

Planning Committee Meeting

**Moot Hall, Town Hall, High Street,
Colchester, CO1 1PJ
Thursday, 19 August 2021 at 18:00**

The Planning Committee deals with planning applications, planning enforcement, public rights of way and certain highway matters. If you wish to come to the meeting please arrive in good time. Usually, only one person for and one person against each application is permitted. Attendance between 5.30pm and 5.45pm will greatly assist in enabling the meeting to start promptly.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda (the list of items to be discussed at a meeting), which is usually published five working days before the meeting, and minutes once they are published.

Dates of the meetings are available here:

<https://colchester.cmis.uk.com/colchester/MeetingCalendar.aspx>.

Most meetings take place in public. This only changes when certain issues, for instance, commercially sensitive information or details concerning an individual are considered. At this point you will be told whether there are any issues to be discussed in private, if so, you will be asked to leave the meeting.

Have Your Say!

The Council welcomes contributions and representations from members of the public at most public meetings. At Planning Committee meetings, other than in exceptional circumstances, only one person is permitted to speak in support of an application and one person in opposition to an application. If you would like to speak at a meeting and need to find out more, please refer to the Have Your Say! arrangements here:

<https://colchester.cmis.uk.com/colchester/HaveYourSay/HYSPlanning.aspx>.

Audio Recording, Streaming, Mobile phones and other devices

The Council audio records and streams public meetings for live broadcast over the internet and the recordings are available to listen to afterwards on the Council's website. Audio recording, photography and filming of meetings by members of the public is also welcomed. Phones, tablets, laptops, cameras and other devices can be used at all meetings of the Council so long as this doesn't cause a disturbance. It is not permitted to use voice or camera flash functions and devices must be set to silent. Councillors can use devices to receive messages, to access meeting papers and information via the internet. Looking at or posting on social media by Committee members is at the discretion of the Chairman / Mayor who may choose to require all devices to be switched off at any time.

Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to the Library and Community Hub, Colchester Central Library, using the contact details below and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets with lift access, if required, are on each floor of the Town Hall. A water dispenser is available on the first floor.

Evacuation Procedures

Evacuate the building using the nearest available exit. Make your way to the assembly area in the car park in St Runwald Street behind the Town Hall. Do not re-enter the building until the Town Hall staff advise you that it is safe to do so.

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Colchester, CO1 1JB

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e-mail: democratic.services@colchester.gov.uk

www.colchester.gov.uk

Covid 19

Please could attendees note the following:-

- Hand sanitiser, wipes and masks will be available.
- Do not attend if you feel unwell with a temperature or cough, or you have come in to contact with someone who is unwell with a temperature or cough.
- Masks should be worn whilst arriving and moving round the meeting room, unless you have a medical exemption.
- All seating will be socially distanced with 2 metres between each seat. Please do not move the chairs. Masks can be removed when seated.
- Please follow any floor signs and any queue markers.
- Try to arrive at the meeting slightly early to avoid a last minute rush.
- A risk assessment, including Covid 19 risks, has been undertaken for this meeting.

COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 19 August 2021 at 18:00

The Planning Committee Members are:

Pauline Hazell	Chairman
Robert Davidson	Deputy Chairman
Lyn Barton	
Helen Chuah	
Michael Lilley	
Jackie Maclean	
Roger Mannion	
Beverley Oxford	
Martyn Warnes	

The Planning Committee Substitute Members are:

All members of the Council who are not members of this committee and who have undertaken the required planning skills workshop training:-

Councillors:

Kevin Bentley	Tina Bourne	Roger Buston	Nigel Chapman
Peter Chillingworth	Nick Cope	Pam Cox	Simon Crow
Paul Dundas	Andrew Ellis	Adam Fox	Jeremy Hagon
Dave Harris	Mike Hogg	Sue Lissimore	Derek Loveland
A. Luxford Vaughan	Sam McCarthy	Patricia Moore	Beverley Oxford
Gerard Oxford	Chris Pearson	Lee Scordis	Lesley Scott-Boutell
Lorcan Whitehead	Dennis Willetts	Julie Young	Tim Young

AGENDA
THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING
(Part A - open to the public)

Please note that Agenda items 1 to 2 are normally dealt with briefly.

An Amendment Sheet is published on the Council's website by 4:30pm on the day before the meeting and is available to view at the bottom of the relevant Planning Committee webpage. Please note that any further information for the Committee to consider must be received no later than 5pm two days before the meeting in order for it to be included on the Amendment Sheet. With the exception of a petition, no written or photographic material can be presented to the Committee during the meeting.

Live Broadcast

Please follow this link to watch the meeting live on YouTube:

[\(107\) ColchesterCBC - YouTube](#)

1 Welcome and Announcements

The Chairman will welcome members of the public and Councillors to the meeting and remind those participating to mute their

microphones when not talking. The Chairman will invite all Councillors and Officers participating in the meeting to introduce themselves.

2 Substitutions

Councillors will be asked to say if they are attending on behalf of a Committee member who is absent.

3 Urgent Items

The Chairman will announce if there is any item not on the published agenda which will be considered because it is urgent and will explain the reason for the urgency.

4 Declarations of Interest

Councillors will be asked to say if there are any items on the agenda about which they have a disclosable pecuniary interest which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other pecuniary interest or non-pecuniary interest.

5 Have Your Say(Hybrid Planning Meetings)

At meetings of the Planning Committee, members of the public may make representations to the Committee members. This can be made either in person at the meeting or by joining the meeting remotely and addressing the Council via Zoom. These Have Your Say! arrangements will allow for one person to make representations in opposition and one person to make representations in support of each planning application. Each representation may be no longer than three minutes(500 words). Members of the public wishing to address the Committee either in person or remotely need to register their wish to address the meeting by e-mailing democratic.services@colchester.gov.uk by 12.00 noon on the working day before the meeting date. In addition for those who wish to address the committee online we advise that a written copy of the representation be supplied for use in the event of unforeseen technical difficulties preventing participation at the meeting itself.

These speaking arrangements do not apply to councillors who are not members of the Committee who may make representations of no longer than five minutes each

6 Minutes of Previous Meeting

The Councillors will be invited to confirm that the minutes of the meeting held on 17 June 2021 are a correct record.

Planning Committee Minutes 17 June 2021

7 - 18

7 Planning Applications

When the members of the Committee consider the planning applications listed below, they may decide to agree, all at the same time, the recommendations in the reports for any applications which

no member of the Committee or member of the public wishes to address the Committee.

- | | | |
|-----|--|---------|
| 7.1 | 200910 Odeon Cinema, Crouch Street, Colchester | 19 - 56 |
| | Demolition of former Cinema buildings and the re-construction of the Foyer Building and the erection of a new apartment block in place of the auditorium to provide 55no. apartments, 2no. Retail Units (A1) and 32no. basement car parking spaces | |
| 7.2 | 211010 9 Mayberry Walk, Colchester | 57 - 68 |
| | Existing residential dwelling converted to include 4 beds, 1 communal breakfast room, bathroom, WC, kitchen, and living room/dining room to be shared with 4 x residents. | |
| 8 | Exclusion of the Public (not Scrutiny or Executive) | |
| | In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972). | |

Part B
(not open to the public including the press)

PLANNING COMMITTEE
17 JUNE 2021

<i>Present: -</i>	Councillors Hazell (Chairman) Barton, Chuah, Davidson, Lilley, Maclean and Mannion
<i>Substitutes: -</i>	Councillor G Oxford for Cllr B Oxford Councillor Pearson for Councillor Warnes
<i>Also, in attendance:</i>	Councillors Barber*, Goss*, Hogg, King*, Willetts*, T. Young *Attended remotely

846. Minutes of Previous Meetings

The minutes of the meetings held on 26 May 2021 and 27 May 2021 were confirmed as a correct record.

847. 202771 Turner Rise Retail Park, Petrolea Close, Colchester

Councillor G. Oxford indicated that he had previously made a comment in respect of this application which could be construed as pre-determination and withdraw from the room whilst the application was debated and determined.

The Committee considered an application for alterations to the car park with the erection of a freestanding restaurant with a drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays, Goal Post Height restrictor and Play Frame. The application had been referred to the Committee as it had been called in by Councillor Goss for the reasons set out in the report.

The Committee had before it a report and amendment sheet in which all information was set out.

The Committee members had been provided with films and photographs of the site taken by the Planning Officer to assist in their assessment of the impact of the proposals on the site.

Annabel Cooper, Planning Officer, presented the report and assisted the Committee in its deliberations.

Richard Chandler addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He indicated he was speaking on behalf of a large number of residents. If the application was granted

there would be 4 McDonald's restaurants in Colchester, and there were already 3 in 1.3 miles of his location. At busy periods the roads and junctions in this area and the train station were busy and if there was any form of incident on the A12, the congestion increased. There were already sufficient areas to eat on the retail park. Given the variety of retail outlets and the petrol station, there was already very large numbers accessing the retail park and if it attracted customers in the numbers predicted, it would only increase traffic and worsen the situation. The restaurant would also generate traffic from delivery drivers. There were also concerns about litter and impacts on child health, given the proximity of the site to schools.

Craig Newnes addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He explained that he was the franchisee for McDonalds and operated 9 restaurants in the local area. He had worked with officers in bringing forward the application. The application demonstrated his commitment to invest in the local area. It would create at least 85 new jobs for local people. His restaurants encouraged a no idling policy for drive-thru customers, and had made significant donations to Colchester Foodbank and other local charities. Staff worked hard to keep sites litter free and took part in campaigns aimed at reducing litter. The proposals would enhance landscaping and improve pedestrian and cycling infrastructure on the retail park. They had worked with Essex County Council to ensure the application would not have a detrimental impact on traffic in the area. The proposal would generate significant economic investment in Colchester.

Councillor Goss attended and with the consent of the Chair addressed the Committee. Whilst it was acknowledged that McDonalds did valuable community work, this was the wrong location for such a development. It was noted that one of the other retail units, Dunelm Mill, had objected. The Transport Assessment was based on a retail park in Croydon, which was not comparable. Concern was expressed about the impact of the proposals on traffic in the area, which already suffered from congestion and long delays, and a comparison was drawn with the drive thru McDonald's site at Leisure World which caused congestion on Cowdray Avenue. The significant level of public opposition was noted, as were the objections from Colchester Cycle Campaign and the objection on health grounds from the NHS. Only 4 extra car parking spaces would be provided for customers with no extra provision for staff parking. The proposals were also likely to increase issues around littering in the area. There were also concerns about increases in anti-social behaviour and harmful impacts on air quality.

Councillor King attended and with the consent of the Chair addressed the Committee. There were clear counter balancing arguments against those used to support the application. The proposals would increase traffic and litter. Whilst the Highways Authority acknowledged that extra trips to the site would be generated by the proposals it did not address the impact of those additional trips, and attention was drawn to the recent ruling by a coroner on the impact of air pollution on health. The NHS did not support the application and there were demonstrable links between fast food and diseases such as diabetes. The National Planning Policy Framework was clear that social and environmental impacts could be measured against economic impacts and that public health was a material planning consideration. On that basis the application should be refused.

In discussion members of the Committee expressed concern about the additional traffic that would be generated and the impact this would have on already busy area. It was noted that the Highways Authority had not objected and further clarification was sought on the compilation and conclusions of the Transport Assessment. Further information was also sought on the distance to the nearest residential property and whether the concerns about health, in particular childhood obesity, were material planning considerations.

The Planning Officer explained that the Transport Assessment included the data from Croydon for comparison purposes, as it was considered it was the site that most closely reflected what was proposed. It did not mean that no study had been made of the impact on this area. The scope of the Transport Assessment had been agreed in advance with the Highways Authority. It was anticipated that there would be increased traffic generation, but it was considered that there would be a significant number of trips to the restaurant that were linked to existing trips to the retail park. There would also be significantly improved pedestrian and cycling access. The nearest residential property was approximately 200 metres to the north and was screened by significant structures. No concerns had been raised by the Environmental Protection Team. In respect of childhood obesity there was no guidance in the National Planning Policy Framework or local planning policies that demonstrated that this could be taken into consideration. However, the application included a Wellbeing Assessment which included information on health menu choices.

Martin Mason, Essex County Council Highways, attended to assist the Committee and explained that the Highways Authority had done their own in house traffic generation study. This had shown that the site would generate some new trips. These trips had been assessed against the National Planning Policy Framework and it was their professional opinion that the additional trips would not have a severe impact of the network. Whilst the meaning of "severe" had not been tested at appeal, it included a consideration of whether the impacts of traffic generated could be mitigated. The site would allow a significant number of linked trips to be made. The site was also accessible with public transport, cycling and pedestrian access.

In further discussion members considered that although concerns about the impact on the road network remained, this would not be a sustainable reason for the refusal of the application. It was suggested by some members of the Committee that food choices were a matter for the individual. To help address concerns about littering it was suggested that an informative be added requesting the car registration details be printed on receipts to deter littering. It was also suggested that the trees due to be removed should be replaced by semi mature trees, and it was agreed that an informative should be added requesting that this should be included in the landscaping scheme.

RESOLVED that (SIX voted FOR, TWO voted AGAINST) that the application be approved subject to the conditions and informatives set out in the report together with additional informatives requesting that car registration details be printed on receipt and that semi mature heavy standard trees to form part of the landscaping scheme to compensate for the loss of existing trees.

848. 210787 87 Colchester Road, West Bergholt

The Committee considered an application for part change of use to takeaway (fish and chip shop), change of shopfront, installation of extractor hood and fan and external cold rooms. The application had been referred to the Committee as it had been called in by Councillor Willetts for the reasons set out in the report.

The Committee had before it a report and amendment sheet in which all information was set out.

The Committee members had been provided with films and photographs of the site taken by the Planning Officer to assist in their assessment of the impact of the proposals on the site.

Annabel Cooper, Planning Officer, and Simon Cairns, Development Manager, presented the report and assisted the Committee in its deliberations.

Parish Councillor Bob Tyrell, Chair of West Bergholt Parish Council Planning Committee, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. The applicant had made no effort to engage into dialogue. The application site was in a residential area in the heart of the village. The application did not comply with PP14 of the West Bergholt Neighbourhood Plan, which stated extensions to existing employment sites would only be supported if the impact on residential amenity was acceptable, and that traffic impact was acceptable in terms of highway safety and amenity of residents. Residents opposed the application so the Parish Council sought the refusal of the application or the deferral for further negotiations. The concerns of the Parish Council included increased traffic and parking and the proximity to a junction, together with increased disturbance because of the excessive opening hours. The location of the refrigeration units and flue would cause noise disturbance. If the Committee were minded to grant the application there should be a limit on opening times, regular collections to deal with litter that was generated and the permission should be limited to 12 months to allow the impact to be assessed.

Councillor Willetts attended and with the consent of the Chair, addressed the Committee to explain that he had called in the application. He considered the application was defective as it did not contain enough information about the control of fumes and odour. Odour and chaotic parking were common problems at fish and chip takeaways and neither could be adequately controlled by conditions. The report acknowledged that there was insufficient information to demonstrate that odour would not have a detrimental impact on the surrounding neighbourhood. Although Environmental Protection had suggested means of reducing the impact, this should have been resolved before the application was reported to the Committee. By their nature trade at fish and chips shops created queues, and there would be significant passing trade from the B1508. Much of the trade would come by car. The only parking available was a small layby that was already used by local residents. This would lead to the B1508 being blocked by indiscriminate parking. If approved the application would cause a significant nuisance to local residents.

Councillor Barber attended and with the consent of the Chair addressed the Committee. He explained that the layby near the premises was privately owned and not part of the public highway and therefore no reliance could be made on it as parking for customers. This undermined the content and conclusions of the report. Whilst the report explained that there was no minimum standard for parking the Committee should ensure that proper consideration was given to the issue. It was very unlikely that customers would cycle: most customers would arrive by car. The West Bergholt Neighbourhood Plan had been adopted by Colchester Borough Council and the report do not give sufficient weight to the Neighbourhood Plan. The Neighbourhood Plan was policy and not guidance. The Committee must take account of the local opposition to the proposal on the grounds of the impact on residential amenity. The concerns expressed on highways issues also needed to be considered.

In response, the Planning Officer explained that the issues around the Neighborhood Plan were fully addressed in the Committee report. In terms of parking, applications were considered against an adopted parking standard, but hot food takeaways were not required by policy to provide parking and so this could not be imposed on the applicant.

In discussion, members of the Committee sought further clarification on the relevance of the Neighbourhood Plan and the weight that the Committee should be putting on the arguments raised that the application was contrary to the Neighborhood Plan on highways and amenity grounds. The Planning Officer reiterated that this was addressed at paragraphs 14.13 and 14.22 of the Committee report. The Highways Authority had not objected to the proposal and therefore the application was considered acceptable in terms of traffic generation. It was also considered that the proposed conditions would be sufficient to protect residential amenity.

Concerns around the impact of odour on neighbouring properties remained. A view was also expressed that it was important to support the Neighbourhood Plan as it was based on the views of the local community, and the considerable number of objections received was noted and should be given weight. Concerns were also expressed about the potential position of the flue, given that there appeared to be room to move it away from the neighbouring property.

A different view was also expressed that that there was no evidence to support the view that the application posed a risk to highway safety and that the concerns about parking and residential amenity were speculative and could not be used to support a refusal of the application. Concerns raised about the flue would be addressed by the proposed condition requiring further information to be submitted to the Council's Environmental Protection Team.

A motion to refuse the application on the grounds on non-conformity with the West Bergholt Neighborhood Plan and the lack of parking, which would lead to congestion thereby causing a risk to Highway safety, was proposed. The Development Manager emphasised that sufficient weight had been given to policy PP14 of the West Bergholt Neighbourhood Plan on highway grounds. All development had some

impact on the neighbourhood, but the impact of this development on amenity could be effectively controlled through conditions.

On being put to the vote the proposal to refuse the application on the grounds specified was lost (FOUR voted FOR, FIVE voted AGAINST).

A proposal to approve the application subject to the conditions and informatives in the report was then proposed.

RESOLVED that the application be approved subject to the conditions and informatives set out in the report (FIVE voted FOR, FOUR voted AGAINST)

849. 210673 Mary Barron Building , Colchester General Hospital, Turner Road, Colchester CO4 5JL

Councillor Chuah (in respect of having been the Council's shareholder appointment on the Board of the Trust) declared a non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(5).

The Committee considered an application for the erection of a building to provide an Elective Orthopaedic Centre comprising 8283sqm internal floor area; the demolition of Mary Barron building and removal of Cardiac Catheterisation Unit, administrative block and part removal of Elmstead Day Unit (Endoscopy only), relocation of clinical services; a new service loop road including drop off parking, delivery area and ambulance bays; the provision of an external link corridor to the existing Elmstead Day Unit and landscaping and ancillary works.

The Committee had before it a report and amendment sheet in which all information was set out.

The Committee members had been provided with films and photographs of the site taken by the Planning Officer to assist in their assessment of the impact of the proposals on the site.

Lucy Mondon, Principal Planning Officer, presented the report and assisted the Committee in its deliberations.

Nick Hulme, Chief Executive of the East Suffolk and North Essex NHS Foundation Trust (ESNEFT), addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The application would help reduce waiting times for orthopaedic surgery, which would help reduce pressure on emergency services. Waiting times were now almost two years. The application would allow the provision of high quality care and help the Trust attract high calibre staff. The application also included extensive landscaping and drop off parking. There had been extensive consultation with residents in Essex and Suffolk and good co-operation with residents.

The Committee expressed its thanks to the Trust for their work supporting the community during the Covid 19 pandemic. The Committee also welcomed the application although some concern was expressed about the impact of the loss of trees on site and asked that they be replaced by mature trees. The potential impact of plant located on the roof was also raised. The Principal Planning Officer explained that the Council's Arboricultural Officer was satisfied that the removal of trees proposed was acceptable given their low and moderate value, subject to mitigation with additional planting elsewhere. In respect of the plant, a noise assessment had been completed and Environmental Protection were satisfied that this could be controlled by the proposed conditions.

RESOLVED (UNANIMOUSLY) that-

(a) The application be approved subject to the recommended conditions (following satisfactory negotiations with regards to the landscape strategy and including any necessary conditions as a result) and informatives as set out in the report and Amendment Sheet, and following the signing of a legal agreement to secure necessary planning contributions. In the event that the legal agreement was not signed within 6 months of the committee meeting, authority be delegated to the Assistant Director to refuse the application, or otherwise to be authorised to complete the agreement;

(b) Authority be delegated to the Head of Service to make minor amendments to the recommended conditions as a result of consultation with the applicant and the requirements of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.

850. 190335 Land at the Rear of the Colchester Centre, Hawkins Road, Colchester

The Committee considered an application for the redevelopment of the site to provide 282 student bedrooms (sui generis) in an 8 storey building with ancillary ground floor space combining café, meeting space, bin store, cycle store, laundry, reception/office, plant rooms and car parking.

The Committee had before it a report and amendment sheet in which all information was set out.

The Committee members had been provided with films and photographs of the site taken by the Planning Officer to assist in their assessment of the impact of the proposals on the site.

James Ryan, Principal Planning Officer presented the report and assisted the Committee in its deliberations. He explained that there was over provision of parking, especially given the sustainable location of the site. It was hoped that the applicants could be encouraged to run the site as a largely car free site and a travel plan condition was proposed.

Chris Board of ABC Planning addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application and thanked the

Council's officers, who had provided an excellent service and delivered improvements to the scheme. In terms of car parking the site would be taken over by a management company who specialised in student accommodation. They had indicated that they were looking to limit the car parking to 10 spaces for the whole building which would cover the needs of those operating the building and disabled parking provision. This could be finalised at reserved matters stage.

A statement from Councillor Tim Young was read to the meeting indicating that he did not object to the application. The design was much improved and there were no material planning reasons for it to be refused, but the issue of car parking needed to be resolved. The only car parking on the site should be disabled bays. The site was close enough to the university for students to walk or cycle there. The position of cycle storage needed to be addressed. It should be much nearer the entrance and with greater volume. A climate emergency had been declared in Colchester and that should apply to planning applications too; walking and cycling must be promoted and this application gave an opportunity to set an example. The parking in and off Hawkins Road was horrendous when the businesses are working at full capacity and more cars in the area should not be encouraged. The applicant should confirm that a sprinkler system would be included within the development. This was vitally important in any application of this type and size, and this was given added piquancy given the recent anniversary of the Grenfell tragedy.

The Principal Planning Officer indicated that the wish to reduce the parking as outlined by both speakers was supported and this could be settled at reserved matters, and the reduction in car parking would give the opportunity to create more green space. A sprinkler system would be provided.

In discussion it was suggested that there should be better provision of cycle parking, and that the University should provide transport links to students with disabilities. Confirmation was also sought that the lifts had a dedicated power supply, so they could be used in an emergency, given there were rooms for those with disabilities on all floors. It was also suggested that the material used for the cladding should be fireproof. In terms of ensuring the development was environmentally friendly, Committee members suggested that planting should be integrated into the building and whether a more sustainable heating system could be used. Concern was also expressed about the lack of amenity space for students.

The Principal Planning Officer explained that a dedicated power supply for the lifts was an issue for Building Control but an informative could be added requesting the issue be looked at. The other issues raised by the Committee could also be secured by conditions and informatives with the applicant's agreement. It was not known at this stage what sort of heating system was proposed, but again the Committee's wish that a sustainable system be looked at could be covered by an informative. The reduction in parking would provide an opportunity to provide more green space.

RESOLVED (UNANIMOUSLY) that the application be approved subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990, within 6 months from the date of the Committee meeting. In the event that the legal agreement was not signed within 6 months, to delegate authority to the Assistant Director to refuse the application, or otherwise to be authorised to

complete the agreement. The Permission also be subject to the conditions set out in the report, for which delegated authority was also granted to add to and amend as necessary, and additional conditions and informatives to address the following issues:-

- Dedicated power supply for the lifts to prevent them becoming unusable in the event of a power cut or emergency;
- A sprinkler system for safety;
- Green/Sedum roof;
- Solar panels;
- A sustainable heating system that limits the amount of carbon produced, such as ground source/air source heat pumps;
- All materials used to be fully fire retardant;
- Increased secure and lockable cycle provision;
- Good quality tree planting;
- More amenity space for students;
- Less on-site car parking;
- Accessibility scheme/travel plan link to university for disabled students.

851. 210822 2 Woodview Close, Colchester

The Committee considered an application for a single storey rear extension and log cabin type summer house. The application was before the Committee as it had been called in by Councillor Mike Hogg for the reasons set out in the report.

The Committee had before it a report in which all information was set out.

The Committee members had been provided with films and photographs of the site taken by the Planning Officer to assist in their assessment of the impact of the proposals on the site.

John Miles, Planning Officer presented the report and assisted the Committee in its deliberations.

Graham White addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He lived at 3 Woodview Close and explained that his wife suffered from severe acute respiratory syndrome which was aggravated by dust pollution. He welcomed that the Council had taken his concerns seriously and had made dust management a condition of the planning permission, but noted that the Advisory Note for Control of Pollution During Construction and Demolition Works did not specifically mention control of onsite dust pollution. How this would be incorporated into the Method Statement, and what assurances could be given to the maintenance and implementation of the Method Statement? It was considered that the combined effect of the application was overbearing in terms of scale and mass. Both buildings were very close to their

property. A reduction of half a metre in the depth or a reduction in height, perhaps through a flat roof, would substantially improve the situation.

Ray Miller addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The summer house would be located in a corner of the plot adjacent to a large leylandii hedge and would be well screened. Additional screening would also be added. The design of the rear extension had been subject to some discussion with the neighbours and the plans had been amended to take account of concerns expressed. Further screening would help reduce the impact on neighbouring properties. The application would not set a precedent as there had been significant development in the area. A Method Statement for the Control of Dust would be prepared and the Advisory Note on Control of Pollution would be strictly adhered to.

Councillor Hogg attended and with the consent of the Chair addressed the Committee. He had called the application in on the basis of concerns and objections from residents and he felt it was important that the decision was made by the Planning Committee after hearing representations from neighbours. Whilst the conclusion in paragraph 16.9 on the impact of the development on amenity of neighbouring properties was noted, this would depend on where the application was viewed from and he considered there would be loss of visual amenity.

The Planning Officer explained that in respect of control of dust the Council had a statutory duty under the Equality Act to address potential effects on those who may have a protected characteristic. A bespoke condition was proposed which required a Method Statement specifying the extra measures that would be taken to minimise dust pollution. This would give the Council more control over the building process and provide security for neighbouring residents. In terms of neighbourhood amenity the impact on all surrounding properties had been assessed. The application had passed the 45 degree test and in terms of the amenity of properties to the north, it accorded with Council standards. Therefore, it was considered the application was acceptable in terms of impact on amenity.

In discussion the Committee was pleased to note the bespoke condition on the control of dust and the efforts that would be made to mitigate the effects of the construction. The Committee considered that there were no material planning reasons on which a refusal of the application could be justified.

RESOLVED (EIGHT voted FOR and ONE ABSTAINED from voting) that the application be approved subject to the conditions and informatives as set out in the report.

852. 210384 Box Cottage, The Avenue, West Bergholt, Colchester CO6 3HD

The Committee considered an application for a proposed first floor rear extension, alteration and detached annex for a carer. The application was before the Committee at it had been called in by Councillor Willetts for the reasons set out in the report.

The Committee had before it a report in which all information was set out.

The Committee members had been provided with films and photographs of the site taken by the Planning Officer to assist in their assessment of the impact of the proposals on the site.

Chris Harden, Planning Officer, and Simon Cairns, Development Manager, presented the report and assisted the Committee in its deliberations.

Councillor Willetts attended and with the consent of the Chair addressed the Committee and explained that he had called the application after being contacted by a number of residents who were concerned about the creation of a detached annex. There were no outstanding concerns about the proposed alterations to the main dwelling. Planning training stressed that the individual circumstances of the applicant were not a relevant planning consideration. There were several rear gardens that met at a common point and there was concern that a residential annex was being shoehorned into a narrow site in an exposed position. The standard condition requiring that the annex only be used by a relative of the family or a carer alleviated some concerns. However there were residual concerns about this form of development. Whilst there was sympathy for the circumstances of this applicant it was hoped that this would not set a precedent for this form of development in such a constrained location. It was more appropriate for this decision to be taken by the Planning committee rather than under delegated powers, and it was hoped the Planning Committee would make clear that this was only being approved due to the special considerations of the case.

The Planning Officer explained that each case would be judged on its own merits. The annex was quite small scale and there would be significant garden space remaining. The special considerations gave additional weight in planning terms. The Planning Service would ensure that the conditions regarding residency were complied with.

The Committee noted the special considerations of the applicant and welcomed the sensible approach of the applicant, neighbours and the Parish Council. The Committee explored whether the residency condition should be tightened further so that the annex could only be occupied by a carer. However, the Development Manager reassured the Committee that the condition as drafted ensured that the annex could not be used as a separate dwelling independent of the main property and so was sufficient.

RESOLVED (UNANIMOUSLY) that the application be approved subject to the conditions and informatives as set out in the report.

853. Jan Mooney

The Committee expressed its thanks to Jan Mooney, Democratic Services Officer, for her service in support of the Planning Committee, and across the Council more widely, over her 20 years at the Council, and wished her a happy retirement.



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Item No: 7.1

Application: 200910

Applicant: Blumarble Property Management Limited

Agent: Pomery Planning Consultants Ltd

Proposal: Demolition of former Cinema buildings and the re-construction of the Foyer Building and the erection of a new apartment block in place of the auditorium to provide 55no. apartments, 2no. Retail Units (A1) and 32no. basement car parking spaces

Location: Odeon Cinema, Odeon Cinema, Crouch Street, Colchester, CO3 3ES

Ward: Castle

Officer: Alistair Day

Recommendation: Refusal

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee as it has been called-in by Cllr Goacher on the following grounds:

“This is major site in Crouch Street Colchester. The proposal to demolish the entire building contradicts previous guarantees that the facade would be retained. This is a building of historic importance visually and parts of it are [locally] listed. Also, the proposal for a block of flats would alter the residential density of the street by a large amount with implications for traffic congestion and parking. As such these matters are significant and this major application should be heard by the Planning Committee and given full scrutiny by democratic representatives”.

2.0 Synopsis

- 2.1 The major issues for consideration are:

- The impact that proposed development would have on the character and appearance of Colchester Conservation Area No.1 and the setting of nearby listed buildings;
- the effect of the development on the amenity of occupiers of nearby buildings and whether the development would provide residents with adequate amenity;
- the impact of the proposed development on highway and pedestrian safety and the free flow of traffic; and
- whether the lack of s106 contributions would result in a development that is unacceptable

- 2.2 For the reasons set out in the report, the application is recommended for refusal

3.0 Site Description and Context

- 3.1 The application site occupies a central position on the south side of Crouch Street (east), within Colchester town centre. The cinema was designed by architect Cecil Masey and was built in 1931. The building is composed of two distinct parts: the architecturally designed foyer which has been described as being in a Spanish / Moorish style; and the rear auditorium, which is effectively a brick and rendered box with a corrugated roof. The interior of the building has been altered and many of the original features have been stripped out. The building closed as a cinema in about 2002 when Odeon Cinema built their multiplex cinema in Head Street and has remained vacant since that time.
- 3.2 The former cinema is included on the Council's adopted List of Buildings of Local Architectural or Historic Interest and is situated within Colchester Conservation Area No.1 (Town Centre). The street frontage range of the former cinema, due to its distinctive architectural style, makes a positive

contribution to Crouch Street which in turn enhances the special character of the Conservation Area. The auditorium in contrast is a bland box whose scale and mass are at variance with the fine historic grain of area. The auditorium is generally obscured from public view by virtue of its 'backland' position; but can be seen in views from Headgate, Southway / Butt Road and Essex Street where it is seen between gaps in the built frontage. The auditorium is not considered to contribute positively to the character and appearance of the conservation area.

- 3.3 To the east of the former cinema is a group of three storey mid C19 buildings of a 'stripped classical' design. This terrace is included on the Council's adopted Local List. To the west of the application site and separated by a modern three storey office building, is Nos. 20-22 a Georgian building which is listed grade II* (star). Wrapping around the rear (south) of the site is a 3 to 4 storey modern office block. The north side of Crouch Street (opposite the application site) is composed of 2-3 storey buildings of mixed date and styles.

4.0 Description of the Proposal

- 4.1 The application proposes the total demolition of the former cinema building and the erection of 55 no. apartments, comprising: 22 no. x one Bed, 30 no. x two Bed and 3 no. x three Bed. At basement level, parking for 34 cars and cycle parking is provided. Two new shop units are also proposed within the reproduction frontage which seeks to reinstate the principal architectural element of the historic building.

5.0 Land Use Allocation

- 5.1 Central Area - Mixed Use

6.0 Relevant Planning History

- 6.1 C/COL/06/0541 - Change of use of former cinema site into night club with extensions and fire escape staircases to rear and new shop fronts. – Dismissed at Appeal
- 6.2 151004 Conversion and new roof to front range of former Cinema to create 11no. Apartments and Demolition of Auditorium and Erection of New Building to provide 46no. One & Two Bed Apartments, refurbishment of 2no. existing Retail Units and creation of 30 basement car parking spaces. - Approved

7.0 Principal Policies

- 7.1 Regard has been given to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the Colchester Borough Core Strategy (adopted 2008, reviewed 2014),

Development Policies (adopted 2010, reviewed 2014); the Site Allocations (adopted 2010) and Section 1 of the Local Plan 2017-2033.

7.2 The Council is developing a new Local Plan (Submission Colchester Borough Local Plan 2017-2033). The whole of the emerging Local Plan was submitted to the Secretary of State in October 2017; however, the examination of the two sections has taken place separately. Section 1 of this Plan has been found sound and was adopted by the Council on 1 Feb 2021. The examination of Section 2 of the emerging Local Plan was undertaken in spring 2021 and the Council is now waiting for the Inspector's letter.

7.3 Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

- (1) the stage of preparation of the emerging plan;
- (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.

Section 1 of the Plan carries full weight; Section 2 is considered to be at an advanced stage but some policies could be subject to change. Reduced weight has been given to the policies in the Section 2 plan in the determination of this application.

7.4 The National Planning Policy Framework (the Framework) must be taken into account in planning decisions and is a material consideration together with the accompanying Planning Practice Guidance (PPG). The National Design Guide is also a material consideration.

7.5 In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), special regard has been paid to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess. Section 72(1) of the LBCA Act requires special attention has been paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

7.6 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

- The Essex Design Guide
- External Materials in New Developments
- EPOA Vehicle Parking Standards
- Affordable Housing
- Community Facilities
- Open Space, Sport and Recreation
- Sustainable Construction
- Shopfront Design Guide

- Cycling Delivery Strategy
- Sustainable Drainage Systems Design Guide
- Street Services Delivery Strategy
- Planning for Broadband 2016
- Managing Archaeology in Development.
- Developing a Landscape for the Future
- Planning Out Crime
- Town Centre Public Realm Strategy
- Air Quality Management Guidance Note, Areas & Order

7.7 Historic England's Good Practice Notes: Managing Significance in Decision Taking in the Historic Environment and The Setting of Heritage Assets are also material considerations.

7.8 The National Design Guide - Planning practice guidance for beautiful, enduring and successful places is also a material consideration.

8.0 Consultations

8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

Archaeological Officer

8.2 No objection subject to a planning condition to record and advance understanding of the significance of any heritage asset before it is damaged or destroyed.

Environmental Protection (General)

8.3 No objection subject to conditions and informatives.

Environmental Protection (Contamination)

8.4 It is noted that no walkover was conducted as part of the instructed works. However, based on the information provided, the conclusions and recommendations would appear reasonable i.e., that an intrusive investigation is not considered to be warranted at this time, but that if during development ground conditions are found to differ from those anticipated, further risk assessments will be required.

8.5 Consequently, should permission be granted for this application, a condition regarding unexpected contamination is recommended.

8.6 In addition, to the above, the Council's Contaminated Land Officer recommended that that pre-demolition asbestos surveys and necessary removal works should be conducted prior to commencing any demolition works on the existing building.

Environmental Protection (Air Quality)

- 8.7 The AQA has been reviewed and it is noted that slight exceedances have been modelled for first floor flats along Crouch Street and at ground floor retail units. Modelling identifies that by the operational phase of the development there will be no exceedances. However, modelled improvements using future emission factors rarely occur to the magnitude identified and with this uncertainty, the requirement for mitigation would be recommended.

Historic Buildings Officer

- 8.8 The application causes significant concerns in terms of its impact on identified heritage assets. The proposals will result in the complete loss of a locally important non designated heritage asset that contributes positively to the conservation area. The proposal to reinstate the front elevation on Crouch Street by attempting to imitate the historic façade while increasing the volume of the range will be to the detriment of the street scene and the addition of the extra storey of the rear block compromises the potential for the development to integrate successfully into the built context of the area.
- 8.9 For the reasons set above, the proposed development does not comply with the legislation, national and local policies for the protection of heritage assets and conservation areas and cannot be supported on heritage grounds

Anglian Water

- 8.10 No objection subject to recommended conditions and informatives.

Cinemas Theatre Association

- 8.11 The Association object to the application on the grounds that:
- The cinema is an important example of the mature neo-Spanish style employed by the major cinema architect Cecil Masey. It is one of a series with the Granada, Walthamstow, and the Avenue, Northfields, both of which are listed at Grade II*. We believe its style is unique within Essex.
 - The cinema on Colchester's Local List, with a very complete historical description, and is a prominent feature in Crouch Street in Study Area 2 of Colchester Town Centre Conservation Area. It should therefore be protected alongside other historic buildings in the town.
 - The proposed replica building would re-create only the cinema's façade, and even then would change some important details. The overall massing and impression would be radically different, and the significance and authenticity of the original completely lost.

- The application claims that the front block is structurally unsound, but offers no evidence for this assertion. At the very least there should be a structural engineer's report. As a historic building, the presumption should be towards restoration of the original fabric.
- The interior of the front block survives to a considerable extent, and the first floor restaurant space shown in the photograph attached has architectural quality. The central area of this space behind the tall Spanish window should be retained and restored in any new scheme.

Essex Police

- 8.12 The published documents have been studied and, unfortunately, do not provide sufficient detail to allow an informed decision relating to security, pursuant to the National Planning Policy Framework, sec 12 paragraph 127, (f) and Colchester's Planning Policy DP1: Design and Amenity, iv. – 'Create a safe and secure environment'.
- 8.13 Essex Police would be keen to meet with the developers to discuss incorporating crime prevention through environmental design into this site through the nationally acknowledged Secured By Design accreditation. Essex Police would like to have the following issues clarified
- Developments of flats can suffer adversely from anti-social behaviour due to unrestricted access to all areas and floors of the building. What security is proposed within this development to counter this potential problem?
 - In addition to above, how will the basement car park ramp and stairwells be secured to prevent unauthorised, unrestricted access to this area?
- 8.14 Essex Police would recommend the applicant incorporate Crime Prevention through Environmental Design and apply for nationally acknowledged and police recommended Secure By Design accreditation.

Fire and Rescue Service

- 8.15 Access for fire-fighting purposes does not appear to meet the requirements within ABD B5 from the information provided. More detailed observations on access and facilities for the Fire Service will be considered at Building Regulation consultation stage. It is the responsibility of anyone carrying out building work to comply with the relevant requirements of the Building Regulations.

Officer Comment:

For applications submitted on or after 1 August 2021 there is now a requirement to submit a Fire Statement if the building contains two or more dwellings and meets the height condition of 18m or more or 7 or more storeys. The building proposed under this application would meet the

height requirements for a Fire Statement but as the application was submitted before 1 August 2021, a Fire Statement is not required to be submitted. Given this, and as noted by the Fire and Reuse Service, matters relating to fire will therefore need to meet the relevant Building Regulation requirements and these matters will be assessed should the development be implemented.

Historic England

- 8.16 Historic England objects to the application on heritage grounds. The proposals for total demolition of the former Odeon Cinema, a building included in Colchester Borough Council's Local List and located within the Colchester Town Centre Conservation Area, are considered wholly inappropriate in this sensitive location and have not been justified in accordance with the requirements of paragraph 194 of the NPPF. In addition, the scale and massing of the newbuild residential block that would replace the auditorium would be overly dominant in both short and long streetscape views within the conservation area and would adversely affect the setting of listed buildings in the vicinity. We therefore urge your authority to refuse the application in its current form.
- 8.17 In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess, section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas and section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.
- 8.18 Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If, however, you propose to determine the application in its current form, please treat this as a letter of objection, inform us of the date of the committee and send us a copy of your report at the earliest opportunity.

Highway Authority

- 8.19 From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to recommended conditions and informatives

Lead Local Flood Authority

- 8.20 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 the condition and informatives.

Theatres Trust

- 8.21 The Theatres Trust is the national advisory public body for theatres. We were established through the Theatres Trust Act 1978 'to promote the better protection of theatres' and provide statutory planning advice on theatre.
- 8.22 Although it is not statutorily listed architecturally it is unique in Essex with an impressive principal façade in a Spanish-American style, as well as being an important survivor of Massey's provincial work. It is on the Council's adopted List of Local Architectural or Historic Interest. Notwithstanding its vacant and deteriorating state, it is also an important positive contributor to the Colchester Town Centre Conservation Area and is recognised by the Conservation Area Character Appraisal as one of the more interesting buildings in Crouch Street.
- 8.23 As the site was built as a cinema with theatre provision, and that cinema remains the building's lawful use, our general position as supported by national and local policy is that it should be demonstrated the site is surplus to requirements for continued community or cultural use before other uses are considered. We are aware of local interest in the building being retained for cultural use. While evidence of continuing need does not appear to have been tested within the previous application (and we note that Cinema Theatre Association did not object to the change of use) we accept there is an existing permission and therefore while retention and restoration of the site for community or cultural use would be desirable and loss of parts of the building regrettable the primary factor in this application is the total loss of the site as an undesignated heritage asset. In that context it is also pertinent to note since the previous submission Colchester has gained a further cinema within the town centre with a further permission on an out-of-town site and works on expanding provision at the Mercury Theatre are advanced.

On the basis of total loss of the original building we object to this proposal. We would note the merits of retention were prominently stated within the conclusion of the previous application's report which heavily influenced the recommendation to approve. Although not statutorily listed, the frontage of this building is nonetheless an important and significant asset not just within the immediate context of Crouch Street but regionally and even nationally given its association with Massey and being a survivor of his provincial work. While we appreciate the applicant's objective of delivering a scheme which offers an acceptable commercial return, that should not come to the detriment of the scheme's public benefits and loss of heritage. Furthermore, retention generally represents a more environmentally sustainable option than demolition and re-construction. This must be considered alongside any cost and efficiency arguments supporting the new build option because embodied carbon and the impact of extraction, manufacture, delivery, recycling and landfill of new and demolished materials should be taken into account. While we welcome that some elements would be re-used – for example metalwork to the windows – we

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do not consider this to mitigate the overall impact of loss. Therefore in conclusion we recommend the refusal of planning permission.

9.0 Parish Council Response

9.1 The site is not parished

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.

- Loss of an important piece of Cinema Architectural History; it is an iconic part of our town centre and must be preserved.
- Demolition would be to rob Colchester of the key feature of one of its much-loved landmark buildings
- There is no evidence of structural problems, the intention is to reduce build costs and thereby increase the profitability of the scheme; this should not be considered a justification for its demolition.
- The building has been allowed to fall into to a poor state of disrepair; this should not form no part of any argument or justification for the demolition of the façade.
- They have applied to demolish the frontage on order to gain access to the site for demolition and building purposes and given no care to the listed building
- Scale, mass and height of the proposal is out of character with the surrounding
- The developers got their sums wrong in the original submission they have now painted themselves into a corner; adding extra floors to accommodate puts the whole scheme out of proportion with its surroundings.
- Application for Residential Conversion should not be accepted based on the argument that flats is now the only economically feasible / viable option being offered / proposed
- Housing needs to be prioritised for Borough residents
- Increased congestion / pollution from residential traffic
- It will create excessive car movements
- Lack of parking will add to the strain on existing limited parking
- This development should be car free with access to a car club parking
- The parking spaces should have high-wattage electric charging points.
- The cycle parking should be far more prominent and secure
- There is concern about the headroom offered at the various cycle parking locations.
- The flats on the west facing side will have a very limited aspect as they would the back directly onto nearby buildings.
- Loss of social amenities
- The proposed south elevation is close to the adjacent office building and will result in direct overlooking. Privacy has been enjoyed by the office

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building since it was built as the south elevation of the former Odeon was devoid of windows.

- The proposal if permitted in this form would prejudice any future application under Permitted Development Rights to change the use of Southway House into residential use.
- It will cause disruption to the access of the office car park and the ability of the occupiers of a Southway House to go about their daily business
- There are very few places for live music and for plays etc.
- It is in an area known for the night-time economy.... this will very possibly lead to conflict between residents and business

10.2 The following representations have been received from Cllr M Goacher:

- This building is on the list of buildings that the Council considers to be of such importance that they should be retained. As such the complete demolition of the building would render this list to be pointless.
- it was always understood previously that the frontage of the existing building would be retained. For the applicant to go back on this understanding due to the building degenerating due to being left redundant for several more years is unacceptable and contravenes previous agreements.
- the proposal for 55 dwellings with a high level of provision for car parking but a low level of provision for cyclists is bound to increase traffic congestion in an already busy area. This also completely contradicts Council attempts to deal with the climate emergency following the unanimous vote in Council in 2019 to declare a climate emergency. There should be provision for every resident to store a bicycle, but currently there is not. Rather there is the encouraging of residents to own and use cars, this increasing traffic in the area significantly.

10.3 The following representations have been received from Cllr P Coleman:

- Given the town centre location there needs to be less traditional car parking spaces, replace with more electric car charging places and definitely more safe cycle storage, storage for at least one bike per flat and secure given cost of bikes and electric bikes.

Civic Society

10.4 The new application in respect of the Odeon cinema building has proved to be something of a dilemma for the Civic Society. This stems from the Society's active attempts some years ago to secure a full listed status for the building and an element of disappointment that it has only achieved a local listing for the facade building. Along with the majority of residents we have despaired at the lack of activity and the gradual dereliction of the building over the years of ownership blight and development problems. Many of us would have looked forward to a positive new beginning with the passing of the earlier planning application and the promise of an improvement in the street scene of Crouch Street

- 10.5 The Society is well aware of the viability issue surrounding this earlier plan and the consequent lack of any positive proposals to the despair of the neighbouring local businesses and residents who pass by and shop in the area. As a result, the Society feels that we should approach this new application with a positive approach in the hope of finding a workable solution to all our hopes for a new beginning. The Planning Statement, the Heritage Impact Assessment and the Viability Report have presented the argument that this is the only possible solution to the conundrum now facing us all, despite the possibility of only the most modest of profits with little provision for on costed site issues with contamination or water run-off. The consequences of this argument are that we must all accept the need for the demolition of the frontage building and its facade to allow proper site access as well as the increase in height of the apartment building as well as an increase in the number of flat units to make for a viable plan. It will now be a six storey building plus basement which will allow for an additional nine flats. By a reconfiguration of the parking provision and additional four places will be found in the basement. It must be suspected that the single bedroom flats will have no parking provision as there will be 30 two bed flats and 3 three bed flats in the new plan. All of these modest changes could be argued as being acceptable changes despite the possibility of some aspects being very close to neighbouring buildings.
- 10.6 The greater issue is the problem of the original frontage building and the plan to rebuild to the original plan and specification with the re-use of original fixtures and fittings and the construction of an altogether more attractive roof than the existing corrugated one. This replacement plan does present some issues for the Society. Principally we are unhappy with the use of " facadism" - i.e. the retention of an original facade to hide a new interior but this will be taken to the greater extreme of being an ersatz facade. Is this Spanish-American Mission style frontage really such a wonderful building that it demands retention and full restoration? It was never the best of Masey's original designs nor constructions. Hence the local listing status. The original grandeur of the cinema was in the interior ornamentation which is to be completely demolished. Do we really need two additional retail units again on the north side of Crouch Street where shops have never been truly successful? Might there not be a better argument for the Crouch Street frontage to be two Georgian houses possibly with green space in emulation of the original design before this short lived cinema. If we are obliged to accept this new scheme, then the Society is adamant that the quality of the frontage replication must be conditional to the consent.
- 10.7 Further we remain concerned by the lack of parking provision and the then definite threat to the on-street parking which is essential to the local shops. We would insist that every flat has bike parking provision and that the electrical charging points should be of greater numbers to future proof the provision. We would also see the need for all recommendations by statutory consultees to be made conditional as well as the need for full archaeological recording and surveying of the basement excavations. Lastly, we would like to insist that the possible name should be " Regal

House" and not " Gardens". The Society does appreciate that the cinema has a high communal value currently and many in the town have considerable memories invested in the structure. We also are fully aware that this site has no future as a concert venue, cinema or indoor market as many would suggest. We are anxious only that we acquire the best design to re-vitalise our premier shopping street.

11.0 Parking Provision

11.1 The application proposed 34 car parking spaces.

12.0 Accessibility

12.1 The layout and buildings have been designed to ensure that pedestrians of all mobility types can move around the development in a safe and convenient manner.

13.0 Open Space Provisions

13.1 None

14.0 Air Quality

14.1 The site is outside of any Air Quality Management Area. An Air Quality Impact Assessment has been submitted due to its proximity to an Air Quality Management Area.

15.0 Environmental and Carbon Implications

15.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives. Consideration of this application has taken into account the Climate Emergency and the sustainable development objectives set out in the Framework. It is considered that, on balance, the application represents sustainable development.

16.0 Environmental Assessment

16.1 The development, by virtue of its size and scale is not considered to result in significant impacts and, as such, is not considered to constitute EIA development under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

17.0 Planning Obligations

17.1 As a “Major” application, there was a requirement for this proposal to be considered by the Development Team. The following contributions were requested:

- Community - £71,459.01
- Parks & Recreation - £173,392.19
- Highways –Residential Travel Information
- Transport and Sustainability - £5,000 Contribution towards an electric car club car.
- Housing – 11 AH Dwellings The tenure of the affordable housing should be no less than 80% affordable rent and no more than 20% shared ownership.
- Education - As the pupil numbers generated by the proposed development do not reach ECC specified contribution request thresholds, an education contribution will not be sought.
- NHS - £33,454.08

17.2 Following the review of the viability assessment the Development Team agreed that seven shared ownership units should be provided and that the scheme should be subject to a viability review requirement.

18.0 Report

Principle of Development

18.1 The application site is located on the edge of Colchester town centre and is identified as a Mixed-Use Area on the Proposals Map. CS Policy SD1 states that new cultural, retail, office and mixed-use developments will be delivered through regeneration of the Town Centre and its fringe. CS Policy TC1 states that Mixed Use Areas will provide mixture of residential and commercial uses. DP Policy DP6 provides further guidance stating that appropriate uses will be supported where: a proposal contributes to the design quality, activity levels and character of the area; complement other uses on the frontage; and have no significant adverse impact on neighbourhood amenity. The Framework promotes the growth of town centres and recognises that residential development can play an important role in ensuring the vitality of such area. In addition to the above policy support, it is also a material consideration that planning permission was granted on 29 March 2018 for a residential led redevelopment scheme at this site; this permission lapsed on 29 March 2021.

- 18.2 In view of the above, there is not an objection, in principle, to the proposal to provide residential accommodation with small scale retail units at this site. The application does however need to be assessed against other planning policies and material considerations.

Five Year Land Supply

- 18.3 The Council's latest published Annual Housing Position demonstrates that the Council has a 5-year land supply.

- 18.4 The Planning Statement opines that the Council is unable to demonstrate a five year supply of housing and references the recovered appeal in Tiptree (Barbrook Lane) in which the Secretary of State found (April 2020) that the Council was then unable to demonstrate a 5 year housing land supply. The agent notes that the Council's housing land supply was found to be at 4.7 years, against a 5.0 year target. The agent goes on to state whilst this shortfall is modest, the 46 units approved in 2018 scheme are included within the 4.7 year supply. The agent states that these units are not deliverable and as consequence of this, the 4.7 years supply identified by the Secretary of State would be reduced further. The agent opines that approving the current application for 55 units will reinstate the 46 units and add nine additional units, making an important and meaningful contribution to the Council's housing land supply.

- 18.5 In more recent appeals (Land off Maldon Road, Tiptree and Braiswick), Planning Inspectors have found that the Council is able to demonstrate a five year deliverable supply of housing. In the Braiswick appeal the Inspector stated:

"The Council states that it has a supply equating to around 5.4 years based on 6,108 units identified within its APS. Both parties in advance of the Hearing agreed a contribution of 300 units from the Fiveways Fruit Farm; this is a reduction of 50 units originally included in the Council's trajectory. Furthermore, based on my analysis, I have deleted a further 397 units resulting in a 5YHLS of 5,661, sufficient to maintain a 5YHLS."

- 18.6 Members may wish to note that the current application site was one of the sites that the Inspector deleted from counting towards the Council's five-year housing land supply. The Inspector commented that although there is already an extant permission for the redevelopment of Odeon site, viability issues have necessitated revisions resulting in the submission of new application. In view of this, the Inspector opined that, for the time being, there is insufficient evidence to support the case that it will yield any units during the 5 years in question.

- 18.7 The Inspector in the Braiswick appeal also considered the effect of the pandemic on housing delivery. The Inspector commented that it is almost impossible to predict the impacts of how the pandemic may affect housing supply over the next few years. At the appeal the appellants cited a decision in Wokingham, which was issued towards the start of the first

lockdown, that suggested a deduction of between 74-148 dwellings should be made equating to between 3-6 months' supply. However, the Inspector for the Braiswick appeal commented that since that decision was issued the response of the built environment sector has become clearer and the Council have highlighted measures that have been put in place which have acted as a spur to house building to compensate for the loss in supply. The Inspector concluded that "On the balance of evidence before me I consider that there would be no significant impacts on supply from the pandemic".

- 18.8 For the reasons given above, it is considered that the Council is able to demonstrate a five year supply of housing and this supply is not dependent on the current application site coming forward for development.

Heritage Considerations

- 18.9 Both CS Policy ENV1 and DPP Policy DP14 reflect the statutory obligations as set out in S66(1) of the LBCA Act to have special regard to the desirability of preserving a listed building or its setting and S72 of the same Act that requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. In a similar vein, the Framework gives great weight to the conservation of designated heritage assets, noting that the more important the asset, the greater the weight should be. This is irrespective of the level of harm. The Framework also states that any harm should also require clear and convincing justification.
- 18.10 The former Odeon cinema is included on the Council's adopted Local List of Buildings of Architectural or Historic Interest. The application site is located within Colchester Conservation Area No.1. There are also a number of listed buildings in the immediate vicinity of the application site and special regard has to be paid to the setting of these buildings.
- 18.11 The former Odeon cinema comprises two distinct parts, namely the architecturally designed frontage range (comprising the entrance foyer with its embedded shops and carriage arches) and the functional rear auditorium. The front range consists of the Spanish or Moorish style gabled foyer (equivalent to three plus storeys in height) which is flanked by two storey hipped wings. To either side of the entrance foyer were originally recessed niches which reflected the design of main gabled foyer. At first floor level, the windows have cast iron balconettes which were originally surmounted with a string course that extended down like inverted consoles into bays between the windows. The front range is characteristic of 1930's cinema architecture, albeit of a slightly unusual design. The rear auditorium is essentially a large brick and rendered box with a corrugated roof. The building has been vacant since the Odeon moved to its current location in Head Street (about 20 years ago) and is in poor condition due to lack maintenance and repeated vandalism.

18.12 The key heritage considerations are:

- i Whether the loss of a non-designated heritage asset is justified;
- ii Whether the proposal would preserve or enhance the character or appearance of the Colchester Conservation Area No.1;
- iii Whether the proposal would harm the setting of nearby listed buildings;
- iv Whether the extent of any harm would be substantial or less than substantial;
- iv If the proposal leads to less than substantial harm to the significance of the heritage asset, do the public benefits of the proposal outweigh this harm; and
- iv If the proposed development leads to substantial harm, is substantial harm necessary to achieve substantial public benefits that outweigh that harm or loss. If substantial harm is not considered necessary to achieve public benefits or those public benefits are not considered to outweigh the harm, then the decisive issue is whether all of the four tests set out within paragraph 195 of the Framework apply.

18.13 Local planning policies seek to preserve or enhance non-designated assets (locally listed buildings). The Framework (paragraph 203) states the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. The Framework goes on to state (paragraph 207) that the loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area should be treated either as substantial harm under paragraph 200 or less than substantial harm under paragraph 201, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area.

18.14 In terms of significance, the applicant's Heritage Statement (HS) suggests that overall, the former cinema has medium heritage value. This assessment has been arrived at by considering evidential, historic, aesthetic and communal values of the building.

18.15 In assessing the historic significance of the cinema, whilst there may not be full agreement as to the precise grading of the heritage values, there is agreement that, at the local level, the significance of the former cinema ranges between moderate and high. Given this, officers believe that the building is rightly included on the Local List and constitutes a non-designated heritage asset. In terms of the contribution that the buildings make to the conservation area, the HS acknowledges that the front range makes a positive contribution to this part of the Conservation Area, although the HS does note that due to the building's current condition, it detracts from the appearance of the east half of Crouch Street. There is thus also agreement that the building makes a positive contribution to the appearance of the conservation area. Given this, in accordance with

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paragraph 207 of the Framework, it is necessary to consider whether the demolition of the former cinema would cause substantial or less than substantial harm to the conservation area. The agent opines in the Planning Statement that the impact of the proposals on the character of the conservation area when taken as a whole would be negligible and concludes that the harm to the significance of the conservation area is therefore less than substantial. Officers agree that the demolition of the building will result in less than substantial harm being caused to the conservation area designation but do not consider the extent of harm to be at the lower end of the scale as suggested by the agent.

- 18.16 The Framework states that any harm to, or loss of the significance of a designated heritage asset, should require clear and convincing justification. The justification put forward in the HS for the current application is that the proposals have been developed following a viability assessment on the consented scheme, which found that this would result in a substantial loss for the developer. The HS explains that the viability assessment has considered several options and it is stated that the current application represents the only scheme that does not result in a substantial loss. The viability of the scheme is the only reason put forward to justify demolition of the building; it has not been alleged that the building is incapable of conversion or that the building is structurally unsound. Whilst the concerns highlighted by the agent regarding the viability of a residential-led scheme are appreciated, no evidence has been submitted that the former Odeon has been marketed for sale. This has been raised with the agent and they have stated that the site has been available for sale since the last permission and whilst there has been some interest there have been no formal offers. The agent goes to state that “even if it were extensively marketed, the issue is not the visibility of the building, but the viability of creating a use from it that is the greatest challenge. I’m sure that if it was sold for £1, the level of investment required to retain the building in a viable use would exceed any likely returns”. The submitted viability information indeed suggests that this may well be the case; however, without formal marketing, the applicant has failed to demonstrate that there are no alternative options to the total demolition of the building and without this evidence, the case for the total demolition of the cinema has not been fully demonstrated.
- 18.17 As a locally listed building that makes an important contribution to the character and appearance of the Town Centre Conservation Area, there is a strong presumption in favour of retaining and repurposing front range to preserve the significance of the conservation area.
- 18.18 Crouch Street originally formed one of the main routes into the town centre. The street retains a strong historic character despite being bisected by the dual carriageway of Balcerne Hill. The east end of Crouch Street (between Headgate and Balcerne Hill) is composed of historic buildings that are generally between two and three storeys in height. The former cinema occupies a central position within this part of Crouch Street and, by virtue of its unusual design, makes a striking impact on the local street scene. To the west of the cinema is a traditionally designed modern three

storey red brick office building; beyond the office building, lies 20-22 Crouch Street, a fine eighteenth century building that is listed grade II* (star) for its special architectural and historic interest. The buildings to the south and south-west of Nos.20- 22 are modern and range between three to five storeys in height. Immediately east of the cinema is a three storey early nineteenth century terrace, which is locally listed. At the east end of the street is the Bull Public House, a timber framed structure with an eighteenth-century frontage, which is listed grade II for its special interest. The north side of Crouch Street is composed of a mix of buildings, typically between 2 and 4 storey in height and of various ages and styles. To the south of the application site, is a modest early nineteenth century terrace (15-19 Headgate) which is locally listed.

- 18.19 The effect of the application proposal on the conservation area falls into two strands: the effect that the demolition would have on the character and appearance of the area; and the effect that the proposed replacement building would have on local street scene and that of the conservation area; these 'strands' are discussed in turn below.
- 18.20 The former Odeon was designed to present an imposing façade to the street. The building is considered to make a significant contribution to the character and appearance of this part of the conservation area, although its positive contribution is diminished by the ground floor openings and many of the windows being boarded over and by its poor condition. The facade of the building has not however been so irreversibly altered that it could not once again form the architectural focus of the street. The building is significant in terms of architectural, historic and social / cultural history of the area and the understanding of its development. The total loss of such a large and prominent building from the historic street fabric would cause harm to the character and appearance of the area and would consequently be harmful to the significance of the conservation area. This harm is considered to be less than substantial, albeit at the greater end of this scale.
- 18.21 It is proposed to demolish and rebuild the front range of the cinema. The agent opines that the loss of the front range will be mitigated by erecting a building that "bears a closer resemblance" to the original Masey design. The proposal to put a replica building back in the place of the former Odeon is philosophically questionable and would seemingly show a lack of confidence to create a modern building that is befitting this sensitive location. That said, officers acknowledge that there is support this approach and officers accept that a facsimile structure will maintain 'an air of familiarity' to the local street. Whilst the support to rebuild the front range is appreciated, it should be noted that modern building requirements mean that it is rarely possible to faithfully recreate historic detailing which will result in subtle changes from the design and detailing of the original building. In addition to these modifications, the current application proposes a more significant change to the original design through the introduction of the parapets to the flanking wings and the addition of a further floor of accommodation; this 'addition' will alter the rhythm of the original building and the relationship of the wings to the central gable, with

the latter becoming less dominant in the street scene. In the view of officers, for the argument that a new replica building will mitigate the loss of the existing structure is to truly hold weight, then the replacement building needs to faithfully replicate the original Massey design. The submitted scheme does not do this and, consequently, in the view of officers, limited weight can be given to argument that the new Crouch Street frontage building will truly mitigate the impact of demolishing the original front range of the former cinema.

18.22 In addition to rebuilding the front range, it is also proposed to construct a new six-storey residential block (including rooftop / penthouse apartments) to the rear of the recreated front range. The design of the properties surrounding the site reflect the buildings' age and are generally modest in scale and have a fine grain. The rear apartment block will appear as a single large block that adopts a contemporary style. The design approach is broadly similar to the scheme that was previously approved but with an additional storey and a slightly different (enlarged) footprint when compared to the approved scheme. The addition of the extra floor inflates the design of the building and give the façade an extruded appearance. In negotiating the 2015 application, officers expressed concern that the scale and mass of the proposed rear range was out of context with the surrounding historic townscape; however this scheme was eventually accepted on the basis that it was similar in height to the existing auditorium block, provided for the retention and conversion of the historic front range and provided the minimum quantum of the development, that the applicant argued was necessary to make the scheme financially viable and deliverable. When negotiating the 2015 application, Officers were clear in their advice that a six storey building in this location would not be appropriate.

18.23 The current application seeks permission to increase the height of the rear accommodation from five to six storeys. The proposed apartment block will be most visible from Headgate and the junction of Butt Road / Southway. The new building will also be seen in views from Crouch Street and Essex Street. The proposed rear accommodation block will of considerably greater scale and mass than the surrounding buildings and will introduce a form of development that will be overly prominent in the established townscape and will fail to integrate successfully with the adjacent buildings or indeed that of the proposed new front range. In views from the south and east, the proposed rear apartment block will dominate the locally listed buildings (15-19 Headgate and 10-14 Crouch Street) and the long unrelieved roofline will create an alien feature in the established roofscape. Whilst it is accepted that the proposal will provide an element of vitality (natural surveillance) to the Headgate frontage, and that this represents an improvement on dead frontage elevation of the existing auditorium, this 'positive' is not considered to outweigh the harm caused by the scale and mass of the proposal. In terms of the views along Crouch Street, the rear apartment block will loom over the front facades of the buildings and create a discordant feature in the local street scene. For the reasons described above, it is considered that the proposed six storey block would create an overly dominant feature in the streetscape and will be harmful to

the character and appearance of the immediate historic townscape. This view is shared by Historic England.

18.24 With regard to the setting of listed buildings, the two listed buildings most affected by the proposed development are Nos. 20-22 Crouch Street and the Bull Inn, which are listed grade II* and grade II respectively. The Bull Inn is principally an eighteenth-century building with an older core. When viewed in the context of Crouch Street, the Bull Inn is likely to experience only negligible change as a result of the proposed development; this is due to the built-up nature of the street and distance from the application site. When viewed from the south, the proposed apartment block will form part of the same townscape backdrop as the Bull Inn (which also includes views of Jumbo). In this context, the proposed development, by virtue of its greater scale, height mass and design, will detract from the historic townscape / roofscape of the area (including the setting of the listed buildings). Nos. 20-22 Crouch Street is located to the west of the application site and separated on the Crouch Street frontage by a modern office building. Nos. 20-22 Crouch Street has a fine eighteenth century façade and, like the Bull Inn, its original setting has been affected by later developments. The HS notes that the nos. 20-22 Crouch Street originally had large rear gardens which have been lost and constructed upon for the most part with the surviving open areas hard surfaced as car parking. The west flank wall of the cinema has formed part of the setting of nos. 20-22 Crouch Street since the 1930s and contributes to the claustrophobic rear courtyard setting. The replacement of the auditorium building provides the opportunity to improve this aspect of the setting to nos. 20-22 Crouch Street. The current application does little to improve the existing situation however. The proposal to rebuild the front range of the cinema will not significantly affect the setting of nos. 20-22 Crouch Street; although the way in which the rear apartment block looms over the front facades of the Crouch Street buildings will create a discordant and incongruous juxtaposition with the existing built form and will detract from the setting of 20-22 Crouch Street.

18.25 The Council's Archaeological Officer notes that the application site is in an area of high archaeological potential and that there is the potential for the proposed development to have an impact on buried archaeology. When constructing the former cinema, extensive excavations were undertaken, and the agent opines that it is likely that most buried archaeology would have been destroyed at this time. It is however possible for some archaeology to have survived; indeed the HS notes that an interesting feature of Cecil Masey's plans is that he appears to have incorporated the foundations and basement of the Georgian properties that once stood on this site into the layout of the cinema. The Council's Archaeological Officer has advised that there are no grounds to refuse this application from an archaeological standpoint but that recording conditions (archaeological and building recording) will be required.

18.26 Paragraph 202 of the Framework states that where a proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefit of the proposal. The

principal public benefit generated by the current application is the provision of new residential units. Against this, the Frameworks requires great weight to be given to conservation of heritage assets and that any harm to or loss of significance requires clear and convincing justification. Although the provision of housing would provide a positive benefit, this alone is not considered to overcome the harm that would result to the conservation area, the loss of a locally listed building or the setting of the nearby listed buildings. The agent also states that the implementation of proposal would 'tidy-up' the appearance of this part of the conservation area. Officers give this alleged benefit very limited weight as a similar claim was made in respect of the previous scheme and there is no guarantee that the current scheme, if approved, would be implemented. The Framework requires that a balanced judgement is made having regard to the scale of any harm or loss to the heritage asset; the current application would result in the total loss of a non-designated heritage asset. It is considered that the proposed development would cause material harm to the setting of nearby listed buildings and harm to the character and appearance of the town centre conservation area (both through the demolition of a locally listed building and by the creation of new development whose size, scale, mass and design is out of context with its surrounding). The application is therefore contrary to sections 66(1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and would conflict with the aforementioned local plan policies and the guidance set out in the Framework. The public benefits that have been promoted are not considered to outweigh the harm that has been identified.

Character and Appearance

- 18.27 In considering the design and layout of the proposal, CS Policy UR2 and DPP Policies DP1 and DP12 are relevant. These policies seek to secure high quality and inclusive design in all developments, respecting and enhancing the characteristics of the site, its context and surroundings. With particular reference to housing density and diversity, CS Policies H2 and H3 require developments to make efficient use of land and relate to their context. The policies go on to state that new developments must enhance local character. Further design guidance is set out in the Essex Design Guide, the Framework and the National Design Guide (NDG) – the latter being published after the extant proposal was approved. The principles set out in the above policies are carried forward in the ELP (in particular, policies DM9, DM10, and DM15).
- 18.28 The Framework establishes the importance that the Government attaches to the design of the built environment and this has been increased by the recent amendments to the Framework. The supporting guidance document to the Framework notes that local building forms and details contribute to the distinctive qualities of a place and that standard solutions rarely create a distinctive identity or make best use of a particular site. In October 2019, the Government published the NDG which sets out guidance on the characteristics of well-designed places and what good design means in practice.

- 18.29 The NDG, which whilst not a detailed set of design criteria against which to assess the design of a proposed development at a local level, nevertheless sets out the broad principles to achieve the well-designed places that the Framework expects new development to deliver. The NDG expects new developments to be skilfully woven into their context and respect the rhythm scale and proportions of the existing townscape.
- 18.30 The general design of the proposed development is discussed above and for the reasons explained it is considered that the proposed development will fail to integrate successfully into the townscape of this part of the town centre due to its greater scale, mass height and general design. It is the view of Officers that should total demolition of the existing cinema building be considered acceptable then any replacement building(s) should reflect the prevailing characteristics of the surrounding townscape including the local vernacular and other precedents that contribute to the area's character. To replace the existing buildings with a block that is larger than the existing auditorium, which is considered in terms of its scale and mass to be out of context with its surroundings, is not considered to provide a sensitive solution appropriate to the redevelopment of this site.
- 18.31 The concerns raised by Essex Police are appreciated. In many respects the development at street level and the proposal to create a basement car park are similar to the previously approved scheme. A key difference between the two schemes is that the previous scheme provided a gated enclosure to the basement area whereas the current application does not. The inclusion of a gated entrance to the basement could be the subject of a condition and would not therefore constitute a reason for refusal.
- 18.32 For the reasons given above, it is considered that the proposed development does not create a high-quality design and fails to enhance the characteristics of the site, its context and surroundings. The proposed development will therefore conflict with the aforementioned local plan policies and national guidance.

Amenity Considerations (including Private and Public Open Space Provision)

- 18.33 DPP Policy DP1 states that all development must be designed to a high standard and avoid unacceptable impacts on amenity. DPP Policy DP12 requires high standards for design, construction and layout in new residential development. These requirements are also included in ELP Policy DM15. The adopted Essex Design Guide also provides guidance on the protection of residential private amenity. DPD Policy DP16 sets out the provisions for private amenity space and public open space.
- 18.34 Policy DP16 states that flats should be provided with a minimum of 25sqm per flat and that where balconies are provided this space may be taken off the communal requirement. The submitted drawings show 23 units with a private balcony or sitting out area of more than 5sqm; and 4 units are shown with balconies of 4.4sqm. The development does not provide any communal spaces for the residents (unlike the previously approved

scheme). In town centre locations, it is not unusual for residential properties to have smaller areas of private amenity space. Given this, and in view of the types of units proposed (apartments as opposed to family dwellings) the proposed provision of private amenity space is considered, on balance, to be acceptable. Policy DP16 also requires public open space to be provided (minimum 10%) or where this is not practical, a contribution made to offsite provisions. In this instance, given the constraints of the site, the provision of an area of open space on site is not considered practical and/or contextually appropriate. A request for a contribution for off-site enhancement of public open space has been made to mitigate the impact of the development; however, given the scheme's lack of viability, the development is unable to support this.

- 18.35 An objection has been raised from the owner of Southway House (located to the south (rear) of the site) that close juxtaposition between their offices and the proposed development will compromise the privacy of existing and future users of their building. These concerns are appreciated, particularly as the existing occupiers of Southway House have had a long history of facing out (to the north) onto an 'inactive' built form. The proposed south elevation of the new apartment has been elevated with windows and it is accepted that there will be some inter-visibility between the proposed development and Southway House. It is however important to note that whereas the cinema is built up to the boundary, the south face of the proposed rear apartment block is set back from the boundary, which provides a greater degree of separation than in the existing situation. Furthermore, to reduce the perception of privacy being comprised, the openings on the south elevation have a canted façade so that they do not face directly towards Southway House. It should also be noted that whilst planning policy documents such as the Essex Design Guide provide criteria for the protection of residential amenity, commercial buildings are not considered to have the same sensitivity and therefore greater flexibility can be applied. Similar concerns were raised by the owner of Southway House in respect of the previous scheme and Members considered the relationship between the existing and proposed buildings to be acceptable.
- 18.36 The application site is located within a street, which experiences a relatively high traffic volumes including buses. It is also a street that contains a significant proportion of uses that contribute to Colchester's night-time economy. A noise survey has been submitted to determine the potential impact of noise on future occupiers of the development. This report concludes that with suitable glazing and ventilation the criteria for assessment (BS 8233:2014) can be met. No details of external venting for the basement have been provided and in the absence of these details the submitted Noise Report recommends a target noise level based on 2016 background noise data to ensure that plant noise will not disturb future residents of the development. These details can be conditioned
- 18.37 Concern has been expressed that the development is likely to cause noise and disturbance during the demolition and construction works to local residents and businesses. It is accepted that the development has the potential to impact on the amenity of nearby occupiers however these

impacts can be adequately mitigated by an appropriately worded condition(s).

Policy DP12 sets out a variety of factors that need to be considered when considering the appropriateness of a development. These include: all habitable rooms have acceptable levels of day light; units should have acceptable levels of privacy for rear-facing habitable rooms and sitting-out areas; and the development should have accessible bin / recycling storage area and external drying areas. The form of the development and the constraints of the site are such that proposed apartment buildings are closely juxtaposed with the adjacent buildings. Given this, and the scale and the height of the buildings (both existing and proposed) it is likely that the lower level apartment will suffer from shadowing from the adjacent built form. The application is not supported by a daylight / sunlight analysis (to demonstrate the extent of any shadowing) however the proposal is not dissimilar that the previously approved scheme that was considered acceptable by Members. The proposed apartments have been designed to minimise intervisibility between buildings and provide bin and recyclable storage in accessible areas. The development does not make provision for external drying areas.

- 18.38 For the reasons given above, it is considered that with appropriately worded conditions, the proposed development would not have a significant adverse effect on the amenity of neighbouring properties or future residents. In view of this, the proposed development is not considered to conflict with DPD Policies DP1 or the Framework insofar as they seek to secure an appropriate standard of amenity for all occupants of land and buildings.

Ecology and Biodiversity

- 18.39 Local Authorities, in the exercise of their functions, are required to have regard to the need to protect biodiversity and a core principle of the Framework is that planning should contribute to conserving and enhancing the natural environment. DPP Policy DP21 seeks to conserve or enhance biodiversity and geodiversity in the Borough. Emerging Local Plan Policy ENV1 requires appropriate ecological surveys where necessary and seeks the preservation, restoration and enhancement of natural habitats where appropriate.
- 18.40 A bat survey (dated 2014) has been submitted in support of this application. Whilst the report is dated, it does nevertheless conclude that the building has low suitability for bat roosts and that there was a lack of nearby foraging habitat. For these reasons, it was considered that the risk of bats occurring in the building and being affected by the proposed works to be negligible. These circumstances have not changed in the intervening time since the 2014 survey was undertaken.
- 18.41 The development site falls within the 'Zone of Influence' (Zoi) for one or more of the European designated sites into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The

Essex Coast RAMS is a large-scale strategic project which involves a number of Essex authorities, including Colchester Borough Council, working together to mitigate the effects arising from new residential development. It is anticipated that, without mitigation, new residential development in this area and of this scale is likely to have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure when considered 'in combination' with other plans and projects. For this development to be considered acceptable a scheme of mitigation (a financial contribution) would need to be submitted.

Transport and Accessibility

- 18.42 CS Policy TA1 to TA4 seeks to improve accessibility and change travel behaviour as part of a comprehensive transport strategy. Policy TA4 seeks to make the best use of the existing highway network and manage demand for road traffic. DPP Policy DP17 requires all development to maintain the right and safe passage of all highways users. Policies in the emerging Local Plan seek to promote sustainable means of transport and managing the demand for road traffic.
- 18.43 Given the site's town centre location, there is an existing good network of pedestrian and cycle links. The proposed development will also have very good access to public transport (bus and rail) facilities.
- 18.44 There is currently no formal parking on-site and the application proposes the creation of 34 parking spaces and cycle parking spaces within the proposed basement. The basement parking will be accessed via a carriage arch on the west side of the building.
- 18.45 The Highway Authority is of the opinion that the proposal will not have a severe impact capacity or be to the detriment of highway safety and, as such, has not raised an objection to this application. The Highway Authority has requested that residential travel information packs are provided to each residential unit. Travel Packs will help to influence the behaviour and travel choices of a proportion of the occupants of the proposed apartments, initially at least. The requirement to provide travel packs accords with development plan policies and the principles in Framework which seek promote sustainable transport choices and accessibility.
- 18.46 Given the above, it is considered that the proposed development would accord with relevant development plan policies and national planning policy guidance set out in the Framework.

Parking

- 18.47 CS Policy TA5 refers to parking and states that development proposals should manage parking to accord with the accessibility of the location and to ensure people friendly street environments. DPP Policy DP19 states that the Council will refer developers to the Essex Planning Officers

Association (EPOA) Vehicle Parking Standards which was adopted by Colchester Borough Council as a Supplementary Planning Document (SPD) in November 2009. Emerging Policy DM22 reflects the adopted local plan requirements.

18.48 The Parking Standards state the for residential development the following parking provision should be provide:

- 1 bedroom unit - 1 space/dwelling.
- 2+ bedroom unit - 2 spaces/dwelling.
- Visitors - 0.25 spaces/dwelling.

The guidance does however state that where development is located within the urban areas with good links to sustainable transport a lower parking standard can be considered.

18.49 The application proposes 34 car parking spaces, which includes one tandem space that will need to be allocated to a single unit. The standard parking requirement for the number of units being proposed (22 x One Bed, 30 x Two Bed and 3 x Three Bed.) is 88 parking space, plus 14 visitor parking spaces. Whilst it is accepted that the parking provision is less than the standard provision set out in the adopted guidance, given that the site is located within the town centre, it is considered appropriate to accept a lower level of parking provision. The comments made in respect of placing additional strain on existing parking provision are appreciated. Parking on Crouch Street is currently restricted by no waiting restrictions and time limited parking bays. There are also parking restrictions in the surrounding street (which includes residential parking schemes).

18.50 In terms of cycle parking, the Council's adopted guidance requires 1 secure covered space per dwelling to be provided. 29 Sheffield style stands (58 spaces) are is shown located in the basement and in the eastern courtyard. Not all of the proposed cycle parking appear convenient to use and amendments will be required to ensure all cycle parking is readily accessible and convenient to use; this could be controlled by a condition.

18.51 The proposed parking provision is considered to accord with the aforementioned planning policies, the Council's adopted guidance on parking and the Framework.

Drainage and Flood Risk

18.52 CS Policy ENV1 sets out the strategic policy approach to safeguard people and property from the risk of flooding. DPP Policy DP20 supports development proposals that include flood mitigation / attenuation measures as well as flood resilience measures.

- 18.53 A Drainage Strategy has been submitted which shows that the site is situated within Flood Zone 1 – i.e. little to no risk of flooding. As this is a major application ECC Suds Team have been consulted and they have not raised an objection to this proposal, subject to condition being attached.

Contamination

- 18.54 DPP Policy DP1 requires new development to undertake appropriate remediation of contaminated land. Emerging Local Plan Policy ENV5 requires an assessment of the extent of contamination and any possible risks, with a requirement for any remediation works as necessary.
- 18.55 The desk top based contamination report accompanying this application concludes that the site is suitable for residential development. The Council's Contamination Land Officer agrees with the conclusions of the submitted report and has recommended a condition to cover unexpected contamination.

Air Quality

- 18.56 The CS contains policies for the delivery of development, infrastructure, facilities and services in Colchester to 2021. The Council does not have any specific policies on air quality within the CS; Policy TA4 however states that "The demand for car travel will be managed to prevent adverse impacts on sustainable transportation, air quality, and local amenity and built character." The adopted Colchester Borough Council - Air Quality guidance note is a material consideration.
- 18.57 The application is supported by air quality report. This report notes that the application site is located approximately 80m south-west of an Air Quality Management Area (AQMA) designated as a result of high nitrogen dioxide (NO₂) concentrations, which covers a large section of Colchester town centre. For this reason, the report explains, an assessment the is primarily focused on concentrations of the most important traffic derived pollutants, NO₂ and fine particulate matter (both PM₁₀ and PM_{2.5}). The report predicts that concentrations of NO₂, PM₁₀ and PM_{2.5} are likely to be below the Air Quality Objective at all modelled receptor locations in the first full year of operation of the development 2022. The report also states that the impact of traffic associated with the proposed parking spaces is not considered to be significant. The report concludes that no measures are required to reduce exposure of residents to air pollution and that the provision of three electric vehicle charging points and secure cycle parking spaces will incentivise residents to use sustainable modes of transport. A risk assessment of construction-related effects has also been undertaken following the Institute of Air Quality Management (IAQM) Guidance on the assessment of dust from demolition and construction. The development site is defined as 'low risk' of dust soiling for demolition, earthworks and construction activities. Risks to human health and ecological receptors are considered negligible for all planned activities. Impacts during the construction of the proposed development, such as dust generation and

plant vehicle emissions, are predicted to be of short duration. Mitigation measures have been recommended.

- 18.58 Environmental Protection (EP) has reviewed the submitted AQIA and has not raised an objection to the conclusions of the report. EP have however stated that proposed three Electric Vehicle (EV) charging points should be unallocated; if these spaces are to be dedicated to a particular user, then EV points should be installed at the rate of 1 charging point per unit. It is understood that purchaser of the apartment will have the option of purchasing a parking space. Given this, it is assumed that the bays with EV charging points will be allocated to a particular flat and therefore each parking space will need to provide with an EV charging point.
- 18.59 In light of the above, it is considered that the proposed development is consistent with the requirements of the Council's adopted development plan policies, supplementary planning guidance and the Framework as regards to air quality impacts.

Environmental and Carbon Implications

- 18.60 New developments need to help address the challenges of climate change and sustainability and therefore contribute positively towards the future of Colchester the adoption of a 'fabric first' approach to reducing carbon emissions will ensure that the energy saving measures are built into the fabric of the building and thus ensure the longevity of this method of carbon reduction.

Viability and Development Obligations

- 18.61 CS Policy SD2 requires that new development to provide necessary contributions to meet the community needs arising from a proposal. This policy goes on to state that the viability of developments will be considered when determining the extent and priority of development contributions. Further policies on specific topic areas are provided within the CS and the DPP (for example on affordable housing, health, community facilities and open space etc.).
- 18.62 Paragraph 57 of the Framework states that planning obligations must only be sought where they meet all of the following
- a) necessary to make the development acceptable in planning terms.
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development
- 18.63 The Framework goes onto state that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the

viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments should reflect the recommended approach in national planning guidance, including standardised inputs.

18.64 The Council's Development Team considers all major planning applications and makes recommendations in respect of priorities for s106 obligations. The Development Team made the following obligations requests in request of the application:

- Community - £71,459.01 (Projects 1. St Peters Church and Church Hall. 2. Chinese Association. 3. Quaker meeting house)
- Parks & Recreation - £173,392.19 (No onsite maintenance contribution required - improvements at Castle Park redevelopment of disused bowls green and pavilion @£86,696.09 and Leisure World @£86,696.09).
- Highways –Residential Travel Information Packs
- Transport and Sustainability - £5,000 Contribution towards an electric car club car.
- Affordable Housing – 11 AH Dwellings The tenure of the affordable housing should be no less than 80% affordable rent and no more than 20% shared ownership.
- Education - As the pupil numbers generated by the proposed development do not reach ECC specified contribution request thresholds, an education contribution will not be sought.
- NHS - £33,454.08

The above was agreed with exception of car club request as the scheme as submitted is not car free.

18.65 The Planning Statement explains that finding a productive new use for the former cinema building presents any developer with a number of challenges, not least of which is dealing with the building's scale and position in a hemmed in location, in a relatively narrow and busy street. It is stated that the value of flatted development in the town centre relative to the cost of construction is also challenging and has been the main reason that has prevented the consented scheme from being implemented. If the scheme is to be made deliverable, it is explained that construction costs need to be reduced as much as possible and/or more accommodation found from the site. The agent states that both of these 'elements' have had to be employed to make the current proposal 'financially' viable. It is explained that construction costs are reduced by demolishing all of the building and in doing so the site becomes more open which greatly assist the access, egress and storage on site. Any cost that would need to be devoted to supporting remaining structure and working around it are also saved by complete demolition of the building.

18.66 The agent has stated the approved scheme for the redevelopment of the former Odeon site is not viable. To this end, an Options Review viability appraisal (prepared by MRALLP and dated April 2020) has been submitted in support of the application. The report describes five development options.

- Option 1 is the consented scheme (46 units).
- Option 1a is the consented scheme but with a revised internal layout to provide an additional residential unit.
- Option 1b is said to deliver the scheme at a reduced cost if the Locally Listed Building is replaced rather than retained and converted.
- Option 2 retains the frontage range with an additional floor to the rear of the site which increases the number of residential units from 46 to 55 units.
- Option 2a is the same but with the frontage of the Locally Listed Building replaced with by a replica structure.

18.67 The Council has appointed BPS to review the submitted Options Review and the table below (Table 1) provides BPS's summary of the applicant's submission:

	Consented 46 unit scheme (Option 1)	Amended consented schemed 47 unit (Option 1a)	As 1a + frontage block rebuilt (Option 1b)	Extra Floor to the rear of the site 55 units (Option 2)	As 2a with frontage block rebuilt (Option 2a)
GDV	£9,885,900	£11,160,000	£11,160,000	£12,945,000	£12,945,000
Cost Estimate	£11,167,000	£11,906,100	£11,250,600	£13,208,895	£12,579,500
Surplus on profit cost	-£1,281,627 -11.48%	-£746,100 -6.27%	-£90,600 -0.81%	-£263,895 -2.0%	+£365,500 +2.91%

Table 1: Comparison of the Gross Development Values against the Costs

18.68 In the Planning Statement, it is explained that a 2.91% return is very modest and would not normally be seen as a commercially acceptable return. (The industry standard is usually between 15-20%). The Planning Statement goes on to explain that the level of profit does not consider of the price paid for the site as this is the same regardless of the alternative options considered. (It is stated that the applicant acquired the site for a purchase price of £2.0m in 2015, since then there have been significant costs in maintenance, fees for planning applications, rates and responding to s215 notices). The Planning Statement further explains that whilst 2.91% profit is low, any profit in this instance is welcomed by the applicants as this would reduce the losses suffered to date and the resultant development provides an opportunity to claw back these over time. Should the development to be sold on completion of the scheme, then the losses would be crystallised. As such, it is stated that the applicant intends to retain ownership of the development and will offer the

apartments for rent, which over a longer period of time will help to recover the losses incurred and improve the overall return on investment.

18.69 In assessing the submitted Options Review, BPS have advised that the report is not a typical viability appraisal as it has been tested by comparing the Gross Development Value against the Costs; it would be usual to expect the viability appraisals for each scheme to include inputs such as developer profit, finance, S106/CIL contributions and marketing and sales fees. BPS have requested a full appraisal from the applicant's consultant, but they have advised that they are content to rely on their headline approach to illustrate the overall viability of the scheme.

18.70 Given the above, BPS have created their viability appraisals for the various options using the Argus Developer model to provide a more rounded picture of scheme's viability. BPS have used additional viability inputs based on their 2017 assessment of the consented scheme and experience with other schemes in the area. The conclusions of this assessment are summarised in Table 2 below:

Scheme Options	1	1a	1b	2	2a
	Consented 46 unit scheme	Amended schemed 47 units	47 units & new frontage	Extra Floor 55 units	Extra Floor new frontage
Surplus / Deficit	-£4,014,961	-£3,807,739	-£3,057,283	-£3,723,630	-£3,003,060

Table 2: BPS Assessment using the Argus Developer model

This assessment concludes that none of the options are viable when other viability inputs are considered in addition to the associated construction costs.

18.71 In discussing the scheme with the agent, Officers have commented that the rebuilt front range is not a faithful replica of the original building which significantly weakens the argument that this provides for mitigation for the loss of the historic building. Officers have also commented that, if there is justification for the demolition of the locally listed building, then having cleared the site, the opportunity should be taken to put a building(s) back that reflects the scale and mass of the established townscape of the area. In the light of these comments, the agent has provided further viability options these scenarios. BPS has summarised option appraisals as follows:

Scheme Options	1b amended front replica rebuild removing 5 flats (42 units)	2a amended front replica rebuild removing 5 flats (50)	3 new build 37 units and 2 retail to 'reflect the grain of the area'
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		units)	
GDV	£10,235,000	£12,020,00	£7,082,430
Cost estimate	£10,744,338	£12,073,238	£7,726,609
Surplus on profit cost	-£509,338 -0.8%	-£53,238 -0.44%	-£103,273 -1.4%

Table 3: Comparison of the Gross Development Values against the Costs

18.72 As with their initial report, BPS have undertaken their own viability appraisal for these options using Argus Developer to provide a fully rounded picture of viability. Their conclusions are set out in the Table 4 below:

Scheme Options	1b amended front replica rebuild removing 5 flats (42 units)	2a amended front replica rebuild removing 5 flats (50 units)	3 new build 37 units and 2 retails to 'reflect the grain of the area'
Surplus / Deficit	-£3,209,481	-£3,998,900	-£2,479,031

Table 4: BPS Assessment using the Argus Developer model – alternative options

18.73 As can be seen from Table 4, none of the options are viable; however BPS note that Option 3, although generating a deficit, does provide the best prospects for delivery when all the viability inputs are considered.

18.74 The viability assessments undertaken by BPS have been shared with the agent and they have made a number of comments on BPS's assessment. BPS have reviewed these comments and still consider Option 3 to derive the least deficit. They also note the applicant's consultant is critical of taking a more conventional approach to viability in their appraisals rather than the high level position taken in the applicant's option appraisals. On this particular point BPS acknowledge that their intention was to undertake a high level assessment. However it is evident that when translating this exercise into a conventional and planning recognised approach it changes the direction of the conclusions. It is therefore not unreasonable in the view of BPS to take a more conventional and recognised approach if it has a material impact on the conclusions – i.e. the high level approach appears to draw misleading conclusions and therefore it is not effectively serving the purpose for which it was intended. That said, there is agreement that all option are not viable.

18.75 Under normal circumstance, whether a developer can fund the delivery of a scheme is not a planning matter. As noted above, the Framework advises that is for the applicant to demonstrate if the circumstance justify the need for a viability assessment and the weight to be afforded to this is a matter for the decision maker, having regard to all the circumstances in the case. The assessment work undertaken by BPS demonstrates that

none of the options are technically viable; the 'least worst' option (in terms of viability) is option 3, which is not the subject of this application and for which no design proposals have been tabled (i.e. it is purely a theoretical assessment). Given the scheme's viability, it is clear that the proposed development cannot afford to fund any s106 contributions and thus mitigate its impacts. When considering whether contributions should be applied, the recently lapsed scheme is a material consideration; this application did not provide any s106 contributions but was subject to viability review requirement.

- 18.76 In view of the above, it is not considered reasonable to state that the current application is unacceptable due to the failure to provide affordable housing or other s106 contributions. Given the scheme's lack of viability, deliverability can be considered a material consideration, due to the identified harm that will be caused to the identified heritage assets. The Frameworks advises at paragraph 204 that the local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred. Given that the scheme is likely to result in a £3 million plus loss (which does not include the full purchase price paid for the site), there is serious concern whether the scheme is capable of being delivered. Officers were assured that the applicant intended to implement the previously approved scheme, but this has not taken place due to its lack of viability (now shown to generate a loss of about £4million pound). The agent, whilst acknowledging that the profits levels are marginal (accordingly to their submitted options review), has again advised that the applicant is willing to proceed with the proposed should permission be granted, but no firm commitment has been provided in this respect.

18.0 Planning Balance

- 18.1 The effect of the proposed development on statutorily designated assets must be made against statutory and policy documents. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker to have special regard to the desirability of preserving a listed building or its setting. S72 of the same Act requires special attention to be paid to the desirability of preserving or enhancing the character and appearance of a conservation area. The Framework also makes clear in paragraph 199 that great weight should be given to the conservation of designated heritage assets and their setting. The Framework also states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application and that Local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.
- 18.2 Having assessed the effects of the proposal in heritage terms, it is necessary to identify any harm, characterise its magnitude and then balance that against the public benefits that the proposal may bring. For the reasons explained above, it is considered that the proposed development would result in harm to the designated heritage assets – i.e.

the setting of nearby listed buildings and the character and appearance of the Colchester Conservation Area No.1 (resulting from the loss of a locally listed building and the erection of a building that does not respect the historic townscape of the area). Employing the terminology of the Framework, this harm amounts to 'less than substantial' in magnitude when considered against the significance of the assets when taken as a whole.

- 18.3 The viability evidence demonstrates that the proposed development is not viable. Paragraph 204 of the Framework states that local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred. Putting aside the harm caused to the identified heritage assets, the fact that the scheme generates a significant loss puts into doubt whether the scheme can be successfully delivered, and the applicant has not provided firm assurance in this respect. The scheme's viability (or lack of viability) cannot be ignored and this weighs against the proposal.
- 18.4 The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the development plan. This is reiterated in the Framework which is also a material consideration. There would be harm to the character and appearance of the conservation area and the setting of listed buildings and as such there is a conflict with policies contained in the local plan. The degree of harm is considered to be less than substantial and, in line with the requirements of the Framework, this harm has to be weighed against the public benefits of the scheme.
- 18.5 Public benefits advanced by the applicant are: removing an eyesore and source of antisocial behaviour from Crouch Street; the economic benefit to the street by the reinstatement of an active frontage, contributing to the vitality of the street and the town centre overall; and the contribution made by 55 residential units to the Council's housing land supply. The proposed solution to the resolving the condition of the existing building is not considered sensitive to the wider environment and therefore this is considered to carry limited weight. The application is for a housing led scheme and the delivery of housing would constitute a public benefit; however in this instance there is a question mark around the deliverability of the scheme due to the lack of viability. In addition to above benefits, the proposals would also produce some economic and social benefits in terms of temporary construction jobs and possible longer-term employment opportunities provided by the retail units, which weigh in favour of the application. Whilst these benefits are welcomed, they are not considered to outweigh the harm caused to the designated heritage assets. The proposed development would therefore conflict the heritage and design policies contained within the local plan, the statutory provisions set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Framework and supporting national guidance.
- 18.6 For the reasons given above, and having considered all other matters raised, it is recommended that this application is refused.

REFUSAL of planning permission for the reasons set out below:

1. The application is considered to constitute poor design and, by virtue of this and the demolition of a locally listed building, the development will have an adverse impact on the townscape of the area, including that of the town centre conservation area (Colchester Conservation Area No.1) and the setting of nearby listed buildings. The development is therefore contrary to the relevant local planning policies and the provisions of the Framework and allied Practice Planning Guidance (PPG) that seek to promote high quality and inclusive design and conserve the significance of heritage assets. By failing to safeguard the setting of nearby listed building or preserve or enhance the character and appearance of the Colchester Conservation Area No.1 and the development would also fail to accord with the statutory requirement placed on the decision maker at s66(1) and s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Planning policies UR1, UR2 and ENV1 of the Core Strategy (adopted 2008, updated 2014) seek to promote high quality and enhance historic buildings and features. Policy Ce2 also requires new development in Centres to be sympathetic to local character. Planning Policy DP1 of the Development Plan Policies (adopted 2010, updated 2014) states that development proposals must demonstrate that they, and any ancillary activities associated with them, will: respect and enhance the character of the site, its context and surroundings in terms of its architectural approach, form, proportions, materials, townscape and/or landscape setting, and detailed design features. Policy DP6 similarly states that development will be supported in the Town Centre Mixed Use Areas where it will contribute to the design quality, activity levels and character of the area. Policy DP12 also requires new residential development to achieve a high standard of design, construction and layout. Policy DP14 of the Development Plan Policies states that development will not be permitted that will adversely affect a listed building, a conservation area, historic park or garden or important archaeological remains. In determining applications, the Framework requires the decision maker to ensure that developments will function well and add to the quality of the area, are visually attractive and are sympathetic to local character and history. Paragraph 126 of the Framework requires all new development to create high quality, beautiful and sustainable building and that development that is not well designed should be refused. The development also conflicts with the National Design Guide which promotes well-designed places that reflect their environment. In terms of conservation of the built environment, there is a statutory requirement to have special regard to the listed buildings and their setting and to pay special attention to the desirability of preserving or enhancing the character and appearance of a conservation area. The Framework advises that great weight should be given to the conservation of heritage assets. The Framework also states that states that local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.

- 2 Under the Conservation of Habitat and Species Regulations 2017 (the Habitat Regulations), a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a Special Protection Area must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation, which in this case would be a proportionate financial contribution in accordance with the draft Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS).

A proportionate financial contribution has also not been secured in accordance with the emerging Essex Coast RAMS requirements. The proposal is therefore considered to be contrary to Regulation 63 of The Habitat and Regulations and Development Plan Policy DP21, as well as Policy ENV1 of the emerging Local Plan.



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Item No: 7.2

Application: 211010

Applicant: Mr Peter Wong

Agent: Ms Gemma Smith

Proposal: Existing residential dwelling converted to include 4 beds, 1 communal breakfast room, bathroom, WC, kitchen, and living room/dining room to be shared with 4 x residents (amended application)

Location: 9 Mayberry Walk, Colchester, CO2 8PS

Ward: Berechurch

Officer: Eleanor Moss

Recommendation: On the balance of probability based on the information provided and available to the Council, the change of use from C3 to C4 with the occupation of up to four unrelated people living in 9 Mayberry Walk at any one time is considered to be permitted development.

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because Cllr Harris called in this lawful development certificate for the following reason:

Residents I have met have convinced me of the need to deal with building quality on alterations, with regard to Safety of neighbours and residents who will rent and reside at Number 9

2.0 Synopsis

- 2.1 The key issues for consideration are whether the existing/proposed use is lawful. Members may recall the consideration afforded previously to this application at the meeting of 27 May 2021 (Item 7.8) when it was resolved to grant the certificate. This item is now returned for consideration following readvertisement as a consequence of errors highlighted in the original application form. The planning considerations remain unchanged.
- 2.2 The certificate is not an application for planning permission and conditions cannot be attached. The planning merits of the use are not relevant, nor it is relevant who resides at the property.
- 2.3 The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority.
- 2.4 It is recommended that a Certificate of Lawfulness of an Existing Use be granted for 9 Mayberry Walk in respect of the C4 use of the property.

3.0 Site Description and Context

- 3.1 The site relates to a four bedroom semi-detached dwelling in Mayberry Walk. There are two off road car parking spaces to the front of the property and a garden located to the rear.

4.0 Description of the Proposal

- 4.1 A Certificate of Lawful Use is sought to confirm the use of the property as a house in multiple occupation under use class C4, which allows for 3 – 6 non-related people occupying the property at any one time.

5.0 Land Use Allocation

- 5.1 Residential

6.0 Relevant Planning History

- 6.1 None relevant

7.0 Principal Policies

- 7.1 A Lawful Development Certificate is a legal document which confirms the lawfulness of past, present or future building use, operations, or other matters. If granted by the local planning authority, the certificate means that enforcement action cannot be taken against the development referred to in the certificate. However, the certificate will not protect from enforcement action by the planning authority if the specified use is then changed 'materially' without a planning application for it.
- 7.2 The certificate is not an application for planning permission and conditions cannot be attached. The planning merits of the use are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law, regulations or judicial authority.
- 7.3 Anyone can apply to the local planning authority to obtain a decision on whether an existing use or development is lawful for planning purposes. If the local planning authority is satisfied, on the balance of probabilities that the appropriate legal tests have been met, it must grant a lawful development certificate. Where an application has been made under section 191, a lawful development certificate only confirms what is lawful as at the date of the certificate application.
- 7.4 The amended section 194 of the 1990 Act states that it is an offence to provide false or misleading information or to withhold material information with intent to deceive. Section 193(7) enables the Council to revoke, at any time, a certificate they may have issued as a result of such false or misleading information.

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.
- 8.2 Highway Authority – no objections
- 8.3 Private Sector Housing:

HMOs are only subject to mandatory licensing in Colchester where there are 5 or more occupants, consisting of 2 or more households that share one or more facilities i.e. bathroom, kitchen etc. From the information I have obtained, a licence would not be required under Housing Act 2004 legislation as there are no more than 4 persons occupying. This may be different in other Local Authorities where they may have adopted additional licensing.

Private Sector Housing would only take necessary action once aware of the existence of a HMO and not retrospectively and we have no control to prevent or regulate the conversion of properties to HMOs, only to ensure that they

meet necessary standards. However, if the HMO is identified as licensable and has been operating without a licence we may issue a Civil Penalty Notice (CPN) for the offence. Please see the link to PSH enforcement policy below email signature for further information.

I am in the process of carrying out checks to ensure that the HMO meets with safety and management standards

Updated Private Sector Housing:

I inspected 9 Mayberry Walk last Thursday for which the owner and landlord Mr Wong was present. These are my findings:

Layout & Use

This is basically as indicated in the floor plan provided to Planning. On the ground floor there is one bedroom (front left), WC, shared lounge (mid right) shared kitchen (mid left) and bedroom (rear), which is occupied by Mr Wong. On the first floor there are 2 bedrooms (rear left & right), shared bathroom (front right) and shared kitchen / utility. From a PSH point of view there would be no issue with the shared kitchen / utility, and all seems to be compliant.

Fire Safety

An interlinked and hardwired fire detection and alarm system has been installed that covers all bedrooms, hallway landing and kitchens. For some reason no in the ground floor common use lounge. Emergency lighting has been installed above the landing . I await commissioning certification to BS5839 & BS5266. There are suitably located and wall mounted fire blankets.

Fire doors have not yet been installed but have apparently been ordered and Mr Wong said his contractor is aware of the specification required. He showed me keyless exit locks for doors and door gear that are being stored at the property. I advised that the cupboard doors off of the landing and hallway would also need to be 30 minute.

There are transoms above the kitchen door, which is glazed, and 2 first floor bedroom doors, boarded. These will need to be made 30 minute fire resistant. I looked at the separating wall between ground floor rear bedroom and shared lounge. This seems to be a 100mm stud wall, but it didn't sound very solid as plasterboard either side, the bedroom side being within the bedroom fixed wardrobe. Mr Wong is convinced that it is a plasterboard stud wall and his contractor believes so too. I can ask that this is made 30 minute but difficult to prove otherwise. Is this something you could comment or take action on? As you have already pointed out, there are no escape windows or doors from this bedroom, but Mr Wong said he is getting an estimate for this. The patio doors would have allowed for this, but these have been boarded over, which is another issue. The rear external door (kitchen) lacks a keyless exit lock. There is a shower room off the kitchen close to the door, so I think this is justified.

Excess Cold

The external doors including the rear bedroom (sliding patio) and also to the front ground floor bedroom have been boarded on inside and no insulation

provided. Should this have been required for Building Regulations? There are a few windows where casements / fanlights are either not opening or closing properly or have faulty locking latches. The rear external kitchen door is wood construction half single glazed with a thin lower wood panel. The lower rails and stile are damp and starting to rot.

I have copy of an Electrical Installation Condition Report dated 18/05/2021 which is marked Satisfactory and no C1,C2 or C3 code faults listed. I had a look at the gas pipes and there is what looks like new earth bonding.

8.4 Fire Services:

Access

Access for Fire Service purposes has been considered in accordance with the Essex Act 1987 - Section

Access for Fire Service is considered satisfactory subject to fire brigade access and water supplies for fire fighting purposes to the proposed development being fully compliant with Building Regulations Approved Document B, B5. Your attention is drawn to ADB, B5 Section 13. More detailed observations on access and facilities for the Fire Service will be considered at Building Regulation consultation stage.

Building Regulations

It is the responsibility of anyone carrying out building work to comply with the relevant requirements of the Building Regulations. Applicants can decide whether to apply to the Local Authority for Building Control or to appoint an Approved Inspector. Local Authority Building Control will consult with the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority (hereafter called "the Authority") in accordance with "Building Regulations and Fire Safety - Procedural Guidance".

Approved Inspectors will consult with the Authority in accordance with Regulation 12 of the Building (Approved Inspectors etc.) Regulations 2010 (as amended).

Water Supplies

The architect or applicant is reminded that additional water supplies for fire fighting may be necessary for this development. The architect or applicant is urged to contact the Water Technical Officer at Service Headquarters, telephone 01376-576344.

Sprinkler Systems

"There is clear evidence that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. Essex County Fire & Rescue Service (ECFRS) therefore uses every occasion to urge building owners and developers to consider the installation of AWSS. ECFRS are ideally placed to promote a better understanding of how fire protection measures can reduce the risk to life, business continuity and limit the impact of fire on the environment and to the local economy.

Even where not required under Building Regulations guidance, ECFRS would strongly recommend a risk based approach to the inclusion of AWSS, which can substantially reduce the risk to life and of property loss. We also encourage developers to use them to allow design freedoms, where it can be demonstrated that there is an equivalent level of safety and that the functional requirements of the Regulations are met.”

8.5 Building Control:

No comments received. An update will be provided once received.

9.0 Parish Council Response

9.1 Non-parished

10.0 Representations from Notified Parties

10.1 The application resulted in twenty-three notifications to interested third parties including neighbouring properties, although a number of these are from the same property. The full text of all of the representations received is available to view on the Council's website. However, a summary of the considerations is given below.

- Multiple people living in the property
- Anti-social behaviour
- Already a busy street with vehicles
- HMO out of keeping with family community
- Overcrowding
- Health and safety concerns
- House insurance concerns
- License required
- Overlooking
- Drainage issues
- Congestion
- Mortgage concerns
- Layout concerns
- Building control concerns
- Wrong documents submitted
- Waste concerns
- Parking issues
- Money making scheme
- Change of use unlawful

NB: Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

11.0 Parking Provision

11.1 There are two off-road car parking spaces retained on the front driveway.

DC0901MWeV9.3

12.0 Accessibility

12.1 Not applicable

13.0 Open Space Provisions

13.1 Not applicable

14.0 Air Quality

14.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

15.0 Planning Obligations

15.1 This application is not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (s.106) of the Town and Country Planning Act 1990.

16.0 Report

Assessment

16.1 Section 191 of the Act provides a person with the opportunity to apply to the Local Planning Authority (LPA) for a Certificate to confirm that an existing use or building operation is lawful. The application is an evidence-based application and not a determination of the planning merits of the proposal. The applicant is required to describe the proposal with sufficient clarity and precision to enable the LPA to understand from a written description and plans exactly what is involved in the claim. The burden of proof for establishing lawfulness rests firmly with the applicant, and the evidential test applied is on the "balance of probabilities". The question can be phrased "is it more likely than not that the existing use is lawful?" The LPA should accept the applicant's evidence, provided that it is sufficiently precise and unambiguous, unless they have evidence to contradict or undermine it. Section 191(4) of the Act provides that if the LPA is satisfied on the evidence provided with the application that the existing use or operations are lawful, they shall issue a certificate; in any other case they shall refuse the application.

16.2 The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) allows a property to change from a C3 use (family dwellinghouse) to a C4 use (house in multiple occupation) with the occupation of 3 to 6 unrelated people living in the property at any one time as permitted development. The relevant section of the General Permitted Development Order is provided below:

Permitted development

L. Development consisting of a change of use of a building—

- (a) *from a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule;*
- (b) *from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.*

Development not permitted

L.1 Development is not permitted by Class L if it would result in the use—

- (a) as two or more separate dwellinghouses falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order of any building previously used as a single dwellinghouse falling within Class C4 (houses in multiple occupation) of that Schedule; or
- (b) as two or more separate dwellinghouses falling within Class C4 (houses in multiple occupation) of that Schedule of any building previously used as a single dwellinghouse falling within Class C3 (dwellinghouses) of that Schedule.

16.3 In this instance, the owner of this property is seeking a certificate of lawfulness of an existing use to confirm that the existing C4 use of the property is lawful because the change of use from C3 to C4 is permitted under the General Permitted Development Order.

16.4 The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.

16.5 The application site is not subject to an Article 4 Direction and the existing use relates to up to four occupiers. As such, the change of use from C3 to C4 with the occupation of 3 to 6 unrelated people living in the property at any one time is considered to be permitted development.

16.6 It is noted a number of concerns are raised in relation to the scheme including overcrowding, a family estate, drainage issues, house insurance etc. have been raised by interested parties. While these comments are sympathised with, as this application is for a certificate of lawful use, these concerns cannot be taken into consideration as the planning merits do not form part of the assessment for these types of applications.

16.7 Further to this, comments in relation to a license and fire safety have been raised. The Private Sector Housing Team have confirmed that due to the number of occupiers, an HMO license is not mandatory. The Private Sector Housing team are also ensuring the HMO meets required standards for fire safety, however this should not delay the determination of this certificate as the local planning authority is satisfied, on the balance of probabilities that the appropriate legal tests have been met, it must grant a lawful development certificate.

17.0 Conclusion

- 17.1 To summarise, taking all submitted evidence into account as well as the checks undertaken with internal departments, it is considered that on the balance of probabilities the change of use from C3 to C4 for up to four occupiers is lawful. On this basis it is recommended that a Certificate of Lawfulness of an Existing Use be granted for 9 Mayberry Walk in respect of the C4 use of the property.

18.0 Recommendation to the Committee

- 18.1 Recommendation that the application is APPROVED for the following reason:

On the balance of probability based on the information provided and available to the authority, the change of use from C3 to C4 with the occupation of up to four unrelated people living in 9 Mayberry Walk at any one time is considered to be permitted development.

19.0 Informatives

19.1 The following informatives are also recommended:

1. ZT0 – Advisory Note on Construction & Demolition

The developer is referred to the attached advisory note *Advisory Notes for the Control of Pollution during Construction & Demolition Works* for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

2. INS - Highways

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall 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 or by post to:

SMO1 – Development Management
Essex Highways Ardleigh Depot,
Harwich Road,
Ardleigh,
Colchester,
Essex
CO7 7LT

