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**Item No:** 7.1

**Application:** 192904

**Applicant:** Crest Nicholson

**Proposal:** Application for variation of condition 2 following grant of planning permission 100502 - site-wide levels.

**Location:** Former Seaveralls Hospital Site, Boxted Road, Colchester, CO4 5HG

**Ward:** Mile End

**Officer:** James Ryan

**Recommendation:** Approval

## **1.0 Reason for Referral to the Planning Committee**

- 1.1 This application is referred to the Planning Committee as an officer referral for reasons of transparency.

## **2.0 Synopsis**

- 2.1 The key issues for consideration are the impact difference in the levels as built compared to as approved has on the wider environment and privacy of neighbouring homes.
- 2.2 The application is subsequently recommended for approval.

## **3.0 Site Description and Context**

- 3.1 The site is the recently completed 'Rosewood' housing development accessed from Mill Road and The Northern Approach Road (NAR). This comprises 248 houses, associated roads, footways and shared surfaces, public open space and landscaping. The site is a well-planned residential layout with attractive contemporary house types that includes the bold use of materials and in particular, colour. This gives the area a distinctive feel.

## **4.0 Description of the Proposal**

- 4.1 The scheme seeks to vary the approved plans condition attached to reserved matters application 100502 to regularise the levels across the site. In short, it is to formally approve the development levels as built, with differences in levels across the site when compared to the levels shown on the approved plans. The application does not seek any further changes.

## **5.0 Land Use Allocation**

- 5.1 The land is in residential use.

## **6.0 Relevant Planning History**

- 6.1 The site has a detailed planning history but the application most relevant to this application are as follows:

O/COL/01/1624 – Residential development (approximately 1500 dwellings including conversion of some retained hospital buildings), mixed uses, community facilities, employment and retail, public open space and landscaping, new highways, transport improvements, reserved route of NAR3 and associated development – Approved 21/3/06

100035 – Variation of conditions to outline permission O/COL/01/1624 to allow for changed to phasing – Approved 4/8/11

100502 – Residential development of 248 dwellings and associated infrastructure – Approved 4/8/11

162053 – Variation of condition application to deal with site levels and landscaping – refused 2/2/19

## **7.0 Principal Policies**

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations  
UR2 - Built Design and Character  
TA5 - Parking  
ENV1 - Environment  
ER1 - Energy, Resources, Waste, Water and Recycling

7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

DP1 Design and Amenity  
DP20 Flood Risk and Management of Surface Water Drainage

7.4 Some "allocated sites" also have specific policies applicable to them. The adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

SA NGA1 Appropriate Uses within the North Growth Area

7.5 The Neighbourhood Plan for Myland & Braiswick is also relevant. This forms part of the Development Plan in this area of the Borough.

7.6 Submission Colchester Borough Local Plan 2017-2033:  
The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

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.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo a full and final examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

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

The Essex Design Guide  
Myland Parish Plan  
Myland Design Statement

## **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 Environmental Protection –

No objection.

- 8.3 Highway Authority –

No objection.

- 8.4 Lead Local Flood Authority –

No objection.

## **9.0 Parish Council Response**

- 9.1 The Parish Council have stated that:

‘MCC Notes this application’.

## **10.0 Representations from Notified Parties**

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties.

One letter from 'The Consortium of Mill Road and Thomas Wakely Close Residents' was received.

An objection from 190 Mill Road was also received and this confirmed agreement with the consortium letter. A further objection was then received from the same address. One letter was also received from 294 Mill Road

One letter of support were received from a resident on the Rosewood Estate. Two representation from one address on the Rosewood Estate was received that requested a further condition be imposed.

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:

- There is an outstanding ombudsman complaint due to the way this site has been dealt with.
- Conditions have not been complied with.
- The proposal causes flooding due to the changes in levels in a clay soil area.
- The surface water drainage in not in accordance with the approved plans.
- The back to back distances are smaller than approved.
- The level change has reduced privacy around footpath 69.
- In some instances the dwellings cause overshadowing and loss of daylight.
- The dwelling that backs on to 190 Mill Road is 850mm higher than as approved and this is harmful in terms of overlooking.
- The houses around Thomas Wakley Close are three storey.
- Please can this be sorted out as soon as possible.
- What are the implications of this application?
- Please insert a new condition to restrict the use of the car ports.

## **11.0 Parking Provision**

11.1 As an application to deal solely with levels, no change in parking provision from what was originally approved is proposed by the applicants.

## **12.0 Accessibility**

- 12.1 The changes in levels have not had a material impact on the accessibility of the dwellings that have been built. As the development was built to (what was then) Code for Sustainable Homes Level 4, all plots had to have level thresholds. Only one plot could not be delivered with a level threshold due to being on a terrace run that just couldn't be altered to make it work. For this plot only, Crest Nicholson agreed with the HCA to deliver this plot with a stepped access. Otherwise, all were delivered to be wheelchair adaptable.

## **13.0 Open Space Provisions**

- 13.1 The changes in levels has not had a material impact on the provision of open space.

## **14.0 Air Quality**

- 14.1 The site is outside of any Air Quality Management Area and the difference in levels will not have generated significant impacts upon the zones.

## **15.0 Planning Obligations**

- 15.1 As a "Major" application, there was a requirement for this proposal to be considered by the Development Team. It was considered that the applicant's suggestion for a Unilateral Undertaking to link to the previous Legal Agreement is sufficient to ensure any ongoing obligations continue to apply.

## **16.0 Report**

- 16.1 The main issues in this case are:

### The Impact of the difference in levels.

- 16.2 The principle of residential development has been previously secured via applications O/COL/01/1624, 100035 and 100502.

- 16.3 In considering the design and layout of the proposal, Core Strategy policy UR2 and Development Plan policy DP1 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. Development Plan policy DP1 requires all development to be designed to a high standard that protects existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, and daylight and sunlight.

- 16.4 This application has been made as there are differences in finished slab levels across the site as built when compared to the levels shown on the approved plans. It is important to note that, in effect, this application is looking regularise the situation on the ground as existing today. No further changes are proposed to the scheme. The plots have been sold and are now fully occupied but they are not lawful in planning terms as they do not comply with the approved levels. This has implications for the residents of these dwellings as it makes it difficult to sell their houses should they wish to.
- 16.5 Due to changes during the construction phase (when installing the drainage to allow it to be adopted by the relevant authority and to allow the access to be connected into the Northern Approach Road) a number of the dwellings were not in accordance with one of the approved plans drawings which noted slab levels. This is not something that is always required at planning submission stage but as the slab levels drawing was part of the approved drawings pack this has meant that the changes in levels as built fail to accord with the approved drawings.
- 16.6 The changes in levels cause no concern across the majority of the site. Officers have visited the site throughout the latter part of the construction phase and did not consider the minor changes in levels to be of any particular consequence for the most part.
- 16.7 The boundary with existing residential dwellings to the south of the site is an important consideration however. The pre-existing dwellings that have the closest relationship with the new dwellings are those on Thomas Wakley Close. These new dwellings are marginally lower than was approved. As they are lower it is considered they are acceptable as they have a lesser impact on the surrounding neighbours homes.
- 16.8 The objection from the 'Consortium' (membership unspecified) notes the 25m back-to-back guidance in the Essex Design Guide. This was dealt with in some detail at reserved matters stage. The committee report presented to Members for reserved matters application 100502 (at para 13.1 sub paragraph 5) stated the following with regards to the 25m separation distance and the impact on neighbours:

*Thomas Wakley Close is the area of closest relationship between existing and proposed housing owing to the relatively short gardens of those properties. The landscaping strip runs around this boundary and a minimum 25m back-to-back distance is maintained between the 2-2½ elements to these dwellings in accordance with accepted spatial standards. Furthermore the 2 house types utilised in this area, Types 3.4 and 3.7 are fenestrated such that rear walls at upper floor level contain limited windows, many serving landings and for the most part in the form of rooflights. Furthermore, the amended plans show the roofs to those houses turned through 90 degrees so that gables rather than ridge-lines are presented to the existing dwellings in order that a more articulated roofline produces variety and visual relief to existing residents. Additional sectional drawings have also*

*been submitted to illustrate the relationship between the proposed and existing dwellings.*

- 16.9 The new housing also backs on to dwellings that front Mill Road and some of these are higher than was approved. The dwellings that back onto 190 Mill Rd and up to 200 Mill Road vary from 850mm higher to 25mm higher. The dwellings that back onto 280 Mill Road to 298 Mill Road are 25mm higher rising to 775mm higher. The new dwelling that fronts Mill Road and sits next to 298 Mill Road is 225mm higher. This has been carefully considered by officers and due to the more generous back to back distances involved when compared to Thomas Wakley Close, these differences in height are held to be acceptable.
- 16.10 There are also number of dwellings that front onto the backs of Romulus Close. These are all slightly higher (ranging from 225mm to 665mm higher) but these are set back behind an access road and a landscaped area and are not held to be materially harmful to privacy of their neighbours in Romulus Close.
- 16.11 The objection from the 'Consortium' raises issues with the drainage and cites these issues being due to the changes in levels. Core Strategy Policy SD1 and Development Plan Policy DP20 require proposals to promote sustainability by minimising and/or mitigating pressure on (inter alia) areas at risk of flooding. Policy DP20 also requires all development proposals to incorporate measures for the conservation and sustainable use of water, including the appropriate use of SUDs for managing surface water runoff.
- 16.12 The drainage on the site is an estate wide system and there is no evidence to suggest that it is not working effectively. The system has received technical approval from Anglian Water. No changes to this system are proposed as part of this application.
- 16.13 The surface water drainage scheme includes a system of onsite attenuation, swales/ponds for storm events and storage capacity. But the drainage connects via a series of pipes to the sewers within the Northern Approach Road (NAR) trunk road. Consequently, the whole system connects into the NAR. This necessitated changes in levels in order to tie in to the final NAR design and explains why the levels across the site are different in places to those approved in the first place.
- 16.14 Therefore, it is held that the changes in levels across the site are acceptable.

#### The Landscaping Buffer

- 16.15 The scheme that is before Members has arisen from Enforcement action which has been pursued due to the second outstanding element relating to this site – that being the landscaping buffer/strip between Thomas Wakley Close and Endeavour Way.



- 16.16 As a Section 73 variation of condition application any outstanding conditions from application 100502 will need to be re-imposed or reworded as relevant. The majority are no longer relevant as the scheme is built out and will not be re-imposed.
- 16.17 To that end a bespoke landscaping condition is suggested. This deals with the intervening planting/landscape privacy buffer which has not been installed. The condition will secure appropriate mitigation to be installed in the gardens of Endeavor Way with the agreement of the residents who now live in those dwellings. Crest Nicholson has commissioned (and completed) a full survey of these gardens and has requested access to the neighbours gardens in Thomas Wakley Close. They are in the process of preparing a bespoke solution to soften the impact of the development on the residents in Thomas Wakley Close. This may take the shape of new planting, new boundary treatments or both, dependent on the quality of the existing screening which is variable from plot to plot. It is not considered necessary to install planting in the gardens of the dwellings that back on to Mill Road properties due to the generous back to back distances; which range from 30m to 40m.
- 16.18 If Members wish to approve the final agreed solution to enable this condition to be discharged, this can also be brought to Planning Committee for scrutiny at a later date.

#### Other conditions

- 16.19 Application 100502 also contained a condition (number 4) that required the installation of parking spaces for disabled people being set out in accordance with the 2009 adopted parking standards. This condition is somewhat at odds with the Adopted Parking Standards as under the minimum requirements for C3 residential uses on page 63, for disabled users it states "N/A if parking is in curtilage of dwelling, otherwise as Visitor/unallocated". In this instance the majority of the parking is set out in within the curtilage of the dwellings as per the standards and those that are not are allocated to each dwelling. For reference there is on site visitor parking provided - 37 visitor spaces in total, and also a number of unallocated on street parking spaces but in this instance they are not marked disabled bays. On balance, it is not considered necessary or reasonable to re-impose this condition.
- 16.20 Application ref:100502 also contained a condition (number 5) that required further details of the rear elevations of the dwellings on Thomas Wakley Close. As these dwellings have been built and the houses are occupied, it is not necessary or reasonable to impose this condition again.

- 16.21 With regards to the request from one resident for an additional condition to restrict the uses of the car ports, the Courts have been clear that Section 73 applications cannot be used to deal with matters that are not the subject of the condition variation and cannot be used to 'mop up' other issues even if it would be desirable to do so in the decisions makers opinion. Therefore it is not possible to add a further condition at this stage.

## **17.0 Conclusion and Planning Balance**

- 17.1 To summarise it is considered that the development is acceptable as built in terms of the site levels. After careful assessment the changes from the approved drawings do not have a materially harmful impact on the wider environment. The landscaping buffer/belt issue will be dealt with via condition that can come back to committee for approval at a later date. The planning balance therefore tips strongly in favour of an approval.

## **18.0 Recommendation to the Committee**

- 18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the signing of a linking 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 is not signed within 6 months, to delegate authority to the Head of Service to refuse the application, or otherwise to be authorised to complete the agreement. The Permission will also be subject to the following conditions:

### **1. Non Standard Condition - Approved Plans**

With the exception of any provisions within the following conditions, the development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers:

Phase 1A External Levels Sheet 1 Plots 1-25 – 14418PA/3301 T03  
Phase 1A External Levels Sheet 2 Plots 32–75 – 14418PA/3302 T04  
Phase 1B External Levels Sheet 1 – 14418-1B-3301 C01  
Phase 1B External Levels Sheet 2 – 1441-1B-3302 C01  
Phase 1C External Levels Sheet 1 – 14418-1C-3301 T01  
Phase 1C External Levels Sheet 2 – 14418-1C-3302 T01  
SEVERALLS LEVELS PLAN - A081784-P100 - REV A  
SLAB LEVEL COMPARISON - A0817840-P100

Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.

## **2. Bespoke Landscape/Boundary Treatment Condition:**

Within 3 months of this decision, a scheme showing the following:

- Landscaping in the gardens of 23 to 45 Endeavor Way inclusive
- OR
- >A boundary treatment solution in the gardens of 23 to 45 Endeavor Way inclusive.
- OR
- >A combination of both landscaping and boundary treatments.
- AND
- >Plans of landscaping as installed (or to be installed) for the rest of the site.

To mitigate the impact of the development on the residents in Thomas Wakley Close shall be submitted to and approved in writing by the Local Planning Authority.

The landscaping element shall be planted in the next planting season and any trees or shrubs that die in the first five years following the planting must be replaced. Any boundary treatment approved shall be installed within 3 months of approval of the proposal and thereafter so maintained.

Both the approved landscaping belt/buffer and boundary treatment shall be retained and maintained in perpetuity.

With regards to the landscaping for the rest of the site (ie that which does not make up the landscape buffer and is outside of the gardens of Endeavour Way), any trees or shrubs that die in the first five years following the approval must be replaced.

**Reason:** This condition is needed to ensure the landscaping and boundary treatments needed to soften the impact on the residents of Thomas Wakley Close are of an acceptable quality, are planted/installed and are maintained and retained permanently in the interests of amenity. The section of the condition that relates to the landscaping on the wider site is needed as there is not formally approved landscaping scheme for the wider site and this needs to be rectified.

### **19.1 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. ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via [www.colchester.gov.uk/planning](http://www.colchester.gov.uk/planning) or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

### **3.ZTB - Informative on Any Application With a Site Notice**

PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.