

Planning Committee Meeting

**Moot Hall, Town Hall, High Street,
Colchester, CO1 1PJ**

Thursday, 17 February 2022 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>.

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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

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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, 17 February 2022 at 18:00

The Planning Committee Members are:

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

Chairman
Deputy Chairman

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:

Michelle Burrows	Roger Buston	Nigel Chapman	Peter Chillingworth
Nick Cope	Pam Cox	Simon Crow	Andrew Ellis
Adam Fox	Mark Goacher	Jeremy Hagon	Dave Harris
Mike Hogg	Sue Lissimore	Derek Loveland	A. Luxford Vaughan
Sam McCarthy	Patricia Moore	Gerard Oxford	Chris Pearson
Lee Scordis	Lesley Scott-Boutell	Leigh Tate	Lorcan Whitehead
Dennis Willetts	Barbara Wood	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 20 January 2022 are a correct record.

2022-01-20 Planning Committee Minutes

7 - 14

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 **211510 Colne Quay, Land to East of Hythe Quay, Colchester** 15 - 64
Full planning application for the demolition of existing buildings and construction of student accommodation blocks to provide student studio apartments, internal communal areas, staff offices and associated facilities, a substation, landscaping, works to river wall, changes to access and parking.
- 7.2 **212685 Land at Brierley Paddocks, West Mersea** 65 - 102
Application for Variation of Condition 1 (reserved matters, as approved under 202492), Condition 3 (submission of RM), Condition 4 (detailed access) and removal of Condition 2 (submission of RM) and Condition 6 (schedule) of planning permission 192136 (and subsequent Reserved Matters 202492), comprising updated access arrangements and minor amendments to the layout and housetypes.
- 7.3 **213463 Unsworth House and Josephs Court, Hythe Quay, Colchester** 103 - 120
Change of Use from Offices to Student Accommodation.
- 7.4 **213353 Shrub End Depot, 221 Shrub End Road, Colchester** 121 - 134
Demolition of existing baling shed and construction of new baling shed.
- 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).
- Planning Committee Information Pages v2** 135 - 146

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

PLANNING COMMITTEE

20 January 2022

<i>Present:-</i>	Councillors Hazell (Chair) , Davidson, Chuah, Lilley, McCarthy, Mannion, Moore, G Oxford and Warnes
<i>Substitute Member:-</i>	Councillor Sam McCarthy substituted for Councillor Lyn Barton Councillor Gerard Oxford substituted for Councillor Beverly Oxford Cllr Patricia Moore substituted for Councillor Jackie Maclean.
<i>Also in Attendance:-</i>	Cllr Lorcan Whitehead

892. Minutes

It was noted that there were no minutes presented before the Committee for confirmation.

893. 212810 Man Energy Solutions UK Limited, St. Leonards Works, Port Land, Colchester, CO1 2NX

The Committee considered an application for outline planning permission with all matters reserved save for access for the demolition of all existing buildings and structures and the creation of a residential development with associated open space and infrastructure. The application was referred to the Planning Committee because the application was for major development which has received objections, and the recommendation is for approval subject to a legal agreement.

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

Nadine Calder, Principal Planning Officer, presented the report and assisted the Committee in its deliberations. A presentation was given of the site outlining that all matters except access were reserved and that the parameter plan of the site indicated that 10% of the site would be open space. It was outlined that the proposal was up to four storey high buildings. The Senior Planning Officer showed pictures of the proposed access point and the buildings that would be demolished under the proposal and the surrounding area including the footpaths in the surrounding area. The presentation was concluded by outlining that the site was in the emerging Local Plan and that the officer recommendation was for approval.

Steven Moseley addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 and in objection of the application. The Committee heard that the proposed development did not include enough cycling provision or high-quality infrastructure and that

they would like to see a coherent scheme for safe cycle access as well as public rights of way improvements.

Alice Routledge addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 and in support of the application. The Committee heard that the site was currently designated for use as employment but had been allocated in the Council's emerging Local Plan (Policy EC3) to build up to 130 new dwellings and that it had been demonstrated that there had been no issues on the site. The speaker outlined that the proposal would include a smart energy media area and that a contribution would be provided towards a memorial for the previous employment use on site and concluded that there had been no objections from statutory consultees.

Councillor Whitehead attended and with the consent of the Chair addressed the Committee. The Committee heard how there was regret that Paxmans was being demolished as it was an important part of the Borough's history but that it was good news that the site was being developed and that some affordable housing would be secured on site. It was outlined that there were concerns regarding the four storey proposals which did not fit into the surrounding area and that the scheme was missing a real opportunity to create an active cycling travel link without a properly dedicated cycle path especially on the south of the site. Concern was raised regarding the width of the roads and whether there would be accessibility issues with parking and that the site should have a 20MPH limit to promote active travel. The speaker concluded by outlining that there was concern over school places in the area and that it could mean residents having to travel to more congested areas of the Borough.

Councillor Scordis attended via zoom and with the consent of the Chair addressed the Committee. The Committee heard that the Councillor supported the development on a brown field site and understood the historical context of the site as a member of their family had worked there. The Committee heard that there was an acceptance there would be housing on the site but there was also significant concern regarding the lack of a dedicated cycle route rather than an unsegregated pathway and that there would be issues with the junction on Port Lane and Hythe Hill as there had been accidents in the past. Concern was raised regarding the details of the S106 Agreement and monies going to the Methodist Church and Leisure World and whether this could be better placed by supporting the local schools. The speaker concluded by outlining their concern over the use of a car club and how this would work on the site.

At the request of the Chair the Principal Planning Officer responded to the comments that has been made by the speakers and visiting Councillors. The Principal Planning Officer outlined that the location of the four-storey development was indicative only on the plan and would be for Members consideration in a reserved matters application if it was brought before the Committee. The Committee heard that the proposed cycling links of an unsegregated pathway had been agreed after consultation with the transport and sustainability officer who had concluded that the development was not urban enough in relation to the Town Centre to require a separate segregated cycle pathway. It was noted that the parking on the site would have to conform to the Council's parking standard and that the monies proposed for primary schooling and early years provision had been determined by Essex County Council. The Senior Planning Officer noted Members comments regarding a possible increase in traffic but asked the Committee to note that the site in its current form had an employment use which would be the fallback position if the application was not approved. The Principal Planning Officer concluded by responding that it was considered that the access was acceptable and there was a doubt as to whether 20mph across the site could be secured.

The Committee raised concerns over the footpath to the south of the site as it was used as

an area for dealing drugs and if some CCTV could be installed in the vicinity that would be welcomed. The details of the cycle path was raised by the Committee with some members voicing disappointment that there was not a dedicated segregated cycleway in the proposal. Committee Members asked that when a reserved matters application was made the affordable housing was tenure blind and spread out across the site, that Electric Vehicle Charging points be required, asked for further information on any RAM's payment, and the status of the Methodist Church receiving S106 funding.

The Principal Planning Officer responded to the points raised by the Committee outlining that the footpath to the south of the site would be improved upon what was currently in existence and that there would be more natural surveillance of the footpath once the development was completed and inhabited and that CCTV could be conditioned if Members requested it. The Principal Planning Officer responded to the comments raised regarding the footpath width that the widening to a dedicated cycleway could not be justified when the proposal before members was a betterment on the existing pathway. Members of the Committee heard that the RAMs contribution was included in the section 106 agreement and that Building Regulations were due to change to include Electric Vehicle Charging Points.

Further questions were raised by Members on the role on the footpaths in the area and the use of scooters, and whether the funding being provided to the Methodist Church would ensure that it was available for all residents as well as how the car club would work on the site.

At the request of the Chair the Principal Planning Officer responded to the points raised by the Committee outlining the car club vehicle would have a dedicated charger and that if Members had concerns regarding the distribution of monies to the Methodist Church then this could be reviewed through delegated powers for the officer to review the appropriateness of the proposed funding and potential alternatives. The Committee also heard that a dedicated cycle way would need an additional metre from the proposed site which had not been requested by the sustainability officer.

At the request of the Chair, Martin Mason of Essex County Council's Highways department responded to questions from Members. The Committee heard that the footpath to the south of the site was not proposed to be a cycle way and the improvements to this would ensure the entire stretch of pathway was 3.5 metres wide and that it was very likely that the development would be limited to 20MPH which would be an acceptable level for cycling on the carriageway.

In response to concerns raised by the Committee the Planning Manager clarified that although the Methodist Church was not in public ownership it was usual for the Council to provide monies to charities and trusts and when making decisions on where funding should be allocated to community venues the proximity of facilities was always taken into account.

RESOLVED (EIGHT Voted FOR and ONE voted AGAINST) that the application be approved subject to the conditions and informatives in the report and amendment sheet and an additional contribution towards CCTV on adjacent Public Right of Way (PROW)

894. 211788 Land West of 194 and east of 202 Old London Road Marks Tey, Colchester, Essex

The Committee considered an application for the development of the site for commercial, business and service (Class E c and g), general industrial (Class B2) and storage and distribution (Class B8) purposes with associated access, parking including provision for lost residents on-street parking and landscaping, including diversion of a public right of way, and off-site highway improvement to the Old London Road and its junction with the A120. The application was referred to the Committee as the application was classified as a major and objections had been received.

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

Simon Cairns, Planning Manager, presented the report and assisted the Committee in its deliberations. A presentation was given of the site outlining the proposal before Members of aerial views of the site including the access where the Planning Manager confirmed that Old London Road was part of the trunk road network and under the auspices of National Highways and not Essex County Council. The Committee heard that there were parking permit restrictions along the road and saw the detailed drawings of the Swept paths and manoeuvring on site and between the different buildings proposed on site and their proposed uses. The design indicated that there would be 150 parking spaces on site with 12% incorporating Electric Vehicle Charging Points and that there would be 360 vehicle movements a day with 96 being HGV movements and that the proposal would create 300 jobs. The Planning Manager outlined the detailed uses of the buildings including their external appearance and size as well as the requirement for a 3.5m high acoustic fencing to prevent any loss of residential amenity for neighbouring houses and the details of the cycle and footway link from the site which also included an amendment to have the path lit so that it could be used through the winter encouraging sustainable travel. The Committee heard that there had been a request to amend the operating hours which had been denied. The Committee were also asked to note the amendment sheet and its contents including a letter from the Rt Honourable Priti Patel MP regarding the proposals on the site and the consultation response that had been received from National Highways. The Policy status of the site was commented with it being included in the emerging Local Plan and the Neighbourhood plan and its current status which could be afforded significant weight as it was at an advanced stage. The access to the site was shown to the Committee and it was commented that there was considerable controversy in the findings of no objection from National Highways. The Planning Manager concluded by outlining that the proposal provided significant employment benefits for the area and that the officer recommendation was for approval as detailed in the Committee report and the amendment sheet.

Parish Councillor Gerald Wells, Marks Tey Parish Council, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 and in objection of the application. The Committee heard that the Parish Council requested the Committee defer the application to receive further information on the access to the site especially with regard to the access and vehicle movements. Concern was also raised with regard to the footpath/cycleway whereby the risk of the proposal was being transferred to the Parish Council which was unacceptable. The Committee also heard the concerns that the replacement car parking following the loss of the on street parking would not work and the increased vehicle movements in the area would have a significant impact on the air pollution for the existing residents. It was noted that the Parish Council were also awaiting to convene a meeting with National Highways, the Right Honourable Priti Patel MP and Colchester Borough Council planners to look at the issues surrounding the site. The speaker concluded by asking the Committee to delay the decision and defer the application to review the proposal in more detail especially with regards to the response received from National Highways.

James Firth (Agent) addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 and in support of the application. The Committee heard that since the previous application had been withdrawn significant work had been undertaken to bring forward a first class business site and which provided 300 jobs to the local economy which carried significant weight. The speaker outlined those changes had been made to the application after submission in light of discussions with the Council and its consultees which included amendments to the proposed cycle parking and electric vehicle charging points and advised the Committee that National Highways works were not within the Applicants control. The speaker concluded by outlining that the proposal should be judged against the adopted local plan, that there would be extensive cycle and pedestrian access to the site, that the proposal was acceptable to the Highway Authority, that there had been no statutory consultee objections, and that there would be significant economic benefits if approved.

Councillor Barber attended via zoom and with the consent of the Chair addressed the Committee. The Committee heard that the Councillor had met with the Right Honourable Priti Patel MP and Marks Tey Parish Council regarding the Highways proposals and the response that had been received from National Highways. The Committee heard that after this meeting and intervention from the MP there was a way forward and a solution could be found on the matter if the Committee deferred the application so that this could be explored. The Councillor outlined that there was a golden opportunity to resolve the application and involve residents in the solution.

The Democratic Services Officer read out a statement from Councillor Kevin Bentley who was unable to attend the meeting. The Committee heard that there was no dispute regarding the need to encourage businesses to grow and expand but that this must be done with proper consideration to existing communities whilst looking at the long-term effects. It was noted that there was a need improve the infrastructure in a sustainable way to prevent negative effects on residents in Marks Tey and those that would live there in the future. The proposed development would create large amounts of congestion with no improved junction on the A120 and asked Members to note that congestion would not be eased by the introduction of electric vehicles and that this meant greater consideration would be needed for the access to the site. He urged Councillors to defer the application until further options could be explored and meetings to take place with National Highways and Council Officers as there was only one opportunity to get this right.

The Democratic Services Officer read out a statement from Councillor Andrew Ellis who was unable to attend the meeting. The Committee heard that the Councillor expected there to be a large amount of discussion on the highways proposals and that the application as proposed could break the highways network in the area. It was outlined that the highways proposals were currently in their planning stages and that further conversations were needed between all involved parties to resolve issues as this was not happening at the time of writing. The statement asked the Committee to look into the built form of the proposal, the landscaping on the site, use classes of the proposed buildings and section 2.3 of the report which the Member did not agree with. The Committee heard that although the site may relate to the adjacent one it did nothing to enhance the area and that the scheme needed to be completely redesigned in terms of its landscaping including the proposed policy in the emerging Local Plan of ENV1. The lack of planting and landscape was noted as was the proposal for the 3.5 metre acoustic fencing which would detrimentally impact on the landscape as well as residential amenity. An additional point was raised regarding the scale of the development and whether the proposal constituted overdevelopment of the site. Concern was raised over the proposed use classes on the site and whether a change to more B1 use would lessen possible HGV issues and also with regards to the Neighbourhood Plan in its current form and what weight was given to the policies.

The statement concluded that the Committee could refuse the application on the grounds of overdevelopment and poor landscaping as well as noncompliance with the neighbourhood plan or defer the application so that the scheme could be renegotiated.

At the request of the Chair the Development Manager responded to the points raised by the speakers and the representations read out. The Committee heard that no statutory objections had been received, and that the landscaping officer had found it unacceptable and asked for different plans to be submitted and that in light of Councillor Ellis's comments the noise from the site could be mitigated through additional planting and that any increase in B1 use would also limit noise and HGV movements. The Development Manager outlined that if there was any removal of car parking spaces on Old London Road the highway would continue to be safe and that there was no development consent order in place to deliver the A12 works and that Members had a duty to determine the application that was before them.

Significant concern was raised by Members of the Committee regarding the proposed access and vehicle movements that would be created by the site as well as the proximity to the A12 as well as concern that the relevant agencies were not communicating sufficiently. Members of the Committee discussed the drawings shown regarding the Swept paths for articulated vehicles as well as whether widening of the access would be required to allow two HGV's and other wider vehicles that use the road could pass each safely. The 300 jobs that would be created by the site was noted by Members as a significant economic consideration but there was also concern about the design of the buildings on site and their proposed uses including an overdevelopment of the site. The Committee discussed the implications of the emerging Local Plan, the existing development plan, and the significant weight associated with the Marks Tey Neighbourhood Plan especially with regard to policy MT15.

Members of the Committee explored the details of the site including the environmental damage from the site through loss of trees and hedgerows, the proposed movement of parking spaces onto the site, and whether the application should be refused.

At the request of the Chair, Mark Norman of National Highways addressed the Committee and outlined that the proposal had not received an objection as the junction as proposed did not exceed its current use class and would be unsustainable to object on those grounds based on the level of movements that would be caused by the development.

Members of the Committee continued to debate the application on the issues including the needs and requirements for Traffic Regulation Orders in the area, reasons for deferment of the proposal and possible reasons for refusal. However, it was noted that there was no objection from Highways England in respect of the highways issues. In view of this, it suggested that the application be deferred so that further negotiation could be undertaken to address the Committee's concerns on highways and parking issues, potential overdevelopment of the site and the potential impact on the amenity of neighbouring residents.

RESOLVED (SIX Voted FOR and THREE Voted AGAINST) that the application be deferred to seek negotiations to:

- Address highway access issues and compliance with NP Policy MT15 involving Members, MP and National Highways in light of planned A12 improvements and imminent Development Consent Order NSIP for the A12;
- Reduce quantum of built form on site to avoid over development of site and allow for increased tree retention and potential landscape buffers to boundaries especially those adjacent to dwellings

- Improve streetscene to Old London Road, with better contextual design for Unit 1100
- Resolve onstreet parking for residents and delete suggested TRO to remove the parking bays for residents
- More effective mitigation for residents amenity;
- Review proposed mix of uses to seek to reduce HGV movements e.g. by reducing B8 and increasing E c) uses.

895. 190665 Directors Report – Land Between Via Urbis Romanae and Mill Road, Land South of Axial Way, Colchester

Councillor Warnes (as a Director of Colchester Commercial Holdings Ltd) declared a non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(5).

The Committee considered a report that sought a proposed amendment to the legal agreement process and also requests additional conditions as required for the hybrid application that was considered by the Planning Committee on 29 July 2021 when it approved the application subject to a S.106 agreement and conditions. The report was referred to the Committee as Colchester Borough Council was the Applicant.

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

Simon Cairns, Planning Manager, presented the report and assisted the Committee in its deliberations. A presentation was given of the proposal outlining the history of the application being approved and that the report was being brought before Members to ensure that the process was conducted as transparently as possible. The Development Manager concluded with the officer recommendation of approval.

Members discussed the proposal and the reasons why the application had been returned to the Committee including that the Council was the owner and applicant of the site.

RESOLVED (EIGHT VOTED FOR and ONE ABSTAINED from VOTING) that the proposed amendment to the Legal Agreement process and the agree additional conditions as set out in the Director's report be approved.



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Item No: 7.1

Application: 211510

Applicant: Beyond The Box

Agent: Mr James Firth, Savills

Proposal: Full planning application for the demolition of existing buildings and construction of student accommodation blocks to provide student studio apartments, internal communal areas, staff offices and associated facilities, a substation, landscaping, works to river wall, changes to access and parking

Location: Colne Quay, Land to the east of Hythe Quay, Colchester

Ward: Old Heath & The Hythe

Officer: James Ryan

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This scheme is before committee as it is a major application with objections, a legal agreement and has also been called-in by Councillor Lee Scordis for the following reasons:

1. Loss of light and overshadowing from large buildings
2. Loss of privacy for flats currently in place
3. Conservation of a wildlife area
4. Parking issues likely to arise

2.0 Synopsis

- 2.1 The key issues for consideration are the impact the scheme will have on the townscape and amenity of neighbours, the need for the development and the PRoW, alongside the planning benefits of the scheme.

- 2.2 The application is subsequently recommended for approval.

3.0 Site Description and Context

- 3.1 The application site is located inside what is recognised in Colchester's adopted Proposals Maps as the settlement boundary of the town. The site is located in a former commercial harbour known as the Hythe area, which comprises a mix of industrial, commercial and residential buildings. The area has been subject to regeneration and redevelopment in recent years, notably the Maltings student accommodation scheme to the south and a series of residential apartments and student accommodation blocks located to the eastern side of the River Colne all of which are fairly tall buildings.

- 3.2 The site itself is mostly a vacant piece of brownfield scrub/grassland located between the A134 (Hythe Quay) to its western bank and the River Colne estuary to its east. The north of the site however, comprises low level commercial buildings, which a tyre business operates from. Two houseboats are moored alongside.

- 3.3 To the north of the site is a footbridge across the River Colne providing connectivity to the developed area to the east of the river. The eastern boundary of the site adjoins the River Colne which is supported by a piled river wall. The site is largely enclosed on its western boundary by a concrete wall, which is abutted by a narrow walkway along the eastern side of the A134. This walkway ends at the southern boundary of the site. This area has been left open and is not enclosed by walls. The space to the south of the site comprises an area grassland which occupies the space between the river side and the curb on the A134 until a new footpath starts at the Malting Roundabout and providing onward connection to Colne Causeway (another river crossing).

- 3.4 The Maltings development is located to the south on the opposite side of the roundabout. The western side of the A134 comprises commercial buildings, residential buildings and a pub (The Spinnaker Inn).

- 3.5 The site is located in a sustainable location within the Colchester. The town centre is located within 2km from the site where most of Colchester's central services and facilities can be accessed, including the High Street containing multiple retail outlets, convenience stores, pubs, eateries, leisure and entertainment facilities. Furthermore, there are a number of bus stops within walking distance of the site that provide regular services to Colchester Town Centre. The Hythe Train Station is also located with 500m of the site, which provides transit to Colchester Town Centre as well as services to other destinations within the region including onward travel to London.
- 3.6 The site itself is also located within close proximity to other local services all located in the Hythe Area. The site is just over 1km from the University of Essex main campus (approximately a 15-minute walk or 5-minute cycle ride).
- 3.7 The site is located in Flood Zone 3, but also belongs to an area benefiting from flood defences. An area located to the north of the site is designated as a conservation area but does not include the site itself. A locally listed building, The Spinnaker Inn is located close by on the western side of the A134.

4.0 Description of the Proposal

- 4.1 The application proposes two student accommodation blocks (amended from three blocks as originally submitted) in a sustainable location in Colchester. The scheme has been amended from 300 rooms to 270 rooms within the application period. The proposals allow for the redevelopment of a mostly vacant strip of previously developed former industrial land between the A134 (Hythe Quay) and the western boundary of the Colne Estuary, comprising grass land and scrub. The site provides the opportunity to provide high quality buildings, public realm enhancements and footpath connectivity from the eastern side of the A134 to the south of the site to the Maltings and to a footbridge which crosses the river Colne to the north of the site. The site is located within a designated regeneration and growth area for Colchester.
- 4.2 It is important to note that the proposals also include the construction of a new river wall. There are sections of the existing river wall at the northern and southern extents of the site that are in good condition and do not need to be raised to protect the buildings from flooding. However, the remaining part of the wall is too low to protect the site and is not in a good condition. It is proposed to construct a new river wall by sheet piling on the river side of the existing wall. This element represents a significant investment.

5.0 Land Use Allocation

- 5.1 The land is currently vacant, save from a small car tyre business on site.

6.0 Relevant Planning History

- 6.1 There is no recent planning history.
- 6.2 COL/96/1251 – Outline application for residential development comprising 24 no. two bedroom flats – Former Gas Quay, The Hythe, Colchester was

approved on the 7th November 1996. This does not appear to have been implemented.

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 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP4 Meeting Housing Needs
- SP5 Employment
- SP6 Infrastructure & Connectivity
- SP7 Place Shaping Principles

Appendix A of the Section 1 Local Plan outlines those policies in the Core Strategy Focused Review 2014 which are superseded. Having regard to the strategic nature of the Section 1 Local Plan, policy SD2 of the Core Strategy is fully superseded by policies SP5 and SP6 of the Section 1 Local Plan. Policies SD1, H1 and CE1 of the Core Strategy are affected in part. The hierarchy elements of policies SD1, H1 and CE1 remain valid, as given the strategic nature of policies SP3, SP4 and SP5 the only part of the policies that are superseded is in relation to the overall requirement figures.

The final section of Policy SD1 which outlines the presumption in favour of sustainable development is superseded by policy SP1 of the Section 1 Local Plan as this provides the current stance as per national policy.

All other Policies in the Core Strategy, Site Allocations and Development Management Policies and all other adopted policy which comprises the Development Plan remain relevant for decision making purposes.

- 7.3 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
- SD2 - Delivering Facilities and Infrastructure
- SD3 - Community Facilities
- CE1 - Centres and Employment Classification and Hierarchy
- UR1 - Regeneration Areas
- UR2 - Built Design and Character
- PR1 - Open Space
- PR2 - People-friendly Streets
- TA1 - Accessibility and Changing Travel Behaviour
- TA2 - Walking and Cycling
- TA5 - Parking
- ENV1 - Environment
- ER1 - Energy, Resources, Waste, Water and Recycling

- 7.4 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
- DP2 Health Assessments
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP4 Community Facilities
- DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
- DP10 Tourism, Leisure and Culture
- DP13 Dwelling Alterations, Extensions and Replacement Dwellings
- DP14 Historic Environment Assets
- DP16 Private Amenity Space and Open Space Provision for New Residential Development
- DP17 Accessibility and Access
- DP19 Parking Standards
- DP20 Flood Risk and Management of Surface Water Drainage
- DP21 Nature Conservation and Protected Lanes
- DP25 Renewable Energy

- 7.5 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 EC1 Residential development in East Colchester
- SA EC2 Development in East Colchester
- SA EC3 Area 1: Former Timber Dock
- SA EC7 University of Essex Expansion
- SA EC8 Transportation in East Colchester

- 7.6 The site is not in a Neighbourhood Plan area.

7.7 Submission Colchester Borough Local Plan 2017-2033:

The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan is at an advanced stage having undergone examination hearing sessions in April 2021 and recent consultation on modifications. Section 2 can be afforded significant weight due to its advanced stage

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 significant weight in the consideration of the application.

7.8 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
Community Facilities
Open Space, Sport and Recreation
Sustainable Construction
Cycling Delivery Strategy
Sustainable Drainage Systems Design Guide
Managing Archaeology in Development.
Developing a Landscape for the Future
ECC's Development & Public Rights of Way
Planning Out Crime
Colne Harbour Masterplan
Air Quality Management Guidance Note, Areas & Order

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 Anglian Water

No objection raised. The scheme should use a SuDS system and a number of informative have been requested.

The foul drainage from this development is in the catchment of Colchester Water Recycling Centre that will have available capacity for these flows.

8.3 Arboriculture

No trees on site.

8.4 Archaeology

No objection, condition requested.

8.5 Cadent

We do not object to the proposal in principle.

Please note that there is a Low pressure gas main at the proposed entrance to the site, the main may need to be lowered to enable the access to be constructed. The developer is to contact Cadent Gas to discuss these works prior to commencing any construction on site.

8.6 Contaminated Land

No objection subject to conditions.

8.7 Colchester Civic Society

Detailed objection – please see website, however the representation notes scale, design, visual impact on context, lack of need, lack of parking, harm to neighbour amenity, lack of green space and impact on air quality.

8.8 Colchester Cycling Campaign

Object to the scheme as government advice states that cyclist dismount signs should not be used. The footbridge across the Colne should be redesignated as a cycle path.

8.9 Environment Agency

No objection.

8.10 Environmental Protection

No objection subject to conditions

8.11 Essex Police

Essex Police confirm a positive pre-application consultation took place, that matters of concern discussed at that meeting have been resolved, resulting in the comprehensive details as contained in the Design and Access Statement.

It is apparent that compliance for Secured By Design (SBD) accreditation is achievable should the applicant wish to pursue that route or should the planners stipulate SBD as a planning condition in ensure the aspiration of a location that is safe and accessible as outlined in Colchester - Policy DP1: Design and Amenity plan, i.v. 'Create a safe and secure environment' and NPPF, sec 12, paragraph 127, (f) 'Create places that are safe, inclusive, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience'.

8.12 Highway Authority

No objection subject to conditions. This will be discussed in the report below.

8.13 Health and Safety Executive

Do not advise against (no objection).

8.14 Historic Buildings and Areas Officer

No objection – please see relevant section below

8.15 Historic England

On the basis of this information, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

8.16 Landscape Advisor

No objection subject to conditions.

8.17 Natural England

We have read the Council's Appropriate Assessment and are satisfied as long as a contribution to the Essex Coast RAMS is made the scheme is acceptable.

8.18 NHS

Require a financial contribution towards healthcare provision in the area.

8.19 Place Services Ecology

Following additional information, no objection subject to conditions.

8.20 Private Sector Housing

Object – see main body of report.

8.21 Ramblers

The Ramblers eagerly await the reinstatement of this section of Public Right of Way footpath 138 Colchester.

8.22 SuDS (LLFA)

No objection to the scheme.

8.23 Urban Designer

The scheme is acceptable architecturally but is not policy compliant due to its scale. More detail are set out in the relevant section below.

9.0 Parish Council Response

9.1 The area is non-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. As the scheme was amended during the application period two consultations were undertaken. A number of representations were received, with 62 were in objection and 53 were in support and 13 were general comments.

10.2 An objection was also received from Alderman Theresa Higgins. In summary this objected to the scheme as it is considered to be too tall, comprises overdevelopment, will dominate the area, will harm biodiversity and is harmful

to the historic area. The impact on the sewage system was also raised. The need for student accommodation was also questioned.

- 10.3 It is beyond the scope of this report to set them all out in full and they are all visible on the Council's Website but in summary they noted:

Objections

The scheme is ugly.

The scheme is too large/high/tall.

The scheme is overdevelopment.

The area should be a park.

The area is a haven for wildlife.

There is no need for this student accommodation.

Students do nothing for the area or the economy.

Students should be located at the University.

This will have a harmful impact on my residential amenity/overlooking/Loss of daylight and sunlight.

Where will they park?

Highway and traffic problems in the area will be exacerbated.

The scheme is harmful to the Conservation Area.

This scheme does not give any consideration to the PRow on site.

Support

This will be good for the area.

The buildings are well designed.

The new sea wall and riverside footpath will be a great benefit.

Beyond the Box provides great accommodation.

11.0 Parking Provision

- 11.1 This is essentially a car free scheme, however drop off and servicing car parking is proposed as set out below.

12.0 Accessibility

- 12.1 The scheme proposes two fully wheelchair accessible studios. There are also two non-wheelchair compliant studios of the same size that are very simple to convert if needed. Lifts serve all floors.

13.0 Open Space Provisions

- 13.1 This is discussed in the main body of the report.

14.0 Air Quality

- 14.1 As an essentially car free scheme, it is not held that this proposal will result in a significant impact on air quality. The Environmental Protection team have not raised any concerns in that regard.

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 Planning Obligations should be sought. The Obligations that would be agreed as part of any planning permission would be:

Community – £35,000

Hythe Community Centre – Refurbishment works, increasing the capacity and service to local users.

Transport - £50,000

1. £30,000 towards improving walking and cycling links from the development to university and/or town centre, which could be replacing the zig zag bridge or improvements to the PROW linking the development to Port Lane and the town centre.
2. £20,000 contribution towards setting up, expanding or supporting shared transport schemes in Colchester.
3. Provision of a car club parking space in an easy to access location on site with electric charge points for both a shared electric car club car and shared ebicycles.

Highways -

- a) Upgrade to Essex County Council specification the two bus stops which would best serve the proposal site (details shall be agreed with the Local Planning Authority prior to commencement of the development)
 - b) Improved crossing facilities in Hythe Quay (details shall be agreed with the Local Planning Authority prior to commencement of the development)
 - c) A Travel Plan and Residential Travel Information Packs both in accordance with Essex County Council guidance.
- Works conditioned and delivered either as part of the site or by a s278 agreement

Archaeology - £15,153.00

£14,400 for museum quality display case, design and display material

£753 for enhancement of the Colchester HER

£348 will be required if no archaeological remains are affected by the development, to integrate the information from the archaeological

NHS - 71,700.00

For the provision of healthcare in the vicinity needed due to the increase in demand this scheme will generate.

16.0 Report

The main issues in this case are:

Policy Background

- 16.1 Policy SD1 of the adopted Core Strategy confirms that the Council will promote sustainable development throughout the Borough with growth being directed towards the most accessible and sustainable location in accordance with the Settlement Hierarchy. The Council will promote development in the Town Centre and in regeneration areas, primarily focussed in the following broad locations: Town Centre; North Growth Area; East Growth Area; South Growth Area; and the Stanway Growth Area.
- 16.2 Policy UR1 – Regeneration Areas confirms CBC are committed to regeneration in rundown areas, deprived communities and key centres. CBC will focus on the five areas of regeneration within the Borough which are: North Station; St Botolph's, East Colchester, North Colchester and The Garrison. New development in regeneration areas will be encouraged.
- 16.3 In respect of the Site Allocations document the site is located in an area of regeneration, by policy SA EC2 - Development in East Colchester. SA EC2 states that development within this growth area will be permitted subject to meeting key criteria which notably includes: providing a balanced and integrated mix of uses; provide flood risk management in areas of Flood Zone (2/3); and include uses which attract significant numbers of people which also enhances public accessibility for development on sites fronting the river.
- 16.4 Development in the East Colchester Regeneration and Growth Area is divided into four key areas aimed at making contributions to the area's future development. It will be noted that the site is not located within any of these site-specific site allocation policy areas (as it is located between the boundaries of Area 1: Former Timber Dock (SA EC3); Area 2: King Edward Quay (SA EC4); and Area 4: Hawkins Road (SA EC6). These areas are allocated to provide more specific requirements. The site is therefore not tied to specific allocation requirements; however, the Development Plan provides planning policy support for development in this location subject to proposals meeting the relevant criteria.

Emerging LP

- 16.5 As set out above, the progression of the emerging Local Plan is at an very advanced stage and relevant policies can be afforded weight in accordance with paragraph 48 of the NPPF. The policies in Section 2 of the CB Local Plan is a material consideration that can be afforded significant weight.
- 16.6 In the Section 2 Local Plan, the site also forms part of the East Colchester Special Policy Area (Policy EC2), which is essentially a continuation of the policies contained in the currently adopted Development Plan that seek to grow and regenerate this area of Colchester. Like SA EC2, Policy EC2 supports and encourages development that helps to achieve the following key objectives. The proposals have therefore been assessed against the relevant objectives of Policy EC2 below, which also takes into account the key criteria of Policy SA EC2 stated at paragraph 5.3 above:
- i) Support regeneration of the area through appropriate densities, providing good public transport, a mix of uses including commercial community and residential as well as providing community and environmental enhancements*
- 16.7 It can be argued that the proposals will directly support the regeneration of the local area by providing development on a mostly vacant underutilised parcel of land that runs alongside the river Colne. Proposals will allow for a new footpath connection and footway along the river front, creating better connectivity along the eastern side of the A134 and opportunities for human interaction with the river front (in accordance with the aspirations for the Rowhedge Trail Route), providing significant benefit to the public and the local community. Opportunities for enhancement of the public realm; and environmental enhancement all exist as a result of the proposals. Student accommodation provides a type of residential development specific to the University. The Hythe is a suitable location for student accommodation given its proximity to the University of Essex site, which is also evidenced by the numerous examples of other student accommodation sites also situated in the local area (for example the Maltings, Hythe Mills, Hawkin Quays).
- ii) Maximise the potential benefits of the location adjacent to the University, enhanced by its expansion (Policy EC1)*
- 16.8 In accordance with this objective, the proposals will provide additional student accommodation primarily for students returning to university after their first year of study. Returning students are not guaranteed student accommodation by the University and there is demand to provide quality private student accommodation outside of the University to Campus to those individuals who are not guaranteed accommodation by the University. As confirmed in the University of Essex's University Strategy 2019–2025 they currently enrol 15,317 students across three campuses with ambitions to expand their student population to 20,000 students. The additional 270 student units proposed will provide a significant contribution to the university's targets, by providing

accommodation in accordance with their expansion. As noted above at paragraph 5.8 the application site is ideally located in an accessible location within walking distance of the university, in an area which has already proved to be a popular location for student accommodation. The need for accommodation is dealt with in more detail below.

iii) Deliver significant public realm improvements to enhance public access, connectivity and sustainable movement

- 16.9 As touched upon at paragraph 16.7 above, the proposals will provide significant public realm improvements, improving connectivity and sustainable movement's within the area, including the establishment of the river walk along the eastern side of the site. The proposals will also improve pedestrian safety, by moving pedestrian flow away from the current narrow footpath along Hythe Quay, to the more open areas through the site.

iv) Ensure new developments are responsive to the distinctive historic character of the area and reinforce the significance of the Conversation Area

- 16.10 The site is not located in a conservation area nor is it located nearby to any designated heritage assets. It is noted however, that a locally listed building is located opposite to the site on the western side of the A134 (The Spinnaker Pub) and is located south of the Hythe Conservation Area. The proposals have been designed to complement the local context and character of the area. In support of the proposals a Heritage Impact Assessment has been prepared by RPS. The findings of the proposals in relation to local heritage impact is assessed in this document and commented upon in the relevant section below.

v) Contribute to the East Transit Corridor

- 16.11 The proposals will establish a riverside footway improving pedestrian connections along the Hythe. The current footpath is narrow, close to the road and bounded by a wall with no access to the riverside. The proposals will result in significant public realm enhancements and improve connections within the East Transit Corridor particular when accessing the university from the town centre and vice-versa.

vi) Enhance provision of Green Infrastructure to maximise potential opportunities for biodiversity and habitat creation

- 16.12 The application site mostly comprises low value grassland and area of which isn't accessible to the public. As shown on the accompanying landscape drawings the proposals will introduce green infrastructure through soft landscaping to the site and provide opportunities for biodiversity enhancement and habitat creation including the provision of a biodiverse roof. This application is also accompanied by a Preliminary Ecological Appraisal, which is commented upon further below at paragraph 5.66.

vii) Contribute towards flood risk solutions

- 16.13 A Flood Risk Assessment and Drainage Strategy accompanies this planning application and is assessed later in this report. However, the proposals have been developed to mitigate any flood risks, including the rebuild of the river wall which is currently in need of repair. The proposals are considered acceptable in this regard.

viii) Provide for a compatible mix of uses having regard to neighbouring amenity

- 16.14 As established above student accommodation is seen as a wholly compatible with use within the area given its links to the University, which is confirmed by a number of other student accommodation developments also present in the vicinity of the application site. In respect of neighbouring amenity, assessments regarding the heights of the proposals and its suitability within the locality are assessed within the LVIA and the Daylight/sunlight assessments that accompany this planning application and assessed later in this report.

ix) Situate development away from contaminated land

- 16.15 A Phase 1 Contamination Survey accompanies this planning application. Land contamination is not anticipated to be an issue for the application site. However, if further investigations are required these can be dealt with by a suitably worded condition.

Policy Conclusion

- 16.16 Subject to the proposal meeting other relevant policies contained within the Development Plan, the emerging Local Plan and national planning policy, the principle of student accommodation at the policies referenced above within the adopted and emerging Local Plan establish the principle of development at the application site and proposals should be supported.
- 16.17 It is also noted that CBC have supported the development of this site for residential development previously as noted in the planning history section above.

Amendments within the application period

- 16.18 The scheme was amended significantly during the application period in order to overcome issues raised by both neighbours and consultees.

The main amendments can be highlighted as follows:

- ☐ Reduction of built form
- ☐ Design updates to improve articulation and reduce building mass
- ☐ Enhanced public realm to provide direct access to River Colne
- ☐ Tidal terrace to enhance ecological benefits
- ☐ Improvements to residential amenity

- Removal of habitable rooms from areas of flood risk

Amount/Operation

- 16.19 As submitted the scheme comprised 300 units of student accommodation. During the application period in an attempt to overcome some of the objections the scheme was changed from three blocks to two and the number of bedspaces was reduced from 300 rooms to 270 rooms.
- 16.20 The scheme proposed 254 studios that are 13.5m², 2 wheelchair compliant studios that are 26m², 2 larger 26m² studios and 9 studios of 18m².
- 16.21 On the ground floor there are a number of group study rooms, kitchens, laundry, plant room, bin area, bike stores, a reception area and a TV room. There is no residential accommodation on the ground floor. Both blocks have lifts, the taller southern block has two lifts. The entire building is covered by sprinklers for fire safety and the applicants have confirmed that the layout has been informed by a fire consultant.
- The studios are located on the floors above. This comprises first floor to fifth on northern block and first floor to ninth on southern block. Each floor also has a shared kitchen in each block.
- 16.22 Operationally, the applicants have confirmed that their staff are on site during normal business hours plus the key move in weekends. They also employ additional staff and students to help on the key move in weekend. They remotely manage the CCTV and other systems.

Design

- 16.23 The National Planning Policy Framework (2021) sets out the Government's planning policies for England and how these are expected to be applied. The framework sets out that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, going on to state that 'good design is a key aspect of sustainable development'. The framework also states that 'development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design'.
- 16.24 Government guidance on design is provided by the National Design Guide and National Model Design Code, both of which form part of the governments Planning Practice Guidance. The National Design Guide seeks to deliver places that are beautiful, enduring and successful by setting out the characteristics of well-designed places and outlining what good design means in practice. Whilst the National Model Design Code sets out clear design parameters to help establish what good quality design looks like and provides a common overarching framework for design. These documents are intended to help create beautiful and distinctive places, with a consistent and high quality standard of design.

- 16.25 At a local level these policies are carried through and adopted as part of the Colchester Borough Council Local Plan 2001-2021 and Colchester Borough Local Plan 2013-2033. Relevant policies include Core Strategy Policy UR2, Development Policy DP1 and North Essex Authorities' Shared Strategic Section 1 Plan Policy SP7, which seek to ensure development responds positively to local character and context to preserve and enhance the quality of existing places and their environs.

At a local level these policies are supported by more detailed guidance provided by supplementary planning documents such as the Essex Design Guide.

- 16.26 Section 2 of the Colchester Borough Local Plan 2013-2033, 'Local Plan for Colchester', is currently at the examination stage and as such is considered to be at an advanced stage and can thus be afforded weight within the determination of planning applications. Policy DM15 is of particular relevance with regard to setting design standards and amongst other requirements seeks to ensure proposed developments respect and enhance the character of the site, its context and surroundings in terms of its layout, architectural approach, height, scale, form, massing, density, proportions, materials, townscape and/or landscape qualities, and detailed design features.

Design Assessment

- 16.27 This scheme has stemmed from a significant amount of pre-application work with the Council's in-house Urban Design Officer and a full set of amended drawings have been supplied during the application period in order to attempt to overcome some of his concerns.
- 16.28 As submitted, the scheme comprised three blocks. A significant change to the proposals has been reconfiguration of the scheme into two blocks. This allows for a large area of public realm to be created in the centre of the development, whilst also providing the maintenance of direct views between the River Colne and The Spinnaker public house.
- 16.29 The re-siting of retained blocks has also allowed for improvements to the area of public realm at the northern edge of the site, as well as increased the distance between the new buildings with those existing and the edge of the River Colne. A substation originally proposed in this area of open space has also now been integrated into one of the buildings instead.
- 16.30 The improvements have enhanced the ability of the site to support natural desire lines and the wider public enjoyment of this unique riverside location.
- 16.31 Further improvements to the design of the blocks themselves through a review of material usage, glazing and fenestration and roof form supports a sense of reduced massing and scale.
- 16.32 The revisions to the scheme see the proposed built environment reduced from three structures, down to two, with the addition of a central area of public realm. As a result, the footprint of the proposed built environment has reduced and the quantum of public realm provided has increased. Consequently, the perceived

mass of the proposed built environment is improved, as is access and views along the waterfront.

- 16.33 Revisions to the composition and treatment of the facades of the proposed structures seek to mitigate their scale and ensure they appear as a coherent collection of various structural elements which share consistent features. The use of a variety of materials and detailing break down the massing of the structures effectively. As a result, the elevational treatments of the proposed structures achieve a consistent rhythm, appearing balanced and visually articulated. The approach to materiality is consistent with the vernacular of the wider area. A good degree of active frontage is delivered at ground floor, however it is not evenly distributed. As such, the ground floor elevations to the north of the site would benefit from enhanced detailing or landscaping. On balance, the proposed built environment is considered to achieve an acceptable standard of design in itself.

Design Policy Compliance

- 16.34 As per the original submitted scheme, by virtue of its location and scale, the proposed built environment remains out of keeping with the site's immediate context and the prevailing transitional character of the area. However, the scheme does now achieve an acceptable standard of architecture and an enhanced provision of public realm. In light of this, there are positive and negative elements to the design of the proposed development. The in-house Urban Designer argues that, by virtue of the latter, the proposed development would still be discordant with the sites' established context and as such remains contrary to some elements of the above outlined national and local planning policies. This must be weighed up in the planning balance however.

Conclusions

- 16.35 As highlighted above, elements of the design of the proposed development have been improved, whilst others remain contrary to elements of policy. The proposal brings a disused parcel of land back in to use, delivers public realm improvements, significantly enhances access to the waterfront and looks to respond to the existing historic fabric of the area. The Urban Designer argues that the proposed development has a poor connection with its immediate context by virtue of its scale. The negative elements of the design are generally a result of the density of the proposed development, which pertains to matters of principle. As such a balanced judgement is required as to whether the negative elements of the proposed design are considered acceptable in the context of the wider material planning considerations relevant to this application.
- 16.36 On balance, the amendments have significantly improved the overall design of the scheme, continuing to build on that developed along with officers through a detailed pre-application process, and ensure that the updated scheme better accords with Policy DP1 of the Development Plan and DM15 of the emerging Local Plan.

Need

- 16.37 A number of representations have questioned the need for this accommodation. The latest update from the University (provided to the developer) in summary is as follows:

		Academic Year 2021/22	Academic Year 2022/23	Academic Year 2023/24	Academic Year 2024/25	Academic Year 2025/26	Academic Year 2026/27
Campus	Level	Total	Total	Total	Total	Total	Total
Colchester Campus	UG	10,945	11,003	11,031	11,719	12,111	12,331
	PGT	2,606	2,781	2,830	2,898	2,978	2,982
	PGR	585	692	778	781	804	817
	Total	14,136	14,476	14,639	15,398	15,892	16,129

- 16.38 This demonstrates that the University are projecting that they will increase full time student numbers in Colchester by 1993 by Academic Year 2026/27, which with only 15% of Essex University students living at home will result in an additional demand for accommodation of 1694 rooms. The University will continue to only provide accommodation for foundation and 1st year students, resulting in 685 students who require on-campus accommodation and 1008 that require 3rd party accommodation.

- 16.39 Additionally, there is currently an under supply of on-campus accommodation for foundation and 1st year students of around 350 beds which, when added to the above new demand, results in a total requirement for 1035 additional on-campus beds by academic year 2026/27. To address the on-campus demand, the University has commenced construction of the Meadows phase 2 which will provide approximately 1200 additional bed spaces, addressing the on-campus supply problem, but doing nothing to address the 1008 bed demand for off-campus accommodation. Add to this that 55% of current students are unable to access purpose built student accommodation and that the pipeline for private student accommodation projects in Colchester is virtually empty and you will see that continuing to develop sustainable, high quality schemes like this one is essential to both the continued growth and success of the university.

Landscaping

- 16.40 The revisions made to the overall site layout have been directly influenced by a desire to improve the offering of public open space and realm on the site, and to ensure that these spaces relate specifically to the unique location of this site. The revised layout provides significantly more usable space of this nature and, as such, more flexibility to design them in a way which ensure they are beneficial for both the new and existing community, whilst also making a maximum contribution to biodiversity. The use of rain gardens allows these spaces to contribute positively to the flood and drainage strategy for the site in a dual purpose manner also. The

scheme will therefore comply with Core Strategy Policy ENV1 and Section 2 Policy ENV1.

- 16.41 It is noted that the Landscape Master Plan shows planting and planters with footpath between. Whilst this appears as very attractive, it will need to be rearranged to maintain the definitive alignment of the PRow that was previously amended to avoid the landing of the white footbridge. This will be achieved via condition.

Impact on Townscape

- 16.42 Policy DP1 of adopted Development Plan requires proposals to respect its context and surroundings in terms of townscape and/or landscape setting, it also requires proposals to respect or enhance the landscape and other assets that contribute positively to the site and the surrounding area. This is also carried forward in DM15 of the emerging Local Plan.
- 16.43 In respect these policies, a Landscape, Townscape and Visual Impact Assessment has been prepared by Guarda Landscape and accompanies this planning submission. The report sets out the baseline situation of the site and its surrounding context and has informed the design of the development of the application proposals and approach to mitigation as part of landscape led approach.
- 16.44 The report has been prepared in accordance with the relevant guidance with viewpoints also being agreed with CBC Officers before the assessment was undertaken. The defined study area is centred on the proposed site and is based on the area from which views of the development may be visible i.e. the visual envelope.
- 16.45 The report has undertaken two types of assessment landscape effect and visual effect. It considers the effect of the completed scheme on the surrounding landscape, townscape character and visual amenity from the surrounding roads and footpath network.
- 16.46 An initial baseline appraisal in Part 1 of the report confirms in landscape terms, with the exception of a small isolated reed bed, that the overall condition of the site is poor and it has a derelict and degraded character. The wall to the western boundary of the Site, visually separates the Site from the Hythe Quay forming a detracting feature within the Site's townscape context, and PRow FP 127_138 does not currently exist on the ground. The site is considered to be of low landscape and townscape value. In terms of visual amenity, the site within its context was considered to offer medium to high visual amenity.
- 16.47 The assessment of landscape effects found that there would be a permanent change in land use which will alter the character of the site and the immediate surroundings. However, the development will bring significant riverside public realm enhancements, for example through landscape improvements and a biodiversity. In the context of the site's existing post-industrial brownfield character, these changes are beneficial.

- 16.48 The applicants argue that upon completion, the overall effect of the development would be predominantly beneficial. Although built form will increase, the new buildings (architecturally) reflect the Hythe's industrial past and the area with positive outcomes for the setting of the of the site and the Hythe Conservation Area.
- 16.49 The assessment of visual effect found that those in closest proximity to the site will experience the greatest changes in visual amenity, particularly pedestrian users. The effect on visual amenity to local residents was also assessed to be major adverse or major/moderate adverse impact during construction. The construction phase will be most disruptive however these effects are temporary. However, the proposed landscape mitigation, aims to reduce the effects of development and provide new public realm to the riverside. Given the narrowness of the site, most of the mitigation, in terms of tree planting, is to the north and south of the building and the plaza links between the buildings. The use of mature vegetation will provide immediate impact and provide positive change, immediately on the scheme.
- 16.50 The new buildings will be a visible element in the riverside view and from Hythe Quay which will be seen in conjunction with the existing built form which surrounds the site. The buildings have been designed to reflect the local context in terms of scale, layout and landscape. The effect of tree planting will be most effective at ground level in close proximity to the site. In middle distance views the effect of tree planting will provide a green setting to the buildings improving the areas townscape character and visual amenity. In longer distance views the proposed buildings are beyond the existing built form and the landscape proposals will not be visible and have no effect.
- 16.51 The proposal will alter the character of the site and its immediate surrounding, although there will be localised adverse visual and landscape effects, especially to receptors close the site, the change to high quality new development is seen as beneficial given the public realm enhancements, the reinstatement of the public footpath along the riverside and the interconnectivity of the site. This is an element of the scheme that must be assessed in the planning balance.
- 16.52 Given the extent of the changes and the impact they have on views in and out of the proposed development site, an Addendum to the LVIA previously submitted has therefore also been prepared to form part of this submission. This concludes that the proposed changes will be beneficial in terms of Townscape and Landscape visual impact considerations.

Impact on Setting of CA and non-designated HA's

- 16.53 Policy DP14 – Historic Environment Assets confirms development proposals that will adversely affect a listed building, conservation area, historic park or garden or important archaeological remains will be not be permitted. Section 16 of the NPPF is also concerned with impacts on heritage assets that in determining application local planning authorities should require applicants to describe the significance of any heritage assets affected.

16.54 In the light of the above a Built Heritage Statement has been prepared by RPS Consulting. This report identifies The Spinnaker Pub opposite the site as a locally listed heritage listed building and also acknowledges that the site is located approximately 50m south of the Hythe Conservation Area.

16.55 The Development Manager has assessed this scheme and the historic justification provided as follows:

Heritage Asset: Summary of Significance

16.56 Locally Listed (NDHA): The Spinnaker PH close by and Maponite Warehouses to north.

16.57 Designated HA: The Hythe CA and attendant assemblage of listed buildings especially those clustered at base of Hythe Hill. Note: these are indirect impacts on setting only the development is divorced from the conservation area boundary to the north. There are no designated HA within or adjacent to the application site. The LB's potentially affected include: 26b & 26c Hythe Hill, Church of St Leonard, and The former Sun Inn.

Scope Of Works: Summary

16.58 Development of student accommodation (sui generis) in linear format of two articulated blocks of up to 8/9 stories in height at the southern end cascading down to 4 stories at the northern end

Relevant Statutory Duties

16.59 s.66(1) PI (Lb & Ca) Act 1990

S72(1) PI (Lb & Ca) Act 1990

Analysis of Impact Upon Heritage

16.60 The Spinnaker PH (formerly the Anchor) is a very important survivor from the port related heritage of the Hythe. It is a typical early-mid C19 PH and has a key relationship with the adjacent quayside. The scheme has been revised in late 2021 to remove the intervening block (reducing unit nos from 300 to 270 units) with the reinstatement of direct intervisibility from the PH to the River Colne. The creation of an important area of landscaped space now further enhances the setting of this non-designated HA.

16.61 In terms of the wider impacts on the setting of the Hythe CA to the north, the principal effect will be experienced in terms of the long views along the river corridor out from and into the CA. The introduction of a significant built form will soften views of the Maltings Development (8 Storeys) through the use of a cascaded massing from a peak at the northern end (9 storey focal point on the southern junction) to a more typical 4 storeys at the northern end (addressing the CA). The increased mass and intensity of development will contrast with the former historic haphazard coal and lime kiln uses and will instead respond to the later C20 and C21 development on the opposed bank of the Colne in Hawkins Road. The scale will

contrast with that established in the later C20 e.g., to the west of Hesper Road where a modest 3 storey format dominates.

- 16.62 However, the built form now proposed will have only a peripheral impact on the character of the CA to the north and will simply reinforce more recent patterns of development of increased scale to the south. This reflects the transitional character of this part of the Hythe, in terms of the magnitude of effects, the impact will be at the lower end of less than substantial harm and offset by the public benefits of regenerating a derelict area of river frontage and providing new public realm and planting.
- 16.63 I do not perceive any material impact on the significance of listed buildings to the north as the development site does not make a material positive contribution, either now or historically, to their individual heritage values or significance. They are too remote in my opinion and lack a functional relationship to the application site.
- 16.64 The impact on the significance of the Spinnaker PH (NDHA) has been significantly mitigated by the revisions secured to the scheme. But nevertheless, it will suffer a change to its historic setting in terms of its established visual dominance and character. The 1840's Spinnaker PH will still be appreciated and understood in terms of its heritage values, but it will be subordinated in terms of townscape presence. I believe this modest harm is more than offset by the public benefits of the scheme, and in particular, the economic uplift to the local economy including potential customers of the PH which may secure its viability in the longer term.

Compliance With Relevant Policies

- 16.65 Adopted LDF: ENV1, UR2, DP14

CBLP 2017-2033 SP6 Place Shaping Principles in part, ENV1 Environment, EC2 Hythe Special Policy Area, DM16 Historic Environment.

- 16.66 The scheme complies with the NPPF and above policies except for the adopted ENV1 and DP14 which do not provide a 'balancing mechanism' to address situations of harm to significance and the consideration of wider public benefits. It is important that relevant plan policies are read in the context of the plan as a whole and not in isolation.

Conclusions & Recommended Actions

- 16.67 The scheme as revised (two blocks) contributes to the strategic aims of regenerating the Hythe albeit with a minor erosion of the wider historic setting of the CA, which is as explained above, convincingly outweighed by the public benefits of the scheme. The change to the setting of the Spinnaker PH (NDHA) will further evolve the relationship of this modest building to its environs (which have been in a state of transition as port related industry and activity has been displaced by homes) but again this loss is outweighed in my opinion in the ‘

planning balance' by the regeneration merits of the wider scheme.

Suggested Conditions

- Materials, architectural detailing
- Reuse of existing artwork on concrete boundary walling in accordance with scheme to be agreed.

Living Conditions

16.68 The Council's in house Private Sector Housing team have made the following comments:

The accommodation is creating 'micro-flats' rather than shared HMO accommodation, as each bedroom area has its own en-suite shower room and kitchen sink/cooking facilities provided. Each unit can therefore be considered a self-contained flat. The majority of studio flats are 13.5m² and therefore do not meet the attached DCLG space standards for minimum internal floor area for each unit. For 1 bedroom this is 37m².

I have serious concerns of up to 26 studios/persons sharing one kitchen/living room area on each level. This is an inappropriate number to be using one communal room. The layout of the double kitchens also shows sinks and cooking facilities side by side, rather than 2 distinct kitchen areas for safe use.

My suggestion would be to either make each unit meet the DCLG space standards for a 1 bed flat, or to remove all kitchen and cooking facilities from each room and provide a sensible level of kitchen/living room space based on the number of occupants for each floor of accommodation. I would suggest that no more than 10 persons should be allocated a designed kitchen/living area (meeting all space and kitchen facilities requirements for 10 persons) and therefore at least 2 separate kitchen/living rooms would need to be provided per floor of accommodation.

16.69 In response, this application is for bespoke, *sui generis* student accommodation. It is not for 'normal' C3 residential accommodation. The operators/applicants specialise in such facilities and are well known for their high-quality accommodation. It is the success of their recent development in Avon Way, Greenstead that has driven their desire to bring this scheme forward. It is not reasonable to assess this scheme as a set of self-contained flats when they are plainly for students who will want to spend a great deal of time in the communal areas on the ground floor and also on campus. Reworking the scheme in line with the comments above would fundamentally change the applicant's product and is not held to be a reasonable requirement.

16.70 This has been carefully considered but it is held that a refusal on the basis of the comment above would not be reasonable for the use that is proposed. A condition is suggested to ensure the accommodation proposed is retained as student accommodation in perpetuity.

Archaeology

- 16.71 In support of this planning application an Archaeological Desk Based Assessment has been prepared by RPS Consulting. The report confirms that the proposed development will not impact on any designated archaeological assets.
- 16.72 The report recommends that the first stage of investigation should comprise archaeological and geo-archaeological monitoring of the proposed site ground investigation, with subsequent sub-surface topographical modelling. The results of which will be used to inform appropriate timing of subsequent trial trenching, which has been agreed with CBC's Archaeological Officer ahead of this submission to be undertaken post-determination and secured by conditions if planning permission is granted.
- 16.73 Since the original submission, ground investigations on the site have now been completed with trial-pits, window sampler boreholes and ground investigation boreholes having been observed by Colchester Archaeological Trust. This programme of work was also agreed in advance.
- 16.74 A brick structure which may have been associated with a series of lime kilns which stood here in the 19th century was observed, along with substantial make-up and demolition layers associated with the prior use of the site as an industrial area, activity which likely destroyed any earlier archaeological deposits which might have existed here.

Impact on Amenity

- 16.75 Paragraph iii) of Policy DP1 requires development proposals to protect existing residential amenity.
- 16.76 It is first important to note that planning does not seek to protect views. Some residents of the flats located south of the development site will lose their current river view, but that is not a material consideration.
- 16.77 In respect of this, the proposals impact upon the daylight/sunlight enjoyed by neighbouring properties is relevant. An Assessment has therefore been produced by Point 2 and accompanies this planning application.
- 16.78 The applicants argue that the site is located in an area which has seen substantial redevelopment and regeneration into a primarily residential urban sector. They state that as most of the surrounding properties are already tall at (4 to 9 floors) in the existing scenario, a degree of flexibility from the default BRE guidelines is necessary if the development site is to be fully utilised and the building is to match the height and proportions of existing buildings.
- 16.79 The applicants therefore argue that in order to meet housing targets, a degree of pragmatism with regards to the BRE guidelines will be necessary in accepting a handful of derogations.

Background

- 16.80 It should be noted that in order to assess daylight and sunlight it is usual to assess impacts in relation to the guidelines set out in the 2011 Building Research Establishment (BRE) Report 'Site layout planning for daylight and sunlight - A guide to good practice' by Paul Littlefair. This document is most widely accepted by planning authorities as the means by which to judge the acceptability of a scheme. As a result, all of the analysis that the applicants provide is fundamentally based upon this guidance.
- 16.81 It should be noted that the BRE guidelines does not consider pass or fail as a criteria (principally as the BRE provides nationwide guidelines), it primarily looks at whether daylight reductions will be noticeable. Thus if reductions mean that windows are left with greater than 0.8 times their former value (relative alterations of less than 20%), the alterations are not noticeable. Where the relative alterations leave a window with less than 0.8 times their former value of daylight (a relative reduction of greater than 20%), this is considered a noticeable alteration. It should be emphasized that it has been held on appeal that a noticeable alteration of daylight does not necessarily mean the reduction of daylight is unacceptable. Buildings with an unusually high level of existing daylight (perhaps due to an unusually underdeveloped neighbouring plot) may experience noticeable alterations due to additional massing. Of critical importance therefore is whether the windows/room are left with sufficient daylight.
- 16.82 As a result a degree of flexibility on understanding the acceptability of a scheme is required. One of the key aspects for example may be the context of a scheme, such as whether it is located in an urban, sub-urban or rural setting. Other criteria include reference to the NPPF where it highlights the requirement to maximise the efficient use of land, or aspirations of the local authority to develop land in accordance with the local plan – the creation of a sufficient number of homes alongside the expansion of the university. As a result of this position, the BRE therefore highlights what degree of additional obstruction may be considered noticeable or not. The acceptability of the degree of obstruction therefore rest on numerous factors. Indeed the BRE at para 1.6 explicitly provides that in special circumstances the developer or planning authority may wish to use different target values. For example in a historic city centre or in an area with modern high rise buildings a higher degree of obstruction may be unavoidable.
- 16.83 The consultants have provided some guidance within their report as to existing light levels in the locale, this seeks to provide what is commensurate with the locale and therefore what is considered acceptable for this proposal. Thus where alterations of daylight are noticeable they have provided guidance, using existing prevailing daylight levels, of what amount of retained/residual daylight is considered acceptable.
- 16.84 VSC is 'Vertical Sky Component'. The VSC method measures the general amount of light available on the outside plane of the window as a ratio (%) of the amount of total unobstructed sky viewable following introduction of visible barriers such as buildings.

- 16.85 Taking into consideration the flexibility of the default BRE Guidance according to Appendix F as encouraged by the NPPF, a target retained VSC target in the 'mid teens' is considered appropriate in relation to the Application Site.
- 16.86 Retained VSC values of 9% to 'low teens' have already been considered acceptable in planning terms within the immediate local context as this level of residual daylight already exists. Furthermore the consultants note that it was held at appeal (Goldsworth Road, Woking December 2021 para 34-39) that retaining a VSC level of 27% in neighbouring properties is unrealistic; as has been recognised in many appeal decisions and other documents.
- 16.87 Even retaining 20% VSC is considered, generally, to be reasonably good, and in urban areas retaining around mid-teen % VSC is considered to be acceptable.
- 16.88 Indeed the appeal that the consultants cite noted that with one living room retaining a VSC of only 9% was acceptable. Thus the consultants have highlighted in the report where daylight alterations will be noticeable and provided guidance as to what is an acceptable degree of retained daylight where this is the case.
- 16.89 Of the noticeable alterations of daylight, 31 window retain between 15% and 26% residual daylight. Of the 5 that are left with less than this, 4 are between 14.3% and 14.9% and 1 is 8%. It should be noted however that this latter window serves a room with 2 windows and this is the smaller window. The primary light giving window experiences no noticeable alterations of daylight and thus on balance this is considered acceptable.
- 16.90 The properties (33-43 Meachen Road, 1-52 Keel Point & Sail House) experience alterations of daylight which fully accord with BRE guidance and will therefore be unnoticeable. The alterations which are unnoticeable demonstrate no noticeable change to the occupant(s).
- 16.91 The properties (1-29 Maria Court and 58-102 Caelum Drive) experience very minor breaches of BRE guidance to 1 or 2 windows or rooms, but the overall effects are not material. One window experiences a technically noticeable minor alteration of daylight (within 58-102 Caelum Drive only), thus only one apartment within one property will be impacted. The overall effects are not material as the room is served by 2 windows and only the considerably smaller secondary window is noticeably impacted. The remaining primary light giving window serving the room is not noticeably impacted.
- 16.92 Dwellings which experience reductions which are technically noticeable but are considered minor in part due to their retained VSC are The Spinnaker PH and 1-31 Meachen Road. Any noticeable alterations of daylight are ameliorated by adequate retained daylight levels which range from the mid-teens up to 26%, which is appropriate for the locale.
- 16.93 45-79 Meachen Road experiences noticeable alterations of daylight to around a third of the receptors. The receptors are a specific reference to the windows, not the apartments, thus it is a third of tested windows. It should be noted that not all windows within the block face the development site thus these will not be material for assessment. In this instance all windows retain VSC levels of at least the 'mid-

teens'. This relates to the residual/retained levels of VSC, or the amount of daylight these windows will receive after the development is completed. This means that the windows with noticeable alterations retain an amount of residual daylight which is considered commensurate with the locale or better.

- 16.94 These are within the bounds of the current prevailing daylight levels of the locale, thus are commensurate to the general conditions and can be considered acceptable in planning terms. The consultants have considered the prevailing daylight levels within the locale and compared these with the impacts to the surrounding residential properties. Their assessment finds that any windows which experience noticeable alterations of daylight will still retain adequate amounts of daylight which are similar to or better than some of the existing prevailing daylight levels in the area.

Sunlight

- 16.95 As regards sunlight, most receptors are fully BRE compliant. Where neighbours will experience reductions of less than the recommendations, these derogations are considered minor and overall, the sunlight levels are considered acceptable. The impacts relate to 45-79 Meachin Road where some rooms experience alterations of Annual Probable Sunlight Hours which leave them below the recommendations of the BRE. That said, in an urban environment alterations of direct sunlight are inevitable, not least when developing on a clear site such as this. The consultants therefore consider that the overall levels of retained daylight are commensurate with the locale.

Overlooking

- 16.96 This scheme will provide habitable student accommodation rooms that face the existing flats opposite (i.e. on the other side of Colne Quay/the A134). This is a reality of developing an urban site such as this. It is not considered that the scheme will cause materially harmful overlooking to these dwelling or their private amenity areas. Front to front overlooking such as this is generally accepted in situations such as this and blank flanks would not be architecturally appropriate as the south facing elevation is a publicly prominent as the riverside facing elevation.
- 16.97 In conclusion, Officers have carefully considered the findings of the daylight and sunlight report and also considered the implications of potential overlooking to the neighbours to the west. It is accepted that this scheme will have adverse impacts on the neighbours and it is very important to acknowledge that. In many respects that is inevitable if a constrained site in an urban location such as this is to come forward. On balance, it is not considered that this scheme will cause materially harmful impacts to neighbours that are sufficient to warrant a refusal of a scheme that has the significant public benefits such as this one.

Employment

- 16.98 The proposals will result in the replacement of low level commercial buildings to the north of the site, which is currently occupied by a tyre business. It is however, noted that the application site does not comprise allocated employment land. The supporting paragraph to Policy SA EC1 – Residential development in East Colchester states that the Hythe area has long been the location for traditional industries, many associated with the former port operations. These industries however are unlikely to attract the necessary economic and environmental benefits required for the regeneration initiative. The tyre business is currently responsible for employing a relatively small number of people, whilst the development proposals will employ at least 5 permanent staff members. Furthermore, there will also be wider economic benefits to the Hythe and the wider Colchester area through the housing of circa 270 students, the proposals are considered to be acceptable in this regard.

Highways, Parking and the Public Right of Way

- 16.99 Policy DP17 – Accessibility and Access requires all new development proposals to be accompanied by an appropriate Transport Assessment to determine the impacts on access, traffic generation and assess that appropriate provision for pedestrians, cyclist and links to foot and cycle networks have been accounted for. Additionally, Core Strategy TA1 and TA2 are concerned with changing travel behaviours i.e. promoting walking and cycling. Likewise, Policies DM20, DM21, DM22 set out similar criteria.
- 16.100 The scheme is ‘car free’ so there is no designated parking for students during term time with the exception of a dedicated loading bay and two drop-off areas located along the roadside of the A134. This includes roadside access to the substation at the northern end of the scheme.
- 16.101 As a ‘car free’ site, the proposals prioritise pedestrian movements and encourage other modes of transport. Due to the location, the site is already well placed to take advantage of existing walking and cycling infrastructure. The site is also located with good access to local public transport. As a ‘car free’ development, the proposals only provide a total of 7 temporary spaces along the side of Hythe Quay. These will be managed by the operator.
- 16.102 Policy DP19 confirms that CBC will refer to the adopted parking standards. The adopted parking standards document for CBC is the Parking Standards Design and Good Practice September 2009 (Essex County Council). The Essex Parking Standards do not provide an exact standard for private student accommodation schemes, however standards for residential establishments for further education provide the closest guide. Under these standards the proposals would need to provide 1 space per 5 students and 1 space per full time students. However, Policy DP19 also states that the level of parking provision required will depend on the location, type and intensity of use. Lower standards may be acceptable or required where it can be clearly demonstrated that there is high level of access to services,

such as town centre locations. Cycle parking will also be required for all developments.

- 16.103 The parking spaces that are provided will be reserved for loading/deliveries/services and to accommodate disabled people. Cycle parking is proposed in accordance with the parking standards 1 space per every 3 students.

The PRoW

- 16.104 The site is not currently useable as public space, and although a public right of way (PROW 127_128) runs through the site currently, it does not actually appear as useable on site.
- 16.105 The definitive map has been checked and the alignment of the PRoW is maintained (save for some landscaping that will be amended via condition as set out in the landscaping section). Whilst it is not usable currently, the applicants will need a temporary diversion during the construction phase and they are aware of this.
- 16.106 One of the key public benefits of this scheme is that the proposals will connect the site to the surrounding area and re-establish this footpath and thus revitalise this as an attractive riverside walk. The proposals will also provide an improved landing area from the footway across the river where a new controlled zebra crossing will provide safe passage across the road.
- 16.107 Colchester Cycling Campaign would like to see the new river walk (i.e. the existing PRoW) dedicated as cycleway. The applicants and the Highway Authority are keen for this to be a footpath only. The Highway Authority have requested conditions to prevent the PRoW being used for cycling.
- 16.108 To 'design out' the need for students to wheel their bikes along the PRoW to the cycle store, the applicants are looking to move the cycle store down to the south of the site (in effect swapping it for the room that is current used for laundry). This will mean that students will be able to cycle from the university and straight to the cycle store without having to wheel their bikes along the footway as the cycle store is at the end of the site nearest to the university. This will be addressed via a condition.

Contaminated Land

- 16.109 Policy DP1 confirms development proposals must undertake appropriate remediation of contaminated Land. Policy ENV5 – Pollution and Contaminated Land of the emerging Local Plan confirms on proposals on contaminated or suspected contaminated land must include and assessment of the extent of contamination risk. Paragraph 178 of the NPPF states that a site should ensure it is suitable for its proposed use, taking account any arising risk from contamination.
- 16.110 Following the concluding advice of the Phase 1 Geoenvironmental Assessment submitted with the original application which was rather out of date, additional ground investigations have now taken place and an associated report now forms part of this updated submission. This report makes a number of recommendations

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in terms of the management of potential risk to both construction workers and future habitants of the site. It's findings have been assessed and agreed with the Council's Environmental Protection Team.

Ecology

- 16.111 Policy ENV1 states that development proposals should seek to protect habitats and species and conserve and enhance the biodiversity of the borough and provide for any necessary mitigating or compensatory measures. Policy ENV1 of the emerging Local Plan also states the planning applications should be supported by the appropriate ecological surveys.
- 16.112 In respect of the above a Preliminary Ecological Survey has been prepared by Carol Reid. The appraisal concludes that the site consists of poor, semi-improved grassland – with a wide reed bed extending along half of its length. Compensation for the loss of the reed bed will need to be provided. A Marine license is also required to replace the Sea Wall.
- 16.113 The Landscape Masterplan details how green infrastructure and biodiversity enhancement features such as the biodiverse roof can aid in the provision of biodiversity enhancements.
- 16.114 The scheme was assessed by the Council's consultant ecologists at Place Services. They requested additional detail was provided pre-determination. The applicants agreed to this and commissioned the work.
- 16.115 The amended submission also now includes a Further Botanical Survey and a Reptile Survey and Assessment which were recommended within the Preliminary Ecological Appraisal Report. The Further Botanical Survey has provided further recommendations to inform the landscaping and ecology strategies for the proposed development, and no reptiles were identified on the site.
- 16.116 The additional surveys and assessment continue to comply with Policy ENV1 of the adopted and emerging Local Plan by ensuring that habitats will be protected where needed and have informed the enhancement and mitigation of such features as part of the proposals.

Biodiversity Net Gain

- 16.117 Due to the progress of the Section 2 Local Plan and the inspectors suggested modifications, the applicants were asked to demonstrate 10% Biodiversity Net Gain (BNG).
- 16.118 Full biodiversity net gain calculations have now been undertaken in respect of NPPF updates and emerging local policies. This assesses the biodiversity gains as a result of the proposal using the DEFRA metric and in this regard predicts a biodiversity net gain of 61.8%.
- 16.119 This is a very significant gain and should be given considerable weight in the assessment of the proposals. The ecological gain is achieved through the provision of high quality new and replacement habitats including a new artificial saltmarsh

on the riverbanks, and a biodiverse roof. These unique features allow an opportunity for the provision of the highest quality habitats and maximising their value given that they are in part publicly accessible spaces that also have to provide functionality therefore.

16.120 To provide this level of BNG, the applicants are also looking to work alongside SeaNet a local organisation who are currently working to clear the Colne River of rubbish and detritus. This is a significant public benefit as well as a very useful way of delivering BNG in the immediate vicinity.

16.121 It is noted that the applicants would like to attractively landscape the highway verge that sites to the south of the site close to the roundabout. They would also be prepared to maintain this highway land. The Highway Authority have not agreed to this at this stage are concerned about the potential for this verge/embankment to become destabilised. This will not be secured via condition as it is not yet clear if the applicants' aspirations are deliverable, however if it can be achieved the applicants would be happy to deal with that via the highways agreement.

Canopy Cover

16.122 The Section 2 Local Plan also seeks to achieve an on-site canopy cover increase. There are no significant trees on site currently. The landscaping scheme will include tree planting where possible, mindful of the constraints of this long narrow site. It is therefore considered that the scheme will provide a useful uplift in tree canopy cover.

RAMS

16.123 Under the Conservation of Habitats and Species Regulations 2017 (commonly referred to as the Habitat Regulations) a Habitat Regulations Assessment (HRA) is required for land use plans and for planning applications, which are likely to have significant effects on a Habitat Site. Student accommodation has an impact and therefore this scheme must be assessed on that basis.

16.124 Habitat Sites are protected at the highest level and are of international importance. They are designated through the EU Birds Directive and EU Habitats Directive, and these Directives are transposed into UK law. In Colchester we have the Colne Estuary Special Protection Area (SPA), the Blackwater Estuary Special Protection Area (SPA), Abberton Reservoir Estuary Special Protection Area (SPA) and the Essex Estuaries Special Area of Conservation (SAC). The three SPAs are also Ramsar sites, which are wetlands of international importance. The Essex Estuaries SAC includes the Colne and Blackwater estuaries. Due to the close proximity of the River Stour, the southern shore of the Stour and Orwell Estuaries Special Protection Area (SPA) is also likely to be affected by development in Colchester.

16.125 Population growth in Essex is likely to significantly affect Habitat Sites through increased recreational disturbance in-combination with other Local Plans. Consequently, in partnership with Natural England, the governments advisor on the natural environment, and other LPAs in Essex, Colchester Borough

Council is preparing a Recreational disturbance Avoidance and Mitigation Strategy (RAMS) for the Essex Coast. The RAMS identifies necessary measures to avoid and mitigate likely significant effects from recreational disturbance in-combination with other plans and projects. The RAMS sets out a tariff of £127.31, which applies to all residential development within the Zone of Influence (Zoi). The whole of Colchester Borough is within the Zoi. All residential proposals within the borough should make a contribution towards the measures in the RAMS to avoid and mitigate adverse effects from increased recreational disturbance to ensure that Habitat Sites are not adversely affected, and the proposal complies with the Habitat Regulations.

- 16.126 Proposals for 100 dwellings or more will also require a shadow appropriate assessment to be submitted with the application, which assesses likely significant effects alone. This should clearly show how necessary avoidance measures are incorporated into the proposal however that is not reasonably possible in this instance due to the constrained nature of the site. Payment of the RAMS tariff will address in-combination effects. It is agreed that as student accommodation is assessed on a case-by-case basis as are not full independent dwellings as with a normal block of flats. The applicants have agreed with this approach and the financial proportionate contribution in line with calculation in paragraph A2.7 of the SPD (£6874.20) will be secured in the legal agreement.

Flooding

- 16.127 A Flood Risk Assessment and Drainage Strategy has been prepared by Walsh in support of this planning submission.
- 16.128 The adopted local and national planning policy places significance on the protection of development from flooding. Policy DP20 of the adopted Development Plan confirms development will only be supported where proposals meet the requirements in PPS25, recommendations in Colchester's Strategic Flood Risk Assessment, and include satisfactory flood defence measures including mitigation measures such as SUDs. The Planning Policy Statements have since been replaced by the NPPF, meaning the NPPF and the relevant National Planning Practice Guidance are the most relevant policy documents to following in relation development and flood risk management. Policy DM23 of the emerging Local Plan also recognises this policy change.
- 16.129 Paragraphs 155 to 169 of the NPPF establishes policy relating to flood risk management. The main focus of these policies is to direct development towards areas of the lowest possible flood risk without increasing flood risk elsewhere. The NPPF advises that the sequential test should be used to steer new development to areas with the lowest risk of flooding and if it is not possible for development to be located in zones of lower flood risk the exception test may have to be applied. This is a requirement for development located in either Flood Zone 2 or 3.
- 16.130 The report prepared by Walsh confirms that the site is located in Flood Zone 3A. Based on the flood risk vulnerability classification table (Table 2 of the NPPG), the development overall can be characterised as 'more vulnerable' as it consists of residential units above ground floor level. Based on the above vulnerability and

after having applied the Sequential Test (Diagram 2 of the National Planning Practice Guidance) the development is subjected to the exception test. In accordance with paragraph 160 of the NPPF, the exception test requires applicants to demonstrate:

- ☐ The development would provide wider sustainability benefits to the community that outweigh the flood risk;
- ☐ The development will be safe for its lifetime taking account of its users, without increasing flood risk elsewhere, and where possible, will reduce flood risk overall.

- 16.131 The EA originally objected to the scheme. Following this objection, An updated Flood Risk Assessment and Drainage Strategy has been prepared by Walsh Engineering to address the comments received from the Environment Agency. The strategy proposes number of mitigation measures, such as ensuring that all habitable finished floor levels are at least 300mm above the tidal 0.5% AEP undefended level at or above 4.9mAOD, with other ground floor finished floor levels being at least 300mm above the tidal 0.5% AEP undefended level at or above 3.6mAOD.
- 16.132 Section 7 of the amended FRA specifically deals with comments received from statutory consultees to date. This section has therefore further influenced finished floor levels and seen the inclusion of a non-return valve in the outfall pipe into the River Colne to ensure that tidal volumes do not enter the drainage system and attenuation facilities for the site. The drainage strategy has been updated accordingly.
- 16.133 The updated report concludes that the recommendations made will ensure that the proposed development will not put the occupants at undue risk of flooding nor increase flood risk in the surrounding areas as a result. The scheme will comply with Policy DP20 of the adopted Development Plan, emerging Policy DM23 and latest guidance provided within the 2021 NPPF also.
- 16.134 Additional information is also now provided in the form of a “Design Statement & Philosophy for River Wall Repair & Replacement Works” to detail the works that are proposed to the existing river wall.
- 16.135 Following revisions to the scheme and the FRA, the EA were reconsulted and they now have no objection to the scheme. The proposal is therefore acceptable in that regard.

Public Art

- 16.136 The long wall that currently form the road boundary to the site have a number of pieces of public art in and on it. The applicants have agreed to remove these and re-display them in a public place on site. The detail of this will be agreed via condition.

Houseboats

- 16.137 The houseboats will be moved during the construction phase and then reinstated in their current positions. New power and water supplies will be provided as part of the development.

Climate Crisis and Sustainability Measures

- 16.138 The site is located in a sustainable location which will encourage sustainable transportation methods to both the University and the town. As an essentially 'car free' scheme car ownership will be actively discouraged. Cycle parking will be provided as previously noted, as will a cycle maintenance area.
- 16.139 In addition the applicants have noted they expect to have insulation that is 32% more effective than the current building regs, low energy lighting throughout, low energy electric heating, natural ventilation rather than mechanical, water saving sanitaryware, PV's on the roof for energy generation, a bio-diverse brown roof and new planting as set out previously. There will also be an EV charging bay within the minimal on-site parking that will be used for a car club car. Storage for electric scooters is also proposed.

17.0 Conclusion and Planning Balance

- 17.1 The proposals are compliant with Policies SD1, UR1 and SA EC2 of the adopted Development Plan, which all advocate development within sustainable location within the settlement boundaries of Colchester, with a particular focus on utilising previously developed land and the regeneration of the East Colchester area. The objective of regenerating this area in which the application site sits is also continued within the emerging Section 2 Local Plan, which establishes the principle of development at the site.
- 17.2 The proposals will provide significant benefits in respect of public realm improvement, pedestrian connectivity and pedestrian road safety. It will provide a new section of river wall which is a very significant investment (around £700,000) and this will create a new section of riverside walk that will connect the existing footway to the east with the southern end of the existing Hythe footbridge. This will be publicly accessible. The scheme is therefore beneficial in terms of the wider public realm and has the potential to genuinely create a new publicly accessible piece of the Hythe for the benefit of both the new students and the existing residents. It will transform this rather unkempt piece of land into a section of space that will be inviting to walk along. Whilst it is acknowledged there is a Public Right of Way in place on site already, it can be seen from the condition on site that it is not well used as it is blocked; this scheme will ensure it is surfaced and allow it to be used

to its full potential as an important linkage. It is a shame that the scheme will not provide a cycleway but the upgrade to the PRow is a benefit nonetheless.

- 17.3 The scheme also proposed an innovative 'tidal terrace' between the two proposed blocks. This break in built form will open up views from the Spinnaker Pub opposite and will provide a biodiverse space that the tide can rise up into, with a bridge over to ensure connectivity, and space for sitting out in and relaxing/socialising.
- 17.4 Furthermore, this scheme will also make a significant contribution to CBC's housing supply targets. It will result in an equivalent of circa 108 houses to the Council's five-year land supply. This is a very important benefit of the scheme and in effect results in brownfield development that protects unallocated greenfield sites elsewhere in the Borough from speculative development. The proposal will also aid in the expansion of the University which is major employer in the area and provides wider economic benefits to Colchester.
- 17.5 Set against the significant public benefit is the impact the scheme will have on the neighbouring dwellings in terms of daylight and sunlight. These have been carefully assessed and it is not considered the impacts, whilst acknowledged, will be of a level that warrant the refusal of this scheme.
- 17.6 When located on brownfield sites in urban locations, schemes of this type and scale will inevitably have impacts, be they on neighbouring amenity or on townscape for example. Regeneration focuses on brownfield sites and that is a clear intention of the Development Plan and the NPPF 2021.
- 17.7 The Planning Balance assessment is exactly that, a balancing exercise of the benefits of the scheme weighed against the adverse impacts. This scheme has significant public benefits and has the potential to transform this part of the Hythe, acting as a catalyst for further high-quality development and opening up important pedestrian linkages for the benefit of all residents. Overall, the proposals are considered to provide sustainable development in accordance with the adopted Development Plan and after very careful consideration of the adverse impacts, the Planning Balance is held to tip 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 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 for which delegated authority is also requested to add to and amend as appropriate:

1.Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission. Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2.Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers:

Site Location Plan PL900 P02
Existing Site Plan PL901 P03
Proposed Block Plan PL902 PL05
Ground Floor Masterplan PL903 P06
Proposed First Floor Masterplan PL904 P06
Proposed Second-Fourth Floor Masterplan PL905 P06
Proposed Fifth Floor Masterplan PL911
P05 Proposed Sixth Floor Masterplan PL906 P06
Proposed Seventh Floor Masterplan PL912 P03
Proposed Eighth to Ninth Floor Masterplan PL907 P06
Proposed Roof Masterplan PL908 P06
Proposed site Sections PL909 P05
Proposed Site Elevations PL910 P06

North Block
B0-00-DR-A-PL100 P09
B0-01-DR-APL101 P09
B0-02-DR-APL102 P09
B0-05-DR-APL103 P03
B0-RF-DR-APL107 P07

South Block
C0-00-DR-A-PL100 P09
C0-01-DR-A-PL101 P08
C0-03-DR-A-PL103 P03
C0-06-DR-A-PL106 P04
C0-06-DR-A-PL107 P09
C0-08-DR-A-PL108 P08

C0-RF-DR-A-PL109 P08

Elevations

B0-ZZ-DR-A-PL200 P06

B0-ZZ-DR-A-PL201 P06

B0-ZZ-DR-A-PL202 P06

C0-ZZ-DR-A-PL200 P07

C0-ZZ-DR-A-PL201 P07

C0-ZZ-DR-A-PL202 P0

Sections

B0-ZZ-DR-A-PL300 P07

B0-ZZ-DR-A-PL301 P07

B0-ZZ-DR-A-PL302 P07

C0-ZZ-DR-A-PL300 P07

C0-ZZ-DR-A-PL301 P06

C0-ZZ-DR-A-PL302 P07

C0-ZZ-DR-A-PL303 P07

Refuse and Parking

PL913 P04

Highways (From TA addendum)

ZA861 PL SK 200 F

ZA861 PL SK 201 F

ZA861 PL SK 202 F

ZA861 PL SK 203 F

Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

3. Elements Not Approved

Notwithstanding the landscape masterplan drawings submitted, no hard landscaping or planters are hereby approved. The position of any hard landscaping must be submitted to, and approved in writing by the Local Planning Authority prior to the occupation of the development. The scheme shall be completed in accordance with Landscape Management Plan that is subject to a separate condition.

Reason: The on site hard and soft landscaping is very important to the public benefit of the scheme however to the north of the site the indicative hard landscaping will need to be changed to fully accommodate the definitive alignment of the PRoW.

4. Student Accommodation Only

The development hereby approved shall not be used for any other purpose than *sui generis* student accommodation.

Reason: This is the basis on which the application has been made and the basis on which it has been assessed. The scheme would not comply with adopted plan policy

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if it was for C3 residential accommodation and therefore this condition is needed to ensure it stays as student accommodation in perpetuity.

5. Cycle Store Relocation

Prior to commencement, and updated ground floor drawing showing the revised location of the cycle store shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall then be built in precise accordance with this approved drawing.

Reason: To locate the cycle store in a position that reduces the need for students to wheel their bikes through the site and/or along the PRow.

6. Relocation of Public Art

Prior to occupation, a scheme to demonstrate the relocation of the existing public art that is set into and on the existing boundary wall shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed in complete accordance with the approved drawings.

Reason: To ensure the public art is retained and is displayed in a publicly visible position.

7. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal Report (Carol Reid, April 2021), Reptile Survey and Assessment (ACJ ecology, October 2021), Invertebrate Surveys and Assessment report (Hopkins Ecology, November 2021) and Biodiversity Impact Assessment (ACJ ecology, November 2021) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This will include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

8. PRIOR TO COMMENCEMENT OF ANY WORKS WITHIN THE MARINE ENVIRONMENT: SUBMISSION OF A COPY OF THE MARINE LICENCE

Any works within the marine environment shall not in any circumstances commence unless the local planning authority has been provided with a licence issued by Marine Management Organisation pursuant to the Marine and Coastal Access Act 2009 authorizing the specified

Reason: To conserve the Blackwater, Crouch, Roach and Colne Estuaries Marine Conservation Zone.

9. PRIOR TO COMMENCEMENT: CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN FOR BIODIVERSITY

Prior to commencement an CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN FOR BIODIVERSITY shall be approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of Biodiversity Protection Zones
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.
- i) Containment, control and removal of any Invasive non-native species present on site

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2021

10. PRIOR TO COMMENCEMENT: FURTHER BOTANICAL SURVEY

A further supplementary botanical survey for nationally and regionally important plant species shall be undertaken to inform the preparation and implementation of ecological mitigation measures required through Condition(s). The supplementary surveys shall be of an appropriate type for the above species and survey methods shall follow national good

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2021

11. PRIOR TO OCCUPATION: LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN

A Landscape and Ecological Management Plan shall be submitted to and approved in writing by, the local planning authority prior to the occupation of the development. The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.

- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures for habitats retained and created.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved det

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2021

12. PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

A lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2021.

13. Highways No Cycling on PROW

Prior to commencement of the development details shall be submitted to and approved in writing by the Local Planning Authority to show how cyclists would be prevented from riding their bikes along any part of Public Footpath 138 Colchester. The development shall be carried out in accordance with the approved details.

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.

14. Highways off site works

No occupation of the development shall take place until the following have been provided or completed:

- a) The vehicular and pedestrian access arrangements as shown in principle on the planning application drawings

- b) Upgrade to Essex County Council specification the two bus stops which would best serve the proposal site (details shall be agreed with the Local Planning Authority prior to commencement of the development)
- c) Improved crossing facilities in Hythe Quay (details shall be agreed with the Local Planning Authority prior to commencement of the development)
- d) Existing footway/cycleway located immediately to the south of the proposal site extended north to a suitable termination point (details shall be agreed with the Local Planning Authority prior to commencement of development)
- e) A Travel Plan and Residential Travel Information Packs both in accordance with Essex County Council guidance

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.

15. Noise Mitigation

Prior to construction of the development above ground level, a detailed acoustic assessment and mitigation report, produced by a competent person, which provides details of the noise exposure at the facade of residential dwellings, internal noise levels in habitable rooms and noise levels in all associated amenity spaces shall be submitted to and approved, in writing, by the Local Planning Authority. Where the internal noise levels exceed those stated in the current version of BS8233 with windows open, enhanced passive ventilation with appropriate sound insulating properties shall be provided to ensure compliance with the current version of BS8233 with windows closed and that maximum internal noise levels at night do not exceed 45dBA on more than 10 occasions a night. Where exposure exceeds the noise levels of 60dBLAeq 16 hours (daytime, 07:00-23:00, outside), 55dBLAeq 8 hours (night, 23:00-07:00, outside) any reliance upon building envelope insulation with closed windows should be justified in supporting documents that cross reference the mitigation measures used. In addition, noise levels in external amenity spaces shall not exceed 55dBLAeq 16 hours, daytime. The development shall thereafter be carried out in accordance with any details approved, and shall be retained in accordance with these details thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the future residents by reason of undue external noise where there is insufficient information within the submitted application.

16. Limits to Hours of Work

No demolition or construction work shall take outside of the following times;

Weekdays: **08:00-18:00**

Saturdays: **08:00-13:00**

Sundays and Bank Holidays: **No working**

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

17. Construction Method Statement

No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:

the parking of vehicles of site operatives and visitors;

hours of deliveries and hours of work;
loading and unloading of plant and materials;
storage of plant and materials used in constructing the development;
the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
wheel washing facilities;
measures to control the emission of dust and dirt during construction; and
a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable.

18. Limits to Hours of Construction Deliveries/Worker Traffic

No construction deliveries to or from the site, worker vehicle movements, or construction work shall take place outside of the following times;

Weekdays: **08:00-18:00**

Saturdays: **08:00-13:00**

Sundays and Bank Holidays: **No working**

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

19. External Light Fixtures TBA

No external lighting fixtures shall be constructed, installed or illuminated until details of all external lighting proposals have been submitted to and approved, in writing, by the Local Planning Authority. Thereafter, no lighting shall be constructed or installed other than in accordance with those approved details.

Reason: To reduce the risks of any undesirable effects of light pollution

20. Refuse and Recycling As Shown

Prior to the first occupation of the development, the refuse and recycling storage facilities as shown on the approved plans shall have been provided and made available to serve the development. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times.

Reason: To ensure that adequate facilities are provided for refuse and recycling storage and collection.

21. Site Boundary Noise Levels

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's proposed substation shall not exceed 0dB(A) above the background levels determined at all facades of noise-sensitive premises including future residents above the substation.. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted

application. The impact on existing residential plus those proposed above the substation.

22. Sound Insulation/enclosure of substation Building

Prior to the first use or occupation of the development as hereby permitted, the substation area shall have been constructed or modified to provide sound insulation against internally generated noise in accordance with a scheme devised by a competent person and agreed, in writing, by the Local Planning Authority. The insulation shall be maintained as agreed thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

23. Landscaping

No part of the development shall be occupied until full details of all landscape works have been submitted to and agreed, in writing, by the Local Planning Authority and the works shall be carried out prior to the occupation of any part of the development unless an alternative implementation programme is subsequently agreed, in writing, by the Local Planning Authority. The submitted landscape details shall include:

- Finished levels or contours, where notable changes are proposed.
- Means of enclosure.
- Car parking layouts and pedestrian access and circulation areas.
- Hard surfacing materials.
- Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.).
- Planting plans.
- Written specifications.
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
- Implementation timetables and monitoring programs.

Reason: To ensure that there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development within its surrounding context in the interest of visual amenity.

24. Landscape Management Plan

Prior to the first occupation of the development, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas other than small, privately owned, domestic gardens shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved at all times.

Reason: To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area.

25. Contaminated Land Part 1 of 4 (Site Characterisation)

No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

(i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;

(ii) an assessment of the potential risks to:

human health,

property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,

adjoining land,

groundwaters and surface waters,

ecological systems,

archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with all relevant, current, best practice guidance, including the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

26. Contaminated Land Part 2 of 4 (Submission of Remediation Scheme)

No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and then submitted to and agreed, in writing, by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as

contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

27. Contaminated Land Part 3 of 4 (Implementation of Approved Remediation Scheme)

No works shall take place other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors .

28. Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 25, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 26, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 27.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

29. Validation Certificate

Prior to the first OCCUPATION/USE of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 28.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

30. Materials

No external facing or roofing materials shall be used in the construction of the development hereby permitted until precise details of the manufacturer, types and colours of these, along with plans clearly illustrating on which areas of the development they will be used, have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.

Reason: In order to ensure that suitable materials are used on the development as there are insufficient details within the submitted planning application.

31. Detailing

Prior to the installation of the relevant architectural features, additional drawings that show details of all architectural features to be used including, but not limited to, windows, doors, rusticated brickwork, reveals, brick bonding, rainwater goods, parapet, rooftop railings, cladding pattern jointing, cills, soffits, and transition joints between different materials. Appropriate material shall be submitted to and approved, in writing, by the Local Planning Authority. As appropriate, this may include drawings at a scale between 1:20 and 1:1, product information and samples. The development shall thereafter be implemented in accordance with the approved details.

Reason: There is insufficient detail with regard to these features which are essential elements of the design.

32. Drainage/FRA

No development shall take place except in complete accordance with the submitted Flood Risk Assessment (5297-WAL-ZZ-XX-RP-C-6700, Walsh April 2021) and drainage strategy contained within that document.

Reason: To ensure the scheme is safe for the lifetime of the development and to ensure the scheme does not cause materially harmful off-site runoff.

33. Flood Plan

Prior to occupation and updated flood evacuation plan shall be submitted to and approved writing by the Local Planning Authority. The development shall not be run in any manner other than in complete accordance with the Flood Evacuation Plan.

Reason: To ensure that the flood risk to occupants of the development are minimised to acceptable levels.

34. Archaeology

No works shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation that has been submitted to and approved, in writing, by the Local Planning Authority. The Scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording
 - b. The programme for post investigation assessment
 - c. Provision to be made for analysis of the site investigation and recording
 - d. Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - e. Provision to be made for archive deposition of the analysis and records of the site investigation
 - f. Nomination of a competent person or persons/organisation to undertake the works
- The site investigation shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority. The development shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance with Policy SD1 and ENV1 of Colchester Borough Council's Core Strategy (2008).

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

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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 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.

4.Anglian Water Informative

(1)INFORMATIVE - Notification of intention to connect to the public sewer under S106 of the Water Industry Act Approval and consent will be required by Anglian Water, under the Water Industry Act 1991. Contact Development Services Team 0345 606 6087.

(2) INFORMATIVE - Protection of existing assets - A public sewer is shown on record plans within the land identified for the proposed development. It appears that development proposals will affect existing public sewers. It is recommended that the applicant contacts

Anglian Water Development Services Team for further advice on this matter. Building over existing public sewers will not be permitted (without agreement) from Anglian Water.

(3) INFORMATIVE - Building near to a public sewer – No building will be permitted within the statutory easement width of 3 metres from the pipeline without agreement from Anglian Water. Please contact Development Services Team on 0345 606 6087.

(4) INFORMATIVE - The developer should note that the site drainage details submitted have not been approved for the purposes of adoption. If the developer wishes to have the sewers included in a sewer adoption agreement with Anglian Water (under Sections 104 of the Water Industry Act 1991), they should contact our Development Services Team on 0345 606 6087 at the earliest opportunity. Sewers intended for adoption should be designed and constructed in accordance with Design and Construction Guidance for foul and surface water sewers offered for adoption under the Code for adoption agreements for water and sewerage companies operating wholly or mainly in England ("the Code"), as supplemented by Anglian Water's requirements.

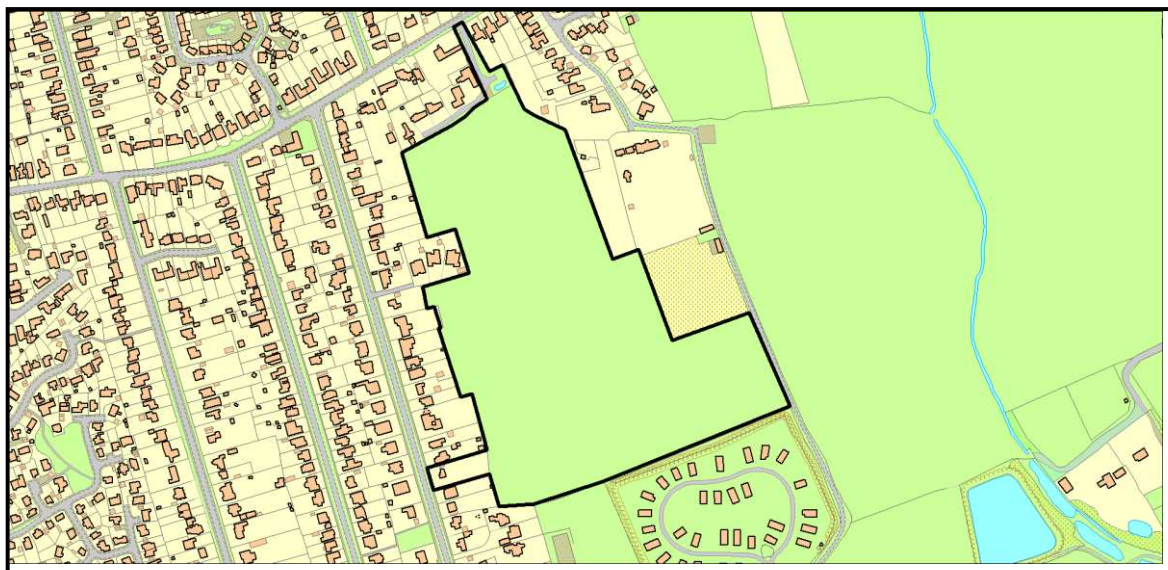
5.Cadent Informative

Cadent Gas own and operate the gas infrastructure within the area of your development. Please note that there is a Low pressure gas main at the proposed entrance to the site, the main may need to be lowered to enable the access to be constructed. The developer is to contact Cadent Gas to discuss these works prior to commencing any construction on site.

6.Highways Informative

Proposed parking and loading bays – the applicant should be aware their application to remove highway rights may not be successful which could mean they would be unable to implement their planning permission or may need to apply to vary it. If instead all or part of the bays were dedicated as highway under a S278 agreement, the applicant should be aware their use would not be for the exclusive use of those visiting the proposal site

- Prior to any works taking place in the highway the developer should enter into an agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works
- All or some of the above requirements may attract the need for a commuted sum towards their future maintenance (details should be agreed with the Highway Authority as soon as possible)
- All work within or affecting the highway should be laid out and constructed by prior arrangement with and to the requirements and satisfaction of the Highway Authority, details to be agreed before commencement of the works. An application for the necessary works should be made to development.management@essexhighways.org



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Item No: 7.2

Application: 212685

Applicant: Ms Harriet Vincett-Wilson, City & Country Mersea Ltd

Proposal: Application for Variation of Condition 1 (reserved matters, as approved under 202492), Condition 3 (submission of RM), Condition 4 (detailed access) and removal of Condition 2 (submission of RM) and Condition 6 (schedule) of planning permission 192136 (and subsequent Reserved Matters 202492), comprising updated access arrangements and minor amendments to the layout and housetypes.

Location: Land at, Brierley Paddocks, West Mersea

Ward: Mersea & Pyefleet

Officer: James Ryan

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it is a Section 73 application with a Deed of Variation that makes material changes to the previous Section 106 agreement.

2.0 Synopsis

- 2.1 The key issues for consideration are the impact of the proposed minor changes to the access point at East Road, the new access point on Seaview Avenue to enable the retention of the dwelling at no.43 and the other changes proposed to the internal layout of the development. These matters are all held to be acceptable.
- 2.2 The application is subsequently recommended for approval.

3.0 Site Description and Context

- 3.1 The application site is located at Brierley Paddocks, West Mersea.
- 3.2 The application site measures 9.2 hectares and was formerly in agricultural use. The site also incorporates No.43 Seaview Avenue which is located to the east of the site set within an established residential avenue. There is some planting in the form of established hedgerows and trees at the boundaries of the site.
- 3.3 The site is bounded on three sides by residential dwellings with Seaview Holiday Park to the south, which comprises approximately 90 static holiday caravans. The surrounding area is predominately residential. The surrounding dwellings comprise a mixture of semi-detached and detached, one storey, two storey and two and a half storey dwellings. The majority of dwellings are of Twentieth Century construction.
- 3.4 The site can currently be accessed from Brierley Paddocks leading from East Road to the north. The scheme also formerly proposed an additional access from Seaview Avenue to serve the site from the west. Both accesses are explored in the report below but the East Road access is existing and the Seaview Avenue pedestrian/cycle access no longer requires the removal of an existing dwelling on Seaview Ave (number 43) as it previously did at outline stage.
- 3.5 The site is within Flood Zone 1. The site is at a low risk of fluvial or tidal flooding and in accordance with the Technical Guidance that accompanies the NPPF, it is consequently suitable for all types of development from a flood risk perspective,
- 3.6 The site is not within any areas designated for their ecological importance but is close to areas that are designated. The site is located some 400m north of The Essex Estuaries Special Area of Conservation (SAC), which surrounds the island of Mersea. The site is also located approximately 1.9km south of the

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Colne Estuary Special Protection Area (SPA), National Nature Reserve (NNR) and Site of Special Scientific Interest (SSSI).

- 3.7 The site is not within nor adjacent to a Conservation Area. To the north of the site is Brierley Hall, a Grade II listed house built around 1800. An early C19 red brick garden wall to the northeast of Brierley Hall is also listed (Grade II). Two converted C17 timber framed barns to the south of Brierley Hall are also Listed (Grade II). These buildings are within the urban environment of Mersea and are viewed as part of the settlement.

4.0 Description of the Proposal

- 4.1 This is a section 73 application to vary the plans conditions of the outline and reserved matters permissions. It proposed the Variation of Condition 1 (reserved matters, as approved under 202492), Condition 3 (submission of RM), Condition 4 (detailed access) and removal of Condition 2 (submission of RM) and Condition 6 (schedule) of planning permission 192136 (and subsequent Reserved Matters 202492), comprising updated access arrangements and minor amendments to the layout and house types.

5.0 Land Use Allocation

- 5.1 Formerly agricultural land, now development site allocated for housing in CBLP 2017-2033, Section 2.

6.0 Relevant Planning History

This site has a complex planning history but as this application is a Section 73 variation of condition application, the most important applications to note are the approved outline permission 192136 and the reserved matters approval 202492 as they are the applications for consideration now.

Construction of the approved scheme (192136/202492) has started on site.

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 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP7 Place Shaping Principles

Appendix A of the Section 1 Local Plan outlines those policies in the Core Strategy Focused Review 2014 which are superseded. Having regard to the strategic nature of the Section 1 Local Plan, policy SD2 of the Core Strategy is fully superseded by policies SP5 and SP6 of the Section 1 Local Plan. Policies SD1, H1 and CE1 of the Core Strategy are affected in part. The hierarchy elements of policies SD1, H1 and CE1 remain valid, as given the strategic nature of policies SP3, SP4 and SP5 the only part of the policies that are superseded is in relation to the overall requirement figures.

The final section of Policy SD1 which outlines the presumption in favour of sustainable development is superseded by policy SP1 of the Section 1 Local Plan as this provides the current stance as per national policy.

All other Policies in the Core Strategy, Site Allocations and Development Management Policies and all other adopted policy which comprises the Development Plan remain relevant for decision making purposes.

- 7.3 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
SD2 - Delivering Facilities and Infrastructure
SD3 - Community Facilities
CE2c - Local Centres
H1 - Housing Delivery
H2 - Housing Density
H3 - Housing Diversity
H4 - Affordable Housing
UR2 - Built Design and Character
PR1 - Open Space
PR2 - People-friendly Streets
TA1 - Accessibility and Changing Travel Behaviour
TA2 - Walking and Cycling
TA5 - Parking
ENV1 - Environment

- 7.4 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
DP2 Health Assessments
DP3 Planning Obligations and the Community Infrastructure Levy
DP4 Community Facilities

DP9 Employment Uses in the Countryside
 DP12 Dwelling Standards
 DP14 Historic Environment Assets
 DP16 Private Amenity Space and Open Space Provision for New Residential Development
 DP17 Accessibility and Access
 DP19 Parking Standards
 DP20 Flood Risk and Management of Surface Water Drainage
 DP21 Nature Conservation and Protected Lanes
 DP23 Coastal Areas

- 7.5 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:
N/A

- 7.6 The Neighbourhood Plan for West Mersea (WMNP) is soon to go to referendum and is therefore held to carry significant weight.

- 7.7 Submission Colchester Borough Local Plan 2017-2033:
The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan is at an advanced stage having undergone examination hearing sessions in April 2021 and recent consultation on the Inspector’s modifications. Section 2 will be afforded significant weight due to its advanced stage with the Inspectors report expected imminently.

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
- 3The 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 weight in the consideration of the application.

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

The Essex Design Guide
 Affordable Housing
 Community Facilities
 Open Space, Sport and Recreation
 Sustainable Construction
 Cycling Delivery Strategy
 Sustainable Drainage Systems Design Guide
 Managing Archaeology in Development.
 Developing a Landscape for the Future
 ECC’s Development & Public Rights of Way
 Planning Out Crime

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 Arboriculture Planner

Condition bespoke methodology as set out in AIA addendum.

8.3 Essex County Fire and Rescue

Scheme will need to comply with Building Regs – comments made about fire tender turning. Fire hydrants may be needed on site. *Officer note – this will be dealt with at Building Regs. stage*

8.4 Highway Authority

No objection – Having reviewed the information on your website, it would appear the proposed layout now reflects the layout as shown on S278 agreement drawing 20090-C-XX-XX-EL-1101 C02.

8.5 Historic England

No comment.

8.6 Landscape Planner

No objection.

8.7 LLFA/SuDS

No objection to amended scheme.

8.8 Natural England

No comment to make.

8.9 Urban Design

Comments addressed below in report below.

9.0 Parish Council Response

9.1 The Parish Council have stated that:

Comment: Layout for properties adjacent to/backing onto existing development at Seaview Avenue:

West Mersea Town Council (WMTC) considers that these are updated

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proposals in the light of consultation with WMTC and residents of Seaview Avenue and accordingly our previous comments are withdrawn.

Affordable Homes:

WMTC queries the grouping together of all of the affordable homes provision, and questions if this is contrary to policy? Either way, WMTC considers this approach unfortunate/inappropriate and would prefer a more mixed development.

Access to Seaview Avenue:

Reference the access to Seaview, WMTC notes the developers comments to satisfy our previous concerns in respect of the purpose for this access.

Unauthorised use of Dawes Lane by construction traffic:

The developer gave assurances to WMTC that Dawes Lane – a narrow ‘D’ road – would not be used for construction traffic access to the site. This commitment has not been honoured, and residents of Dawes Lane and the wider community are being inconvenienced by totally inappropriate use of this access to the Island by HGV’s accessing the site via the shortcut of Dawes Lane. This is a serious accident waiting to happen.

WMTC requests that this agreement is honoured, reinforced with subcontractors and propose that the developer install “No Construction Traffic Access to Brierley Paddocks” signage at the start of East Mersea Road, and the entrance to Dawes Lane.

Though not requested, the Developer has asked to respond to these in turn and did so on the 19/1/2021, their response is in *italics*:

1.

Comment: Layout for properties adjacent to/backing onto existing development at Seaview Avenue:
West Mersea Town Council (WMTC) considers that these are updated proposals in the light of consultation with WMTC and residents of Seaview Avenue and accordingly our previous comments are withdrawn.

This is in line with the numerous discussions we have had with WMTC recently therefore I am pleased the previous objection/comments have been withdrawn.

2.

Affordable Homes:

WMTC queries the grouping together of all of the affordable homes provision, and questions if this is contrary to policy? Either way, WMTC considers this approach unfortunate/inappropriate and would prefer a more mixed development.

We believe this is in line with adopted policy. The affordable homes are located within the second phase of build out (as is the case with the consented). There is separation provided between the grouping of affordable homes, broken by private properties. On the ground, the streetscape will not be negatively

experienced - all of the new homes across the scheme will be tenure blind, with the same high quality materials palette. It should therefore not be possible to distinguish between the different tenures in any case. The proposed layout has been amended during the consultation process to take account of local concerns, and the arrangement of the affordable properties amended – particularly around plots 10-16 to create an attractive informal green, with open space to the front of properties providing a relaxed setting for residents to enjoy. Properties in this area will additionally benefit from a shared surface driveway with plenty of trees. Furthermore the location of affordable properties (plots 23 & 29-33) fronting onto the larger area of open space running through the spine will have direct views onto green space and very convenient access to these open areas.

3.

Unauthorised use of Dawes Lane by construction traffic:

The developer gave assurances to WMTC that Dawes Lane – a narrow ‘D’ road – would not be used for construction traffic access to the site. This commitment has not been honoured, and residents of Dawes Lane and the wider community are being inconvenienced by totally inappropriate use of this access to the Island by HGV’s accessing the site via the shortcut of Dawes Lane. This is a serious accident waiting to happen.

As far as I can see, there are no specific planning obligations that restrict the use of Dawes Lane for construction traffic, although I do note that the approved CMS sets out that HGV delivery vehicles will be directed via B1025 and East Road. See point 4 in relation to existing signage. We cannot also assume that all instances of vehicles using this shortcut are related to the C&C site only, given the very close proximity of the Dawes Lane development. All sub-contractors, deliveries etc are informed to use B1025 and East Road route (but if not C&C vehicles this is difficult to monitor).

Officer note – it noted that the Dawes Lane residential allocation is not under construction but it is accepted that other construction sites may be using Dawes Lane.

4.

WMTC requests that this agreement is honoured, reinforced with subcontractors and propose that the developer install “No Construction Traffic Access to Brierley Paddocks” signage at the start of East Mersea Road, and the entrance to Dawes Lane.

Signage has been installed onsite already stating ‘construction traffic left turn only’ out of the site (see attached), to encourage vehicles to avoid Dawes Lane. All vehicles are also informed to come into the island via B1025 and East Road. If further signage is required then we can look into providing this. C&C site team are in dialogue recently with WMTC and are assisting in answering queries and seeking managing the situation in a responsible manner.

Case officer response – these points are noted.

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.

10.2 A number of representations have been received through the course of this application, 12 in objection and 9 general comments. A number are very detailed. It is beyond the scope of this report to replicate them all but in summary they objected to the scheme on the following grounds, split into before amended layout drawings and post:

PRE AMENDED SCHEME

- The scheme is harmful to highway safety, footways are needed on both sides of the road, the layout is illegal, fails to comply with the NPPF.
- This is an 'E' type road - how can that be acceptable?
- The off-site works should be considered now.
- C&C do not have the land ownership to move the access.
- The scheme should be rejigged to set the dwellings away from the neighbours
- What about the boundary treatment?
- The houses are too near to Seaview Ave and Farthings Lane.
- The Affordable Housing should be spread out across the site.
- The Affordable Housing should be set over towards Cross Lane away from existing residents.
- What is this application all about?
- The island does not have the infrastructure to cope with 101 dwellings e.g. Doctors, Schools Dentists etc?
- Are there covert actions taking place?
- Should this be a new full application?
- The approved scheme was much better than this as that was agreed with neighbours first.
- This new plan ignores all the good work previously done in conjunction with residents.
- This a greenfield site with ecology on site.
- The new Seaview Access path should not be 'well-lit' to preserve dark night skys.
- The site will overlook my indoor swimming pool which my disabled daughter uses.
- Noise and light pollution
- This is not a tweak it's a full reconfiguration

POST AMENDED SCHEME

- How will car access be prevented along Seaview Ave

- A bollard is needed
- The footpath has been constructed but it is not the correct dimension (its 4.5m wide not 3.5m wide).
- It's a road not a footpath.
- East Road issues noted – full footway east to Cross Lane is needed.
- Better pedestrian and cycle connectivity is needed in order to comply with the NPPF.
- The roads are not being cleaned regularly.
- Very disappointing – still too much AH near my property.
- Why have they built houses on site when this is still awaiting approval?
- Why have they not discharged their conditions yet?
- Have they damaged protected trees?
- They should not have started on site yet.
- I am going to buy a neighbouring property and this scheme is unacceptable due to its impact on the amenity of the neighbours in Farthings Chase.
- You have taken advantage of the fact the owner of the property I am going to buy has died.
- Why has the paddock fence been removed?
- Why has a tree been felled?
- The layout needs to be amended to give neighbours more space.
- There is no 5m of buffer to some of the dwellings.

In response:

10.3 A number of these points either relate to the principle of development on the site which is long secured, or layout matters which are also long secured. This application can only look to change or negotiate elements where change is proposed by the applicant. A number of these points are also dealt with in the report below.

10.4 The buffer between the neighbouring dwellings (existing and proposed to west edge and which is not a policy requirement but was been proposed in consideration of the neighbours) remains in place. The Affordable Housing will be addressed below. The highway implications at East Road have been made at the request of the Highway Authority and they do not require further off site works as part of this application. This application does not propose the felling of trees.

10.5 It is very important to note that the Courts have shown that it is not possible to demand changes or impose more restrictive conditions on a section 73 application such as this. Any new conditions imposed must only relate to the changes proposed by the applicant. It is also not reasonable to require changes to elements of the scheme that are not materially different to the approved scheme.

11.0 Parking Provision

11.1 As with the approved scheme, the on-site parking accords with the adopted standards.

12.0 Accessibility

- 12.1 As per the requirements of the legal agreement, the affordable housing will all be built to Building Regs 2015 Part M4 Cat 2 standards which are capable for wheelchair conversion and one dwelling will be a fully wheelchair accessible M4 Cat 3 (2b) dwelling.

13.0 Open Space Provisions

- 13.1 The Legal agreement requires the developer to provide 2.8ha of public open space on site and this layout complies with this requirement as 3.1ha are provided.

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 As part of this S73 application, the applicant are suggesting a Deed of Variation to the existing S106 Agreement to link this application to the original S106 obligations.
- 15.2 This seeks to correct one inconsistency within the original S106 Agreement which is an additional financial sum in respect of the Healthcare Contribution so that the contributions are all based on a net increase of 101 new build dwellings. Previously, the Healthcare Contribution was calculated on an increase of 100 dwellings only.
- 15.3 Although there is a very small change proposed to the private house mix (1 no. additional 5 bed unit, and 1 no. less 4 bed unit), this does not affect any of the other financial contributions already agreed in the existing S106 Agreement.
- 15.4 The Community Contribution was based on an average standard of 2.3 residents per dwelling (and therefore not calculated by a specific unit mix) and the RAMS Contribution prescribes a cost per dwelling, so this also remains unaffected.
- 15.5 The Healthcare Contribution was also calculated on the basis of the standard 2.3 residents per dwelling on average, but the financial contribution is proposed to be amended for reasons set out above.
- 15.6 The Archaeology Contribution and Open Space Maintenance Sum remain unaffected by this application.

16.0 Report

Principle/Introduction

- 16.1 The principle of residential development has been established as set out in the planning history section of this report. The approved scheme is currently being built out. There is therefore no scope to resist this scheme on the matter of principle. It is noted that since the previous approvals on this site the West Mersea Neighbourhood Plan (WMNP) has moved forward a great deal and is soon to go to referendum. It now carries significant weight. At 5.7 it notes: *Planning permission was granted for a net increase of 100 dwellings at Brierley Paddocks in May 2020 and in February 2021 construction commenced on site. The site is therefore not allocated in the Neighbourhood Plan and the housing requirement subsequently reduced to around 100 dwellings.* The WMNP does not have a specific policy for this site, unlike the Dawes Lane allocation. The allocation of the site (along with Dawes Lane) stems from Section 2 Local Plan Policy SS12a which has also gained weight since the previous approval as set out above.
- 16.2 This is a section 73 application to vary the approved plans condition pursuant to both the outline (to deal with matters of access that were conditioned on the outline permission) and the reserved matters approval (to deal with matter of detail and layout). In many respects the scheme is very similar to that approved. No changes are proposed to the commercial element of the approved scheme in the north eastern corner, that being the Doctors Surgery/Commercial Units.
- 16.3 The main change is to allow the retention of the dwelling at No.43 Seaview Avenue. This was proposed to be demolished under the outline application. The applicants have decided that this dwelling can be fully renovated to become an attractive dwelling. It has been granted permission to be extended already. The implications of this change will be addressed below. It is noted that it is not possible to change the description of development by Section 73 and the outline description refers to the demolition of number 43. The applicants have confirmed they will change the description via a Non-Material Amendment (following this application under s.96.a of the Act) for the sake of completeness.

Access Changes

- 16.4 The East Road access has been amended in line with the requirements of the Highway Authority. In fact, it was the HA who contacted the LPA to request that this change was made whilst they were in the process of drafting the Section 278 highway agreement (this is the agreement between the HA and the applicant to enable changed to the highway network).

16.5 The report for the previous reserved matters Section 73 (202492) said:

As can be seen from the drawing above this scheme proposed the removal of a section of the footway to the east of the access way past the East Road junction.

This has been discussed with the Highway Authority and they are happy with this arrangement. Representations noting the loss of footway have been noted but the Highway Authority accept this layout. It is an improvement in urban design terms as will allow for a softer entrance to the residential development, opposite the listed building so this is a positive step in that regard also.

As per the current plans, to accord with the outline permission there is still a section of proposed footway around the bellmouth radii in front of 78 East Road. The Highway Authority have approached the LPA to ask if this could be removed also as that is their preference. This has been discussed with the applicants but they wish to leave this section 73 running currently. They have confirmed that they will then vary the plans condition on the outline and then vary the reserved matters again at a later date. So what is shown on the plan is unlikely to be the last variation the Council are asked to determine, but the Highway Authority are happy with the layout anyway and therefore it is held to be acceptable.

16.6 This application seeks to remove the small section of footway that was left over. This footway does not connect to an existing section of footway (as there isn't one on the south side of East Road). Therefore it's removal is sensible as requested by the HA. It is noted that the S278 agreement will provide a new section of footway where there is currently verge on the western side of the bellmouth.

16.7 The scheme also looks to slightly shift the access over to the west to avoid conflict with the access point at no. 78 East Road.

16.8 The representations noting the need for the footway on this side of the road and also those that look for the scheme to address wider issues or request more off-site works are noted, however the majority of the footway on the east side of the road was removed in application 202492 and this application simply looks to remove the section around the bellmouth (as noted as very likely in the previous report).

16.9 Pedestrian access to the commercial/doctors surgery area will be facilitated by using the footway on the western side of the access road and which can be crossed further into the new estate near the proposed speed table. A walkway/cycle way then affords onward movement south – this is all very much like the approved scheme. The Highway Authority are happy with this. The scheme is therefore held to comply with Development Policy DP17 and WMNP Policy WM12 both of which require development to provide safe access for all.

Impact on Setting of LB

- 16.10 The shifting of the access slightly towards the listed Brierley Hall is not held to have a materially different impact on its setting compared to the approved reserved matters layout. Removing the small remaining section of new footway that does not connect to an existing footway and therefore serves no purpose is a material improvement to the access point in visual amenity terms however, and this is especially positive close to a listed building. The scheme therefore complies with sentiments of Development Policy DP14 and WMNP WM26 which requires development to preserve or enhance the significance of the heritage assets, their setting and the wider built environment in line with the statutory duty (s.66(1) PL (LB & CA) Act 1990.

Retention of No.43 Seaview

- 16.11 The fundamental reason for this Section 73 application is to retain the existing dwelling at No.43 Seaview Avenue. This was originally proposed to be demolished to facilitate the shared pedestrian and cycle route from the south of the site to Seaview Avenue. Following further investigation it is clear that there is sufficient plot width at 43 Seaview to provide this cycleway without demolishing the dwelling.
- 16.12 This application still seeks an adjustment to the Seaview Avenue access, proposing to shift the access point and pedestrian gateway further to the south of No.43 Seaview Avenue and reduce the width of the shared (pedestrian and cycle) pathway to 3.5m, in line with the Essex Design Guide.
- 16.13 This pathway will permanently serve as an attractively landscaped pedestrian and cycle access only, which will allow permeability of the site and connectivity for local residents. It will therefore prevent the development being a cul-de-sac for pedestrians and cyclists in line with WMNP 29 which seeks to maintain or create a sense of place and/or local character avoiding, where possible, cul-de-sac developments – although as previously approved it is noted that this scheme will be a cul-de-sac for car users. Once finalised, the pathway will be surfaced with block paving, which alongside appropriate planting, is intended to create an attractive gateway into the site on foot or bicycle. Some existing mature trees will also be retained along the route (which will be discussed below), which alongside additional planting, will encourage local wildlife and provide ecological benefits.
- 16.14 It is envisaged that coastal planting species will be delivered, which alongside appropriate lighting, will deliver a safe and desirable route on foot or cycle alike. As depicted in the indicative landscaping plan high quality and well considered landscaping will be delivered, providing the benefits outlined above. The overall planting style of the scheme will be coastal, which is addressed by introducing specific coastal planting species such as *Armeria maritima* (sea thrift), *Eryngium varifolium* (sea holly), *Limonim latifolium* (sea lavender), and combining them with swathes of ornamental grasses to create a flowing planting scheme. The

Landscape consultants say this is inspired by the movement of flocks of starlings.

- 16.15 The impact this change would have on the street scene has been at the forefront of officers minds since the idea was tabled. Following discussions, the pedestrian gateway has been well considered and an indicative sketch based on the current proposals demonstrates that the route will still feel inviting, spacious and green and will encourage modes of sustainable transport. It is therefore considered that this change is acceptable. The scheme is therefore held to constitute good design, be beautiful as required by the NPPF (2021) and WMNP Policy WM 29.

Impact on Trees

- 16.16 It is accepted that this scheme will bring the footway/cycleway closer to protected trees sited on the boundary with the neighbour than the approved scheme. It is also noted that as set out in a number of the representations, a 'temporary' road has been installed in order to facilitate the construction of the approved/implemented scheme beyond. This road is not in the position as previously approved (as the dwelling at 43 is still standing) nor is it quite in the position that is intended. It is wider than the 3.5m required for a cycleway footway which it will be returned to eventually.
- 16.17 It's construction is unfortunately likely to have caused some damaged to the roots of the protected trees as the temporary road/track is well within the Root Protection Areas (RPA's) of the trees. This was reported to the Enforcement Team but as the temporary road was constructed in one go the damaged had already been done.
- 16.18 This has been discussed with the Arboricultural Officer in some detail. He asked for the applicant's Arboriculture Consultant to consider the best way to move this scheme forward in the best interests of the protected trees. They suggested the following:
- *Regarding the methodology for removing the temporary surfacing, we would use hand tools or, under supervision by an arboriculturist, by mechanical means, ensuring the soil level is not disturbed. If any roots are found, these would be covered to prevent them drying out. We would work on the surface itself working backwards, away from the tree, and would not enter soft ground once exposed without adequate ground protection installed. Once cleared, we can then install the no-dig surface, in-line with the chosen manufacturer's installation guidance.*
 - *We note that the submitted addendum report does not advise what, if any, impact may have occurred regarding potential impact on the stability of the tree or damage to roots. As such, we have liaised with our Arboricultural Consultant for advice on the most appropriate way for this to be successfully investigated. We propose:*

1. *Investigation works, to be undertaken by a suitably qualified team, to comprise a root survey with excavation along the edge of the works closest to the tree with hand tools and an air spade (if required). The aim of this would be to find and identify any damaged roots and the establish the diameter of any said roots to ascertain how much, if any, damage may have been caused to the tree. The LPA Tree Officer may of course oversee any investigation works and/or attend site once excavations are completed to discuss and agree any mitigation measures should they be required.*
2. *Following the undertaking of investigation works, we will set out a scheme of appropriate mitigation measures as required, to be agreed with the LPA. Whilst we cannot offer and agree a specific mitigation strategy until it is ascertained whether potential damage has been caused, possible mitigation measures for any severed/damaged roots could include the pruning / cleanly cutting the roots in question with appropriate tools, and monitoring of the tree over a 18-36 month period, for example. If any compaction has occurred, potential mitigation could include the addition of well-rotted mulch on top of the affected area and a light air spade to effectively work this into the ground. However, the mitigation measures appropriate to this specific scenario can only be agreed post investigative work being carried out.*
3. *In respect of the S73 application, we could agree to an additional condition on the matter, if desired, to provide reassurance that the path of action outlined above will be implemented in accordance with the agreed strategy.*

16.19 This plan of action was set out to the Council's Arboriculture consultant and he has agreed with this. A condition to ensure that this occurs is therefore suggested. The scheme will therefore comply with Development Policy DP1, Core Strategy Policy ENV1 and WMNP Policy WM 22 which, at criteria iii. Requires development to retain important landscape characteristics including trees and ancient hedgerows and other prominent topographical features.

Other Changes

16.20 This scheme proposed a number of other changes to the scheme. As submitted this scheme proposed changes to the dwellings that are closest to the Seaview Ave boundary (but separated by a planting belt). This resulted in a number of objections from neighbouring dwellings and West Mersea Town Council (WMTC). Following detailed discussions with officers and also with WMTC the applicants have almost reverted to the approved layout (with some minor changes). A car park area next to Farthings Chase that lacked surveillance and was considered to be fundamentally unacceptable has been removed and the previous layout reinstated in that area. As noted previously WMTC are now broadly content with the scheme.

16.21 A number of other minor changes were suggested as set in detail by the design addendum. Following consultation with the in-house urban designer, they have been reversed where requested or left as is where the applicants have justified it and request the scheme determined as it is.

The changes are:

16.22 The parking courtyard area has been removed (as noted above), reverting back to the 'T shaped' driveway arrangement similar to the approved scheme. As such, house types and grouping of units have been shuffled around this area and offer an improvement to the street scene and design of the development compared to the both the approved layout and previously.

- The tenure split and extent of house types remain the same across the site, with the exception of 1 no. additional 5 bed unit and 1 no. less 4 bed unit (private). The affordable housing split remains as already approved.
- Corner turning properties have been re-introduced (plots 49 and 50) to improve the street scene and address the road more successfully.
- Double garages introduced to plots 61-63 (previously these were car ports), to create a more solid and continuous frontage to the primary street.
- Some rear garden boundaries have been adjusted but all still meet or exceed minimum standards.
- The parking provision for plots 39 & 42 has been reconsidered in response to comments from Urban Design. As such plot 39's garage has been moved to the rear of the property, and plot 42's garage has been pushed forwards to reduce car dominance upon the approach into site.
- Minor adjustments to boundaries made, considering consultee comments from the Landscape Officer.
- The Urban Design Officer raised concern over parking provision; although the applicants have increased the number of garages across the site, these do not meet size standards and therefore cannot be counted as parking spaces. The parking provided remains in line with policy.
- For avoidance of doubt, there is no change to the western boundary landscape buffer proposed, and this will still be delivered.

A number of other minor adjustments to the layout are proposed, with a view to improving upon the consented scheme following further technical design development, including:

- Emergency turning areas to southeast corner of the site further reviewed and adjusted to ensure they can effectively accommodate emergency vehicles.

Locations of SUDS basins revised following technical review therefore there are no longer swales running through the site and there are no conflicts with the proposed footpaths (as suggested by the Landscape Officer).

- Footpath routes reviewed and pedestrian only connection to Cross Lane provided. This connection is now shown as a rolled gravel surfaced footpath.
- The footpaths through the central public open space spine are also to be surfaced in rolled gravel (or similar), and the emergency access path (near plots 62 & 68) has been tweaked to create a more legible and attractive route for pedestrians.
- Following discussion with case officer it was agreed that the 'kick-about area' label can be removed off the plan, as there will be plenty of open space remaining for informal 'kick abouts', and the scheme is consistent with the S106 requirement for a Neighbourhood Equipped Area of Play on site with an appropriate offset from properties.

- The Landscape Officer commented that the 1.8m brick wall enclosure and on-plot close board fence was not shown in the key – for avoidance of doubt, these are picked up in the ‘detailed layout’, to be read alongside the ‘development layout plan’.

16.23 House type Changes:

Finally, as a result of internal adjustments to the approved house types, there are some elevational adjustments sought, as summarised below. There have been no changes proposed to these from the initial submission of plans in September.

The elevations of these house types however have been updated (in the Dec 21 submission) to match the approved materials palette for the scheme for consistency.

For clarification, in response to a query raised by the Council officers, the insertion of Velux rooflights into house types 2014, 2089, 2200 is to provide natural light to the loft space only, and City & Country will not be building stairs from the second floor to loft space (and subsequently the submitted floorplans show 2 storey houses). This will be controlled by a new condition to ensure that changes to utilise the loft space in the future by prospective purchasers will follow the normal planning approvals process.

16.24 The Urban Designer has provided comments set out below. The developers have responded to those in *italics* and the case officer’s responses to both in planning balance terms follow:

- The originally approved integrated sustainable drainage system appears to have been replaced by two large detention basins. This diminishes a degree of the character and sense of place established by the approved scheme. *The revised swale locations enable residents to have more usable POS green spaces, as they are more contained – the previous scheme had drainage basins running down the central spine, which would be empty for the majority of the time and reduce the amount of circulation/usable open space.* Case Officer – on balance and whilst the approved scheme is optimum, the amended scheme does allow more space for play/movement and less conflict with the footpath, so on balance is acceptable.
- House-type HA-Aa appears incoherent as a pair of mirrored semi-detached units. In instances where this occurs it should be replaced by house-type HA-A, at least in part. *This arrangement has already been approved under the approved scheme (202492) – specifically plots 30 & 31, 59 & 60, 61 & 62. Furthermore, this specific arrangement occurs less on the S73 scheme (only 2 pairs of this arrangement of semis proposed, rather than 3). Given that this type of semi-detached unit has already been approved I do not see that there is an issue.* Case Officer – this point is accepted.

- Areas of POS to the side of dwellings have been enclosed. *This was to address comments that 'HT 2089 & HT 2200 show secondary doors opening onto the public realm' and reducing ambiguity about how the space to the sides of these properties were treated. The landscape officer is comfortable with the latest boundary treatments to these plots, which offer attractive estate railings.* This diminishes the open character of some areas of the site, reduces the quantum of open space and fails to resolve the duality of the units with two public facing entrances (will also likely result in future pressure to fully enclose these areas). *Firstly the S106 Agreement sets out that the site is to provide at least 2.8ha of POS; the s73 layout provides 3.21ha of POS, in excess of the site specific requirement, and still provides 0.12ha more POS than the approved scheme. Therefore there is not an overall reduction in POS across the site. Secondly, condition 12 of 202492 sets out that future plot purchasers would have to seek permission from the LPA for installation of any additional boundaries/ enclosures where fronting a highway/footpath, so in any case this would be down to the LPA to determine on a case-by-case basis, should the individual purchaser want to seek to pursue a change in boundary treatment down the line. C&C do not therefore believe that this approach is problematic.* Case Officer - On balance this is accepted as the Council will have control of additional boundary treatments via the removal of PD.
- The above also appears to have led to revised approach to the enclosure/demarcation of public and private spaces. i.e. amended use of hedging and estate railings, loss of knee rails. The original approach and placement applied a logic that contributed to the road hierarchy and individual character areas within the site. As a result, the revised approach further diminishes a degree of the character and sense of place established by the approved scheme. *Please refer to revised landscaping strategy Rev Z (which is currently being finalised to address two minor comments from the Landscape Advisor), that has been agreed with the landscape officer.* Case Officer - On balance this is acceptable.
- The reduced use of the second brick type, reduces the degree of visual interest and contrast it provides, Thus diminishing its contribution the road hierarchy and individual character areas within the site. *The approach to materials follows the approved plot by plot materials schedule (as approved under 211686) and the established approach.* Additionally, two pairs of bricks are listed in the legend as "50/50", this is unclear and ambiguous. *The 50:50 brick pairing is due to supply issues with one of the initially approved bricks – the detail is currently being determined under 213504, which will provide greater certainty on the brick manufacturer etc. The details of external materials is an element that is reserved by condition.* Case Officer - On balance this is acceptable.
- Changes to more common/standard colours for windows, doors and rainwater goods also diminish the approved design aesthetic. *For*

avoidance of doubt, materials changes are not sought under this s73 application. The details of materials have already been approved through discharge of conditions (211686) against the approved scheme. The elevations were therefore updated to reflect the approved materials for consistency. Case Officer - This point is correct and is therefore acceptable.

The points raised by the in-house Urban Designer have been discussed with him in light of the developers responses. Whilst they are all valid concerns, the developer's responses are also valid and the Council must be alive to the planning history, the elements of the scheme already approved via condition and the commercial realities of bringing this site forward. In particular the construction industry is facing a national materials supply shortage therefore the Council must be flexible in that respect. In the planning balance it is not held that these changes to the scheme materially degrades the scheme to the point that warrants or could sustain a refusal.

The Affordable Housing

- 16.25 A number of representations note changes to the AH and its grouping.
- 16.26 In fact this is very similar to what was previously approved. Whilst it is grouped together as it was before this is only really appreciated in plan view. It is the same in type and mix. The applicants are not providing more affordable housing (AH) as has been suggested (though officers suggest it would not be a negative point if they were) and in street scene terms there is still market housing in amongst in the AH as you travel along the road. For example, if you travel south along the spine road you would pass market housing, then affordable housing, then market housing. If you turned west you would enter an area with affordable housing on both side of the road and then you would pass through that into an area of market housing.
- 16.27 It is accepted that the AH is not 'pepper-potted' throughout the development as requested by the WMNP Policy WM4 but it never has been and is not on the scheme currently being implemented. The benefit of this approach is that it keeps the AH in the earlier phase of construction (the Eastern/Cross Lane side of the site still being under significant archaeological investigation) and will therefore be delivered early on to meet the AH need.
- 16.28 It is clear as with previous application, the neighbours would like the AH set over towards Cross Lane, but that matter has been dealt with in some detail at the time of the first reserved matters approval ref:200960. That aspiration is therefore not possible at this time.

Impact on Amenity

- 16.29 The changes to the East Road access will not have a material change in amenity terms as the change is very minor.

- 16.30 The change to the Seaview Road access point does bring the pedestrian footway/cycleway closer to the neighbour to the south so this must be carefully considered. As there is still scope for good quality planting as shown in the relevant section of this report, it is not considered that the movement of position will cause an increase in harm when compared to the approved scheme. It will not result in a material increase in use of the access point (noted to be only used by pedestrians and cyclists) and therefore is not foreseen to be harmful. It will be lit by low level lighting (secured via the landscaping condition) to minimize light pollution in line with WMNP 28.
- 16.31 The various minor layout tweaks have also been considered. It is noted that the landscape buffer that was offered at Reserved Matters stage along the boundary with Seaview Ave (including Farthings Chase) remains. This is not a policy requirement but was provided by the applicants in the spirit of neighbourliness. The Seaview Ave back-to-back distances are far in excess of the adopted policy in the Essex Design Guide. The scheme (as approved) is still orientated to sit comfortably around the Farthings Chase dwellings. Therefore this scheme as amended is acceptable in that regard.

Climate Emergency

- 16.32 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.
- 16.33 It was considered that this scheme comprised sustainable development at the outline stage and that is still the case with this section 73 submission. As was intended at outline stage, the scheme has a layout with large areas of open space, room for tree planting that will be secured by condition and a layout that prioritises the pedestrian and cyclist. It is considered that the application represents sustainable development.

Deed of Variation

- 16.34 As part of this S.73 application, the applicant are suggesting a Deed of Variation to the existing S106 Agreement to link this application to the original S106 obligations.
- 16.35 This seeks to correct one inconsistency within the original S106 Agreement which is an additional financial sum in respect of the Healthcare Contribution so that the contributions are all based on a net increase of 101 new build dwellings. Previously, the Healthcare Contribution was calculated on an increase of 100 dwellings only.

- 16.36 Although there is a very small change proposed to the private house mix (1 no. additional 5 bed unit, and 1 no. less 4 bed unit), this does not affect any of the other financial contributions already agreed in the existing S106 Agreement.
- 16.37 The Community Contribution was based on an average standard of 2.3 residents per dwelling (and therefore not calculated by a specific unit mix) and the RAMS Contribution prescribes a cost per dwelling, so this also remains unaffected.
- 16.38 The Healthcare Contribution was also calculated on the basis of the standard 2.3 residents per dwelling on average, but the financial contribution is proposed to be amended for reasons set out above.
- 16.39 The Archaeology Contribution and Open Space Maintenance Sum remain unaffected by this application.

17.0 Conclusion and Planning Balance

- 17.1 To summarise, this scheme will align the East Road access point with the requirements of the S278 agreement. It will allow the retention of an existing dwelling and will therefore increase the quantum of development on site by one dwelling indirectly. It will ensure the early phased delivery of the on-site AH whilst the very complex archaeological works are still being undertaken on the eastern side of the site.
- 17.2 Essentially this scheme is still an intelligent and robust proposal that makes good use of the opportunities of the site in delivering a relatively low-density mixed use scheme. It incorporates some worthy design features that aid placemaking and protect the amenities of neighbouring properties.
- 17.3 The planning balance tips strongly in favour of an approval.

18.0 Recommendation to the Committee

- 18.1 The Officer recommendation to the Committee is for:
- 18.2 APPROVAL of planning permission 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 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 set out below.
- 18.3 PLEASE NOTE: It is noted that the following draft conditions also note the condition they will replace/amend on either the outline or the reserved matters application, as a number of these are currently with the Council for discharge and therefore may become compliance conditions by the time the Deed of Variation is engrossed so the decision can be issued. Delegated Authority is therefore requested to rework the conditions below as applicable.

Draft condition 1
(condition 1 of outline permission & condition 3 of RM)

The 'reserved matters' relating to APPEARANCE, LANDSCAPING, LAYOUT and SCALE are to be delivered in accordance with the following approved plans:

- CC-336-AJ01 Rev B - Proposed access to East Road
- CC-336-AJ02 Rev A - Proposed access to Seaview
- CC008-PL-02 rev Zd Detailed Layout
- CC008-PL-03 rev Zd Color of Materials
- CC008-PL-06 rev V Garden Areas
- CC008-PL-11 rev B HA Location
- West Mersea Revised Phasing Plan Rev B
- CC008-ST-01 Rev L Proposed Street Elevations A, B & C
- CC008-CP-01 rev Zp Dev Layout
- CC008-PL-04 rev Za Landscape
- CC008-Apt1-01 Rev E HA APT 1 Plans
- CC008-Apt1-02 Rev F Apartment 1 Elevations
- CC008-Apt2-01 Rev F Apartment 2 Plans
- CC008-Apt2-02 Rev F Apartment 2 Elevations
- CC008-HA-C-01 Rev I Plans & Elevations
- CC008-HA-D Rev D Plans
- CC008-HA-D-02 Rev E Plans & Elevations
- CC008-HT-1286-01 Rev C Plans & Elevations
- CC008-HT-1596-01 Rev A HT-1596 Plans
- CC008-HT-1596-02 Rev C Elevations
- CC008-HT-2014-01 Rev A HT-2014 Plans
- CC008-HT-2014-02 Rev C HT-2014 Elevations
- CC008-HT-2089-01 Rev B HT-2089 Plans
- CC008-HT-2089-02 Rev B HT-2089 Elevations ps
- CC008-HT-2200-01 Rev A HT-2200 Plans
- CC008-HT-2200-02 Rev B HT-2200 Elevations ps

And in accordance with the reserved matters details approved under reference 202492:

CC008-910a-01 Floor Plans & Elevations Rev E
CC008-HT-1016-01 Floor Plans & Elevations Rev C
CC008-1285a-01 Floor Plans & Elevations Rev E
CC008-1285b-02 Plans & Elevations Rev A
CC008-1285c-03 Floor Plans & Elevations Rev A
CC008-1465-01 Floor Plans Rev C
CC008-1465-02 Elevations Rev G
CC008-1465-03 Elevations Rev A
CC008-1683-01 Floor Plans Rev A
CC008-1683-02 Elevations Rev E
CC008-1747-01 Floor Plans Rev A

CC008-1747-02 Elevations Rev F
 CC008-Aa-01 Floor Plans & Elevations Rev A
 CC008-A-01 Floor Plans & Elevations Rev E
 CC008-HA-B-01 Floor Plans & Elevations Rev G
 CC008-BT-01 Boundary Treatment Details Rev 00
 CC008-SU-01 Surgery Plans Rev 00
 CC008-SU-02 Surgery Elevations Rev 00
 CC008-CO-01 Commercial Plans Rev 00
 CC008-CO-02 Commercial Elevations Rev 00
 CC008-CP-01 Single Carport - Store Rev 00
 CC008-CP-02 Double Carport - Store Rev 00
 CC008-CP-03 CP1 Double Carport Side Rev 00
 CC008-CP-04 CP2 Single Carport Side Rev 00
 CC008-CP-05 CP3 Double Carport Link Rev 00
 CC008-CP-06 CP4 Single Carport Link Rev 00
 CC008-CP-07 CP5 Double Carport Rev 00
 CC008-PG-01 2 & 3 Bay Parking Pergola Rev A
 CC008-PG-02 4 Bay Parking Pergola Rev A
 CC008-SG1-01 SG1 Single Garage Floor Plans & Elevations Rev 00
 CC008-SG2-01 SG2 - Double Garage Floor Plans & Elevations Rev 00
 CC008-TG1-01 Triple Garage Floor Plans & Elevations Rev 00 001.

Reason: To clarify the plans that are approved in the interests of proper planning.

Condition 2 of outline permission – remove

~~Application for approval of the reserved matters shall be made to the Local Planning authority before the expiration of three years from the date of this permission.~~

Remove condition 2.

Condition 2
(condition 3 of outline permission)

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the Town and Country Planning Act 1990 (as amended).

Condition 3
(condition 4 of outline permission)

The scheme must be delivered in accordance with the following approved access plans:

- Site Location Plan - 17003/OPA1-001
- CC-336-AJ01 Rev B - Proposed access to East Road
- CC-336-AJ02 Rev A - Proposed access to Seaview

Reason: To clarify the plans that are approved in the interests of proper planning.

Condition 4

(condition 5 of outline permission)

The D1/B1 uses hereby approved shall not operate apart from in complete accordance with a schedule of operation that shall be submitted to and approved in writing by the Local Planning Authority. This schedule shall include details of:
The specific D1 or B1 use proposed.

The hours of operation of the D1 and/or B1 use.

The hours and details of servicing of the D1 and/or B1 use.

The hours and details of deliveries to and from the D1 and/or B1 use.

The D1/B1 uses shall not operate apart from in complete accordance with the approved schedule unless otherwise agreed in writing with the Local Planning Authority.

Reason: This condition is necessary as this outline permission is approving 0.5ha of the site as D1/B1 uses but has no details of those D1/B1 uses at this stage. Therefore the Council needs this extra detail to ensure the proposed uses do not materially harm neighbouring amenity.

(condition 6 of outline permission) - remove

~~Any reserved matters application seeking approval of scale and layout shall include a detailed schedule of the proposed housing mix, to be agreed by the Local Planning Authority through the approval of that reserved matters application. No development shall commence until the housing mix schedule has been agreed as part of the reserved matters and the development shall be carried out in accordance with the approved details. The detailed schedule shall include the following: >The plot number, >The type of dwelling, >The number of storeys, >The number of bedrooms and bedspaces, >The size of the outdoor private amenity space, >The number and sizes of parking/garage spaces provided~~

Condition 5

(condition 7 of outline permission)

The 0.5 ha of the site that is to be used for commercial purposes shall be used solely for B1 or D1 uses and for no other purpose.

Reason: This is the basis on which the application was submitted and subsequently considered and the Local Planning Authority would need to give further consideration to the impacts of a different use at this site at such a time as any future change of use were to be proposed.

Condition 6
(condition 8 of outline permission)

The development shall not commence above damp-proof course level until a scheme comply with for the provision and implementation of electric vehicle (EV) charging points (Electric Charging Points Statement - Feb 2021 (updated April 2021) has that has already been submitted to, and approved in writing by, the Local Planning Authority. The EV charging points shall be installed prior to the first occupation of their respective dwellings.

Reason: In the interests of sustainability and air quality by encouraging the use of ultra-low emission vehicles.

Condition 7
(condition 9 of outline permission)

No works shall take place until the implementation of a programme of archaeological work has been secured, is to be carried out in accordance with an approved Written Scheme of Investigation that has been submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and:

- The programme and methodology of site investigation and recording.
- The programme for post investigation assessment.
- Provision to be made for analysis of the site investigation and recording.
- Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- Provision to be made for archive deposition of the analysis and records of the site investigation.
- Nomination of a competent person or persons/organisation to undertake the works.

The site investigation shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority.

Each archaeology area (as defined in the WSI) shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance Adopted Development Policy DP14 (2010, Revised 2014) and the Colchester Borough Adopted Guidance titled Managing Archaeology in Development (2015).

Condition 8
(condition 10 of outline permission)

No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and certified as technically acceptable in writing by the SUDs approval body or other suitably qualified person(s). The certificate shall thereafter be submitted by the developer to the Local Planning Authority as part of the developer's application to discharge the condition. No development shall commence until the detailed scheme has been approved in writing by the Local Planning Authority. The approved scheme shall subsequently be implemented prior to occupation and should include but not be limited to: Limiting discharge rates to not exceed the existing greenfield runoff rate from the site for all storm events up to and including the 1 in 100-year rate plus 40% allowance for climate change. Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus- 40% climate change event. Provide the inclusion of 10% urban creep. Demonstrate that all storage features can half empty within 24 hours for the 1:100 plus 40% climate change critical storm event. Final modelling and calculations for all areas of the drainage system. The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753. Detailed engineering drawings of each component of the drainage scheme. A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features. A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

Reason: To ensure that flood risk is not increased elsewhere by development.

Condition 9
(condition 11 of outline permission)

No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.

Reason: The National Planning Policy Framework paragraph 163 and paragraph 170 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution. Construction may lead to excess water being discharged from the site. If dewatering takes place to allow for construction to take place below groundwater level, this will cause additional water to be discharged. Furthermore the removal of topsoils during construction may limit the ability of the site to intercept rainfall and may lead to increased runoff rates. To mitigate increased flood risk to the surrounding area during construction there needs to be satisfactory storage of/disposal of surface water and groundwater which needs to be agreed before commencement of the . Construction may also lead to polluted water being allowed to leave the site. Methods for preventing or mitigating this should be proposed.

Condition 10
(condition 12 of outline permission)

No occupation of the development shall take place until a Maintenance and Management Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, shall be submitted to and agreed, in writing, by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long-term funding arrangements should be provided.

Reason: To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk and to ensure that the SUDs are maintained for the lifetime of the development.

Condition 11
(condition 13 of outline permission)

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason: To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

Condition 12
(condition 14 of outline permission)

No works shall take place above damp-proof course level until an The development shall be carried out and maintained in accordance with the approved Ecological Enhancement and Mitigation Plan (EEMP) (Ecology Enhancement and Mitigation Plan by The Ecology Partnership (Aug 2020) .has been submitted to and approved by the Local Planning Authority. The EEMP shall follow the principles set out in the submitted ecological reports as a minimum. The development shall then be carried out and maintained in accordance with the approved EEMP. Reason: In order to mitigate the impact of the development upon ecology and biodiversity and in the interest of ecological enhancement.

Condition 13
(condition 15 of outline permission)

Development shall be carried out in accordance with Arboricultural Implications Assessment Addendum OAS/18-019-AR01 Rev E, unless otherwise agreed in writing with the LPA.

Reason: To adequately safeguard the continuity of amenity afforded by existing trees and in particular the TPO'ed specimens that are of particular significance

Condition 14
(condition 16 of outline permission)

No works shall take place above damp-proof course level until a scheme for on-site foul water drainage works, including connection point and discharge rate, has been submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of any phase, the foul water drainage works relating to that phase must have been carried out in complete accordance with the approved scheme.

Reason: To prevent environmental and amenity problems arising from flooding.

Condition 15
(condition 17 of outline permission)

No occupation of the development shall take place until the following has been provided or completed: a. A priority junction off East Road to provide access to the proposal site as shown in principle on the planning application drawings b. A pedestrian/cycle access off Seaview Avenue as shown in principle on the planning application drawings (although it is noted that this is to be used for an 18 month temporary period (from first use) for sales and light residential traffic) c. For the non-residential element of the proposal, if there are 50 or more employees, a Travel Plan in accordance with Essex County Council guidance d. For the residential element of the proposal, Residential Travel Information Packs in accordance with Essex County Council guidance

Condition 16
(condition 18 of outline permission)

The development is to be carried out in accordance with Bus stop specifications and program as per approved VD20319-100-, and the works are to be installed prior to first occupation, unless otherwise agreed in writing by the LPA. . Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.

Condition 17
(condition 19 of outline permission)

Prior to the first occupation of any of the dwellings hereby approved street name signs shall have been installed at the junction of the new highway with the existing road network. Reason: To ensure that visitors to the development can orientate themselves in the interests of highway safety.

Condition 18

(condition 20 of outline permission & condition 5 of outline permission)

Prior to the first occupation of the development, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas other than small, privately owned, domestic gardens shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved at all times unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area

Condition 19

(condition 21 of outline permission)

The development shall be carried out in accordance with the approved Construction Method Statement (CONSTRUCTION METHOD STATEMENT V.2 and plan CC008-PL-04.001 REV D), as already approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period unless otherwise agreed in writing with the Local Planning Authority.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable.

Condition 20

(condition 22 of outline permission)

No construction deliveries to or from the site, worker vehicle movements, or construction work shall take place outside of the following times;

Weekdays: 08:00- 18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

Condition 21

(condition 23 of outline permission)

No fires may be lit on site at any time.

Reason: In the interests of neighbouring amenity.

Condition 22
(condition 24 of outline permission)

No works shall take place except in complete accordance with Delta Simons, Geo-Environmental Assessment, Brierley Paddocks, West Mersea, Issue 2, Final, Ref. 17-0806.03, dated 3/7/20

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

Condition 23
(condition 25 of outline permission)

If the Investigation and Risk Assessment submitted under Condition 24 identifies a need for remediation, no works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and then submitted to and agreed, in writing, by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Condition 24
(condition 26 of outline permission)

Following completion of measures identified in the approved remediation scheme (Delta Simons, Geo-Environmental Assessment, Brierley Paddocks, West Mersea, Issue 2, Final, Ref. 17-0806.03, dated 3/7/20.), a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Condition 25
(condition 27 of outline permission)

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 24, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 25 which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 26.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Condition 26
(condition 28 of outline permission)

If the Investigation and Risk Assessment submitted under Condition 24 identifies a need for remediation, prior to the first OCCUPATION or USE of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 24.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Condition 27
(Condition 4 of RM conditions)

No works shall take place above ground floor slab level until full details of all landscape works have been submitted to and agreed, in writing, by the Local Planning Authority and the works shall be carried out prior to the occupation of any part of the development unless an alternative implementation programme is subsequently agreed, in writing, by the Local Planning Authority. The submitted landscape details shall include:

- Finished levels or contours, where changes are proposed.
- Means of enclosure.
- Car parking layouts and other vehicle and pedestrian access and circulation areas;
- Hard surfacing materials.

- Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.).
- Proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. Indicating lines, manholes, supports etc.).
- Earthworks (including the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform)
- Retained historic landscape features and any proposals for restoration.
- Planting plans.
- Written specifications.
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
- Implementation timetables and monitoring programs.
- Position of footpaths and connection to Cross Lane.
- The full details of a 2m high close boarded timber fence along the full length of the western site boundary with Seaview Avenue.

Reason: To ensure that there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development within its surrounding context in the interests of visual amenity.

Condition 28
(condition 4 of RM conditions)

No above ground works shall take place until full details of the proposed landscape buffer/tree belt along the western site boundary comprising a minimum of 5m in depth have been submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate:

- details of all associated walls, fences and railings;
- planting plans;
- schedules of plants, noting species, plant size and proposed numbers/densities;
- implementation timetable and management proposals.

Reason: To safeguard the provision of amenity for existing and proposed residents.

Condition 29
(condition 6 of RM conditions)

The scheme must be carried out in complete accordance with the Spectrum Acoustic Consultants report ARC7086/20369/First Issue/Revision 1 10.12.20

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the existing residents by reason of the traffic entering and leaving the site. This report was submitted to discharge the condition on application 200960 and therefore this condition is needed to ensure it is carried over to the new reserved matters approval.

Condition 30
(condition 7 of RM)

No external facing or roofing materials shall be used in the construction of the development hereby permitted except those that have already been approved by the LPA. Such approved materials shall be those used in the development, unless otherwise agreed in writing by the LPA.

Reason: In order to ensure that suitable materials are used on the development as there are insufficient details within the submitted planning application.

Condition 31
(condition 8 of RM)

No external lighting fixtures shall be constructed, installed or illuminated until details of all external lighting proposals have been submitted to and approved, in writing, by the Local Planning Authority. Thereafter, no lighting shall be constructed or installed other than in accordance with those approved details.

Reason: To reduce the risks of any undesirable effects of light pollution.

Condition 32
(condition 9 of RM)

Prior to the commercial or surgery element of the development hereby permitted coming in to use, details of the number, location and design of cycle parking facilities shall be submitted to and approved, in writing, by the Local Planning Authority. The approved facility shall be secure, convenient and covered and shall be provided prior to occupation and retained for that purpose at all times thereafter.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety.

Condition 32
(condition 10 of RM)

Prior to the first occupation of the development, either residential or commercial, the vehicle parking area/spaces indicated on the approved plans, including any parking spaces for the mobility impaired, shall have been hard surfaced, sealed, marked out in parking bays and made available for use to the satisfaction of the Local Planning Authority. The vehicle parking areas shall be retained in this form at all times and shall not be used for any purpose other than the parking of vehicles that are related to the use of the development.

Reason: To ensure that there is adequate parking provision to avoid on-street parking of vehicles in the adjoining streets in the interests of highway safety.

Condition 33
(condition 11 of RM)

Notwithstanding the provisions of Classes A, B, C, D and E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no extensions, ancillary buildings or structures shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interest of visual amenity and to ensure the development avoids an overdeveloped or cluttered appearance.

Condition 34
(condition 12 of RM)

Notwithstanding the provisions of Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no fences, walls, gates or other means of enclosure, other than any shown on the approved drawings, shall be erected in advance of any wall of the dwelling to which it relates (including a side or rear wall) which faces a highway (including a footpath or bridleway) unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interests of visual amenity with regard to the context of the surrounding area.

Condition 35
(condition 13 of RM)

Notwithstanding the provisions of the Use Classes Order (1987 as amended) or any subsequent replacement statutory instrument, the surgery building as shown on the approved plans shall be retained for a doctor's surgery/medical purposes permanently. The commercial unit as shown on the plans shall be retained as commercial uses permanently. Those being:

- (a) as an office
- (b) for research and development of products or processes, or
- (c) for any industrial process, being a use which can be carried out in any residential area

without detriment to the amenity of that area by reason of noise, vibration, smell, fumes,

smoke, soot, ash, dust or grit.

No changes to other uses are permitted without the benefit of a full planning application.

Reason: To ensure the scheme as has been assessed with the provision of these elements in place and it has been approved on that basis. These uses are needed to secure the provision of employment opportunities and local healthcare facilities in conformity with the Emerging Local Plan. Any other uses would need careful assessment by the LPA to ensure they did not cause material harm to neighbouring amenity and were acceptable in policy terms.

New Condition 36 - Seaview Ave Access Works

No later than the 31/07/2023, the temporary access serving the marketing building that has been created at the Seaview Road access point shall be carefully removed in accordance with the AIA addendum (OAS/18-019-AR01 Rev E) before being adjusted and narrowed to a width of 3.5m to provide the permanent pedestrian/cycle only route as shown on the approved drawings. No later than 31/07/2023, this route shall be bollarded at either end to prevent vehicular traffic passing along this pedestrian/cycleway. The shared pedestrian/cycleway route shall be retained as such with no vehicular traffic allowed to pass along it, in perpetuity.

Reason: This condition will ensure the temporary access track is removed without causing damage to the TPO'd trees on the boundary and to ensure that the shared pedestrian/cycleway is delivered in line with the outline permission as a non-vehicular access.

New Condition – 37 Loft space for stage only

No second floor living accommodation is hereby approved on any of the dwellings. The loft spaces shall not be used for any purpose other than storage.

Reason: This is the basis on which the application has been made. The conversion of any of the loft spaces to habitable accommodation will require the benefit of planning permission. This is to enable the LPA to assess the impact of an conversion to neighbouring amenity to both existing neighbours and neighbours on the development site.

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 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.



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Item No: 7.3

Application: 213463

Applicant: Balcerne Gate Properties Ltd

Agent: Mr Steve Norman

Proposal: Change of Use from Offices to Student Accommodation

Location: Unsworth House & Josephs Court, Hythe Quay, Colchester, CO2 8JF

Ward: Old Heath & The Hythe

Officer: John Miles

Recommendation: Approval subject to conditions and securing the necessary RAMS contribution prior to decision issue

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because a director of the applicant company is a spouse of a member of Colchester Borough Council staff.

2.0 Synopsis

- 2.1 The key issues for consideration are the principle of the development, design and heritage impacts, impacts on neighbouring amenity, occupier amenity, flood risk, parking and highways matters. These matters have been considered alongside planning policy requirements and other material matters, leading to the application being subsequently recommended for approval.
- 2.2 The report describes the site and its context, the proposal itself, and the consultation responses received. Material planning considerations are then reviewed together with issues raised in representations.

3.0 Site Description and Context

- 3.1 The site is accessed off Hythe Quay via a private driveway. There are two buildings on site, single storey Josephs Court to the north of the site and two-storey Unsworth House to the west. Josephs Court is a flat roofed building, with a render finish, while Unsworth House is constructed in red brick, under a tiled roof. The two buildings are arranged around an existing car parking area, and a small landscaped area, primarily laid to lawn. A number of listed buildings are situated in the vicinity of the site, including 8 Hythe Quay to the east and 89-90, 93, 95-96, 97 and 98-99 Hythe Hill to the North, however the application buildings themselves are of no particular historical or architectural interest. The site is in Flood Zone 2/3.

4.0 Description of the Proposal

- 4.1 The application has been revised over the course of its determination, with it now sought the units are used specifically as student accommodation (*sui generis*). The proposed floor plans have also been amended, with one unit on the ground floor of Unsworth House now omitted and a communal living area in its place. As revised, the proposal includes 11 units. External works are limited to minor alterations to existing fenestration and some minor external remodelling to the front elevation of Unsworth House.

5.0 Land Use Allocation

- 5.1 The site lies within an area comprising a mix of commercial and residential land uses. The site is also partly within the Hythe Conservation Area.

6.0 Relevant Planning History

- 6.1 The application follows 210312, an application for prior approval for the conversion of the two buildings on site to six flats. Prior approval was granted

in May 2021 however it is understood that this permission has currently not been implemented, although it remains extant.

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 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP4 Meeting Housing Needs
- SP5 Employment
- SP7 Place Shaping Principles

Appendix A of the Section 1 Local Plan outlines those policies in the Core Strategy Focused Review 2014 which are superseded. Having regard to the strategic nature of the Section 1 Local Plan, policy SD2 of the Core Strategy is fully superseded by policies SP5 and SP6 of the Section 1 Local Plan. Policies SD1, H1 and CE1 of the Core Strategy are affected in part. The hierarchy elements of policies SD1, H1 and CE1 remain valid, as given the strategic nature of policies SP3, SP4 and SP5 the only part of the policies that are superseded is in relation to the overall requirement figures.

The final section of Policy SD1 which outlines the presumption in favour of sustainable development is superseded by policy SP1 of the Section 1 Local Plan as this provides the current stance as per national policy.

All other Policies in the Core Strategy, Site Allocations and Development Management Policies and all other adopted policy which comprises the Development Plan remain relevant for decision making purposes.

7.3 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
CE2 - Mixed Use Centres
H1 - Housing Delivery

- H2 - Housing Density
- H3 - Housing Diversity
- UR1 - Regeneration Areas
- UR2 - Built Design and Character
- PR1 - Open Space
- PR2 - People-friendly Streets
- TA1 - Accessibility and Changing Travel Behavior
- TA2 - Walking and Cycling
- TA3 - Public Transport
- TA4 - Roads and Traffic
- TA5 - Parking
- ENV1 - Environment
- ER1 - Energy, Resources, Waste, Water and Recycling

- 7.4 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
 - DP2 Health Assessments
 - DP3 Planning Obligations and the Community Infrastructure Levy
 - DP4 Community Facilities
 - DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
 - DP12 Dwelling Standards
 - DP13 Dwelling Alterations, Extensions and Replacement Dwellings
 - DP14 Historic Environment Assets
 - DP16 Private Amenity Space and Open Space Provision for New Residential Development
 - DP17 Accessibility and Access
 - DP19 Parking Standards
 - DP20 Flood Risk and Management of Surface Water Drainage
- 7.5 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 CE1 Mixed Use Sites

7.6 The site is not in an area covered by a Neighbourhood plan.

- 7.7 Submission Colchester Borough Local Plan 2017-2033:
- The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan is at an advanced stage having undergone examination hearing sessions in April 2021 and recent consultation on modifications. Section 2 will be afforded some weight due to its advanced stage. However, as it is yet to undergo full and final examination, the exact level of weight to be afforded will be considered on a site-by-site basis reflecting the considerations set out in paragraph 48 of the NPPF. Proposals will also be considered in relation to the adopted Local Plan and the NPPF as a whole.

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.

- 7.8 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
Managing Archaeology in Development.

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 Archaeological Advisor:

No archaeological issues.

8.3 Environment Agency

At the time of writing no comments received.

8.4 Environmental Protection:

Based on the information available to Environmental Protection, it would appear that this site could be made suitable for the proposed use. A condition covering the reporting of unexpected contamination is recommended, alongside an informative relating to the applicant's obligations under The Control of Asbestos Regulations 2012.

8.5 Essex Country Fire and Rescue

No objections – advice given regarding building regulations, water supplies and sprinklers.

8.6 Highway Authority

No objections – conditions recommended regarding the provision of cycle parking and the distribution of public transport facility information.

8.7 Historic Buildings and Areas Officer

No objections.

8.8 Natural England

No objection subject to securing appropriate mitigation.

8.9 Private Sector Housing

No objections to the proposal as a whole although concerns raised regarding the size of each unit with regards to DCLG's space standards.

9.0 Parish Council Response

9.1 The site is in a non-parished area.

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. Consultations exercises resulted in two objections from neighbouring properties, the full text of which are available on the Council's website. However, a summary of the material considerations is given below:

- Noise and disturbance/ loss of amenity
- Removal of a tree on site
- Consideration of potential impact on the Conservation Area.

10.2 Alderman Theresa Higgins has also commented on the application and has raised the issues as to whether the cycle parking proposed is secure.

11.0 Parking Provision

11.1 The scheme provides 5 parking spaces, and the proposed site plan details the inclusion of a further 12 cycle parking spaces.

12.0 Accessibility

12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. In terms of the proposal, the scheme is capable of providing a step free access to the ground floor units and the communal living area is also located at ground floor level. Based on the submitted information, the scheme is not considered to cause discrimination in terms of The Equality Act.

13.0 Open Space Provisions

13.1 The proposal falls below the threshold for requiring open space provisions.

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. While a Unilateral Undertaking would normally be sought to secure proportionate financial contribution towards community and leisure contributions, it is not considered seeking such contributions would be justified in this instance with there an extant permission in place for residential development on the site, under which there was no mechanism to seek such contributions. There is also no net increase in the contributions that would be due under the now proposed scheme, compared to those for the previous scheme, should there have been a mechanism to secure such. The application has agreed to make a proportionate RAMS mitigation contribution.

16.0 Environmental and Carbon Implications

16.1 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 National Planning Policy 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. The consideration of this application has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that on balance the application is considered to represent sustainable development (see paragraph 17.4 of the main report).

17.0 Report

The main issues in this case are considered in turn below:

Principle

17.1 In terms of the principle of development, Core Strategy Policies SD1 and H1 (in so far they remain relevant) seeks to locate growth at the most accessible and sustainable locations, in accordance with the settlement hierarchy. Section 1 Policy SP3 states existing settlements will be the principal focus for additional growth across the North Essex Authorities area within the Local Plan period and development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area.

- 17.2 The application site is within the settlement boundary of Colchester, in a highly sustainably location, close to both public transport links, shops and other facilities.
- 17.3 While the site has most recently been under an employment generating use it is not within a designated employment zone. With regards to the principle of the development it is further noted the principle of a residential use of the site has been established through extant planning permission 210312.
- 17.4 Taking into account the above, the proposal is considered acceptable in principle.

Design and Heritage Impacts

- 17.5 Core Strategy policy ENV1 seeks to conserve and enhance Colchester's natural and historic environment. Core Strategy policy UR2 seeks to promote and secure high quality design. Development Policies DP1 and DP12 set out design criteria that new development must meet. These require new development to be of a high quality and respect the character of the site and its context. Development Policy DP14 seeks to protect, preserve and enhance the historic environment. Section 1 Policy SP7 further states that all new development should respond positively to local character and protect and enhance assets of historical value.
- 17.6 According to Planning (Listed Buildings and Conservation Areas) Act (1990), Section 66(1) and 72(1), planning decisions shall have special regard to the desirability of preserving listed buildings and their setting and the desirability of preserving or enhancing the character or appearance of Conservation Areas. At the same time, the National Planning Policy Framework's (2021) Paragraph 200 determines that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
- 17.7 The proposal includes external works, however the works proposed are minor in nature, being limited to alterations to existing fenestration and the application of cedar cladding to the front elevation of Unsworth House. The proposed new openings are sympathetic to the existing buildings in terms of their form and proportions and while the proposed cedar cladding is arguably of a more contemporary character than the existing building, its application is relatively limited and it is not considered to have any adverse impact on the character or appearance of the existing building.
- 17.8 The existing buildings do not have any historic or architectural merit and are neutral contributors to the character and appearance of the Conservation Area and the setting of nearby listed buildings. With the proposed limited external changes not affecting the character of the buildings or altering their contribution to their surroundings, there are also no concerns from a heritage perspective and the scheme is held to meet the statutory test for the preservation or enhancement of the Conservation Area, listed buildings, and their settings.

Neighbouring Amenity

- 17.9 Development Policy DP1 states that all development must be designed to a high standard and avoid unacceptable impacts on amenity. This includes protecting existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, pollution (including light and odour pollution), daylight and sunlight. This policy is further supported by Section 1 Policy SP7, which requires all new development to protect the amenity of existing residents. The adopted Supplementary Planning Document (SPD) the Essex Design Guide also provides guidance on the safeguarding of residential private amenity.
- 17.10 With regard to overlooking it is worth noting that the site is in a dense urban area, where a degree of mutual overlooking is to be reasonably expected. Notwithstanding this it is not considered the proposal will result in any harmful overlooking, with there a good degree of separation between the first floor windows of Unsworth House and the dwelling's fronting Hythe Hill. In this regard it is also worth noting that the form of openings proposed and the internal layout of this scheme is not considered materially different to the previous approval in terms of the potential for any angles of overlooking, or the nature or intensity of such.
- 17.11 Taking into account the relatively small scale nature of the development and the physical and functional relationship of the building to neighbouring properties it is also not anticipated the proposal will give rise to any undue noise or disturbance that would be harmful to neighbouring amenity.
- 17.12 Taking into account the nature of the proposed works there are also no concerns the proposal will have any adverse impact on neighbouring properties with regards to loss of light or outlook.

Occupier Amenity

- 17.13 Core Strategy Policy UR2 provides that the Borough Council will secure high quality and inclusive design in all developments to make better places for both residents and visitors. Development Policy DP1 states that all development must be designed to a high standard, while DP12 states that that residential development will be guided by high standards for design and layout, including providing acceptable levels of daylight to all habitable rooms. Section 1 Policy SP7 further requires all new development to protect the amenity of future residents.
- 17.14 All habitable rooms are served by at least one external opening and it is considered the internal layout and form of openings proposed will ensure adequate levels of natural light to all habitable rooms.
- 17.15 It is noted that room 8 and room 9 are to receive natural light via rooflights, with only high level outlook. In addition to this it is noted that some concerns have also been raised by Private Sector Housing about the room sizes falling below national standards.

- 17.16 With regards to the issue of the outlook of rooms 8 and 9 it is however noted that the internal layout of Josephs Court provides these rooms with easy access to a shared kitchen/living area with two windows providing a southerly outlook over the proposed amenity area. Furthermore, with regards to the both the above issues, but most significantly with regards to room size, it is important to note that the occupation of the accommodation is proposed to be limited to students and the applicant has agreed a condition to this effect. This is considered significant as it is recognised that student accommodation is often more compact than traditional open market housing, reflecting the common needs of students and the more transient nature of occupation.
- 17.17 The proposal has also been revised since first submitted to provide a communal living area on the ground floor of Unsworth House, for the benefit of the amenity of future occupiers.
- 17.18 The proposal also includes a formal external amenity space of around 60m², in addition to the site being in close proximity to a number of local amenities, including Old Heath Recreation Ground.
- 17.19 Taking into account all the above factors, the proposed development is considered to provide acceptable levels of amenity for the intended future occupiers, on balance.

Flood risk

- 17.20 With regards to flood risk on site the submitted Flood Risk Assessment details that Josephs Court is located within Flood Zone 2 and 1, while Unsworth House is located in Flood Zone 3 and 2 - although the site is in an area benefiting from flood defences.
- 17.21 National policy on meeting the challenge of climate change, flooding and coastal change is contained in the National Planning Policy Framework (the Framework). Paragraph 155 of the Framework sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future) and that development will normally be directed towards areas with a lower risk of flooding through the application of the Sequential Tests and subsequently where applicable the Exception Test.
- 17.22 Applications for minor development and changes of use should not however be subject to the Sequential or Exception Tests. Paragraph 164 of the NPPF (2019) states 'Applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments'. Paragraph 033 (Reference ID: 7-033-20140306) of the PPG reiterates that the Sequential Test does not need to be applied for individual developments on sites which have been allocated in development plans through the Sequential Test, or for applications for minor development or change of use (except for a change of use to a caravan, camping or chalet site, or to a mobile home or park home site).

- 17.23 Acceptability of the proposal is therefore considered to hinge on the Flood Risk Assessment submitted and that this document provides sufficient analysis of the risk and is able to demonstrate the development can be made appropriately flood resistant and resilient, any residual risk can be safely managed and safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
- 17.24 Notably finished ground floor levels have been proposed at a minimum of 4m AOD. This is above the 0.5% (1 in 200) annual probability flood level including climate change and therefore dry in this event. In addition, the site benefits from the presence of existing flood defences and the actual risk is considered to be low.
- 17.25 Whilst a degree of residual risk remains from extreme events and potential breach events it is considered the low level of residual risk can be mitigated by the production of a standalone Flood Warning and Evacuation Emergency Plan, in accordance with the recommendations made in the submitted Flood Risk Assessment. The production of such a document, in addition to ensuring copies are made available in perpetuity for future occupiers of the development, can be controlled by way of condition.
- 17.26 While the Environment Agency have not offered comment on this application they did comment on the previous approval for residential accommodation on the site, raising no objections. The scheme considered here does have differences from the previously approved scheme however it is not considered there is any material difference in terms of flood risk to future occupiers taking into account the accommodation proposed, and with finished floor levels set no lower than previously approved.
- 17.27 Taking into account the above the proposal is considered acceptable with regards to flood risk.

Ecology

- 17.28 Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. Development Plan Document Policy DP21 seeks to conserve or enhance biodiversity and geodiversity in the Borough. New developments are required to be supported by ecological surveys where appropriate, minimise the fragmentation of habitats, and maximise opportunities for the restoration, enhancement and connection of natural habitats. Policy ENV1 states that the Borough Council will conserve and enhance Colchester's natural and historic environment. Conserving and enhancing the natural environment is also a core principle of the NPPF.
- 17.29 In this instance, the proposal has been considered in line with Natural England's Standing Advice. The application site is not considered to be a suitable habitat for protected species given the urban location and any areas of soft landscaping being primarily regularly mown grass. As such the proposal is considered to be acceptable in this regard with no adverse ecology impacts anticipated.

Off-site impacts on Protected Areas

- 17.30 Under the Conservation of Habitats and Species Regulations 2017 (commonly referred to as the Habitat Regulations) a Habitat Regulations Assessment (HRA) is required for land use plans and for planning applications, which are likely to have significant effects on a Habitat Site. Student accommodation has an impact and therefore this scheme must be assessed on that basis.
- 17.31 Population growth in Essex is likely to significantly affect Habitat Sites through increased recreational disturbance in-combination with other Local Plans. Consequently, in partnership with Natural England, the governments advisor on the natural environment, and other LPAs in Essex, Colchester Borough Council is preparing a Recreational disturbance Avoidance and Mitigation Strategy (RAMS) for the Essex Coast. The RAMS identifies necessary measures to avoid and mitigate likely significant effects from recreational disturbance in-combination with other plans and projects. The RAMS sets out a tariff of £127.31, which applies to residential development within the Zone of Influence (Zoi).
- 17.32 The Essex Coast RAMS SPD states however it would not be appropriate to expect the RAMS tariff of (£127.30) for each unit of student accommodation. This would not be a fair and proportionate contribution. Nevertheless, Natural England has advised that there needs to be a financial contribution towards the RAMS as there is likely to be a residual effect from student accommodation development even though it will likely only be people generated disturbance rather than dog related. Natural England has advised that the tariff could be on a proportionate basis. Taking into account the guidance outlined in The Essex Coast RAMS SPD it is considered appropriate to seek a financial contribution in line with the Essex Coast RAMS but applying a conversion rate of 2.5 student accommodation units being equivalent to a unit of residential accommodation, to ensure a fair and proportionate contribution.
- 17.33 In accordance with the Habitats Regulations a Habitats Regulation Assessment has been undertaken and concludes that subject to a proportionate financial contribution being secured in line with the Essex Coast RAMS and adopting the conversion rate outlined, the project will not have an Adverse Effect on the Integrity of the European sites included within the Essex Coast RAMS. Natural England have been consulted and raised no objection to the proposal - including the conversion rate outlined – subject to securing appropriate mitigation. Applying the relevant conversion rate, a contribution figure of £560.12 is calculated and delegated authority is sought to oversee the securing of such a contribution via an appropriate mechanism.

Parking and Highways Safety

- 17.34 Core Strategy policy TA1 seeks to improve accessibility and change travel behaviour and encourages development within highly accessible locations to reduce the need to travel. Core Strategy Policy TA2 promotes walking and cycling as an integral part of sustainable means of transport. Policy TA4 seeks to manage the demand for car use. Development Policy DP17 states that all developments should seek to enhance accessibility for sustainable modes of transport by giving priority to pedestrians, cycling and public transport access. Policy DP19 states that a lower standard of parking provision may be acceptable where it can be demonstrated that there is a high level of access to services. The NPPF focuses on the importance of providing new development in accessible and sustainable locations so that it minimizes reliance on the private car. The NPPF advises that development proposals should only be refused on transport grounds where the residual cumulative impacts of development are severe upon the network or there would be an unacceptable impact on highway safety.
- 17.35 The Highway Authority has assessed the scheme and are satisfied that the scheme is acceptable in highway safety terms subject to conditions.
- 17.36 While there is no specific parking standard for student accommodation it is considered reasonable to assume that car ownership amongst students will be proportionally lower than in the general population. The site is also in a highly accessible location, in walking distance to essential services, in addition to being in a location with easy access to a number of bus routes and in this context the proposed 5 parking spaces are considered adequate.
- 17.37 Cycle parking has been proposed and the site is capable of comfortably accommodating suitable cycle parking provisions. To ensure that any cycle parking provisions are secure, convenient and covered it is recommended an appropriately worded condition is imposed requiring exact details to be submitted for agreement, and provisions thereafter made in accordance with details agreed.
- 17.38 In conclusion on the above, there are no concerns from a highways safety or capacity perspective and the proposal is considered to make suitable provision for car parking, while appropriate cycle parking can be secured by condition.

Climate Emergency

- 17.39 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030.
- 17.40 The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy 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. This report has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF.

- 17.41 It is important to consider how this application will contribute to a low carbon future for the area. The site is in a highly accessible location, in a position ideal for walking and cycling be that to local shops and services. The scheme also provides the reuse of existing buildings with embodied carbon and a good level of cycle parking, and the provision of EV charging facilities on-site to facilitate the uptake of ultra-low emission vehicles can be controlled by way of condition. Taken as a whole, it is considered the scheme contributes towards the Council's low carbon aims and the development comprises sustainable development.

Other Matters

- 17.42 Concerns have been raised in representations received about the removal of a tree on site. It is understood that the removal of this tree was granted approval under works to trees in a conservation area application 212630. The decision granted permission for the removal of two trees due to ivy take over and one tree causing damage to a wall, and cracking to a building.
- 17.43 The proposal site lies within an area of archaeological interest and accordingly the Council's Archaeological Advisor was consulted on the proposal. The Archaeological Advisor was however satisfied that no material harm will be caused to below-ground archaeological interest and there will be no requirement for an archaeological investigation.

18.0 Conclusion and Planning Balance

- 18.1 To summarise, the scheme will bring a vacant building back into use, on a site which is sustainably located, close to key facilities including shops and transports nodes. The scheme will also contribute to the Council's land supply and will help meet the ever-growing demand for student accommodation. The scheme is considered to preserve neighbouring amenity, while ensuring acceptable levels of amenity for future occupiers and any residual flood risk is appropriately managed. The scheme will also not adversely affect the character and appearance of the Conservation Area or the setting of neighbouring listed buildings. The scheme is therefore held to meet the social, economic and environmental roles of sustainable development as set out in the NPPF 2021. Officers consider that the Planning Balance convincingly tips in favour of approval in this instance.

19.0 Recommendation to the Committee

19.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to a proportionate financial contribution to the Essex Coast RAMS being secured and the imposition of the following conditions:

1. ZAA - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. ZAM – To Accord with Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Location Plan and Drawing Numbers

21-04/UH&JC_THAP REV D

21-04/JC_FP_PROP REV E

21-04/UH_FF_PROP REV F

21-04/UH_GF_PROP REV G

21-04/UH_ELF_PROP REV B

21-04/UH_ELR_PROP REV A

21-04/UH_ELS_PROP REV A

and the submitted Flood Risk Assessment (Ref: REF: 2615/RE/12-20/01 REVISION A, Dated: March 2021).

Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved and in the interests of the safety of any future occupiers, with the site in an area at risk of flooding.

3. Non Standard Condition - Use

The development hereby approved is to be used as sui generis student accommodation only and for no other purpose. Occupation shall be restricted to university students, or students of other tertiary institutions, whilst undertaking studies at their respective institutions.

Reason: For the avoidance of doubt as to the scope of the permission, as this is the basis on which the application has been considered and as unrestricted occupation or use of the accommodation in the form proposed would likely not be acceptable and would require further consideration at such a time as it may be proposed.

4. Non Standard Condition - Cycle Parking

Prior to the first occupation of the proposed development, details of the provision for the storage of bicycles sufficient for all occupants and visitors to that development, of a design that shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.

Reason: To promote the use of sustainable means of transport.

5. Non Standard Condition - EV Charging

Prior to the first occupation of the proposed development EV charging point infrastructure shall be provided to serve the development, in accordance with a scheme which shall have previously been submitted to, and approved in writing by, the Local Planning Authority. A minimum of 1 charging point should be provided.

Reason: In the interests of sustainability and air quality by encouraging the use of ultra-low emission vehicles.

6. Non Standard Condition - Public Transport Information

The development shall not be occupied until such time as details of public transport facilities (timetables and locations of bus stops etc), walking and cycling being prominently displayed in public or communal areas and regularly updated and maintained in perpetuity within the site, which shall be approved by Local Planning Authority.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

7. Non Standard Condition - Flood Plan

Prior to the first occupation of the development hereby approved a proportionate standalone Flood Warning and Evacuation Emergency Plan shall be submitted to and approved, in writing, by the Local Planning Authority. The submitted Emergency Plan shall be in accordance with the relevant recommendations made in the submitted Flood Risk Assessment and copies shall remain available in perpetuity for future occupiers of the development.

Reason: In the interests of mitigating the impact of flood risk on the future occupants of the student accommodation

8. Non Standard Condition - Unexpected Contamination

In the event that historic land contamination is found at any time when carrying out works in relation to the development, it must be reported in writing immediately to the Local Planning Authority and all development shall cease immediately. Development shall not re-commence until such times as an investigation and risk assessment has been submitted to and approved in writing by the Local Planning Authority, and where remediation is necessary, a remediation scheme has been submitted to and approved in writing by the Local Planning Authority. Development shall only re-commence thereafter following completion of measures identified in the approved remediation scheme, and the submission to and approval in writing of a verification report. This must be conducted in accordance with all relevant, current, best practice guidance,

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including the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

The Local Planning Authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination. The applicant is responsible for the safe development and safe occupancy of the site.

Reason: Not all of the site was accessible during a previous site walkover.

19.0 Informatives

19.1 The following informatives are also recommended:

1.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.

2.Informative - Asbestos in Existing Buildings

In accordance with the applicant's obligations under The Control of Asbestos Regulations 2012, prior to undertaking the permitted development works, an appropriate refurbishment/pre-demolition asbestos survey should be undertaken, by suitable qualified and experienced persons, and any relevant identified material managed, removed safely, and appropriately disposed of at a suitable waste acceptance facility. The enforcing authority for this type of work is the Health and Safety Executive and it is recommended that you contact them directly to discuss their requirements.

Reason – Environmental Protection wish to ensure that no new contamination pathways are created by the proposed development.

3.Informative - Fire Safety

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

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to life, business continuity and limit the impact of fire on the environment and to the local economy.

4.Informative - 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



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Item No: 7.4

Application: 213353

Applicant: Colchester Borough Council

Agent: Mr Martin Leek

Proposal: Demolition of existing baling shed and construction of new baling shed.

Location: Shrub End Depot, 221 Shrub End Road, Colchester, CO3 4SA

Ward: Prettygate

Officer: Mr Daniel Cooper

Recommendation: Approval subject to recommended conditions

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the applicant is Colchester Borough Homes Ltd.

2.0 Synopsis

- 2.1 This application seeks consent for the demolition of the existing bailing shed to be replaced with a new replacement bailing shed. The proposal is not considered to impact upon the character and appearance of the area of highway safety.
- 2.2 The application is subsequently recommended for approval.

3.0 Site Description and Context

- 3.1 The application site relates to a well-established recycling/refuse centre located in Shrub End.

4.0 Description of the Proposal

- 4.1 The proposal is for the replacement of the existing bailing shed with a new bailing shed at the same location and with a slightly larger footprint.

5.0 Land Use Allocation

- 5.1 Employment Land

6.0 Relevant Planning History

- 6.1 F/COL/05/1475 - Liquid Petroleum Gas (LPG) storage facility, waste transfer site, recyclable material handling facility, staff car parking area and ancillary works including lighting, small works team workshop, compound and vehicle access. Approved 25/10/2005.
- 6.2 210492 – The erection of 4 canopies to replace temporary canopies. Approved 28/5/2021.

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) and National Planning Policy for Waste 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 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP5 Employment
- SP6 Infrastructure & Connectivity
- SP7 Place Shaping Principles

Appendix A of the Section 1 Local Plan outlines those policies in the Core Strategy Focused Review 2014 which are superseded. Having regard to the strategic nature of the Section 1 Local Plan, policy SD2 of the Core Strategy is fully superseded by policies SP5 and SP6 of the Section 1 Local Plan. Policies SD1, H1 and CE1 of the Core Strategy are affected in part. The hierarchy elements of policies SD1, H1 and CE1 remain valid, as given the strategic nature of policies SP3, SP4 and SP5 the only part of the policies that are superseded is in relation to the overall requirement figures.

The final section of Policy SD1 which outlines the presumption in favour of sustainable development is superseded by policy SP1 of the Section 1 Local Plan as this provides the current stance as per national policy.

All other Policies in the Core Strategy, Site Allocations and Development Management Policies and all other adopted policy which comprises the Development Plan remain relevant for decision making purposes.

7.3 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
CE1 - Centres and Employment Classification and Hierarchy
CE2 - Mixed Use Centres
CE3 - Employment Zones
UR2 - Built Design and Character
ENV1 - Environment
ER1 - Energy, Resources, Waste, Water and Recycling

7.4 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
DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
DP17 Accessibility and Access
DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

- 7.5 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 CE1 Mixed Use Sites

- 7.6 The area is not subject to a Neighbourhood Plan.

- 7.7 Submission Colchester Borough Local Plan 2017-2033:
The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan is at an advanced stage having undergone examination hearing sessions in April 2021 and recent consultation on modifications. Section 2 will be afforded some weight due to its advanced stage. The exact level of weight to be afforded will be considered on a site-by-site basis reflecting the considerations set out in paragraph 48 of the NPPF. Proposals will also be considered in relation to the adopted Local Plan and the NPPF as a whole.

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.

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

External Materials in New Developments
EPOA Vehicle Parking Standards
Sustainable Construction

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 - The Highway Authority does not object to the proposals as submitted. Recommended Informative:
Informative1: 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.

- 8.3 Minerals and Waste – No objections and notes that the proposed development will increase waste management capacity.

- 8.4 Environmental Protection - Should planning permission be granted Environmental Protection wish to make the following comments:-

Should permission be granted for development, Environmental Protection recommends inclusion of the following advisory note: -

NOTE: Demolition and Construction

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.

ZPD - Limits to Hours of Work

No demolition or construction work shall take outside of the following times;

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

ZGR - *Light Pollution for Minor Development*

Any lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) shall fully comply with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ2 RURAL, SMALL VILLAGE OR DARK URBAN AREAS.

Reason: In order to safeguard the amenity of the surrounding area by preventing the undesirable, disruptive and disturbing effects of light pollution.

- 8.5 Contaminated Land Officer – No objections subject to the following precautionary informatives:

Informative - Ground Gas Risks

The applicant is advised that the site to which this planning permission relates is recorded as being within 250 metres of filled land ('Shrub End'). Prior to commencement of the permitted development the applicant is therefore advised to satisfy themselves that there are no unacceptable risks to the permitted development from any ground gases.

The Local Planning Authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination. The applicant is responsible for the safe development and safe occupancy of the site.

Reason - The site lies within 250m of a former (or suspected) landfill site and Environmental Protection wish to ensure that development only proceeds if it is safe to do so. This informative should not be read as indicating that there is any known danger from landfill gas in this locality.

Informative - Asbestos in Existing Buildings

In accordance with the applicant's obligations under The Control of Asbestos Regulations 2012, prior to undertaking the permitted development works, an appropriate pre-demolition asbestos survey should be undertaken, by suitable qualified and experienced persons, and any relevant identified material managed, removed safely, and appropriately disposed of at a suitable waste acceptance facility. The enforcing authority for this type of work is the Health and Safety Executive and it is recommended that you contact them directly to discuss their requirements.

Reason – insufficient detail has been supplied in support of this application and the potential presence of asbestos containing materials (ACM's) on the site therefore cannot be discounted and Environmental Protection wish to ensure that no new contamination pathways are created by the proposed development.

- 8.6 Archaeological Officer – No grounds for refusal however, site is located close to potential archaeological assets therefore the following condition will be required:

No works shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation that has been submitted to and approved, in writing, by the Local Planning Authority.

The scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
- b. The programme for post investigation assessment.
- c. Provision to be made for analysis of the site investigation and recording.
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- e. Provision to be made for archive deposition of the analysis and records of the site investigation.
- f. Nomination of a competent person or persons/organisation to undertake the works.

The site investigation shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority. The development shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the

development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance Adopted Development Policy DP14 (2010, Revised 2014) and the Colchester Borough Adopted Guidance titled Managing Archaeology in Development (2015).

9.0 Parish Council Response

9.1 Non Parished

10.0 Representations from Notified Parties

10.1 None received.

11.0 Parking Provision

11.1 The proposal does not change the parking provision on site.

12.0 Accessibility

12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. In terms of the proposal, the bailing shed does not include any steps. Based on the submitted information, the scheme is not considered to cause discrimination in terms of The Equality Act.

13.0 Environment and Carbon Implications

13.1 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 National Planning Policy 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. The consideration of this application has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that as the proposal makes provision for the recycling of waste, on balance the application is considered to represent sustainable development.

14.0 Open Space Provisions

14.1 Not applicable

15.0 Air Quality

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

16.0 Planning Obligations

- 16.1 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.

17.0 Report

Principle

- 17.1 The site relates to an existing recycling and waste processing centre, which is very well established within Colchester. While the proposal would not result in any expansion of the recycling/waste centre or additional activity, it would assist the recycling centre in continuing to meet the needs of local customers by assisting with waste management overall and increasing capacity, which is considered to be in accordance with the principles of the NPPF and National Planning Policy for Waste.

Impact on Residential Amenity

- 17.2 Development Policy DP1 states that all development must be designed to a high standard and avoid unacceptable impacts on amenity. This includes protecting existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, pollution (including light and odour pollution), daylight and sunlight. The adopted Supplementary Planning Document (SPD) the Essex Design Guide also provides guidance on the safeguarding of residential private amenity.
- 17.3 Given the site is already in active use as a waste sorting and recycling centre and the proposal is for a replacement (albeit larger) bailing shed, impact upon residential amenity is considered to be minimal. The new bailing shed will not result in significant additional vehicle movements and is located a good distance away from the nearest neighbouring dwelling. In addition, the new bailing shed will be in the same location as the existing therefore, additional impact through introduction of new built form will be minimal and not incongruous with the existing setting. Given the above and nature of the proposal, the proposal is considered to be acceptable in this regard.

Impact upon Surrounding Area

- 17.4 Core Strategy policy ENV1 seeks to conserve and enhance Colchester's natural and historic environment. Core Strategy policy UR2 seeks to promote and secure high quality design. Development Policies DP1 and DP12 set out design criteria that new development must meet. These require new development to be of a high quality and respect the character of the site and its context. Core Strategy policy UR2 seeks to enhance Colchester's unique historic character and protects features which contribute positively to the character of the built environment from demolition or inappropriate development.

- 17.5 The scheme will replace a dilapidated structure that has come to the end of its life and is not considered to be of good quality due to its age and condition. The replacement bailing shed will be located within the existing site at the same location as the existing bailing shed. Wider public views will be limited to those approaching the site by road from the West heading East, with the majority of other angles well screened from the public. Therefore, the proposal is not considered to create a harmful impact upon the street scene or the wider area. On balance, the proposal is considered to be of an acceptable design and appearance is in compliance with the aforementioned policies.

Highway Safety and Parking

- 17.6 Core Strategy policy TA1 seeks to improve accessibility and change travel behaviour and encourages development within highly accessible locations to reduce the need to travel. Core Strategy Policy TA2 promotes walking and cycling as an integral part of sustainable means of transport. Policy TA4 seeks to manage the demand for car use. Development Policy DP17 states that all developments should seek to enhance accessibility for sustainable modes of transport by giving priority to pedestrians, cycling and public transport access. Paragraph 109 of the NPPF confirms development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Policy TA5 of the Core Strategy 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.
- 17.7 In this instance, the proposal is located away from the access road and designated parking. The Highway Authority has been consulted and does not raise an objection to the scheme. As such, it is considered that the proposed development would accord with relevant development plan policies and national planning policy guidance set out in the Framework.

Contamination

- 17.8 Development Policy DP1 requires all development to avoid unacceptable environmental impacts. The Council's Contaminated Land Officer has not objected or identified any significant risks and has recommended precautionary informatives to be included as part of this approval.

Landscape

- 17.9 The Council's Landscape Officer has not objected to the proposal however, it is important to ensure that the new bailing shed does not harm the landscape character of the surrounding area. While it is stated above that the new shed will replace the existing at the same location, it is noted that the rear (West) boundary is in a poor condition with a chain link fence that has fallen down in some sections. The applicant has verbally advised that they may want to replace the existing fence to secure the site with new boundary treatment therefore a

condition shall be included for details of this to be submitted in writing to the Local Planning Authority to ensure appropriate design and materials are used.

18.0 Conclusion

18.1 To summarise, the proposal is considered to be acceptable and in conformity with relevant plan policies and is consequently recommended for approval.

19.0 Recommendation to the Committee

19.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

1. ZAA - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. ZAM - *Development to Accord With Approved Plans*

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 003 REV P01, 004 REV P01 dated October 2021, 611 REV P04 and 612 REV P04 dated September 2021.

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

3. ZBB - Materials As Stated in Application

The external materials to be used shall be those specified on the submitted application form and drawings, unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that materials are of an acceptable quality appropriate to the area

4. Z00 – Archaeological

No works shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation that has been submitted to and approved, in writing, by the Local Planning Authority.

The scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
 - b. The programme for post investigation assessment.
 - c. Provision to be made for analysis of the site investigation and recording.
 - d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 - e. Provision to be made for archive deposition of the analysis and records of the site investigation.
 - f. Nomination of a competent person or persons/organisation to undertake the works.
- The site investigation shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority. The

development shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance Adopted Development Policy DP14 (2010, Revised 2014) and the Colchester Borough Adopted Guidance titled Managing Archaeology in Development (2015).

5. ZPD - Limits to Hours of Work

No demolition or construction work shall take outside of the following times;

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

6. ZGR - *Light Pollution for Minor Development*

Any lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) shall fully comply with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ2 RURAL, SMALL VILLAGE OR DARK URBAN AREAS.

Reason: In order to safeguard the amenity of the surrounding area by preventing the undesirable, disruptive and disturbing effects of light pollution.

7. Z00 – Landscape Boundary Treatments

No boundary fence, wall or any other boundary treatment shall be constructed until a scheme of enclosure has been submitted to and agreed, in writing, by the Local Planning Authority. This scheme shall include details of the boundary enclosure to the site, specifying the type and height of fencing in a green RAL colour complementary to the wider rural landscape. The implementation of the enclosure works shall comply with the recommendations set out in the relevant British Standards current at the time of submission. The approved landscape scheme shall be carried out in full prior to the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any enclosure which is removed or seriously damaged shall be replaced without delay, like for like, with enclosure of similar specification, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details.

Reason: In order to ensure that there is a sufficient landscaping scheme for the relatively small scale of this development where there are areas to be laid out but there is insufficient detail within the submitted application.

20.0 Informatives

1. INS – Ground Gas Risks

The applicant is advised that the site to which this planning permission relates is recorded as being within 250 metres of filled land ('Shrub End'). Prior to commencement of the permitted development the applicant is therefore advised to satisfy themselves that there are no unacceptable risks to the permitted development from any ground gases.

The Local Planning Authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination. The applicant is responsible for the safe development and safe occupancy of the site.

Reason - The site lies within 250m of a former (or suspected) landfill site and Environmental Protection wish to ensure that development only proceeds if it is safe to do so. This informative should not be read as indicating that there is any known danger from landfill gas in this locality.

2. INS – Asbestos in Existing Buildings

In accordance with the applicant's obligations under The Control of Asbestos Regulations 2012, prior to undertaking the permitted development works, an appropriate pre-demolition asbestos survey should be undertaken, by suitable qualified and experienced persons, and any relevant identified material managed, removed safely, and appropriately disposed of at a suitable waste acceptance facility. The enforcing authority for this type of work is the Health and Safety Executive and it is recommended that you contact them directly to discuss their requirements.

Reason – insufficient detail has been supplied in support of this application and the potential presence of asbestos containing materials (ACM's) on the site therefore cannot be discounted and Environmental Protection wish to ensure that no new contamination pathways are created by the proposed development.

3. INS – Archaeological

PLEASE NOTE The submitted scheme of archaeological investigation should be in accordance with an agreed brief. This can be procured beforehand by the developer from Colchester Borough Council. Please see the Council's website for further information: www.colchester.gov.uk

4. 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.

5. 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.

Material Planning Considerations

The National Planning Policy Framework highlights that the planning system is plan-led and reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require (in law) that planning applications “must be determined in accordance with the development plan, unless material considerations indicate otherwise”.

Where our Development Plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable development unless otherwise specified.

The following approach should be taken in all planning decisions:

- Identify the provisions of the Development Plan which are relevant to the decision and interpret them carefully, looking at their aims and objectives
- Identify and consider relevant material considerations for and against the proposal
- Consider whether or not the proposal accords with the Development Plan and, if not, whether material considerations warrant a departure from the Development Plan.

A material planning consideration is one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission). The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.

When applying material considerations the Committee should execute their decision making function accounting for all material matters fairly, reasonably and without bias. In court decisions (such as *R v Westminster CC ex-parte Monahan* 1989) it has been confirmed that material considerations must relate to the development and use of land, be considered against public interest, and be fairly and reasonably related to the application concerned.

Some common material planning considerations which the Planning Committee can (and must) take into consideration in reaching a decision include:-

- Planning policies, including the NPPF and our own Development Plan
- Government guidance, case law, appeal decisions, planning history
- Design, scale, bulk, mass, visual appearance and layout
- Protection of residential amenities (light, privacy, outlook, noise or fumes)
- Highway safety and traffic issues, including parking provisions
- Heritage considerations; archaeology, listed buildings and conservation areas
- Environmental issues; impacts on biodiversity, trees and landscape, flooding
- Economic issues such as regeneration, job creation, tourism and viability
- Social issues; affordable housing, accessibility, inclusion, education, recreation

The above list is not exhaustive

The following are among the most common issues that are **not** relevant planning issues and cannot be taken into account in reaching a decision:-

- land ownership issues; private property rights, boundary disputes and covenants
- effects on property values
- loss of a private view
- identity of the applicant, their character, previous history, or possible motives
- moral objections to a development, such as may include gambling or drinking etc
- competition between commercial uses

- matters specifically controlled through other legislation

Strong opposition to large developments is a common feature of the planning process but whether or not a development is popular or unpopular will not matter in the absence of substantial evidence of harm (or support from the policies within the Development Plan). It is the quality of content, not the volume that should be considered.

The law also makes a clear distinction between the question of whether something is a material consideration, and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case but provided it has given regard to all material considerations, it is for the Council to decide what weight is to be given to these matters. Subject to the test of “reasonableness”, the courts (or the Local Government Office) will not get involved in the question of weight. Weight may be tested at appeal.

Planning Obligations

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are:

1. necessary to make the development acceptable in planning terms
2. directly related to the development, and
3. fairly and reasonably related in scale and kind.

These legal tests are set out as statutory tests in the Community Infrastructure Levy Regulations and as policy tests in the National Planning Policy Framework.

Human Rights, Community Safety and Equality and Diversity Implications

All applications are considered against the background and implications of the:

- Human Rights Act 1998
- Crime and Disorder Act 1998 (and in particular Section 17)
- Equality Act 2010
- Colchester Borough Council Equality Impact Assessment (EIA) Framework

In order that we provide a flexible service that recognises people's diverse needs and provides for them in a reasonable and proportional way without discrimination.

Using Planning Conditions or Refusing Planning Applications

The Planning System is designed to manage development, facilitating (not obstructing) sustainable development of a satisfactory standard. The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (PPG) reinforce this, stating that “Planning should operate to encourage and not act as an impediment to sustainable growth”. Therefore, development should be considered with a positive approach. Where a condition could be used to avoid refusing permission this should be the approach taken.

The PPG sets out advice from the Government regarding the appropriate use of conditions, and when decision makers may make themselves vulnerable to costs being awarded against them at appeal due to “unreasonable” behaviour. Interpretation of court judgments over the years is also an important material consideration. Reasons why a Planning Authority may be found to have acted unreasonably at appeal include lack of co-operation with applicants, introducing fresh evidence at a later stage, introducing a new reason for refusal, withdrawal of any reason for refusal or providing information that is shown to be manifestly inaccurate or untrue.

In terms of the Planning Committee, Members are not bound to accept the recommendations of their officers. However, if officers’ professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority.

Whenever appropriate, the Council will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed. Therefore, before refusing any application the Planning Committee should consider whether it is possible to resolve any concerns by use of conditions before refusing permission. Failure to do so on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead.

Any planning condition imposed on a development must pass 6 legal tests to be:

- | | |
|--|-------------------------|
| 1. Necessary | 2. Relevant to planning |
| 3. Relevant to the development permitted | 4. Reasonable |
| 5. Precise | 6. Enforceable |

Unless conditions fulfil these criteria they are challengeable at appeal as ultra vires (i.e. their imposition is beyond the powers of local authorities).

If no suitable condition exists that can satisfy these tests a refusal of planning permission may then be warranted. In considering the reasons for that refusal, the Council must rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason. In all matters relating to an application it is critically important for decision makers to be aware that the courts will extend the common law principle of natural justice to any decision upon which they are called to adjudicate. The general effect of this is to seek to ensure that the Council acts fairly and reasonably in executing our decision making functions, and that it is evident to all that we have done so.



Colchester Borough Council Development Management

Highway Safety Issues

When considering planning applications, Colchester Borough Council consults Essex County Council Highways Authority on all highway safety issues. They are a statutory consultee, and a recognised expert body. This means that they must be consulted on planning applications, by law, where the proposed development will involve a new access to the highway network, create “material” changes in traffic movement, or where new roads are to be laid out. Where developments affect the trunk road network Highways England become a statutory consultee.

When the Highway Authority is consulted they are under a duty to provide advice on the proposal in question as the experts in highway matters. Their opinion carries significant weight upon which the Local Planning Authority usually relies. Whilst this Council could form an opinion different to the Highway Authority, it would need to provide counter-evidence to justify an argument that the expert body was incorrect. That evidence would need to withhold challenge in appeal or through the courts. Failure to do so would result in a costs award against the Council for acting unreasonably (see other notes pages within this Agenda). Similarly, if the Highway Authority were unable to support their own conclusions they may face costs being awarded against them as the statutory consultee.

Officers of Essex County Council Highway Authority conduct their own site visits to each site in order to take account of all highway safety matters. They also consult their own records and databases, traffic flow information and any other relevant material that may be available, including any submitted documents within planning applications.

Parking Standards

Although the Highway Authority has some remit over parking in so far as it relates to highways safety issues, parking itself is a matter for the Local Planning Authority to determine against national policy and our own adopted standards. Like the other Essex Authorities, Colchester Borough Council has adopted the Essex Planning Officer’s Association Parking Standards. These standards set out that:

- A parking space should measure 2.9 metres by 5.5 metres. A smaller size of 2.5 metres by 5 metres is acceptable in special circumstances.

For residential schemes:

- The residential parking standard for two bedroom flats and houses is two spaces per unit.
- The residential parking standard for one bedroom units is one space per unit.
- A garage should have an internal space of 7 metres by 3 metres. Smaller garages do not count towards the parking allocation.
- One visitor space must be provided for every four units.

Residential parking standards can be relaxed in areas suitable for higher density development and where there is good walkable access to shops, service and public transport, such as town centres.



Colchester Borough Council Environmental Control

Advisory Notes for the Control of Pollution during Construction and Demolition Works

The following information is intended as guidance for applicants/developers and construction firms. In order to minimise potential nuisance to nearby existing residents caused by construction and demolition works, Environmental Control recommends that the following guidelines are followed. Adherence to this advisory note will significantly reduce the likelihood of public complaint and potential enforcement action by Environmental Control.

Best Practice for Construction Sites

Although the following notes are set out in the style of planning conditions, they are designed to represent the best practice techniques for the site. Therefore, failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974)

Noise Control

1. No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holiday days.
2. The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:1984.
3. Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
4. Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

Emission Control

1. All waste arising from the ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
2. No fires to be lit on site at any time.
3. On large scale construction sites, a wheel-wash facility shall be provided for the duration of the works to ensure levels of soil on roadways near the site are minimised.
4. All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Best Practice for Demolition Sites

Prior to the commencement of any demolition works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Planning & Protection Department. In addition to the guidance on working hours, plant specification, and emission controls given above, the following additional notes should be considered when drafting this document: -

Noise Control

If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Planning & Protection prior to the commencement of works.

The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.

Emission Control

All waste arising from the demolition process to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.

The Town and Country Planning (Use Classes) Order 1987 (as amended)

Class A1. Shops

Use for all or any of the following purposes—

- (a) for the retail sale of goods other than hot food,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other cold food for consumption off the premises,
- (e) for hairdressing,
- (f) for the direction of funerals,
- (g) for the display of goods for sale,
- (h) for the hiring out of domestic or personal goods or articles,
- (i) for the washing or cleaning of clothes or fabrics on the premises,
- (j) for the reception of goods to be washed, cleaned or repaired,
- (k) as an internet café; where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet where the sale, display or service is to visiting members of the public.

Class A2. Financial and professional services

Use for the provision of —

- (a) financial services, or
 - (b) professional services (other than health or medical services), or
 - (c) any other services (including use as a betting office)
- which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

Class A3. Restaurants and cafes

Use for the sale of food and drink for consumption on the premises.

Class A4. Drinking establishments

Use as a public house, wine-bar or other drinking establishment

Class A5. Hot food takeaways

Use for the sale of hot food for consumption off the premises.

Class B1. Business

Use for all or any of the following purposes—

- (a) as an office other than a use within class A2 (financial and professional services),
 - (b) for research and development of products or processes, or
 - (c) for any industrial process,
- being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2. General industrial

Use for the carrying on of an industrial process other than one falling within class B1 above

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.

Class C2. Residential institutions

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.

Class C3. Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by—

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.

Class D1. Non-residential institutions

Any use not including a residential use —

(a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,

(b) as a crèche, day nursery or day centre,

(c) for the provision of education,

(d) for the display of works of art (otherwise than for sale or hire),

(e) as a museum,

(f) as a public library or public reading room,

(g) as a public hall or exhibition hall,

(h) for, or in connection with, public worship or religious instruction, (i) as a law court.

Class D2. Assembly and leisure

Use as —

(a) a cinema,

(b) a concert hall, (c) a bingo hall or casino,

(d) a dance hall,

(e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

Sui Generis Uses

Examples of sui generis uses include (but are not exclusive to):

theatres, amusement arcades or centres, funfairs, launderettes sale of fuel for motor vehicles, sale or display for sale of motor vehicles, taxi businesses or a business for the hire of motor vehicles, a scrapyard or the breaking of motor vehicles, hostels, retail warehouse clubs (where goods are sold, or displayed for sale, only to persons who are members of that club), night-clubs, or casinos.

Interpretation of Class C3

For the purposes of Class C3(a) “single household” shall be construed in accordance with section 258 of the Housing Act 2004.

Interpretation of Class C4

For the purposes of Class C4 a “house in multiple occupation” does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004

Supreme Court Decision 16 October 2017

CPRE Kent (Respondent) v China Gateway International Limited (Appellant).

This decision affects the Planning Committee process and needs to be acknowledged for future reference when making decisions to approve permission contrary to the officer recommendations.

For formal recording in the minutes of the meeting, when the Committee comes to a decision contrary to the officer recommendation, the Committee must specify:

- Full reasons for concluding its view,
- The various issues considered,
- The weight given to each factor and
- The logic for reaching the conclusion.

Deferral and Recommendation Overturn Procedure (DROP) Flowchart

If Councillors require more information, or minor amendments to be explored, then the item should be deferred.

If no more information or amendment is desired Councillors will proceed to propose a motion.

