

Scrutiny Panel Meeting

**Grand Jury Room, Town Hall, High Street,
Colchester, CO1 1PJ**

Tuesday, 14 March 2023 at 18:00

The Scrutiny Panel examines the policies and strategies from a City-wide perspective and ensure the actions of the Cabinet accord with the Council's policies and budget. The Panel reviews corporate strategies that form the Council's Strategic Plan, Council partnerships and the Council's budgetary

guidelines, and scrutinises Cabinet or Portfolio Holder decisions which have been called in.

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. If you would like to speak at a meeting and need to find out more, please refer to the Have Your Say! arrangements here: <http://www.colchester.gov.uk/haveyoursay>.

Audio Recording, Mobile phones and other devices

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

Access

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

Facilities

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

Evacuation Procedures

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

Colchester, CO1 1JB
telephone (01206) 282222 or textphone 18001 followed by the full number you wish to call
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www.colchester.gov.uk

Scrutiny Panel – Terms of Reference

1. To fulfil all the functions of an overview and scrutiny committee under section 9F of the Local Government Act 2000 (as amended by the Localism Act 2011) and in particular (but not limited to):

- (a) To review corporate strategies;
- (b) To ensure that actions of the Cabinet accord with the policies and budget of the Council;
- (c) To monitor and scrutinise the financial performance of the Council, performance reporting and to make recommendations to the Cabinet particularly in relation to annual revenue and capital guidelines, bids and submissions;
- (d) To review the Council's spending proposals to the policy priorities and review progress towards achieving those priorities against the Strategic and Implementation Plans;
- (e) To review the financial performance of the Council and to make recommendations to the Cabinet in relation to financial outturns, revenue and capital expenditure monitors;
- (f) To review or scrutinise executive decisions made by Cabinet, the North Essex Parking Partnership Joint Committee (in relation to decisions relating to off-street matters only) and the Colchester and Ipswich Joint Museums Committee which have been made but not implemented referred to the Panel pursuant to the Call-In Procedure;
- (g) To review or scrutinise executive decisions made by Portfolio Holders and officers taking key decisions which have been made but not implemented referred to the Panel pursuant to the Call-In Procedure;
- (h) To monitor the effectiveness and application of the Call-In Procedure, to report on the number and reasons for Call-In and to make recommendations to the Council on any changes required to ensure the efficient and effective operation of the process;
- (i) To review or scrutinise decisions made, or other action taken, in connection with the discharge of functions which are not the responsibility of the Cabinet;
- (j) At the request of the Cabinet, to make decisions about the priority of referrals made in the event of the volume of reports to the Cabinet or creating difficulty for the management of Cabinet business or jeopardising the efficient running of Council business;

2. To fulfil all the functions of the Council's designated Crime and Disorder Committee ("the Committee") under the Police and Justice Act 2006 and in particular (but not limited to):

- (a) To review and scrutinise decisions made, or other action taken, in connection with the discharge of those functions by the responsible authorities of their crime and disorder functions;
- (b) To make reports and recommendations to the Council or the Cabinet with respect to the discharge of those functions.

COLCHESTER CITY COUNCIL
Scrutiny Panel
Tuesday, 14 March 2023 at 18:00

The Scrutiny Panel Members are:

Councillor Dennis Willetts
Councillor Sue Lissimore
Councillor Darius Laws
Councillor Mike Lilley
Councillor Sam McCarthy
Councillor Lee Scordis
Councillor Paul Smith

Chairman
Deputy Chairman

The Scrutiny Panel Substitute Members are:

All members of the Council who are not Cabinet members or members of this Panel.

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

Please note that Agenda items 1 to 5 are normally dealt with briefly.

1 Welcome and Announcements

The Chairman will welcome members of the public and Councillors and remind everyone to use microphones at all times when they are speaking. The Chairman will also explain action in the event of an emergency, mobile phones switched to silent, audio-recording of the meeting. Councillors who are members of the committee will 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 registerable interest or non-registerable interest.

5 Minutes of Previous Meeting

There are no minutes for approval at this meeting.

6 Have Your Say!

The Chairman will invite members of the public to indicate if they wish to speak or present a petition on any item included on the agenda or any other matter relating to the terms of reference of the meeting. Please indicate your wish to speak at this point if your name has not been noted by Council staff.

7 Decisions taken under special urgency provisions

The Councillors will consider any decisions by the Cabinet or a Portfolio Holder which have been taken under Special Urgency provisions.

8 Cabinet or Portfolio Holder Decisions called in for Review

The Councillors will consider any Cabinet or Portfolio Holder decisions called in for review.

9 Items requested by members of the Panel and other Members

(a) To evaluate requests by members of the Panel for an item relevant to the Panel's functions to be considered.

(b) To evaluate requests by other members of the Council for an item relevant to the Panel's functions to be considered.

Members of the panel may use agenda item 'a' (all other members will use agenda item 'b') as the appropriate route for referring a 'local government matter' in the context of the Councillor Call for Action to the panel. Please refer to the panel's terms of reference for further procedural arrangements.

10 Work of the One Colchester Partnership

9 - 18

This paper provides an overview of the operating arrangements of One Colchester Partnership (OCP). A presentation on the evening of the panel will supplement this report and provide an opportunity for the panel to ask further questions to understand more about the OCP and its work.

11 Briefing by Councillor Andrea Luxford-Vaughan, Portfolio Holder for Planning and Infrastructure

This will be a verbal briefing by Councillor Andrea Luxford-Vaughan, Portfolio Holder for Planning and Infrastructure, on work occurring within her remit, and to give the Panel an opportunity to ask questions.

12	Review of S106 Developer Contributions	19 - 124
	This report covers a range of topics associated with developer contributions, namely;	
	<ul style="list-style-type: none"> • Background and procedures for setting section 106 contributions/policies • Permitted Development • Essex County Council guidance • Issues and problems • Collection rates and procedures for collecting Section 106 contributions • Comparison of planning applications. 	
13	Annual Scrutiny Report for 2022-23	125 - 154
	This report sets out the work of the Scrutiny Panel during 2022/23 and requests that the Panel recommend the report to Full Council for approval on 19 July 2023.	
14	Work Programme 2022-23	155 - 160
	This report sets out the current Work Programme 2022-2023 for the Scrutiny Panel. This provides details of the reports that are scheduled for each meeting during the municipal year.	
15	Exclusion of the Public (Scrutiny)	
	In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).	

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

14 March 2023

Report of	Strategic Director	Author Samantha Goodman
Title	Work of the One Colchester Partnership	
Wards affected	Not applicable	

1. Executive Summary

- 1.1 This paper provides an overview of the operating arrangements of One Colchester Partnership (OCP). A presentation on the evening of the panel will supplement this report and provide an opportunity for the panel to ask further questions to understand more about the OCP and its work.

2. Action Required

- 2.1 To review the work of the OCP, how they operate and ensure satisfactory governance procedures are in place to ensure it provides added value.

3. Reason for Scrutiny

- 3.1 At the annual C&D Committee meeting on Tuesday 14th September 2021, one of the Committee Panel asked about the governance arrangements linked to the migration of the Safer Colchester Partnership (SCP) which now receives oversight from the OCP, and whether details of that decision were available for scrutiny.
- 3.2 The Chair explained that the linking of the SCP with the OCP had not changed its terms of reference, its statutory role or fundamental structure. The Chair of the SCP offered to bring the overall work of the OCP, and its relationship to the SCP, to a future meeting of the Scrutiny Panel. The Committee welcomed this.
- 3.3 The initial request was relating to governance of the SCP. Clarification on this was given at the C&D Committee meeting in Autumn 2022. The focus is now to provide clarity on the structure of the OCP, how it operates and the added value it provides in the City.

4. The One Colchester Partnership

Structure

The One Colchester Partnership meet in a forum called the One Colchester Strategic Group (OCSG). Membership at a strategic level includes senior decision makers of public, voluntary and commercial partners from the ICS, CCC, ESNEFT, Essex County Council, We Are Colchester, University of Essex and arts and culture sector. One Colchester is aligned to key system programmes (see Appendix B) and the connections are supported through representation, joint-working and devolution of budgets to the One Colchester Funding Panel.

The OCSG oversees two delivery boards: The One Colchester Delivery Board (OCDB) and the Community Safety Delivery Board (CSDB). The OCSG co-ordinates several thematic working groups at high level to address targeted concerns, including Tackling Racism, Ukrainian Support and Strategic Winter Response.

The OCSG introduced a Funding Panel to the structure in April 2022. This Panel manage and administer funding on behalf of the Partnership. National Lottery, North East Essex Health and Wellbeing Alliance and Essex County Council funds have been held in trust for One Colchester to distribute to voluntary and community sector organisations to achieve outcomes for local people. The panel holds over £1.5 million in trust (administered by C360) which are monitored by the OCFP. The OCFP membership includes public, voluntary and commercial sector representation and reports directly to the OCSP.

The One Colchester Boards have key relationships with many strategic partnerships including NEE Health and Wellbeing Alliance, Safer Essex, and the Safer Colchester Partnership. Where applicable, this has extended to One Colchester being assigned a position within relevant committees, most notably the North East Essex Community Services (NEECS) contract managed by ESNEFT to co-ordinate community healthcare programmes.

The OCP took responsibility for the City's statutory functions related to Community Safety from April 2020. The OCP consists of senior level partners working together to facilitate a system wide approach to a Safer Colchester; a Prosperous Colchester and a collaborative approach to maximising the opportunities for good Health and Wellbeing across the city. Please refer to Appendix A for the OCP Terms of Reference.

Prior to April 2020, the OCP was supported by a dedicated Delivery Board, formed in 2014, which continues to operate alongside the Community Safety Delivery Board (CSDB). These two delivery boards are accountable to the OCSB. These Boards ensure there is no duplication of provision/projects, highlights an awareness of gaps in provision, plus increased accessibility of resources and funding opportunities. A representative from the CSDB attends OCDB meetings and vice versa to ensure information sharing between the two delivery boards.

Three key themes sit within the One Colchester Partnership. The Delivery Boards interact to support each of them:
Community Safety – led by CSDB
Prosperity and Hardship – led by OCDB
Health and Wellbeing – led by OCDB

Achievements

Highlights in the last year include:

- Establishing One Colchester Funding Panel and doubling available budget
- Ensuring members are integrated into developments of the Integrated Care Board (ICB)
- Co-ordinating partners to explore potential for a Community Supermarket in Colchester (ongoing)
- Providing webinars and networking opportunities for system wide priorities – i.e., climate change, Town Deal

5. The One Colchester Delivery Board

The OCDB is Chaired by the Community 360 Head of Programmes with the Vice Chair being the Colchester City Council Community Enabling Manager. The OCDB has a wide group of partners, drawn from across sectors in the City. New representatives are invited and engagement with these partners widens dependent upon topics/activity. The PFH for Communities is invited to all meetings. The OCDB retains responsibility for delivery of programmes of work assigned to it by system partners, including Dementia Friendly Communities and Winter Resilience response. The programmes of work are subject to change depending upon priorities set by the Strategic Group.

The OCDB facilitates closer working relationships between partners through monthly meetings. This forum facilitates opportunities for collaboration, gathering and distributing insight and intelligence to inform cross sector working, and monitoring and evaluating projects through its network. It implements delegated responsibilities from the OCSG, including Tracking the Covid-19 Recovery Programme, Disseminating the principles of the Communities Can... approach and shaping and delivering activities to address demand within the system, for example, strategic winter response group.

The OCDB can evidence partnership working in practice through successful case studies. These evidence how the One Colchester Hub serves as a central focal point for teams and residents, how cross referral between trusted partners has been effective, and how access to practical help has been made available as part of Winter Resilience programme. The OCDB facilitates support to VCSE partners to continue to operate services through funding and provide links to the LDP programme.

Achievements

Highlights in the last year include:

- Opening One Colchester Hub in new location in Long Wyre Street with partner engagement
- Integrating with Alliance led Neighbourhoods programme, including distributing over £240,000 to VCSE groups through Hyperlocal Fund
- Directly supported nearly 3000 people through Winter and Dementia Friendly programmes
- Co-ordinating the Dementia Friendly Communities programme, including securing Lottery funding for seven years of sustained activity (ending March 2025)
- Integration with key local workstreams, including Neighbourhoods.
- Broadening membership base and continuing to do so.

6. The Community Safety Delivery Board

The CSDB consists of individuals representing statutory partners and organisations that work in partnership to reduce crime and disorder in Colchester and deliver the key priorities set by the Safer Colchester Partnership, contained in the Annual Partnership Plan ([Annual Partnership Plan 2022-23 .docx \(sharepoint.com\)](#))

CSDB has a wide membership with partners from education, voluntary sector, Police, Neighbourhood Watch, Crimestoppers etc, with more partners asking to join all the time. Links to external groups such as Stay Safe, Missing and Child Exploitation (MACE) 1 & 2 and Prevent have been successfully formed, allowing a flow of information.

Placing the SCP function within the OCP enabled an improved systemwide approach to be taken to its community safety work and ensured that key partners such as health and education providers have an improved strategic oversight of Community Safety.

The CSDB has taken over the responsibility for reviewing all local funding bids received to the SCP Community Safety fund and now has oversight of bids to the Police Fire and Crime Commissioners' (PFCC)'s Community Safety Development Fund. This has increased awareness of provision locally, avoiding duplication of projects.

The CSDB has also developed a key role in reviewing the annually produced Strategic Assessment of Crime, adding partner input where relevant, before final approval is sought from the OCSB. This has greatly reduced the time pressure on Strategic Leaders to review the assessment. This level of local partner input did not take place prior to the new operating arrangements being adopted.

Achievements

Highlights in the last year include:

- Launch of #SeeYouSafer, a widespread social media campaign promoting key messages for people to keep safe in the night time economy. Further expanded to deliver engagement events in the High Street and at educational establishments including the University.
- Funding programmes with Next Chapter including opportunities to recruit a new Male IDVA and a CYP Officer for Colchester.
- Successful funding bid to the Home Officer Safer Streets Fund and Violence and Vulnerability Grants have enabled a range of projects to be commenced for the Town Centre and Greenstead ward.
- A new Public Space Protection Order was introduced to tackle Vehicular Nuisance across the whole city.

The One Colchester Partnership response to Covid-19

When Covid struck, the One Colchester Partnership pulled together to provide a co-ordinated community-led response. Working as a team including Council, communities, volunteers, Ward Councillors, Parishes, and Community Leaders they able to provide support, advice, and assistance to those who live in the city.

Achievements

Highlights in the last year include:

- Rapid response to serve as a tactical group to co-ordinate multi-agency working, including weekly strategy meetings at the peak of the pandemic
- Establishment and management of Community Hub offer for vulnerable citizens, conducting over 14,700 welfare calls.
- Recruiting and supporting over 500 volunteers
- Co-ordinated communications campaigns for citizens to access support

7. Standard References

As this report does not relate to a new policy or amendments to an existing policy with Colchester City Council, there are no particular references to consultation or publicity considerations or equality, diversity and human rights, financial, risk management, or environmental sustainability implications.

8. Strategic Plan References

This work contributes to the Council's Strategic Plan 2020-2023 (Strategic Plan 2020-23) under the 'Creating safe, healthy, and active communities' theme.

9. Health, Wellbeing and Community Safety Implications

The One Colchester Strategic Group serves as the functioning Health and Wellbeing Board for Colchester. By integrating the Board into the wider OCSG the partnership is able to develop strategies to tackle the wider determinants of health from a more comprehensive range of partners than by operating a separate Health and Wellbeing Board.

The OCDB takes responsibility for implementing programmes of work which will prioritise improving the health and wellbeing of residents working closely with the North East Essex Health and Wellbeing Alliance. Monthly meetings are structured to reflect the Live Well Domain areas, with accountability to the OCSG that topics relevant to each domain are embedded into the annual programme of meetings. The Alliance Neighbourhoods programme is a standing agenda item each month to ensure that the wider system partners represented on the OCDB can engage with the approach.

The Community Safety implications are the subject of this report.

Abbreviations:

APP	Annual Partnership Plan
BID	Business Improvement District
C&D	Crime and Disorder
CSDB	Community Safety Delivery Board
CSP	Community Safety Partnership
DHR	Domestic Homicide Review
ESNEFT	East Suffolk and North East Essex Foundation Trust
ICB	Integrated Care Board
ICS	Integrated Care System
LDP	Local Delivery Pilot
MACE	Missing and Child Exploitation
NE	North Essex
NEECS	North East Essex Community Services
OCDB	One Colchester Delivery Board
OCSG	One Colchester Strategic Group
OCFP	One Colchester Funding Panel
OCP	One Colchester Partnership
PFCC	Police, Fire and Crime Commissioner
PFH	Portfolio Holder
SCP	Safer Colchester Partnership
SCRAG	Safer Colchester Responsible Authorities Group

Appendices:

- Appendix A OSCP Terms of Reference
- Appendix B Structure of the OCP

APPENDIX A

One Colchester Strategic Partnership Terms of reference

Aims

- To promote and facilitate joint working between agencies to develop a sophisticated understanding of our Place, to increase the impact of services and to better meet future need
- To encourage empowered citizens and communities to mobilise all their assets and to engage in social action to improve quality of life
- To narrow the gap between the most deprived neighbourhoods and the rest of the Borough

Membership

A strategic multi-agency partnership bringing together representatives of the community, business, public and voluntary sectors.

Membership of the Strategic group to be at a sufficiently senior level to be able to represent whole organisations or sectors, determine the Strategic Plan, make high level decisions, commit resources, and be in a position to break down operational barriers.

Membership of the Operational group to be by those representing specific services, and able to bring detailed insights at an operational level, commit to collaborate upon joint activities or projects, be able to cascade information to teams or managers within their own organisations and contribute to enabling actions as determined by the Strategic group.

Purpose

To provide the opportunity for agencies to pool and deepen their understanding of our Place, and to collaborate towards a shared plan to meet the strategic needs of the whole Borough.

To identify and collaborate on specific quality of life issues to better meet the needs of Colchester's citizens and communities, and to allow future needs to be met at a time of reducing financial resources. These issues will include community safety, employment, health, housing, skills and others.

To build on the Borough's strong community spirit by supporting social action to improve quality of life and to reduce the impact of deprivation.

To provide the leadership and decision making required to achieve these priorities, co-ordinating existing resources and assets to achieve the desired outcomes.

To aspire to be an example of partnership best practice, be open to new ideas and learn from other examples of best practice.

Regularly review and refine its structure and its own terms of reference to ensure it remains 'fit-for-purpose' and focused.

Nature and Frequency of Meetings

The Strategic Partnership will meet quarterly to develop a Strategic Plan and to review progress towards achieving the priorities within the Plan.

It will have the ability to meet more often if required and instruct Task and Finish groups for time specific agenda items.

The Operational Group will meet bi-monthly to share information, co-ordinate activity, and implement detailed work to achieve the partnership's Strategic Plan.

Chair

The One Colchester Chair will be elected annually for a maximum of 2 consecutive years.

Vice Chair

The One Colchester Chair will be supported by a Vice Chair.

Quorum

The minimum number of Partners present at any meeting must include 5 agencies. If there are less than 5 Partners present they can recommend and seek ratification through e-mail of decisions in order to keep process fluid and be action focused.

Reporting Process

The Chair of the Strategic Group will provide a written report to the membership at each meeting

The Chair of the Strategic Group will provide the Chair of the Operational group with updates of Strategic group meetings to be reported to Operational group meetings. The Chair of the Operational group will do likewise to enable Strategic group members to be updated.

Accountability

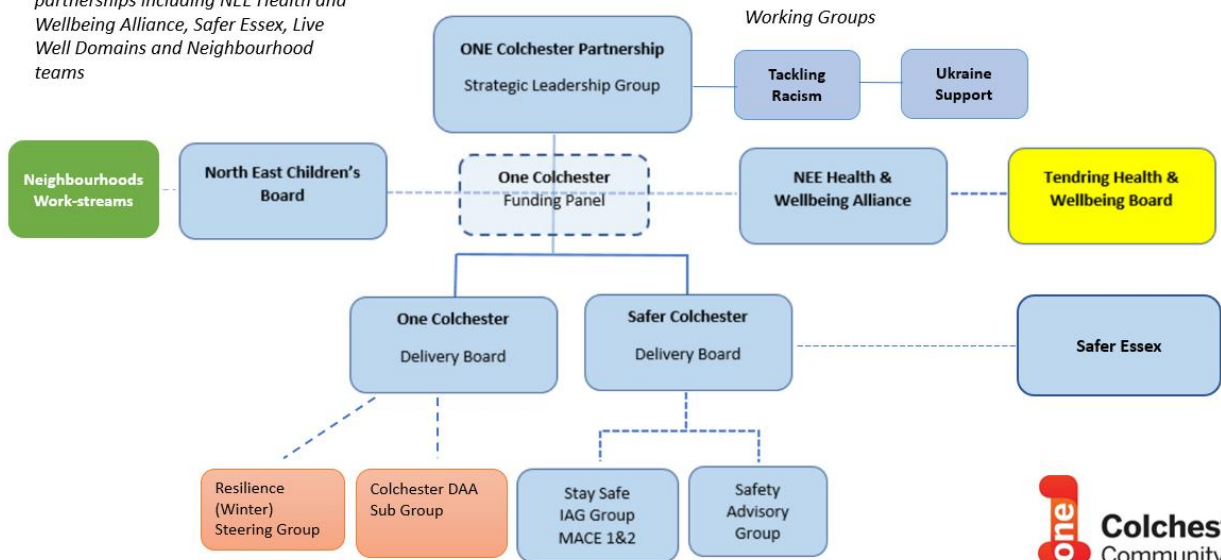
The One Colchester Strategic Partnership is accountable to the people of the Colchester Borough through the accountability structures of the participant members. These include direct accountability to voters for some public sector agencies, accountability to communities and members for third sector agencies, and accountability to local customers and to shareholders for businesses

The Partnership will at all times seek to ensure that it understands the priorities of the borough and its people and is responding to their views and interests.

Each participant Partner member remains accountable to his or her parent organisation.

The Strategic group will provide an annual report to allow members to keep their organisations fully briefed and to inform members of the public.

One Colchester Boards have key relationships with many strategic partnerships including NEE Health and Wellbeing Alliance, Safer Essex, Live Well Domains and Neighbourhood teams



14 March 2023

Report of	Karen Syrett, Lead Officer for Planning & Place Strategy	☎ 506477
Title	Review of S106 Developer Contributions	
Wards affected	All	

1. Executive Summary

- 1.1 This report covers a range of topics associated with developer contributions, namely;
- Background and procedures for setting section 106 contributions/policies
 - Permitted Development
 - Essex County Council guidance
 - Issues and problems
 - Collection rates and procedures for collecting Section 106 contributions
 - Comparison of planning applications.
- 1.2 A number of changes to procedures have already been implemented and others are proposed.

2. Action Required

- 2.1 Scrutiny Panel is asked to discuss existing procedures and guidance, the recent review of s106 processes and to recommend any further changes considered appropriate.

3. Reason for Scrutiny

- 3.1 Scrutiny Panel requested that a report be prepared and brought to the Panel for consideration, to examine any issues, problems, collection rates and procedures relating to setting and collection of section 106 contributions from developers, and that this includes examination of the relevant guidance from Essex County Council and comparison of a range of planning applications received by Colchester City Council.
- 3.2 Langham Parish Council requested a review of infrastructure provision when considering planning applications.

4 Background Information

- 4.1 Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal. They are also commonly referred to as 'section 106', 's106', as well as developer contributions. It is important to note that they cannot be used to address existing shortfalls in infrastructure provision.
- 4.2 This can be via a planning agreement entered into under section 106 of the Town and Country Planning Act 1990 by a person with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land without the local planning authority.
- 4.3 Planning obligations run with the land, are legally binding and enforceable. A unilateral undertaking cannot bind the local planning authority because they are not party to it.
- 4.4 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 necessary to make the development acceptable in planning terms. They must be:
 - necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 4.5 These tests are set out as statutory tests in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework.
- 4.6 Planning obligations are not the only way developers may be asked to contribute to infrastructure. Unacceptable development may be made acceptable by the use of conditions. These should be kept to a minimum and only imposed where they are necessary, relevant, enforceable, precise and reasonable.
- 4.7 Planning obligations in the form of section 106 or section 278 (highway works) agreements should only be used where it is not possible to address unacceptable impacts through the use of conditions.
- 4.8 Policies for planning obligations should be set out in local plans Development Plan Documents and examined in public. Policy requirements should be clear so that they can be accurately accounted for in the price paid for land.
- 4.9 Such policies should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability.
- 4.10 It is not appropriate to set out formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these are not subject to examination. Whilst standardised or formulaic evidence may have informed the identification of needs and costs and the setting of plan policies, the decision maker must still ensure that each planning obligation sought meets the statutory tests set out above. This means that planning obligations will only be appropriate for funding a project that is directly related to that specific development. A financial contribution should not be sought just because of the existence of a formula.

- 4.11 Plans should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability that takes into account all relevant policies, and local and national standards including the cost implications of planning obligations. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and the total cumulative cost of all relevant policies will not undermine deliverability of the plan.
- 4.12 Plans should set out the contributions expected from development towards infrastructure and affordable housing. Where up to date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. Planning obligations can provide flexibility in ensuring planning permission responds to site and scheme specific circumstances. Where planning obligations are negotiated on the grounds of viability it is up to the applicant to demonstrate whether particular circumstances justify the need for viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker.
- 4.13 Applicants do not have to agree to a proposed planning obligation. However, this may lead to a refusal of planning permission or non-determination of the application. An appeal may be made against the non-determination or refusal of planning permission. The Council has used the failure of developers to make adequate provision for S106 as a reason for refusal in many cases but if they go to appeal Inspectors are very strict in their implementation of the tests.
- 4.14 Planning obligations can be renegotiated at any point, as long as both the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made by the developer to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way. Although this is not common it does have to be noted as a possibility if spend does not occur as agreed.
- 4.15 Local planning authorities are expected to use all of the funding received by way of planning obligations, as set out in individual agreements, in order to make development acceptable in planning terms. Agreements should normally include clauses stating when and how the funds will be used by and allow for their return, after an agreed period of time, where they are not.
- 4.16 Since the financial year 2019/2020 onwards, any local authority that has received developer contributions must publish online an infrastructure funding statement by 31 December each year thereafter. Infrastructure funding statements must cover the previous financial year from 1 April to 31 March. The infrastructure funding statement must set out the amount of planning obligation expenditure where funds have been allocated. Allocated means a decision has been made by the local authority to commit funds to a particular item of infrastructure or project.
- 4.17 National guidance contained in the Planning Practice Guidance (PPG) suggests that the infrastructure funding statement (IFS) should set out future spending priorities on infrastructure and affordable housing in line with up-to-date or emerging plan policies. This should provide clarity and transparency for communities and developers on the infrastructure and affordable housing that

is expected to be delivered. Infrastructure funding statements should set out the infrastructure projects or types of infrastructure that the authority intends to fund, either wholly or partly, by planning obligations. This will not dictate how funds must be spent but will set out the local authority's intentions. This should be in the form of a written narrative that demonstrates how developer contributions will be used to deliver relevant strategic policies in the plan, including any infrastructure projects or types of infrastructure that will be delivered, when, and where. The Council has not previously included this information but it is proposed that going forward the Local Infrastructure Delivery Plan is included (see below)

4.18 Permitted Development

There are many forms of permitted development these days. The Government have introduced these because they consider that they should already be generally acceptable in planning terms and therefore planning obligations would ordinarily not be necessary. Any planning obligations entered into should be limited only to matters requiring prior approval and should not, for instance, seek contributions for affordable housing.

4.19 Essex County Council

4.20 The County Council are responsible for S106 contributions related to many areas including education and transportation. Their guidance is contained in [Developers' Guide for Infrastructure Contributions \(ctfassets.net\)](http://ctfassets.net) and a revised version is currently out for consultation.

4.21 Government provides funding to local authorities for the provision of new school places, based on forecast shortfalls in school capacity. There is also a central programme for the delivery of new free schools. Funding is reduced however to take account of developer contributions, to avoid double funding of new school places. Government funding and delivery programmes do not replace the requirement for developer contributions in principle.

4.22 Plan makers and local authorities for education should therefore agree the most appropriate developer funding mechanisms for education, assessing the extent to which developments should be required to mitigate their direct impacts. When local authorities forward-fund school places in advance of developer contributions being received, those contributions remain necessary as mitigation for the development.

4.23 In addition to schools and highways, the County Council also seek contributions towards;

- Early Years and Childcare from sites of 20+ units (same for schools)
- Special Educational Needs from sites of 2000 (intended to reduce to 1000 units)
- Post 16 provision from 20+ dwellings
- Employment and Skills
- Travel Planning from sites of 80+ dwellings and commercial sites
- Waste and Recycling from Garden Communities
- Libraries from sites of 20+ dwellings

- Highways – the consultation is seeking to make changes to the commuted sums for maintenance and the addition of need for provision of Active and Sustainable Travel, and compliance with Cycling Infrastructure LTN 1/20 and Manual for Streets.
- SuDS
- Public Rights of Way
- Passenger Transport

4.24 **Issues and Procedures**

There are a number of issues that arisen over the past year and an internal review of procedures was carried out. Some of the findings have already been addressed and others are in the process of being implemented.

- 4.25 Delay between agreement and receipt of money – this was an issue raised by Langham Parish Council but is also an issue faced by officers, especially in relation to larger infrastructure projects. It can be many years between a planning application being determined, the s106 signed and the money actually being received. In rare instances the approved development is not implemented so the money is never received. This means it is difficult to plan and sometimes alternative funding has been found by the time the S106 is paid. If the legal agreement is specific to a project, the money cannot be spent elsewhere unless the developer agrees a deed of variation, which they are not under any obligation to do. Officers try to build in flexibility within agreements wherever possible.
- 4.26 Developer expectations – increasingly developers are challenging requests for s106 agreements and unilateral undertakings. In most instances their argument is that the request does not satisfy the statutory tests because the ask is not specific enough. To address this the Council needs to maintain a live list of projects for all areas so there is evidence to substantiate each request. It does however make it difficult to incorporate much flexibility.
- 4.27 Identifying projects – everyone wants the same pot of money and it can only go so far. It has become standard practice to split S106 funding so 65% is spent in the ward and 35% on strategic projects which may include the Councils own corporate projects. There are two separate Supplementary Planning Documents (SPD's) on Community Facilities and Sport, Recreation and Open Space and in accordance with these individual requests are made. However, S106 is ward blind and the spend should occur so it mitigates the development. There are also instances where a project can serve multiple benefits ie an area of open space might provide community facilities as well as recreational opportunities. A flexible approach needs to be taken with the priority given to mitigating the new development which will often mean spend in the vicinity of the site (but not necessarily the ward). Some officers believe that contributions should move away from the 65%/35% split and that the rates should be more balanced. Whilst it is acknowledged that some areas do not generate enough S106 to be spent in the Ward and therefore it is difficult to implement change in areas where the priority lies, it is not possible to spend money on a playground upgrade in one area when the growth it is mitigating is in another as it would be contrary to the statutory tests.
- 4.28 Councillors involved too late in the process – there have been occasions when Councillors and Parish Councils have not known about a project for which funding is requested. For this reason it is proposed to change the existing system so Councillors and Parish/Town Councils are involved at the start of the

process by identifying projects within their locality. There should then be no surprises.

- 4.29 Spend release process – is currently slow and cumbersome and has evolved over time without any oversight. Appendix 1 shows the existing spend release process which often requires 9 people to sign each agreement. In the past few years this has included ward councillors but there is no explanation of why this is the case. In many cases projects are identified in the legal agreement and it should be a very straightforward process to release the money for spend. However, in theory any one of those nine signatories could object to the project or spend and there is no process for resolving this. The introduction of Councillor involvement early in the process should avoid this happening and remove the need for so many signatures. The spend release form is now saved in Sharepoint which means everyone can be sent the spend release form at the same time. Appendix 2 shows the revised spend release process.
- 4.30 Viability – national policy and guidance (NPPF and PPG) requires local planning authorities to take account of viability. Where planning obligations are negotiated on the grounds of viability it is up to the applicant to demonstrate whether particular circumstances justify the need for viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker. Where a viability assessment is submitted to accompany a planning application this should be based upon and refer back to the viability assessment that informed the plan; and the applicant should provide evidence of what has changed since then. Viability assessments are used less frequently at the moment because of the recent adoption of the Local Plan. Each of the sites allocated had to be deliverable and developable which includes being viable. Accordingly most applications are now policy compliant with regard to S106. There are some instances where officers do require a viability assessment and these are then assessed independently.
- 4.31 S106 v CIL – the Community Infrastructure Levy (CIL) was introduced in 2010 and is a charge that local authorities can set on new development in order to raise funds to help fund infrastructure. The system runs alongside S106 agreements which are still needed in order to deliver affordable housing and other infrastructure. Colchester initially proceeded with a CIL charging schedule but paused work when it became apparent that adoption would undermine delivery of affordable housing. An up-to-date local plan must be in place in order to proceed with CIL so whilst the situation was kept under review the circumstances in Colchester were not right to proceed. The Government have also announced, several times, that they would be reviewing CIL and the latest consultation (NPPF Feb. 2023) also suggests that a new Infrastructure Levy will be introduced and consultation on this is expected in the next few weeks. It would not be wise for the Council to proceed with CIL now when it could be about to be replaced. There are pros and cons to adopting CIL so the situation should remain under review.
- 4.32 If introduced, the levy, which is being brought forward via the Levelling Up and Regeneration Bill, would largely replace the community infrastructure levy and section 106 payments. Rates would be set locally and based on the gross development value (GDV) of the finished development, rather than - like CIL - the value at the point permission is granted. A report for the think tank Centre for Social Justice suggests that the proposal to “level up” affordable housing through the new levy is “liable to make a bad situation worse” and calls on the government to make a number of changes to the legislation to “remedy these

issues". The report also argues that the infrastructure levy should be ring fenced for the delivery of affordable housing and community infrastructure "rather than opening the door to diverting funds away from these much-needed homes and facilities".

4.33 No single point of contact for S106 – many of the problems referred to above stem from the fact that there is no one with overarching responsibility for S106. Part of the review undertaken in the past year has identified the need for a senior position which will have responsibility for compiling an evidence base (including an audit of infrastructure needs) as well as establishing and maintaining the LIDP which will be used to inform the review of the local plan and planning application decisions. The postholder will be the single point of contact for establishing what money is available and will ensure that no wasted work is undertaken. They will liaise with ward councillors and parish/town councils as well as developers and can help manage expectations.

4.34 Collection Rates - there is no data held for collection rates but generally most people pay when invoiced, occasionally they will pay early to avoid indexation. Payment terms are 30 days. It is not considered necessary to implement any changes to this part of the process.

4.35 **Comparison of Applications**

It is very difficult to compare planning applications because no two applications are the same and in accordance with the regulations S106 is a bespoke process and contributions will vary from site to site. Even where the development comprises a single dwelling and standard formulaic contributions are sought these may vary dependent on the size of dwelling proposed and infrastructure needs are being addressed. Four examples are summarised below and appended in full to this report as Appendix C.

4.36 211392 – 55 dwellings in Layer de la Haye (outline application). The contributions for this comprise the following;

- Community facilities - £148,711.75
- Parks & Recreation - £314,917.40
- Provision of and maintenance/management (£91,997.34) of open space within the site
- 30% affordable housing
- RAMS contribution - £137.71 per dwelling
- Highways works (by condition) – priority junction works; upgrade 2 bus stops; footpath improvements; travel information works.
- Total financial contribution per dwelling - £10,240.

4.37 220747 – 48 apartments and 10 dwellings in Military Road. The contributions consist of the following;

- Community facilities – £69,768.85
- Affordable Housing – 30% (16 units)
- Parks and recreation – £159,333.35
- CCTV - £20,000.00
- Transportation - £30,000.00
- Archaeology - £15,153.00
- RAMS - £7574.05
- Healthcare - £35,300.00
- Crossing point on Military Road and Travel Information Packs (by condition)

- Total financial contribution per dwelling unit = £6,129.

4.38 221786 – 1 x 3 bedroom house, Ambrose Avenue;

- Community facilities - £2872.83
- RAMS - £137.71
- Open Space, Sport and Recreation - £6560.79
- Total financial contribution = £9571.33

4.39 222460 – 4 x 3 bed houses and 5 apartments - Albert Street, Colchester;

- Community facilities - £18,878.61
- RAMS - £1239.39
- Open space, Sport and Recreation - £43,113.75
- Total financial contribution per dwelling = £7,025.75

4.40 The Review and Further Proposed Actions

A review of the S106 process was authorised to be conducted as a project as part of the Transformation Programme. The purpose of the review was to maximise the use of S106 contributions. A number of findings and recommendations were made as a result of the review which was informed by the Planning Advisory Service best practice guidance. These are detailed below.

- 4.41 Ensure infrastructure planning and delivery function is sufficiently skilled and resourced. This should cover not just collection and monitoring of funding and works but should link infrastructure planning into the wider corporate capital delivery process. It is important officers and Councillors have a good understanding of S106. Training has been rolled out and will be offered on a regular basis.
- 4.42 Secure and maintain support and buy in from Senior Board. The absence of leadership is the biggest predictor of an absence of effective spend. Infrastructure planning and delivery is of relevance across many council services and therefore requires corporate-level support. Regular reports will be made available to Senior Board.
- 4.43 Establish an officer level steering group. This group can take ownership and accountability for day-to-day infrastructure planning and delivery matters. Ensuring representation from all services who depend on developer contributions can help play an active role in the process. Development Team Membership has been reviewed and Protocol reviewed updated.
- 4.44 Ensure evidence for infrastructure planning is robust and up to date. A schedule of infrastructure needs set out in the Local Infrastructure Delivery Plan (LIDP) should be regularly updated. It should be able to provide a credible pipeline of projects which can be assessed through your prioritisation governance framework to make well informed spending decisions. This has been initiated and will be regularly updated.
- 4.45 Agree a clear set of priorities. This will ensure that there is a clear, transparent and robust way to identify projects for spend. These should be based on an understanding of infrastructure requirements and objectives related to the Strategic Plan, the Local Plan, IDP or other corporate documents.

- 4.46 Use the Infrastructure Funding Statement (IFS) to promote delivery. The IFS should be seen as an opportunity to demonstrate the collaborative working and successful delivery of projects that support communities and enable good growth, as well as providing transparency over what developer contributions have been collected for and are likely to be spent on in the future. The IFS is published annually but it is proposed that it will include more information in the future (see below)
- 4.47 An integrated system for managing data. Being able to efficiently and accurately collect and monitor developer contributions is fundamental in supporting the wider infrastructure planning and delivery system. A system that allows this data to be managed in an integrated way across relevant parts of the Council can make the whole system be more effective. The current database is available as an access database and confirmation is required that the Northgate Assure Project is a fit for purpose replacement for the current system.
- 4.48 A sufficiently skilled and resourced delivery function. The whole system only operates effectively, and the outcomes for which developer contributions are collected can only be realised, if projects are delivered in a timely fashion. The introduction of a S106 Manager will improve the understanding of the S106 process. There needs to be a review of the Spending Officer Role and Responsibilities who are often tasked with project managing delivery alongside their day job.
- 4.49 Legal Process Timescales. The current legal process in support of S106 activity is a lengthy process. There is currently a backlog of Land Transfers. The Council currently uses in house legal expertise which can have time constraints due to available resources. It is intended to introduce a Memorandum of Understanding (MOU). This is currently in draft; and needs ratifying. External legal processes also cause delay.
- 4.50 Spend Release Process. It has been established that this is complicated and needs simplifying (see para. 4.29 above). This is work in progress.
- 4.51 In addition to the actions already implemented above it is proposed that the following actions are implemented and amended if necessary in accordance with any recommendations following the planned audit of S106 spend.
- Update and circulate the Local Infrastructure Delivery Plan
 - Update the spend release process
 - Include the LIDP as an appendix to future Infrastructure Funding Statements to provide clarity and transparency for communities and developers
 - Appoint a s106 Manager to have oversight of S106 procedures and spend.
 - Ensure the Council has a fit for purpose system for managing data.
 - Review the role and responsibilities of spending officers
 - Update the Community Facilities and Sport, Leisure and Recreation SPD(s).

5 Equality, Diversity and Human Rights implications

- 5.1 An Equality Impact Assessment has been prepared for the Local Plan, and is available to view by clicking on this link:
[Equality Impact Assessment June 2017.pdf \(windows.net\)](#)

6 Strategic Plan References

- 6.1 The Council's Strategic Plan includes the objective to deliver homes for those most in need and to improve health and wellbeing. Effective use of S106 agreements can help deliver affordable housing and infrastructure to support our communities.

7 Consultation

- 7.1 N/A

8 Publicity Considerations

- 8.1 Planning contributions can be controversial so the report could generate publicity for the Council.

9 Financial implications

- 9.1 An effective system will ensure financial contributions are collected to mitigate the impact of new development.

10 Health, Wellbeing and Community Safety Implications

- 10.1 An effective system will ensure financial contributions are collected to mitigate the impact of new development and ensure health and wellbeing are planned for.

11 Health and Safety Implications

- 11.1 N/A

12 Risk Management Implications

- 12.1 An effective system for collecting S106 contributions should manage the risk of inappropriate development that can place a burden on existing infrastructure.

14. Environmental and Sustainability Implications

- 14.1 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. Sustainable Development is the golden thread running through planning.

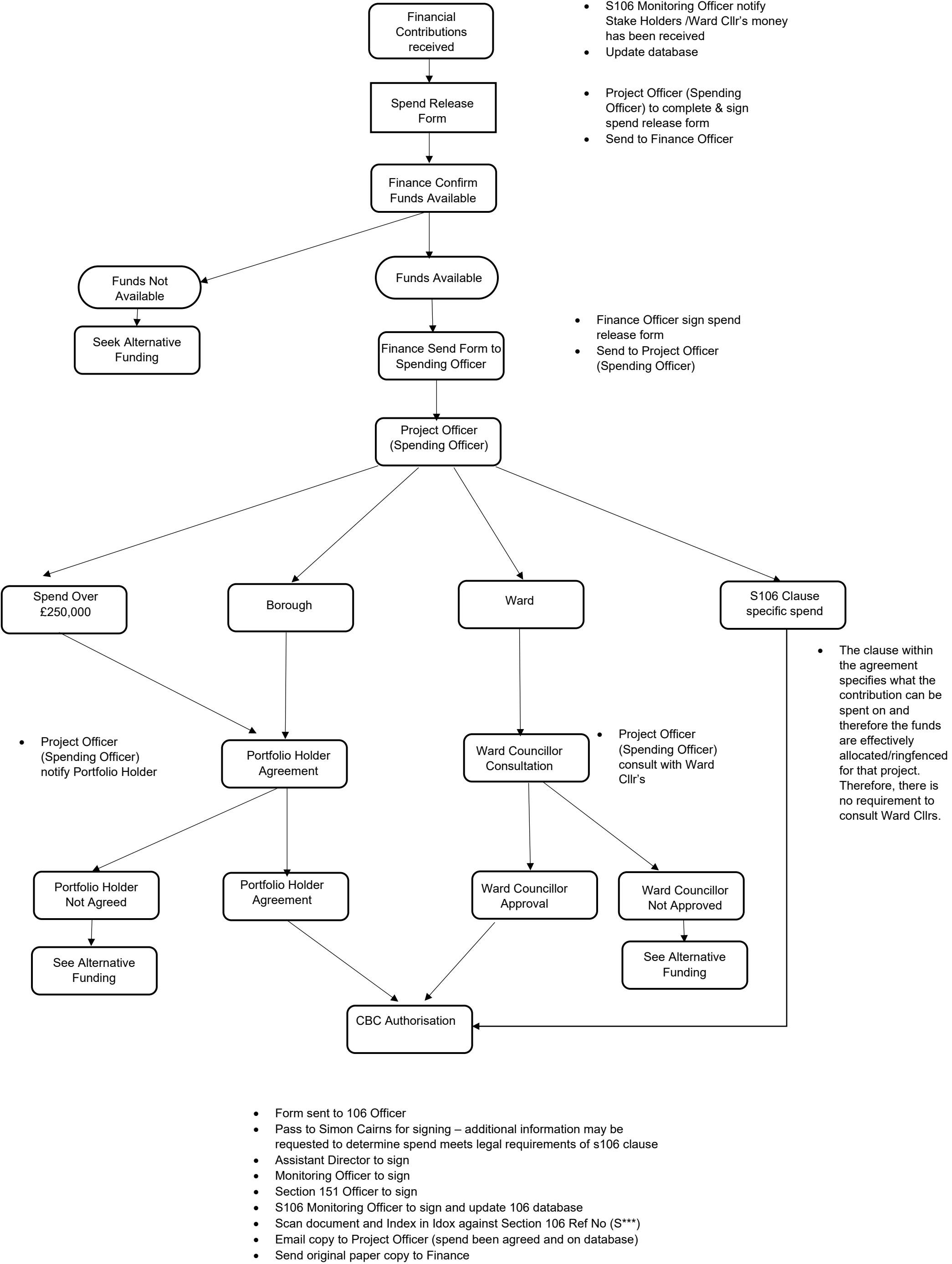
15. Appendices

Appendix A – Existing spend release process

Appendix B – Proposed spend release process

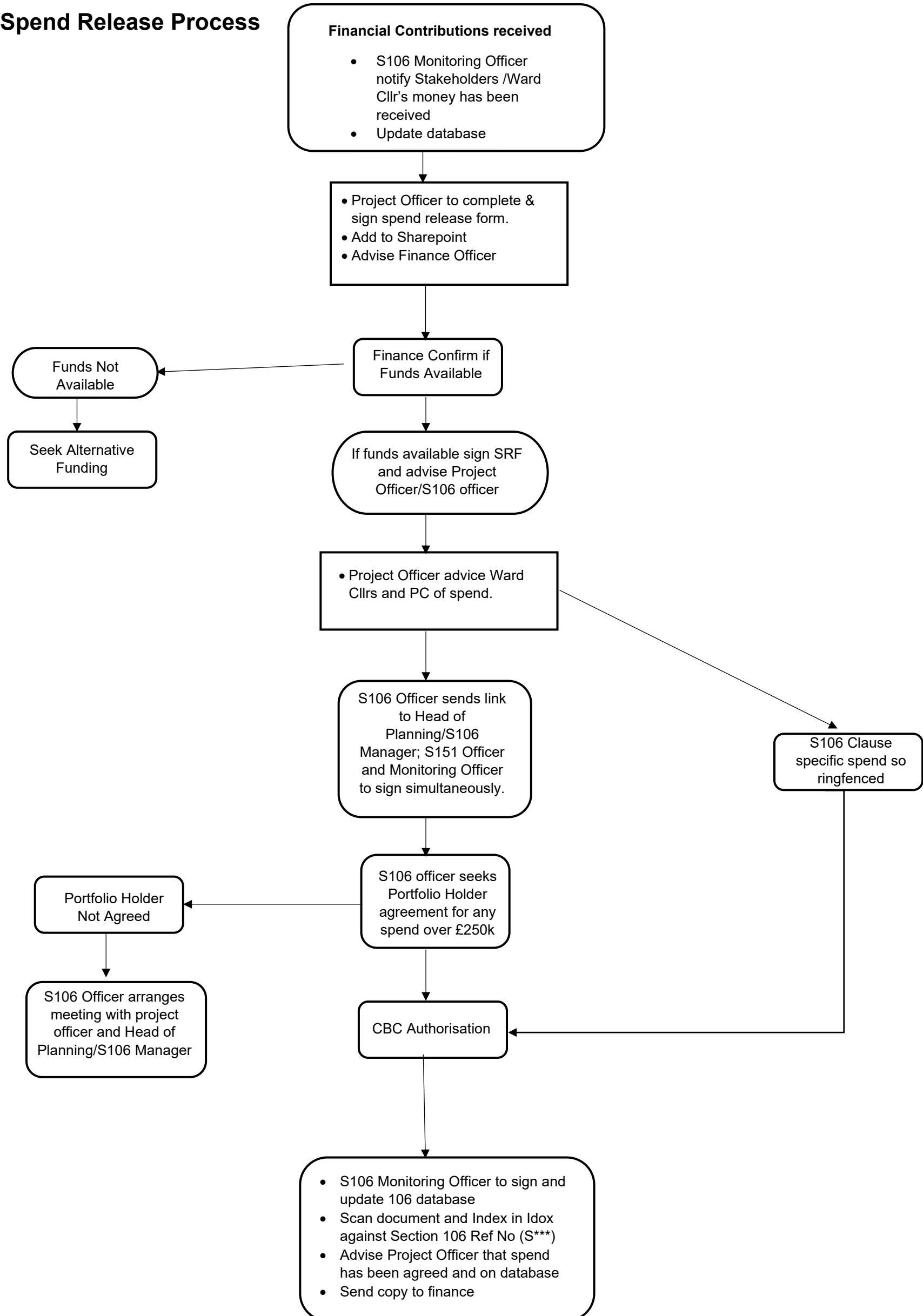
Appendix C – Four examples of Section 106 agreements [see 4.35 above]

Spend Release Process



Appendix 2

Revised Spend Release Process




Dated 17th October 2022

AGREEMENT

pursuant to Section 106 of the
Town and Country Planning Act 1990 (as amended)
relating to land at The Folley, Layer-de-la-Haye,
Colchester, Essex

Between

Borough 
(1) Colchester City Council

and

(2) Jayne Catherine Gee, Daniel John Watts
and Jason James Watts

We hereby certify this to be a true copy of the original

Date 17 October 2022
Holmes & Hills LLP

Holmes & Hills LLP
A12 Commercial Hub, 86 London Rd, Marks Tey, Essex, CO6 1ED

THIS AGREEMENT is made on

17th October

2022

BETWEEN:

- Borough* *AB*
- (1) **COLCHESTER CITY COUNCIL** of Rowan House, 33 Sheepen Road, Colchester, Essex, CO3 3WG (the "Council");
- (2) **JAYNE CATHERINE GEE** of Highfields, Cooks Hall Road, East Bergholt, Colchester CO6 3EX and **DANIEL JOHN WATTS** of Larchwood, Hasketon, Woodbridge IP13 6JP and **JASON JAMES WATTS** of Flat 91, Elgin Mansions, Elgin Avenue, London W9 1JN (the "Owner");

INTRODUCTION:

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the authorities who are entitled to enforce the obligations contained in this Agreement.
- (B) The Owner is the freehold owner of the Site which is registered at HM Land Registry under title number EX409299 which title is free from encumbrances that would prevent the Owner entering into this Agreement.
- (C) The Planning Application has been submitted to the Council and the Council has resolved to grant the Planning Permission subject to the completion of this Agreement.
- (D) The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating and facilitating the Development in the manner hereinafter appearing and is satisfied that planning permission for the Development could be granted subject to conditions and to the execution of this Agreement.
- (E) The Council is satisfied that the planning obligations contained in this Agreement are necessary to make the Development acceptable in planning terms; are directly related to the Development and fairly and reasonably relate in scale and kind to the Development.
- (F) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and its successors in title.

NOW THIS AGREEMENT WITNESSES as follows:

OPERATIVE PART

1. DEFINITIONS

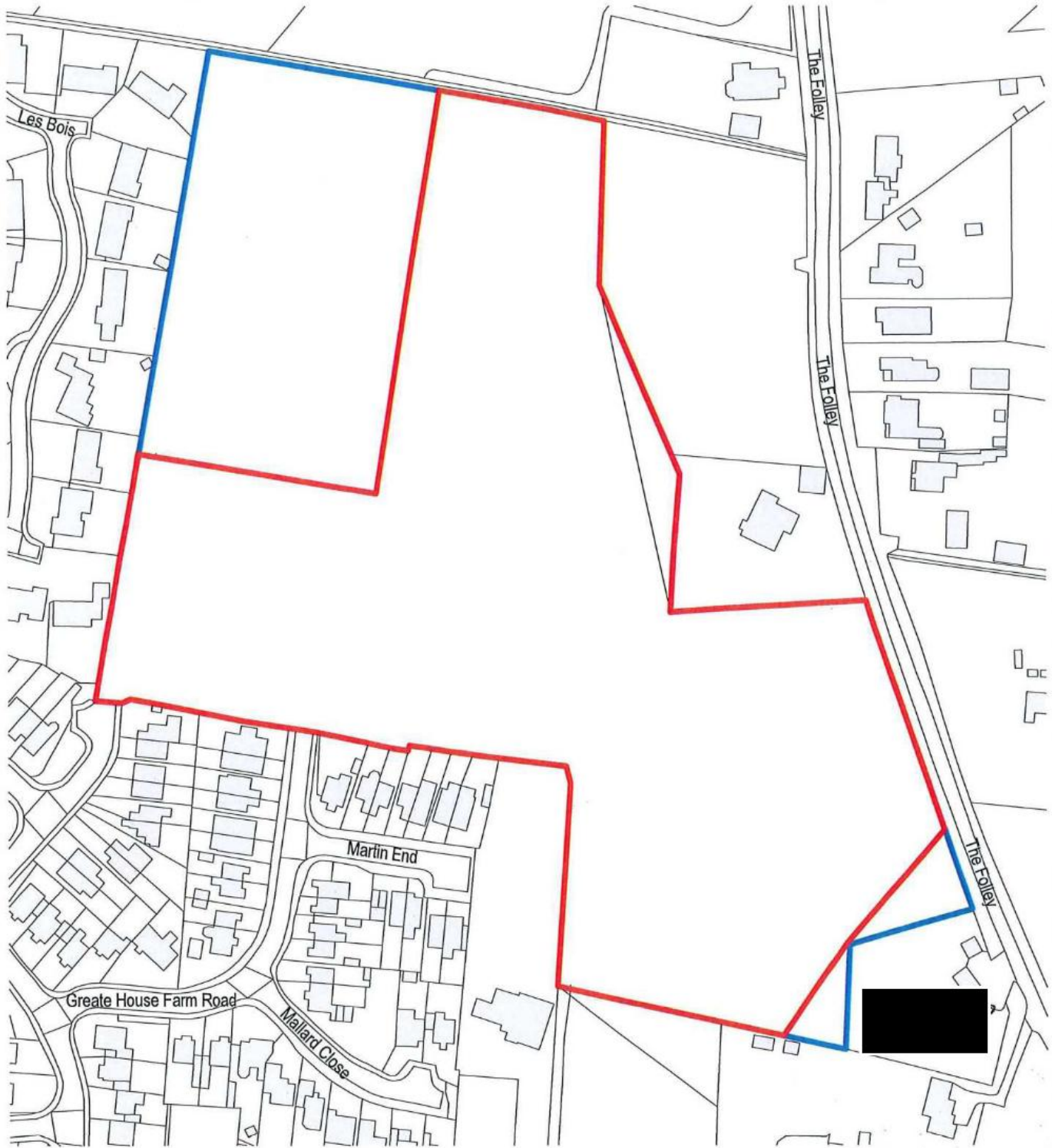
1.1 In this Agreement the following terms and expressions have the following meanings:

"1990 Act"	means the Town and Country Planning Act 1990
"Commencement Date"	subject to Clause 1.2 means the date on which the Commencement of Development occurs
"Commencement of Development"	means subject to clause 1.2 the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and " Commence Development " shall be construed accordingly
"Contributions"	means the Community Contribution, the Parks and Recreation Contribution and the RAMS Contribution
"Development"	means outline planning permission for residential development as described in the Planning Application on the Site pursuant to the Planning Permission
"Dwelling"	means a house or self-contained flat or bungalow constructed as part of the Development
"Index"	means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as either shall replace such index, or as the Council reasonably requires
"Index Linked"	means increased to reflect any increase in the Index during the period from and including the date of this Agreement to and including the date of actual payment
"Market Dwellings"	means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings as defined in Schedule 4 and " Market Dwelling " shall be construed accordingly
"the Notice of Commencement"	means the written notice advising of the proposed Commencement Date

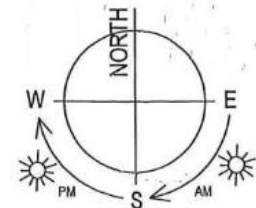
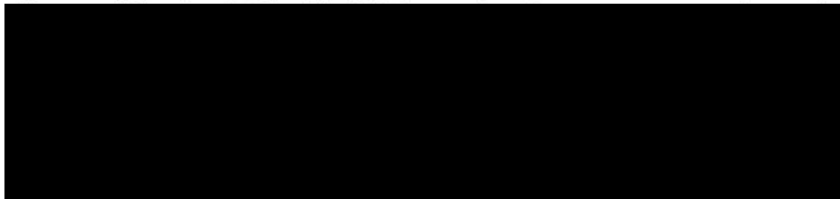
"Occupation"	means beneficial occupation for the purposes permitted by the Planning Permission and shall not include (i) occupation for the construction of the Development (ii) daytime occupation by workmen involved in the construction of the Development (iii) in so far as such uses are ancillary to the construction of the Development (a) the use of finished buildings for sales purposes for use as temporary offices or for show homes or (b) for the storage of plant and materials or (c) use for security operations; and "Occupy" and "Occupied" shall mutatis mutandis be construed accordingly
"Plan"	means the plan attached to this Agreement
"Planning Application"	means the application for outline planning permission reference 211392 for up to 39 market homes and 16 affordable homes with vehicular access from Greate House Farm Road and The Folley with all other matters reserved
"Planning Permission"	means the planning permission that will be granted for the Development in pursuance of the Planning Application subject to conditions upon the completion of this Agreement
"Reserved Matters"	means the matters reserved for approval in relation to the Planning Permission
"Sterling Overnight Index Average (SONIA) Rate"	means an assessment of the rate of interest the Council can expect to earn on investments through the British sterling market, the rate used being the average interest rate at which banks are willing to borrow sterling overnight from other financial institutions and other institutional investors and "SONIA Rate" shall be construed accordingly
"Site"	means the freehold land on the West side of The Folley, Layer-de-la-Haye shown for identification purposes only edged red on the Plan
"Working Days"	means Monday to Friday inclusive but excluding days which are public holidays

1.2 In this Agreement:

1.2.1 the clause and Schedule headings do not affect its interpretation:

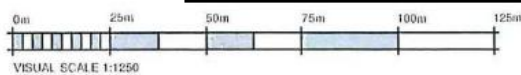


2 Site Location Plan
1 : 1250



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P1	Planning Application	VT	21.04.20
REV	DESCRIPTION	DRN	DATE
DRAWING		PLANNING	

CLIENT
Tollgate Partnership Limited (TPL)

PROJECT
Laver de la Haye - Masterplan

DRAWING
Site Location

SCALE
1 : 1250 @ A3

DRAWN
VT

CHKD
GR

DATE
20/02/2020

DRAWING NUMBER
6572-1101-P1

- (a) unless otherwise indicated, references to clauses and Schedules are to clauses of, and Schedules to, this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
 - (b) references to any statute or statutory provision include references to:
 - (i) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - (ii) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
 - (c) references to the Site include any part of it;
 - (d) references to any party to this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
 - (e) "including" means "including, without limitation";
 - (f) any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing; and
 - (g) if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected.
- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 2. EFFECT OF THIS AGREEMENT**
- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its respective statutory powers, functions or discretions in relation to the Site or otherwise.

- 2.4 The obligations in this Agreement will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated or is to be situated) by the Owner to that statutory undertaker.
- 2.5 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Agreement, whether or not pursuant to an appeal.
- 2.6 Subject to the provisions of Schedule 4 insofar as they relate to a Chargee as defined in Schedule 4, a mortgagee of the Site will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under a security and it will not be liable for any breach of the provisions of this Agreement after it has parted with or released its interest in the Site but they will remain liable for any breaches of their obligations in this Agreement occurring before that date.
- 2.7 Other than in relation to paragraph 11 of Schedule 4 the obligations in this Agreement will not be enforceable against the individual owners or occupiers or mortgagees of any Dwellings constructed on the Site pursuant to the Planning Permission nor anyone deriving title from such owners, occupiers or mortgagees nor against anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant.
- 2.8 Other than in relation to Schedule 4 the obligations in this Agreement will not be enforceable against an Approved Body as defined in Schedule 4 nor anyone deriving title from such Approved Body.

3. COMMENCEMENT DATE

- 1.1 Save in respect of Clause 7 which will become operative on the date of this Agreement and in respect of obligations expressly in this Agreement requiring compliance prior to the Commencement Date and which will become operative on the issue of the Planning Permission this Agreement will come into effect on the Commencement Date.
- 1.2 The Commencement Date and Commencement of Development will not be triggered by any of the following operations:
- 1.2.1 site investigations or surveys;
 - 1.2.2 site decontamination;
 - 1.2.3 the clearance of the Site including demolition;
 - 1.2.4 works connected with infilling;
 - 1.2.5 works for the provision or relocation of drainage or mains services to prepare the Site for development together with access roads;

- 1.2.6 erection of fencing or boarding;
- 1.2.7 erection of boards advertising the development;
- 1.2.8 the construction of a temporary site compound or a temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a temporary marketing suite; or
- 1.2.9 the construction of temporary access roads.

4. OBLIGATIONS OF THE PARTIES

- 4.1 The Owner covenants with the Council to comply with the Owner's obligations set out in the Schedules to this Agreement.
- 4.2 The Owner covenants with the Council to provide (so far as practical) not less than three months' notice in writing to the Council of the anticipated date of Commencement of the Development and Notice of Commencement to the Council no later than twenty (20) Working Days prior to the Commencement Date.
- 4.3 The Owner covenants with the Council to provide not less than ten (10) Working Days' notice in writing of the intended first Occupation of a Dwelling on the Site and notice in writing every three (3) months thereafter until first Occupation of the last Dwelling indicating the number and type of Dwellings occupied on the Site together with notice in writing of the Occupation of the last Market Dwelling on the Site.
- 4.4 The Council covenants with the Owner to comply with the obligations on the part of the Council set out in the Schedules to this Agreement.
- 4.5 The Council covenants with the Owner to provide written confirmation to the Owner upon request confirming that the Owners various obligations pursuant to this agreement have been complied with upon discharge of the relevant obligation.
- 4.6 The Council covenants with the Owner to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or similar affirmation.
- 4.7 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of their obligations in this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause.
- 4.8 No compensation shall be payable by the Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed

hereunder (including such as are of a preparatory ancillary or maintenance nature) and (save where expressly provided otherwise) are to be at the sole expense of the Owner and at no cost to the Council.

- 4.9 Representatives of the Council may enter upon the Site at any reasonable time and on reasonable notice to ascertain whether the terms of this Agreement and of the Planning Permission are or have been complied with, subject to complying with all health and safety and/or security requirements of the Owner or of any developer carrying out the Development.
- 4.10 Any agreement, obligation, covenant or Agreement contained herein (unless otherwise specified in this Agreement) by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement, obligation, covenant or Agreement is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.11 If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, and the parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality, provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.
- 4.12 No variation to this Agreement shall be effective unless made by deed, and for the avoidance of doubt the consent, seal, signature, execution or approval of the purchaser tenant or residential occupier of any Dwelling or their mortgagees or any statutory undertaker shall not be required to vary any part of this Agreement.
- 4.13 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 4.14 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply, the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 4.15 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the Council as such and the Council covenants with the Owner it will note on the local land charges register when compliance with all of the said obligations has occurred.
- 4.16 In the event that the Owner fails to serve on the Council any of the notices that they are required by the provisions of this Agreement to serve then the Council shall be entitled to payment of the various Contributions contained in this Agreement at any time following them becoming aware that an event or a level of Occupation of Dwellings has occurred that would trigger the payment of the relevant Contribution,

and the time period for the return of the relevant Contribution shall be extended accordingly.

- 4.17 If the Council agrees following an application under section 73 of the 1990 Act to vary or release of any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Agreement shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless the Council in determining the application for the new planning permission indicate that consequential amendments are required to this Agreement to reflect the impact of the section 73 application, when a separate deed under section 106 of the 1990 Act will be required to secure relevant planning obligations relating to the new planning permission.

5. TERMINATION OF THIS AGREEMENT

- 5.1 This Agreement will come to an end if the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Commencement Date, or the Planning Permission expires before the Commencement Date
- 5.2 Where the Agreement comes to an end under Clause 5.1 the Council covenants on the written request of the Owner, to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.

6. NOTICES

- 6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following address, or to such other address as one party may notify in writing to the others at any time as its address for service:
- 6.1.1 for the Owner at: Tollgate Barn, Tollgate West, Stanway, Colchester CO3 8RJ;
- 6.1.2 for the Council it shall be marked for the attention of the Head of Development Management with Ref: 211392 and sent to the Council's address above;
- 6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 6.2.1 if delivered by hand, at the time of delivery if delivered between 9.00am and 4.00pm on a Working Day, but otherwise at 9.00am on the next Working Day;
- 6.2.2 if sent by post, on the second Working Day after posting; or

6.2.3 if sent by recorded delivery, at the time delivery was signed for.

6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served at 9.00am on the next Working Day.

6.4 If a notice, demand or any other communication is served before 9am on a Working Day, it is to be treated as having been served at 9am on that Working Day.

6.5 For the avoidance of doubt, purported service by fax or email does not constitute good or proper service for the purpose of this Agreement.

7. COSTS OF THIS AGREEMENT

7.1 Upon completion of this Agreement the Owner covenants to pay to the Council its reasonable and proper legal costs in a sum not to exceed Three Thousand Five Hundred Pounds (£3,500 pounds) (no VAT) in connection with the preparation, negotiation and completion of this Agreement.

7.2 Upon completion of this Agreement the Owner covenants to pay to the Council a contribution of Two Thousand Three Hundred and Forty Pounds (£2,340) (no VAT) towards the Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Agreement.

1 JURISDICTION

1.1 This Agreement is to be governed by and interpreted in accordance with the law of England.

2 EXECUTION

2.1 The parties have executed this Agreement as a deed and it is delivered on the date set out above.

SCHEDULE 1

COMMUNITY CONTRIBUTION

1. In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

"Community Contribution" means the sum of One Hundred and Forty Eight Thousand, Seven Hundred and Eleven Pounds and Seventy Five Pence (£148,711.75) Index Linked

"Community Contribution Purposes" means the use of the Community Contribution towards works to improve the Queen Elizabeth Village Hall to include:

- a) upgrading all toilet facilities (for men and women) ensuring that at least one toilet can be accessed from outside for those using the recreation field; and/or
- b) a hearing loop to be installed inside the hall; and/or
- c) acoustic panels to be erected inside the hall; and/or
- d) the installation of solar panels to on the roof of the hall; and/or
- e) the installation of charging points for electric cars; and/or
- f) the installation of heat pumps

2. The Owner hereby covenants with the Council not to:
- 2.1. cause or permit the Occupation of any Dwelling unless and until 25% of the Community Contribution has been paid to the Council;
 - 2.2. cause or permit the Occupation of more than 25% of the Dwellings unless and until a further 25% of the Community Contribution (totalling 50% of the Community Contribution) has been paid to the Council;
 - 2.3. cause or permit the Occupation of more than 50% of the Dwellings unless and until an additional 25% of the Community Contribution (totalling 75% of the Community Contribution) has been paid to the Council; and

2.4. cause or permit the Occupation of more than 75% of the Dwellings unless and until a final 25% of the Community Contribution (totalling 100% of the Community Contribution) has been paid to the Council.

3. The Council hereby covenants with the Owner:

- 3.1. to provide a written form of receipt for payment of each instalment of the Community Contribution on receipt of each part of the Community Contribution pursuant to paragraph 2 above;
- 3.2. to place each part of the Community Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the Community Contribution Purposes;
- 3.3. that upon receipt of a request in writing to do so to be received by the Council no sooner than the tenth (10th) anniversary of the date of the final payment of the Community Contribution to the Council (made pursuant to paragraph 2.4 above) to return to the party who deposited the Community Contribution the unexpended part of the Community Contribution together with interest accrued calculated at the SONIA Rate from the date of payment until the date the unexpended part is actually repaid on the unexpended part;
- 3.4. where at the tenth (10th) anniversary of the date of the final payment of the Community Contribution to the Council (made pursuant to paragraph 2.4 above) a legally binding contract has been entered into by the Council in respect of the Community Contribution Purposes the Council shall be entitled to utilise the Community Contribution to make payment under such contract; and
- 3.5. that upon receipt of a written request(s) from the Owner the Council shall provide the Owner with a statement confirming whether the Community Facilities Contribution has been spent and if the Community Facilities Contribution has been spent in whole or in part outlining how the Community Facilities Contribution has in whole or in part been spent.

SCHEDULE 2

PARKS AND RECREATION CONTRIBUTION

1. In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

"Parks and Recreation Contribution" means the sum of Three Hundred and Fourteen Thousand Nine Hundred and Seventeen Pounds and Forty Pence (£314,917.40) Index Linked

"Parks and Recreation Purposes" means the use of the Parks and Recreation Contribution towards:

1) works to improve/enhance/provide facilities at the New Cut Recreation Field, New Cut, Layer-de-la-Haye including:

- a) the provision of at least two new pieces of play equipment on the play area opposite Layer de la Haye Village Hall; and/or
- b) the provision of a fence around the play area opposite Layer de la Haye Village Hall to keep out dogs; and/or
- c) the provision of a wooden assault course around the perimeter of the recreation ground
- d) the provision of picnic tables and benches; and/or
- e) the provision of a new 'teenager pod'; and/or
- f) improvement works to re-surface and mark-out the basket ball court; and/or
- g) improvement works to resurface the entrances to the multi-sports

and/or

2) works to improve/enhance Maltings Green, Layer-de-la-Haye including:

- a) improvement works to the pond; and/or
- b) the provision of signage such as a new fingerpost; and/or
- c) the provision of new perimeter bollards

2. The Owner hereby covenants with the Council not to:

- 2.1. cause or permit the Occupation of any Dwelling unless and until 25% of the Parks and Recreation Contribution has been paid to the Council;

- 2.2. cause or permit the Occupation of more than 25% of the Dwellings unless and until a further 25% of the Parks and Recreation Contribution (totalling 50% of the Parks and Recreation Contribution) has been paid to the Council;
 - 2.3. cause or permit the Occupation of more than 50% of the Dwellings unless and until an additional 25% of the Parks and Recreation Contribution (totalling 75% of the Parks and Recreation Contribution) has been paid to the Council; and
 - 2.4. cause or permit the Occupation of more than 75% of the Dwellings unless and until a final 25% of the Parks and Recreation Contribution (totalling 100% of the Parks and Recreation Contribution) has been paid to the Council.
3. The Council hereby covenants with the Owner:
- 3.1 to provide a written form of receipt for each payment of the Parks and Recreation Contribution on receipt of each part of the Parks and Recreation Contribution pursuant to paragraph 2 above;
 - 3.2 to place each part of the Parks and Recreation Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the Parks and Recreation Purposes;
 - 3.3 that upon receipt of a request in writing to do so to be received by the Council no sooner than the tenth (10th) anniversary of the date of the final payment of the Parks and Recreation Contribution to the Council (pursuant to paragraph 2.4 above) to return to the party who deposited the Parks and Recreation Contribution the unexpended part of the Parks and Recreation Contribution together with interest accrued calculated at the SONIA Rate from the date of payment until the date the unexpended part is actually repaid on the unexpended part;
 - 3.4 where at the tenth (10th) anniversary of the date of the final payment of the Parks and Recreation Contribution to the Council (pursuant to paragraph 2.4 above) a legally binding contract has been entered into by the Council in respect of the Parks and Recreation Purposes the Council shall be entitled to utilise the Parks and Recreation Contribution to make payment under such a contract; and
 - 3.5 that upon receipt of a written request(s) from the Owner the Council shall provide the Owner with a statement confirming whether the Parks and Recreation Contribution has been spent and if the Parks and Recreation Contribution has been spent in whole or in part outlining how the Parks and Recreation Contribution has in whole or in part been spent.

SCHEDULE 3

OPEN SPACE AND AMENITY AREAS

1. In this Schedule the following words and expressions shall have the following meaning:

"Amenity Areas"	means those areas within the Site comprising areas that are to be laid to grass and/or landscaped and/or hardstanding as shown on the Amenity Areas Plan and provided in accordance with the Amenity Areas Specification excluding such areas that are or are to be publicly maintainable highway or Open Space or to be within the curtilage of Dwellings or to be maintained by owner-occupiers of Dwellings
"Amenity Areas Certificate"	means a certificate or certificates in writing relating to the Amenity Areas issued by the Council that confirms that the Amenity Areas have been laid out in accordance with the approved Amenity Areas Specification
"Amenity Areas Management Plan"	means a management plan prepared by the Owner to be approved in writing by the Council for the ongoing management and maintenance of the Amenity Areas including for the avoidance of doubt provisions for the rectification of any defects in any area of the Amenity Areas until the completion of the relevant transfer of the Amenity Areas to the Management Company and FOR THE AVOIDANCE OF DOUBT the Amenity Areas Management Plan may be combined with the Open Space Management Plan
"Amenity Areas Plan"	means a plan showing the exact location of the Amenity Areas FOR THE AVOIDANCE OF DOUBT the Amenity Areas Plan may be combined with the Open Space Plan
"Amenity Areas Specification"	means a specification(s) to be approved in writing by the Council for the laying out of the Amenity Areas of the Site and FOR THE AVOIDANCE OF DOUBT the Amenity Areas Specification may be combined with the Open Space Specification

"Council's Nominee"	means Layer de la Haye Parish Council
"Management Company"	means: <ul style="list-style-type: none"> (i) a private limited company established or appointed for inter alia the purpose of managing and maintaining the Open Space and/or any part of the Amenity Areas; and/or (ii) any statutory undertakers which are to take on the management of any areas of the Open Space (and/or any part of the Amenity Areas) in accordance with their statutory functions; and/or (iii) any Approved Body (as defined in Schedule 4) in relation to any areas of Open Space and/or any part of the Amenity Areas to be provided in areas marked for Affordable Housing (as defined in Schedule 4) on the Affordable Housing Plan (as defined in Schedule 4)
"Open Space "	means the areas of land to comprise areas of the Site to be shown on the Open Space Plan which shall include the informal and casual open space all of which shall be laid out in accordance with the approved Open Space Specification
"Open Space Completion Certificate"	means a certificate or certificates in writing relating to the Open Space issued by the Council that confirms that the Open Space has been laid out in accordance with the approved Open Space Specification
"Open Space Final Certificate"	means a certificate or certificates in writing issued by the Council that confirms that the Open Space has been maintained and remedial works completed to the reasonable satisfaction of the Council
"Open Space Plan"	means a plan showing the location of the Open Space
"Open Space Maintenance Sum"	means the sum of Ninety One Thousand Nine Hundred and Ninety Seven Pounds and Thirty Four Pence (£91,997.34) Index Linked

"Open Space Management Plan" means a management plan prepared by the Owner to be approved in writing by the Council for the ongoing management and maintenance of the Open Space including for the avoidance of doubt provisions for the rectification of any defects in any area of the Open Space until the completion of the relevant transfer of the Open Space to the Management Company

"Open Space Specification" means a specification to be approved in writing by the Council for the laying out of the Open Space

"Relevant Documents" means the Amenity Areas Plan, the Amenity Areas Specification and the Amenity Areas Management Plan and the Open Space Plan, the Open Space Specification and the Open Space Management Plan

2. The Owner hereby covenants with the Council to submit the Relevant Documents to the Council along with the first application of Reserved Matters approval and not to Commence the Development unless and until the Relevant Documents have been approved by the Council.
3. The Council covenants with the Owner to use reasonable endeavours to provide approval in writing of the Relevant Documents within two months of receipt in full of the Relevant Documents by the Council.
4. The Owner hereby covenants with the Council not to permit the Occupation of more than 50% of the Dwellings unless and until all of the Open Space has been provided in accordance with the approved Open Space Plan and the Open Space Specification and the Council has issued the Open Space Completion Certificate.
5. The Owner hereby covenants with the Council not to permit the Occupation of more than 90% of the Dwellings unless and until the Amenity Areas have been provided in accordance with the approved Amenity Areas Plan and the Amenity Areas Specification and the Council has issued the Amenity Areas Certificate.
6. The Owner hereby covenants with the Council to maintain the Amenity Areas in accordance with the Amenity Areas Management Plan and the Open Space in accordance with the Open Space Management Plan following the issue of the relevant Amenity Areas Completion Certificate or the relevant Open Space Completion Certificate as appropriate or until such time as the transfer described in paragraph 11 have been completed and any remedial works to the Open Space as reasonably identified by the Council pursuant to paragraph 8 below have been carried out and completed.
7. The Owner further covenants with the Council that within 20 Working Days of the issue of the Open Space Completion Certificate to offer to transfer the Open Space to:

- 7.1 the Council's Nominee for the sum of £1.00 (one pound) and if the Council's Nominee does not accept the Open Space within 1 month of the offer; secondly
 - 7.2 to the Council for the sum of £1.00 (one pound).
8. Upon the expiry of 1 year from the issue of the relevant Open Space Completion Certificate the Owner shall invite the Council in writing to inspect the Open Space and identify any remedial works reasonably required to be carried out on the Open Space.
9. Within 3 months of receipt of any list of remedial works required to be carried out on the Open Space or within the next planting season where this is later and appropriate the Owner shall complete the said remedial works and invite the Council in writing to inspect the Open Space and issue the Open Space Final Certificate.
10. The Owner covenants with the Council:
 - 10.1 that following the issue of the Open Space Final Certificate it shall either transfer the Open Space for the consideration of One Pound (£1) free of encumbrances and with all necessary easements and vacant possession to:
 - 10.1.1 the Council's Nominee following acceptance of the offer made pursuant to paragraph 7.1 above; or
 - 10.1.2 the Council following their acceptance of the offer made pursuant to paragraph 7.2; or
 - 10.1.3 in the event that the Council's Nominee or the Council do not agree to accept a transfer of the Open Space within 1 month of the date of the offer referred to above at paragraphs 7.1 or 7.2 above (as relevant) the Owner shall transfer the Open Space to a Management Company for the sum of £1.00 (one pound).'

with the reasonable legal fees for such transfer being the responsibility of the Owner;
 - 10.2 in the event that the Open Space is transferred to the Council or the Council's Nominee to pay the Open Space Maintenance Sum to the Council for the Council to either pass on to the Council's Nominee or use itself (as the case may be) on or prior to completion of such transfer; and
 - 10.3 to transfer the Amenity Areas to the Management Company for the consideration of One Pound (£1) free of encumbrances and with all necessary easements and vacant possession who shall from that date manage and maintain the Amenity Areas for the life of the Development.
11. The Owner further covenants with the Council to include the following provisions in any transfers of the Amenity Areas and the Open Space to the Council or the Council's Nominee and/or the Management Company:
 - 11.1 a covenant only to permit the Amenity Areas to be utilised as grassed areas and/or parking areas and or roads and the Open Space to be utilised by the public as open areas for recreation in accordance with this Agreement; and

- 11.2 a covenant to maintain the Amenity Areas for the life of the Development in accordance with the Amenity Areas Management Plan and the Open Space for the life of the Development in accordance with the Open Space Management Plan; and
- 11.3 a covenant not to transfer the Amenity Areas or the Open Space into the individual ownership of the owners of the Dwellings; and
- 11.4 a covenant by the Management Company and if appropriate the Council or the Council's Nominee to comply with the provisions of this Agreement; and
- 11.5 an obligation by the Management Company that should the Council so require for the Management Company to enter into a direct covenant with the Council to perform the obligations set out in paragraphs 11.1, 11.2, 11.3 and 11.4 of this Schedule.
- 12. In the event that the Open Space is transferred to the Council and the Council receives the Open Space Maintenance Sum the Council covenants with the Owner only to utilise the Open Space Maintenance Sum for the purpose of maintaining the Open Space in accordance with the Open Space Management Plan.
- 13. The Owner shall furnish a copy of the completed transfer(s) (as referred to in paragraph 11) to the Council in relation to the Amenity Areas and the Open Space (in the event that it is transferred to a Management Company) and shall inform the Council in writing of the contact details of any Management Company.
- 14. The Owner shall include in each transfer or lease of a Dwelling an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the Management Company to discharge its obligations under this Agreement in relation to the Amenity Areas and in the event that the Open Space is transferred to the Management Company the Open Space.

SCHEDULE 4

AFFORDABLE HOUSING

Part One

1 In this Schedule the following words and expressions shall have the following meanings:

"Affordable Housing"	means affordable housing as described in Annex 2 of the NPPF
"Affordable Housing Dwellings"	means 30% of the Dwellings provided in accordance with the Affordable Housing Scheme and in accordance with Nationally Described Space Standards and with all houses and ground floor flats to comply with Building Regulations 2015 Part M(4) Category 2 and all Affordable Housing Dwellings that are wheelchair accessible to comply with Building Regulations 2015 Part M(4) Category 3(2b)
"Affordable Housing For Rent"	has the meaning ascribed to it in paragraph a) of the definition of affordable housing at Annex 2 of the NPPF
"Affordable Housing Scheme"	means a scheme and plan to: <ul style="list-style-type: none">a) Identify the location of the Affordable Housing Dwellings on the Siteb) Identify the size of the Affordable Housing Dwellingsc) Identify the exact Affordable Housing Tenure of the Affordable Housing Dwellingsd) provide a list of Approved Bodies who will be approached to take a transfer of the Affordable Housing Dwellings
"Affordable Housing Tenure"	means no less than 80% of the Affordable Housing Dwellings as Affordable Rented Dwellings and no more than 20% of the Affordable Housing Dwellings as Shared Ownership Dwellings unless otherwise agreed in writing with the Council with the actual number to be provided in each category of tenure being rounded up or down to the nearest whole number

"Affordable Rented Dwelling(s)"	mean an Affordable Housing Dwelling that is provided as Affordable Housing For Rent
"Approved Body"	means either a registered provider within the meaning of section 80 of the 2008 Act as approved by the Council in writing (such approval not to be unreasonably withheld or delayed) and which is recognised by Homes England (or future equivalent) for the purposes of providing Affordable Housing or the Council if it has purchased (or proposes to purchase) any of the Affordable Dwellings and is acting in such capacity or any other body organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a housing association
"Capital Receipts"	means proceeds from Staircasing less the Approved Bodies cost of acquisition, build, management, sale, the redemption of any mortgage and reasonable legal fees
"Chargee"	any mortgagee or chargee (or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any administrator howsoever appointed or any such person appointed under any security documentation to enable a mortgagee or a chargee to realise its security) of the Approved Body or of the owner (excepting the Owner) or successors in title to such mortgagee or charge and/or a Housing Administrator of the whole or any part of the Affordable Housing Dwellings that have been transferred to an Approved Body
"Homes England"	means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body
"Housing Administrator"	has the meaning ascribed to it in Section 101 of the Housing and Planning Act 2016
"Housing Needs Register"	means the register maintained by the Council or its nominee or an Approved Body for Persons in Housing Need
"Local Connection"	means that the Person in Housing Need has one of the following connections to the relevant area: <ul style="list-style-type: none"> a) the Person in Housing Need or a member of their household have resided in the Parish for

not less than 3 years during the previous 5 year period; or

- b) they have an immediate adult relative (including a parent, sibling, or adult child) who is currently a resident of the Parish, and has been so for at least five years before the date of application; or
- c) the Person in Housing Need or a member of their household currently:
 - (i) reside in the Parish and have done so for at least 6 of the last 12 months; and
 - (ii) must be permanently employed in the Parish and have worked in the Parish for at least 6 of the last 12 months; or
- d) the Person in Housing Need or a member of their household has an offer of permanent employment (not for a term less than 12 months) within the Parish for which personal attendance within the Parish is a main/ primary requirement of their employment. The work must not be short-term (less than 12 months) or marginal in nature (less than 16 hours' a week), be ancillary to work in another parish or district; or voluntary work.

"Neighbouring Parish"

means any of the following parishes within the city of Colchester:

- a) Abberton and Langenhoe;
- b) Layer Breton,
- c) Birch;
- d) Great and Little Wigborough,
- e) Peldon,
- f) Salcott-cum-Virley; or
- g) Layer Marney;

"NPPF"

means the National Planning Policy Framework 2021 (or any successor policy thereto) issued by H M Government

"Nomination Rights"

the ability for the Council to nominate 100% of the occupants on the first letting of the Affordable Housing Dwellings and 100% of the occupants of subsequent lettings of the Affordable Rented Dwellings

"Parish"	means the parish of Layer-de-la-Haye or if paragraph 9.1 of this Schedule applies Parish shall mean a Neighbouring Parish
"Persons In Housing Need"	means a person or persons registered on the Housing Needs Register or such other person considered by the Council or the Approved Body to be in housing need having regard to their income and local house prices and rents such persons are to be on bands A-C of the Housing Needs Register for the first let of the Affordable Housing Dwellings provided as Affordable Housing for Rent
"Protected Tenant"	means any tenant who: <ul style="list-style-type: none"> (a) has exercised the right to acquire pursuant to the 2008 Act or any statutory provision for the time being in force (or any equivalent contractual or voluntary right) in respect of a particular Affordable Housing Dwelling (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling (c) has been granted a shared ownership lease by the Approved Body and has become a 100% Staircaser
"Regulator of Social Housing"	means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body
"Shared Ownership"	means Dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time being in force in accordance with terms in the Regulator of Social Housing capital funding guide and to individual who is not currently a homeowner
"Shared Ownership Dwellings"	means the Affordable Housing Dwellings provided as Shared Ownership
"Shared Ownership Lease"	means a lease from the Regulator of Social Housing's model Designated Protected Area ("DPA") leases that restricts Staircasing to either: <ul style="list-style-type: none"> a) 80% equity; or

b) 100% equity if the lessee of the Shared Ownership Dwelling covenants to sell back their Shared Ownership Dwelling to the Approved Body or Approved Body's nominee at market value

and the Approved Body shall re-invest such Capital Receipt in Affordable Housing (in order of priority):

i) within the city of Colchester

ii) within the neighbouring councils areas within the county of Essex

iii) within the rest of England

subject to any contrary requirements within the Regulator of Social Housing capital funding guide

"Staircasing"

means the process by which a lessee of Shared Ownership dwelling acquires up to a maximum of 80% of the equity of the said Shared Ownership Dwelling or 100% equity in accordance with the Shared Ownership Lease

"100% Staircaser"

means a lessee of an Affordable Housing Dwelling under a Shared Ownership or shared equity arrangement who has acquired 100% (one hundred per cent) of the equity in the said Affordable Housing Dwelling

"2008 Act"

means the Housing and Regeneration Act 2008

The Owner hereby covenants with the Council as follows:

- 2 To submit the Affordable Housing Scheme to the Council with the first application for Reserved Matters approval and not to Commence Development unless and until the Affordable Housing Scheme has been approved by the Council taking account of the needs of Persons in Housing Need.
- 3 To construct the Affordable Housing Dwellings in accordance with the approved Affordable Housing Scheme.
- 4 Not to permit the Occupation of:
 - 4.1 more than 50% of the Market Dwellings unless and until 50% of the Affordable Housing Dwellings to be provided have been constructed and are available for Occupation and have been transferred to an Approved Body (unless such a transfer is not required pursuant to the Affordable Housing Scheme); and

- 4.2 more than 80% of the Market Dwellings unless and until all of the Affordable Housing Dwellings to be provided have been constructed and are available for Occupation and have been transferred to an Approved Body (unless such a transfer is not required pursuant to the Affordable Housing Scheme).
- 5 For the purposes of this Schedule only the expression "transfer" or "transferred" shall mean a transfer of the freehold or grant of a lease with a term of not less than 125 years of the Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owner and which transfer or grant shall be subject to the provisions of Part Two of this Schedule (unless otherwise agreed with the Council).
- 6 That Affordable Housing Dwellings shall be Occupied for no other purpose than as Affordable Housing and shall be Occupied in accordance with the Nomination Rights (but subject to the provisions of paragraph 8 below).
- 7 To serve on the Council notice in writing not less than 14 days after the first Occupation of 45% and 75% of the Market Dwellings.
- 8 that subject to paragraphs 9, 10 and 11.1 below the grant or assignment of the first tenancy or lease of each Affordable Rented Dwelling and the first sale/purchase of the Shared Ownership Dwellings shall be restricted to a Person in Housing Need with a Local Connection to the parish of Layer-de-la-Haye;
- 9 that subject to paragraph 11.1 if nobody satisfies the requirements of paragraph 8 above then the grant or assignment of the first tenancy or lease of each Affordable Rented Dwelling shall be made to a Person in Housing Need with a Local Connection to one of the following areas (in order of priority from paragraphs 9.1 to 9.2):
 - 9.1 a Neighbouring Parish; and
 - 9.2 if no Person in Housing Need satisfies paragraph 9.1, Colchester.
- 10 that subject to paragraph 11.1 if nobody satisfies the requirements of paragraph 8 above then the grant or assignment of the first sale of each Shared Ownership Dwelling shall be made to a Person in Housing Need with a Local Connection to one of the following areas (in order of priority from paragraphs 10.1 to 10.2):
 - 10.1 a Neighbouring Parish; and
 - 10.2 if no Person in Housing Need that satisfies paragraph 10.1, the city of Colchester; and
 - 10.3 if no Person in Housing Need that satisfies paragraph 10.1 and 10.2 has been found within 6 weeks of the Shared Ownership Dwelling being available for purchase, the Shared Ownership Dwelling can be marketed to individuals who do not on have a Local Connection to the Parish, Neighbouring Parish or the city of Colchester.
- 11 It is Hereby Agreed and Declared:
 - 11.1 The Affordable Housing obligations and restrictions contained in this Agreement (including for the avoidance of doubt this Schedule) shall not bind:

- 11.1.1 a Chargee of the whole or part of the Affordable Housing Dwellings PROVIDED THAT such Chargee on enforcement of security has first complied with the provisions of paragraph 11.2 of this Schedule; or
 - 11.1.2 a Protected Tenant; or
 - 11.1.3 any mortgagee or chargee or receiver of a Protected Tenant; or
 - 11.1.4 any mortgagee or chargee or receiver of an occupier of an Affordable Housing Dwelling; and
 - 11.1.5 any person or body deriving title through or from any of the parties mentioned in paragraphs 11.1.1- 11.1.4 above.
- 11.2 Any Chargee claiming the protection granted by paragraph 11.1 above must first:
- 11.2.1 give written notice to the Council of its intention to dispose of the Affordable Housing Dwelling;
 - 11.2.2 use reasonable endeavours over a period of eight weeks from the date of such written notice to complete the transfer of the Affordable Housing Dwelling to another registered provider or to the Council for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies, interest and costs and expenses incurred by the Chargee.

PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

- 11.3 If such disposal referred to in paragraph 11.2.2 above has not completed within such eight week period the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the affordable housing provisions contained in this Agreement which shall determine absolutely.

Part Two

- A. The transfers of the Affordable Housing Dwellings to the Approved Body shall be with vacant possession
- B. The transfer deed for the transfer of the Affordable Housing Dwellings to the Approved Body shall be prepared by the Owner to the Approved Body and shall contain:
 - 1. a grant by the Owner to the Approved Body of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings
 - 2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development and the beneficial use and enjoyment of the remainder of the Site

3. such other covenants as the Owner may reasonably require for the maintenance of the Development once it is completed and the preservation of the appearance thereof
4. a provision whereby Capital Receipt received from Staircasing is to be retained by the Approved Body and the Approved Body shall re-invest such Capital Receipt in Affordable Housing (in order of priority):-
 - i) within the city of Colchester
 - ii) within the neighbouring councils' areas within the county of Essex
 - iii) within the rest of Englandsubject to any contrary requirements within the Regulator of Social Housing capital funding guide

SCHEDULE 5

RAMS CONTRIBUTION

1. In this Schedule the following words and expressions shall have the following meaning:

"Natura 2000"	has the meaning ascribed to it in section 3(1) of the Conservation and Habitats and Species Regulations 2017
"RAMS"	means a recreation avoidance and mitigation strategy in relation to Essex Coast Natura 2000 European Designations (in particular the Colne Estuary Special Protection Area (SPA) and Ramsar site, the Blackwater Estuary Special Protection Area (SPA) and Ramsar site, Abberton Reservoir Estuary Special Protection Area (SPA) and Ramsar site, the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar Site and the Essex Estuaries Special Area of Conservation (SAC))
"RAMS Contribution"	means the sum of One Hundred and Thirty Seven Pounds and Seventy One Pence (£137.71) per Dwelling Index Linked
"RAMS Contribution Purposes"	means the use of the RAMS Contribution towards the funding of strategic 'off-site' measures identified by the adopted RAMS to mitigate any increased use as a result of the Development at Essex Coast Natura 2000 European Designations (in particular the Colne Estuary Special Protection Area (SPA) and Ramsar site, the Blackwater Estuary Special Protection Area (SPA) and Ramsar site, Abberton Reservoir Estuary Special Protection Area (SPA) and Ramsar site, the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar Site and the Essex Estuaries Special Area of Conservation (SAC))

2. The Owner hereby covenants with the Council to pay to the Council the RAMS Contribution prior to Commencement of Development and the Owner shall not Commence Development nor permit the Commencement of Development until the RAMS Contribution has been paid to the Council.
3. The Council hereby covenants with the Owner to:
- 3.1 provide a written form of receipt for payment of the RAMS Contribution on receipt of the said contribution;

- 3.2 place the RAMS Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the RAMS Contribution Purposes.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

EXECUTED as a DEED by affixing
THE COMMON SEAL of
COLCHESTER CITY COUNCIL
in the presence of: *Borpin SM*

)
)
)



24/01/22

Authorised Signatory

SIGNED as a DEED by
JAYNE CATHERINE GEE
in the presence of:

)
)
)

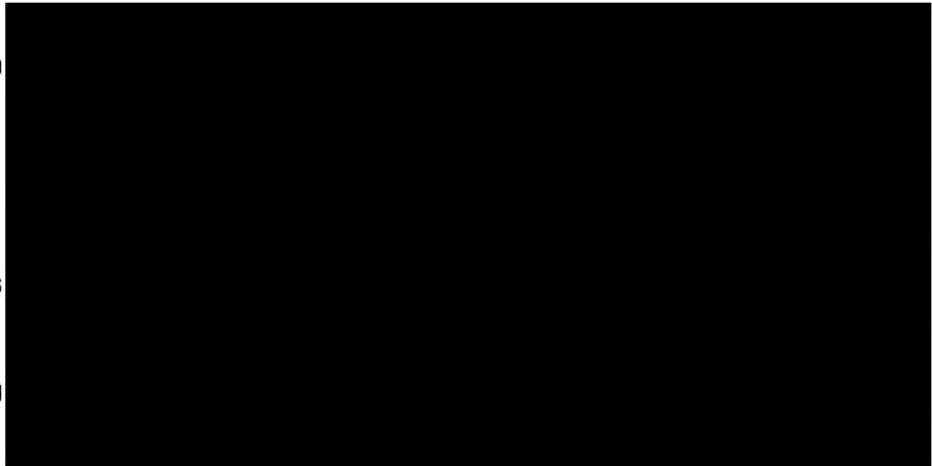


Witness signature:

Witness name:

Witness address:

Witness occupation:



SIGNED as a DEED by
DANIEL JOHN WATTS
in the presence of:

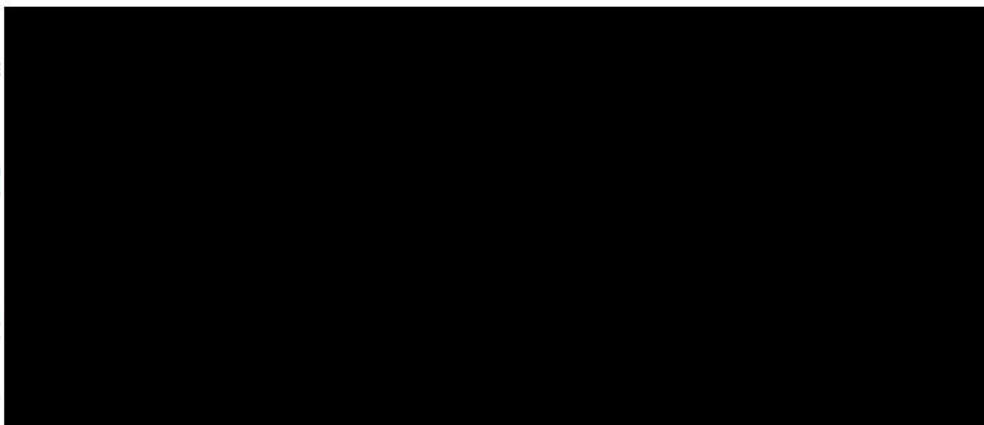


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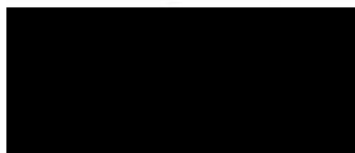
Witness name: *JK*

Witness address:
Esse

Witness occupati



SIGNED as a DEED by
JASON JAMES WATTS
in the presence of:

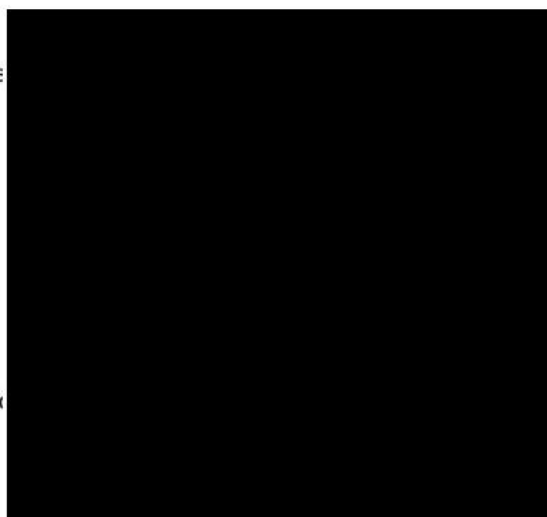


Witness signature

Witness name:

Witness address:

Witness occupati



DATED 14th November 2022

COLCHESTER BOROUGH COUNCIL (1)

-and-

JKS DEVELOPMENTS LIMITED (2)

-and-

BARCLAYS BANK PLC (3)

SECTION 106 AGREEMENT

**Relating to land at the former Lookers Garage, Military Road,
Colchester**

THIS AGREEMENT is made on the 14th day of November 2022

BETWEEN:

- (1) **COLCHESTER BOROUGH COUNCIL** of Rowan House, 33 Sheepen Road, Colchester, Essex, CO3 3WG ("**the Council**"); and
- (2) **JKS DEVELOPMENTS LIMITED** (Co. Regn. No. 12078878) whose registered office is at 47 Colchester Road, White Colne, Essex, CO6 2PW ("**the Owner**"); and
- (3) **BARCLAYS BANK PLC** (Co. Regn. No. 1026167) of Lending Operations, P.O. Box 299, Birmingham, B1 3PF ("**the Bank**").

Together "**the Parties**"

BACKGROUND

- (A) For the purposes of the 1990 Act (as defined herein), the Council is the local planning authority for the area within which the Site (as defined herein) is located and is the authority entitled to enforce all of the obligations set out in this Agreement.
- (B) The Owner is the freehold owner of the Site and which ownership is registered at HM Land Registry with the Title Numbers EX646827 and EX724246.
- (C) The Bank has an interest in the Site by virtue of a charge registered against the Title Number EX646827 (entries numbered 1, 2 and 3 in the Charges Register for that title) and a charge registered against the Title Number EX724246 (entries numbered 1, 2 and 3 in the Charges Register for that title). The Bank has entered into this Agreement to: (a) consent to the Owner binding the Site with the covenants given herein, and (b) to agree and acknowledge that the Site will remain bound by the covenants given herein in the event that the Bank takes possession of the Site pursuant to its charge or otherwise.
- (D) The Planning Application (as defined herein) has been submitted to the Council and the Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating and facilitating the Development (as defined herein) in the manner hereinafter appearing and is satisfied that the Planning Permission (as defined herein) could be granted subject to conditions and to the completion of this Agreement.

- (E) The Council is satisfied that the planning obligations contained in this Agreement comply with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) in that they are necessary to make the Development acceptable in planning terms; are directly related to the Development and fairly and reasonably relate in scale and kind to the Development.
- (F) The Parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against: (a) the Owner and their successors in title; and (b) the Bank and their successors in title but only in the event that the Bank takes possession of the Site.

1. **OPERATIVE PROVISIONS**

1.1 In this Agreement, the following words and expressions have the following meanings:

"1990 Act" means the Town and Country Planning Act 1990, as amended;

"Commencement Date" means the date that Commencement of Development occurs;

"Commencement of Development" means, subject to clause 3.2 herein, the first carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and the use in this Agreement of the terms **"Commence the Development"** or **"Commence Development"** or **"Commenced"** shall be construed accordingly;

"Community Infrastructure Levy" means the Community Infrastructure Levy as introduced by the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 as amended or any successor levy or charge which triggers payments towards Infrastructure;

"Contributions" means the Archaeological Contribution and the RAMS Contribution (both referred to in

Schedule 2), the CCTV & Transport Contribution (referred to in Schedule 3), the Community Facilities Contribution (referred to in Schedule 4), the Healthcare Contribution (referred to in Schedule 5), and the Parks & Recreation Contribution (referred to in Schedule 6);

"Development"

means the development permitted by the Planning Permission;

"Dwellings"

means the fifty-five (55) residential apartments (Use Class C3) constructed as part of the Development and the use in this Agreement of the term **"Dwelling"** shall be construed accordingly;

"Index"

means the "All Items" Index figure of the Index of Retail Prices published by the Office for National Statistics or any such alternative Index or comparable measure of price inflation as shall replace such index or as the Council reasonably requires;

"Index Linked"

means increased to reflect any increase in the Index during the period from and including the date of this Agreement to and including the date of actual payment of the contribution to which it relates;

"Infrastructure"

means "Infrastructure" as defined in Section 216 of the Planning Act 2008 BUT FOR THE AVOIDANCE OF DOUBT this shall not include infrastructure required directly as a result of the Development;

"National Planning Policy Framework"

means the National Planning Policy Framework first published in March 2012 and last updated on 21 July 2021 and the use in this

Agreement of the term **"NPPF"** shall be construed accordingly;

"Notice A"

means a written notice confirming when the Owner expects to Commence Development;

"Notice B"

means a written notice confirming the Commencement Date;

"Notice C"

means a written notice confirming the date of Occupation of a Dwelling or Dwellings;

"Occupation"

means beneficial occupation for the purposes permitted by the Planning Permission and shall not include: (a) occupation associated with the construction of the Development; and (b) daytime occupation by workmen involved in the construction of the Development; and (c) the use of finished buildings for sales purposes for use as temporary offices or for show homes or for the storage of plant and materials or in relation to security operations

and the use in this Agreement of the terms **"Occupy"** or **"Occupied"** or **"Occupancy"** shall be construed accordingly;

"Plan"

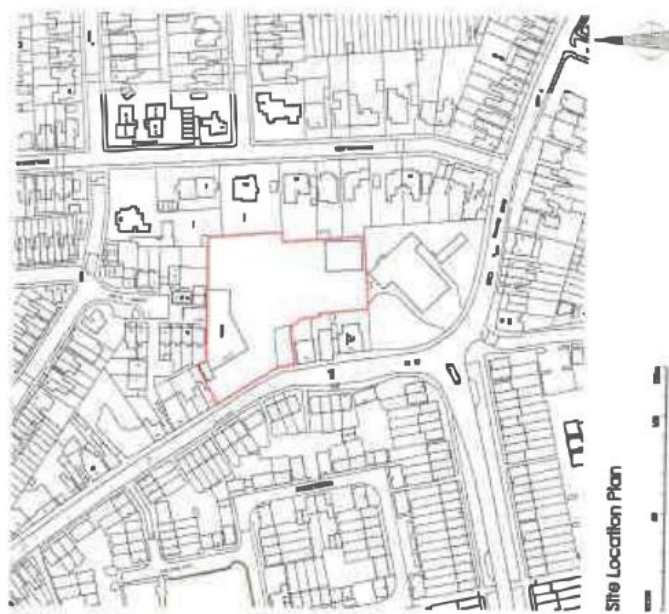
means the drawing numbered 1797 001 dated March 2022 (and titled 'Site Block and Location Plan'), a copy of which drawing is attached to this Agreement;

"Planning Application"

means the planning application to which the Council has applied the reference **220747** seeking FULL planning permission to: (a) demolish the existing car showroom buildings; and (b) construct two residential apartment buildings (with block 1 comprising forty-five (45) x 1 and 2 bedroom residential apartments; and



Site Block Plan



Site Location Plan

**TURNER
JACKSON+DAY
ASSOCIATES**

Architect
Turner Jackson+Day Associates
1000 17th Avenue, Suite 1000
Birmingham, AL 35203
Phone: 205.975.1777
Fax: 205.975.1778
Email: info@turnerjacksonday.com
www.turnerjacksonday.com

Project No. 1797
Date: 08/11/11
Drawing No. 001

Lending Operations, PO Box 299, Birmingham, AL 35202

block 2 comprising ten (10) x 1 and 2 bedroom residential apartments); and (c) provide associated access, basement and above ground parking, landscaping and communal roof terrace;

"Planning Permission" means the planning permission granted in pursuance of the Planning Application subject to conditions;

"Previous Agreement" means the agreement entered into on 24 November 2021 pursuant to Section 106 of the 1990 Act between (1) the Council (2) the Owner and (3) the Bank;

"Seven Day LIBID Rate" means an assessment of the rate of interest the Council can expect to earn on investments through the money market, the rate used being the average interest rate at which banks are willing to borrow eurocurrency deposits or such other rate as the Council considers appropriate;

"Site" means the land on the east side of Military Road, Colchester (the former Lookers garage) and which land is shown edged red on the Plan;

"Working Days" means any day(s) upon which banks in the City of London are open to the general public.

1.2 In this Agreement:

1.2.1 the clause or Schedule headings do not affect its interpretation;

1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a part or paragraph are to a part or paragraph of that Schedule;

1.2.3 references to any statute or statutory provision include references to:

1.2.3.1 all Acts of Parliament and all other legislation having legal effect in England as enacted at the date of this Agreement as

directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;

1.2.4 references to the Site include any part of it;

1.2.5 references in this Agreement to the Owner and the Bank include the respective successors in title of the Owner and the Bank and references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;

1.2.6 "including" means "including, without limitation";

1.2.7 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;

1.2.8 words importing the singular meaning where the context so admits shall include the plural meaning and vice versa;

1.2.9 words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner;

1.2.10 words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to cause permit or allow infringement of the restriction;

1.3 The Parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. EFFECT OF THIS AGREEMENT

2.1 This Agreement is a Deed and is made pursuant to the provisions of Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act, the covenants contained in the Schedules to this Agreement are planning

obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council.

- 2.2 To the extent that any of the covenants contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 The covenants in this Agreement will not be enforceable against: (a) any lessee or occupier of any Dwelling or their mortgagee or chargee or any person deriving title from them; or (b) a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker.
- 2.5 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.

3. COMMENCEMENT DATE

- 3.1 This Agreement is effective from the date of this Agreement but any covenants that require compliance on or after the Commencement Date shall only take effect from the Commencement Date.
- 3.2 For the purposes of this Agreement only the Commencement Date and Commencement of Development will not be triggered by any of the following operations:
 - 3.2.1 archaeological or site investigations or surveys;
 - 3.2.2 site or soil surveys or site decontamination;
 - 3.2.3 the clearance of the Site including any works of demolition;
 - 3.2.4 works connected with groundworks;
 - 3.2.5 works for the provision of drainage or mains services to prepare the Site for development;

- 3.2.6 erection of fencing or boarding;
- 3.2.7 erection of boards advertising the Development (including the erection of advertising hoardings);
- 3.2.8 the construction of a temporary site compound or temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a temporary marketing suite; and

4. OBLIGATIONS OF THE PARTIES

- 4.1 The Owner so as to bind the Site hereby covenants with the Council to comply with the obligations set out in the Schedules to this Agreement.
- 4.2 The Owner covenants with the Council to provide the Council with: (a) Notice A not less than twenty (20) days before the Commencement Date; and (b) Notice B not more than five (5) Working Days after the Commencement Date.
- 4.3 The Owner covenants with the Council to provide the Council with Notice C not more than five (5) Working Days after the first of the Dwellings on the Site has been Occupied.
- 4.4 The Council covenants with the Owner to comply with its obligations set out in this Agreement and in the Schedules to this Agreement.
- 4.5 The Council covenants with the Owner to act reasonably, properly and diligently in exercising its discretion and discharging its functions under this Agreement. In particular, where any agreement, approval, authorisation, consent or other similar affirmation is required from the Council under the terms of the Agreement, the Council will not unreasonably withhold or delay such agreement, approval, authorisation, consent or other similar affirmation PROVIDED ALWAYS that such agreement, approval, authorisation, consent or other similar affirmation may only be given in writing and only prior to the act or event to which it applies (unless otherwise agreed by the Council).
- 4.6 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.

- 4.7 Any obligation that prohibits the Owner from allowing or limiting Occupation of the Site until certain events occur shall also be an obligation on the Owner to positively carry out those certain events by no later than the number of Occupations set out therein unless the context otherwise requires.
- 4.8 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause 4.8.
- 4.9 No compensation shall be payable by the Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Council.
- 4.10 Representatives of the Council may enter upon the Site (but not any Dwelling that is Occupied) at any reasonable time upon reasonable written notice (and immediately in the event of an emergency) to ascertain whether the terms of this Agreement and of the Planning Permission are or have been complied with subject to complying with all health and safety and security requirements required by the Owner.
- 4.11 Any agreement, covenant or obligation contained herein by any of the Parties which comprise more than one person or entity shall be joint and several and where any agreement, covenant or obligation is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.12 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the Parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.

- 4.13 No variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent seal signature execution or approval of the owner, lessee or occupier of any Dwelling or their mortgagee or chargee or any person deriving title from them shall not be required to vary any part of this Agreement.
- 4.14 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 4.15 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 4.16 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the Council as such and the Council covenants with the Owner that it will note on the local land charges register when compliance with all of the said obligations has occurred.
- 4.17 That in the event that the Owner fails to serve any of the notices that they are required by the provisions of this Agreement to serve then the Council shall be entitled to full payment of the Contributions at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of a Contribution and the time period for the return of a Contribution shall be extended accordingly.
- 4.18 If requested by either the Owner and or the Bank in writing the Council shall within 20 working days of receipt of such request to remove the Previous Agreement from the local land charges register and provide evidence to the Owner and the Bank in written form of that removal PROVIDED THAT: (a) this request cannot be made before Commencement of Development has occurred pursuant to the Planning Permission (i.e. the planning permission 220747); and (b) in the event that the Owner or the Bank develops the Site at any time pursuant to the planning permission associated with the Previous Agreement (i.e. the planning permission 201882) then the Previous Agreement shall be restored in its entirety and will: (i) apply to the Site; and (ii) be restored to the local land charges register.

5. TERMINATION OF THIS AGREEMENT

- 5.1 This Agreement will come to an end if: (a) the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Commencement Date so as to render this Agreement or any part of it irrelevant, impractical or unviable; or (b) the Planning Permission expires.
- 5.2 Where the Agreement comes to an end under Clause 5.1 above the Council shall, on the written request of the Owner, vacate or cancel the entry made in the local land charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.

6. NOTICES

- 6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by electronic mail, by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following address (or to such other address as one party may notify in writing to the others at any time as its address for service):
- 6.1.1 for the Owner at 51 Parkstone Avenue, Hornchurch, Essex, RM11 3LN and marked for the attention of Krishan Parkash;
- 6.1.2 for the Council as set out above and all notices shall: (a) be marked to the attention of the Head of Development Management; and (b) quote the planning application reference 220747;
- 6.1.3 for the Bank as set out above and marked for the attention of Paul Scarlett.
- 6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 6.2.1 If delivered by hand, at the time of delivery;
- 6.2.2 If sent by post, on the second Working Day after posting; or
- 6.2.3 If sent by recorded delivery, at the time delivery was signed for.
- 6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

- 6.4 Otherwise than in relation to individual purchasers of Dwellings the Owner shall give to the Council within one month of the Owner disposing of any part of the Site written notice of the name and address of the person or persons to whom the Site or part thereof has been transferred.

7. COSTS OF THIS AGREEMENT

- 7.1 Upon completion of this Agreement the Owner covenants to pay to the Council:
- 7.1.1 its reasonable and proper legal costs in a sum not to exceed FIVE THOUSAND FIVE HUNDRED POUNDS (£5,500.00) (no VAT) in connection with the preparation, negotiation and completion of this Agreement.
- 7.1.2 a contribution of EIGHT HUNDRED POUNDS (£800.00) (no VAT) towards the Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Agreement.

8. DETERMINATION OF DISPUTES

- 8.1 Subject to Clause 8.7 herein, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this Clause 8. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 8.2 For the purposes of this Clause 8 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.4.

- 8.4 Any dispute over the Identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the Identity of the organisation, then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute).
- 8.5 The Specialist is to act as an independent expert and:
- 8.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;
 - 8.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
 - 8.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 8.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
 - 8.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - 8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.
- 8.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

- 8.7 This Clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts of England.

9. **COMMUNITY INFRASTRUCTURE LEVY**

- 9.1 In the event that the Council adopts a charging schedule for the purposes of the Community Infrastructure Levy Regulations 2010 and such charging schedule take effect prior to the date of Planning Permission (or following the grant of Planning Permission a planning permission is granted pursuant to Section 73 of the 1990 Act) the obligations contained in this Agreement which relate to Infrastructure covered by the charging schedule shall cease and no longer be of any effect where Community Infrastructure Levy is paid in relation to that Infrastructure.

10. **JURISDICTION**

- 10.1 This Agreement is to be governed by and interpreted in accordance with the law of England; and the courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

11. **SECTION 73**

- 11.1 In the event that any new planning permission is granted by the Council (or granted on appeal) pursuant to Section 73 of the 1990 Act and unless otherwise agreed between the parties:
- 11.1.1 the obligations in this Agreement shall relate to and bind any subsequent planning permission in respect of the Site granted pursuant to Section 73 of the 1990 Act and the Site itself; and
 - 11.1.2 the definitions of Development, Planning Application and Planning Permission in this Agreement shall be construed to include reference to any application under Section 73 of the 1990 Act, the planning permission granted thereunder and the development permitted by such subsequent planning permission; and
 - 11.1.3 this Agreement shall be endorsed with the following words in respect of any future Section 73 application:

"The obligations in this Agreement relate to and bind the Site in respect of which a new planning permission referenced has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are different to those contained in this Agreement and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new agreement/deed or supplemental agreement/deed pursuant to Section 106 or Section 106A of the 1990 Act.

12. BANK'S CONSENT

- 12.1 The Bank hereby confirms that it consents to the Owner binding the Site by the giving of the covenants herein and acknowledges that in the event that it takes possession of all or any part thereof of the Site (pursuant to the charge referred to in recital C herein, or otherwise) then the Bank or anyone to whom they pass the Site shall be required to perform and/or observe the covenants herein PROVIDED THAT for the avoidance of any doubt the Bank shall have no liability or responsibility for the performance and/or observation of the covenants herein unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

13. EXECUTION

- 13.1 IN WITNESS whereof the Parties hereto have executed this Agreement as a Deed on the day and year first before written.

SCHEDULE 1

AFFORDABLE HOUSING

1. In this Schedule 1 unless the context requires otherwise the following words and expressions shall have the following meanings:

"Affordable Housing Construction Standard" means the construction standard to be applied to the Affordable Housing Dwellings, and which construction standard shall be either Category M4(2) or Category M4(3)(2)(a) or Category M4(3)(2)(b) as appropriate and as set out within the Affordable Housing Plan;

"Affordable Housing Dwellings" means the Affordable Rented Dwellings and the Shared Ownership Dwellings, and the use in this Schedule 1 of the term **"Affordable Housing Dwelling"** shall be construed accordingly;

"Affordable Rented Dwellings" means the thirteen (13) Dwellings to be used exclusively for the purposes of Affordable Rented Housing, subject to the terms of this Schedule 1, and the use in this Schedule 1 of the term **"Affordable Rented Dwelling"** shall be construed accordingly;

"Affordable Rented Housing" means housing that is: (a) let at a rent that is at least twenty percent (20%) below the local market rent for similar housing in the same location; and (b) owned and managed by an Approved Body; and (c) let to Persons in Housing Need;

"Affordable Housing Plan" means a plan that shows: (a) the precise location of the Affordable Housing Dwellings within the Development; and (b) the tenure of the Affordable Housing Dwellings; and (c) the

size of each of the Affordable Housing Dwellings by reference to the number of bedrooms within each Affordable Housing Dwelling; and (d) the Affordable Housing Construction Standard to be applied to each of the Affordable Housing Dwellings

and which plan may be varied from time to time as agreed between the Owner and the Council;

"Approved Body"

means any registered provider of social housing as defined in Section 80 of the Housing and Regeneration Act 2008 or such other body which is:

(a) approved by the Council; and

(b) regulated by Homes England;

"Building Regulations"

means the Building Regulations 2010, as amended (the latest amendment being in June 2022);

"Category M4(2)"

means category M4(2) of the Building Regulations;

"Category M4(3)(2)(a)"

means category M4(3)(2)(a) of the Building Regulations;

"Category M4(3)(2)(b)"

means category M4(3)(2)(b) of the Building Regulations;

"Chargee"

means any mortgagee or chargee or any manager or receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such

mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a Housing Administrator (each a "Receiver") of the whole or any part of the Affordable Housing Dwellings that have been transferred to an Approved Body or any persons or bodies deriving title through such mortgagee or chargee or Receiver;

"Homes England"

means the public body set up to fund and regulate the provision of Affordable Housing (as described in Annex 2 (Glossary) of the NPPF) in England and any successor body;

"Housing Administrator"

has the meaning ascribed to it in Section 101 of the Housing and Planning Act 2016;

"Housing Needs Register"

means the register maintained by the Council or its nominee for Persons in Housing Need;

"Market Dwellings"

means all of the Dwellings that are not Affordable Housing Dwellings;

"Nominations Agreement"

means an agreement entered into by the Council and the Approved Body to regulate the letting of the Affordable Rented Dwellings;

"Persons in Housing Need"

means a person or persons registered on the Council's Housing Needs Register and the use in this Agreement of the term "Person in Housing Need" shall be construed accordingly;

"Protected Tenant"

means any tenant who has:
(a) exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 Act or any statutory provision for the time being in force (or

any equivalent contractual right) in respect of a particular Affordable Rented Dwelling; or
(b) exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Rented Dwelling; or
(c) exercised a contractual right to acquire a one hundred percent (100%) interest in the lease of a Shared Ownership Dwelling
and for the avoidance of any doubt the term **"Protected Tenants"** shall include successors in title to the tenant referred to above;

"Regulator of Social Housing" means the public body set up to fund and regulate the provision of Affordable Housing (as defined in the NPPF) in England and any successor body;

"Shared Ownership Dwellings" means the three (3) Dwellings to be used exclusively for the purposes of Shared Ownership Housing, subject to the terms of this Schedule 1, and the use in this Schedule 1 of the term **"Shared Ownership Dwelling"** shall be construed accordingly;

"Shared Ownership Housing" means housing let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time being in force in accordance with terms in the Regulator of Social Housing capital funding guide;

"Shared Ownership Lease" means a lease of over 125 years substantially in the form of the Regulator of Social Housing model lease from time to time where:

- (a) an initial purchase shall range from 25% to 75% of the equity dependent

on the ability of the lessee to obtain finance; and

(b) there is the ability for the lessee to acquire increased levels of equity (up to 100%) in the Shared Ownership Dwelling at some time in the future; and

(c) capital receipts received from increased equity acquisitions (referred to in '(b)' above) is to be retained by the Approved Body and the Approved Body shall use reasonable endeavours to re-invest such capital receipts in Affordable Housing (as defined in the NPPF) within the borough of Colchester subject to any contrary requirements within the Regulator of Social Housing capital funding guide.

Part One

2. The Owner hereby covenants with the Council, as follows:

2.1 That at least one (1) of the Affordable Housing Dwellings shall be constructed to Category M4(3)(2)(a) or Category M4(3)(2)(b) standards and the remainder of the Affordable Housing Dwellings shall be constructed to Category M4(2) standard.

2.2 Not to Commence the Development unless and until the Affordable Housing Plan has been submitted to the Council for approval and the Council has approved the Affordable Housing Plan in writing.

2.3 To provide the Affordable Housing Dwellings entirely in accordance with the approved Affordable Housing Plan.

- 2.4 Not to Occupy (or allow, cause or permit the Occupation of) any more than twenty (20) of the Market Dwellings unless and until at least eight (8) of the Affordable Housing Dwellings have been:**
- 2.4.1 constructed and are capable of being Occupied for their intended purpose; and**
- 2.4.2 transferred to the Approved Body and for the purposes of this Schedule 1 only the expression "transferred" shall mean a transfer of the freehold interest or leasehold interest that comprises the relevant Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owner (as appropriate) Provided Always that any transfer of the relevant Affordable Housing Dwellings to the Approved Body shall include the provisions contained in paragraphs A and B at Part Two of this Schedule 1.**
- 2.5 Not to Occupy (or allow, cause or permit the Occupation of) any more than thirty (30) of the Market Dwellings unless and until all of the Affordable Housing Dwellings have been:**
- 2.5.1 constructed and are capable of being Occupied for their intended purpose; and**
- 2.5.2 transferred to the Approved Body and for the purposes of this Schedule 1 only the expression "transferred" shall mean a transfer of the freehold interest or leasehold interest that comprises the relevant Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owner (as appropriate) Provided Always that any transfer of the relevant Affordable Housing Dwellings to the Approved Body shall include the provisions contained in paragraphs A and B at Part Two of this Schedule 1.**
- 2.6. Not to Occupy (or allow, cause or permit the Occupation of) any of the Affordable Housing Dwellings unless and until:**
- 2.6.1 the Approved Body has entered into a Nominations Agreement with the Council in respect of those Affordable Housing Dwellings; and**
- 2.6.2 the Council has been provided with the postal addresses (including postcodes) of all of the Affordable Housing Dwellings.**

2.7 Subject always to paragraph 2.8 of this Schedule 1 the Affordable Rented Dwellings transferred to the Approved Body shall be Occupied for no purpose other than as Affordable Rented Housing and the Shared Ownership Dwellings shall be Occupied for no purpose other than as Shared Ownership Housing.

2.8. It is Hereby Agreed and Declared:

2.8.1 the obligations and restrictions contained in this Schedule 1 shall not bind:

2.8.1.1 a Protected Tenant and their mortgagees and/or chargees and any receiver appointed by such mortgagees and/or chargees;

2.8.1.2 any person or body deriving title through or from a Protected Tenant (including any sub-tenant lender chargee or mortgagee);

2.8.1.3 a Chargee of the Approved Body with a charge over the whole or part of the Affordable Housing Dwellings PROVIDED THAT the Chargee has first provided the Council with notice in writing that they intend to dispose of the Affordable Housing Dwelling (or Affordable Housing Dwellings) and have given the Council at least twelve (12) weeks from the date of that notice to put forward a proposal to purchase the Affordable Housing Dwelling (or Affordable Housing Dwellings) at a fair price which at least covers the financial extent of the Chargee's charge, interest, costs and expenses AND if such disposal has not taken place within twelve (12) weeks from the date of that notice the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the obligations in Schedule 2.

Part Two

A. The transfer of the Affordable Housing Dwellings to the Approved Body shall be with vacant possession.

B. The transfer deed shall contain:

1. a grant by the Owner of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings;

2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and
3. such other covenants and reservations as the Owner may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof.

SCHEDULE 2

ARCHAEOLOGY AND ECOLOGICAL MITIGATION

1. In this Schedule 2 the following words and expressions shall have the following meanings:

"Archaeological Contribution"	means the sum of Fifteen Thousand One Hundred and Fifty Three Pounds (£15,153.00), and which sum shall be Index Linked;
"Archaeological Contribution Purposes"	means the use of the Archaeological Contribution for purposes associated exclusively with archaeology at the Site including the display of any artefacts or items found within the Site and the placing of any interpretation boards in or around the Site and the enhancement of the Colchester Historic Environment Record;
"Natura 2000"	has the meaning ascribed to it in section 3(1) of the Conservation and Habitats and Species Regulations 2017;
"RAMS"	means a recreation avoidance and mitigation strategy in relation to Essex Coast Natura 2000 Designations (in particular Hamford Water SAC/SPA/RAMSAR; Colne Estuary SPA/RAMSAR; Stour and Orwell Estuaries SPA/RAMSAR; Blackwater Estuary SPA/RAMSAR; Dengie SPA/RAMSAR and Essex Estuaries SAC);
"RAMS Contribution"	means the sum of Seven Thousand Five Hundred and Seventy Four Pounds and Five Pence (£7,574.05), and which sum shall be Index Linked;

**"RAMS Contribution
Purposes"**

means the use of the RAMS Contribution towards the funding of strategic "off-site" measures identified by the Council's adopted RAMS to mitigate any increased use as a result of the Development at Essex Coast Natura 2000 Designations (In particular Hamford Water SAC/SPA/RAMSAR; Colne Estuary SPA/RAMSAR; Stour and Orwell Estuaries SPA/RAMSAR; Blackwater Estuary SPA/RAMSAR; Dengie SPA/RAMSAR and Essex Estuaries SAC).

2. The Owner hereby covenants with the Council, as follows:
 - 2.1 Not to Commence the Development unless and until the Archaeological Contribution and the RAMS Contribution have been paid to the Council.
 - 2.2 To pay the Archaeological Contribution and the RAMS Contribution to the Council before Commencement of Development.
3. The Council hereby covenants with the Owner, as follows:
 - 3.1 To provide a written form of receipt for payment of the Archaeological Contribution and the RAMS Contribution pursuant to this Schedule 2.
 - 3.2 To place the Archaeological Contribution when received into an Interest-bearing account with a clearing bank and to use the Archaeological Contribution exclusively towards the Archaeological Contribution Purposes.
 - 3.3 That upon receipt of a written request to do so the Council shall provide the Owner with a statement confirming how the Archaeological Contribution has in whole or in part been spent PROVIDED THAT the Council shall only be obliged to provide one statement in each calendar year.
 - 3.4 That upon receipt of a request in writing to do so (such request to be received by the Council no sooner than the fifth (5th) anniversary of the date that the first of the Dwellings is Occupied) to return to the party who paid the Archaeological Contribution any unexpended part of the Archaeological Contribution together with interest accrued PROVIDED THAT this paragraph 3.4 is subject to the provisions of paragraph 3.6 of this Schedule 2.

- 3.5 Where at the fifth (5th) anniversary of the date that the first of the Dwellings is Occupied a legally binding contract has been entered into by the Council in respect of the Archaeological Contribution Purposes the Council shall be entitled to utilise the Archaeological Contribution to make payment under such a contract PROVIDED THAT this paragraph 3.5 is subject to paragraph 3.6 of this Schedule 2.
- 3.6 That in the event that no artefacts or evidence or items of archaeological interest are found anywhere within the Site before or during construction of the Development then the Council will return to the person who paid the Archaeological Contribution to the Council all but three hundred and forty eight pounds (£348.00) of the Archaeological Contribution (along with accrued interest) and the Council further covenants to use the three hundred and forty eight pounds (£348.00) exclusively towards updating the Council's Historic Environment Record (HER) to record that no artefacts or evidence or items of archaeological interest were found within the Site.
- 3.7 To place the RAMS Contribution when received into an interest-bearing account with a clearing bank and to use the RAMS Contribution exclusively towards the RAMS Contribution Purposes.
- 3.8 That upon receipt of a request in writing to do so (such request to be received by the Council no sooner than the fifth (5th) anniversary of the date that the first of the Dwellings is Occupied) to return to the party who paid the RAMS Contribution any unexpended part of the RAMS Contribution together with interest accrued.
- 3.9 Where at the fifth (5th) anniversary of the date that the first of the Dwellings is Occupied a legally binding contract has been entered into by the Council in respect of the RAMS Contribution Purposes the Council shall be entitled to utilise the RAMS Contribution to make payment under such a contract.
- 3.10 That upon receipt of a written request to do so the Council shall provide the Owner with a statement confirming how the RAMS Contribution has in whole or in part been spent PROVIDED THAT the Council shall only be obliged to provide one statement in each calendar year.

SCHEDULE 3

CCTV & TRANSPORT

1. In this Schedule 3 the following words and expressions shall have the following meanings:

"CCTV Contribution" means the sum of Twenty Thousand Pounds (£20,000.00), and which sum shall be Index Linked;

"CCTV Contribution Purposes" means the use of the CCTV Contribution towards the installation of CCTV cameras close to the Site to ensure that full CCTV coverage and monitoring is in place between the former Garrison Church in Military Road and the Winnock Alms Houses which are also located in Military Road;

"Transport Contribution" means the sum of Thirty Thousand Pounds (£30,000.00), and which sum shall be Index Linked;

"Transport Contribution Purposes" means: (a) the use of part of the Transport Contribution (£20,000) towards a car club that will provide electric cars for use by club members and the management of that car club; and (b) the use of the remainder of the Transport Contribution (£10,000) towards supporting/expanding a local active shared transport hub giving residents access to shared ebikes/ecargo.

2. The Owner hereby covenants with the Council, as follows:

- 2.1 Not to Occupy (or allow, cause or permit the Occupation of) any of the Dwellings unless and until the CCTV Contribution and the Transport Contribution have been paid to the Council.

- 2.2 To pay the CCTV Contribution and the Transport Contribution to the Council before any of the Dwellings are Occupied.
3. The Council hereby covenants with the Owner, as follows:
- 3.1 To provide a written form of receipt for payment of the CCTV Contribution and the Transport Contribution.
- 3.2 To place the CCTV Contribution into an interest-bearing account with a clearing bank and to apply the CCTV Contribution exclusively towards the CCTV Contribution Purposes.
- 3.3 That upon receipt of a request in writing to do so (such request to be received by the Council no sooner than the fifth (5th) anniversary of the date that the first of the Dwellings was Occupied) to: (a) provide the Owner with a statement confirming whether the CCTV Contribution has been spent and if the CCTV Contribution has been spent in whole or in part then the statement shall provide details on how the money has been spent; and (b) return to the Owner any unexpended part of the CCTV Contribution together with interest accrued calculated at the Seven Day LIBID Rate from the date of payment until the date the unexpended part is actually repaid.
- 3.4 Where at the fifth (5th) anniversary of the date that the first of the Dwellings was Occupied a legally binding contract has been entered into by the Council in respect of the CCTV Contribution Purposes the Council shall be entitled to utilise the CCTV Contribution to make payment under such a contract.
- 3.5 To place the Transport Contribution into an interest-bearing account with a clearing bank and to apply the Transport Contribution exclusively towards the Transport Contribution Purposes.
- 3.6 That upon receipt of a request in writing to do so (such request to be received by the Council no sooner than the fifth (5th) anniversary of the date that the first of the Dwellings was Occupied) to: (a) provide the Owner with a statement confirming whether the Transport Contribution has been spent and if the Transport Contribution has been spent in whole or in part then the statement shall provide details on how the money has been spent; and (b) return to the Owner any unexpended part of the Transport Contribution together with interest accrued calculated at the Seven Day LIBID Rate from the date of payment until the date the unexpended part is actually repaid.

- 3.7 Where at the fifth (5th) anniversary of the date that the first of the Dwellings was Occupied a legally binding contract has been entered into by the Council in respect of the Transport Contribution Purposes the Council shall be entitled to utilise the Transport Contribution to make payment under such a contract.

SCHEDULE 4

COMMUNITY FACILITIES

1. In this Schedule 4 unless the context requires otherwise the following words and expressions shall have the following meanings:

"Community Facilities Contribution"	means the sum of Sixty Nine Thousand Seven Hundred and Sixty Eight Pounds and Eighty Five Pence (£69,768.85), and which sum shall be Index Linked;
"Community Facilities Contribution Purposes"	means the use of the Community Facilities Contribution towards the St Stephens Church Projects and/or the Wimpole Road Church Projects;
"St Stephens Church"	means St Stephens Church, Canterbury Road, Colchester, CO2 7RY;
"St Stephens Church Projects"	means projects to the St Stephens Church to include: (a) Insulating the church walls and roof; and/or (b) Improving the heating of the building; and/or (c) making the building more energy efficient and sustainable for the future, along with a better sound system and upgrading the foyer; and/or (d) any improvements necessary to increase accessibility of the hireable space to community groups and clubs for activities such as summer holiday clubs and pre-school sessions;
"Wimpole Road Church"	means the Wimpole Road Methodist Church (a substantial Gothic style church erected in 1904), 47 Wimpole Road, Colchester, CO1 2DL.

**"Wimpole Road Church
Projects"**

means projects to the Wimpole Road Church to include: (a) the provision of an increased offering of services at the church; and/or (b) increase/improve the accessibility to the church; and/or (c) the carrying out of works for general improvements to the church.

2. The Owner hereby covenants with the Council, as follows:
 - 2.1 Not to Occupy (or allow, cause or permit the Occupation of) any of the Dwellings unless and until the Community Facilities Contribution has been paid to the Council;
 - 2.2 To pay the Community Facilities Contribution to the Council before any of the Dwellings are Occupied;
3. The Council hereby covenants with the Owner, as follows:
 - 3.1 To provide a written form of receipt for payment of the Community Facilities Contribution;
 - 3.2 To place the Community Facilities Contribution into an interest-bearing account with a clearing bank and to apply the Community Facilities Contribution exclusively towards the Community Facilities Contribution Purposes;
 - 3.3 That upon receipt of a request in writing to do so (such request to be received by the Council no sooner than the fifth (5th) anniversary of the date that the first of the Dwellings was Occupied) to: (a) provide the Owner with a statement confirming whether the Community Facilities Contribution has been spent and if the Community Facilities Contribution has been spent in whole or in part then the statement shall provide details on how the money has been spent; and (b) return to the Owner any unexpended part of the Community Facilities Contribution together with interest accrued calculated at the Seven Day LIBID Rate from the date of payment until the date the unexpended part is actually repaid;
 - 3.4 Where at the fifth (5th) anniversary of the date of first Occupation a legally binding contract has been entered into by the Council in respect of the Community Facilities Contribution Purposes the Council shall be entitled to utilise the Community Facilities Contribution to make payment under such a contract;

SCHEDULE 5

HEALTHCARE

1. In this Schedule 5 unless the context requires otherwise the following words and expressions shall have the following meanings:

"Healthcare Contribution" means the sum of Thirty Five Thousand Three Hundred Pounds (£35,300.00), and which sum shall be Index Linked;

"Healthcare Contribution Purposes" means the use of the Healthcare Contribution towards the provision of additional primary healthcare services at the Wimpole Road Surgery (part of the Colchester Medical Practice), 52 Wimpole Road, Colchester, CO1 2DL;

"NHS England" means the national commissioning authority for health services in England (or its successor body from time to time).

2. The Owner hereby covenants with the Council, as follows:
- 2.1 Not to Commence the Development unless and until the Healthcare Contribution has been paid to the Council.
- 2.2 To pay the Healthcare Contribution to the Council before Commencement of Development.
3. The Council hereby covenants with the Owner, as follows:
- 3.1 To provide a written form of receipt for payment of the Healthcare Contribution;
- 3.2 To pay the Healthcare Contribution to NHS England upon receipt of a document from NHS England confirming that they will:
- 3.2.1 apply the Healthcare Contribution exclusively towards the Healthcare Contribution Purposes;
- 3.2.2 provide full details of the expenditure of the Healthcare Contribution on demand to the Council or the Owner;

- 3.2.3 return any unspent part of the Healthcare Contribution together with interest accrued to the Council after the expiry of seven (7) years from the date of receipt by the Council of the Healthcare Contribution.
- 3.3 To keep an up-to-date record of all payments from the Healthcare Contribution transferred by the Council to NHS England;
- 3.4 Following receipt of a written request (such request not to be made prior to the expiration of seven (7) years from the date of receipt by the Council of the Healthcare Contribution) to repay to the party who paid the Healthcare Contribution any unspent monies of the Healthcare Contribution held by the Council or received by the Council pursuant to paragraph 3.2.3 of this Schedule 5 together with interest accrued within twenty (20) Working Days of receipt of the aforementioned written request;
- 3.5 In the event that the document in the form required by paragraph 3.2.3 of this Schedule 5 is not received following the expiry of seven (7) years from the date of receipt of the Healthcare Contribution by the Council then the Council's obligation to pay the Healthcare Contribution to NHS England shall cease absolutely and the Council shall refund to the party who paid the Healthcare Contribution the unexpended contribution within twenty (20) Working Days of receipt of a written request from the Owner to do so.
4. The Owner hereby acknowledges that the Council shall not be responsible for how the Healthcare Contribution is utilised or in the event that NHS England does not comply with paragraph 3.2.3 of this Schedule 5 for its return above once it has transferred the Healthcare Contribution to NHS England but without prejudice to the rights of the Owner to seek to enforce the obligations in paragraph 3.2 directly against NHS England and in which case the Council shall provide to the Owner such assistance as it reasonably can to enforce those obligations.

SCHEDULE 6

PARKS & RECREATION

1. In this Schedule 6 unless the context requires otherwise the following words and expressions shall have the following meanings:

"Parks & Recreation Contribution" means the sum of One Hundred and Fifty Nine Thousand Three Hundred and Thirty Three Pounds and Thirty Five Pence (£159,333.35), and which sum shall be Index Linked;

"Parks & Recreation Contribution Purposes" means:

(a) the use of sixty five percent (65%) of the Parks & Recreation Contribution towards improvements to the Old Heath Recreation Ground to include: (i) works to increase café usability to year-round (including the installation of a conservatory and extension/alterations to the main building; and (ii) installation of a kids cycle track; and (iii) Installation of flood lights at the all-weather Multi Use Games Area; and

(b) the use of thirty five percent (35%) of the Parks & Recreation Contribution towards Improvements at Leisure World (Cowdray Avenue, Colchester, CO1 1YH) associated with the installation of a new outdoor all-weather 3G sports pitch.

2. The Owner hereby covenants with the Council, as follows:
- 2.1 Not to Commence the Development unless and until the Parks & Recreation Contribution has been paid to the Council.

- 2.2 To pay the Parks & Recreation Contribution to the Council before Commencement of Development.
3. The Council hereby covenants with the Owner, as follows:
- 3.1 To provide a written form of receipt for payment of the Parks & Recreation Contribution;
- 3.2 To place the Parks & Recreation Contribution into an interest-bearing account with a clearing bank and to apply the Parks & Recreation Contribution exclusively towards the Parks & Recreation Contribution Purposes;
- 3.3 That upon receipt of a request in writing to do so (such request to be received by the Council no sooner than the fifth (5th) anniversary of the Commencement Date) to: (a) provide the Owner with a statement confirming whether the Parks & Recreation Contribution has been spent and if the Parks & Recreation Contribution has been spent in whole or in part then the statement shall provide details on how the money has been spent; and (b) return to the Owner any unexpended part of the Parks & Recreation Contribution together with interest accrued calculated at the Seven Day LIBID Rate from the date of payment until the date the unexpended part is actually repaid;
- 3.4 Where at the fifth (5th) anniversary of the Commencement Date a legally binding contract has been entered into by the Council in respect of the Parks & Recreation Contribution Purposes the Council shall be entitled to utilise the Parks & Recreation Contribution to make payment under such a contract.

The **COMMON SEAL** of
COLCHESTER BOROUGH COUNCIL
was affixed in the presence of:

)
)
)



Authorised Signatory

EXECUTED as a DEED by

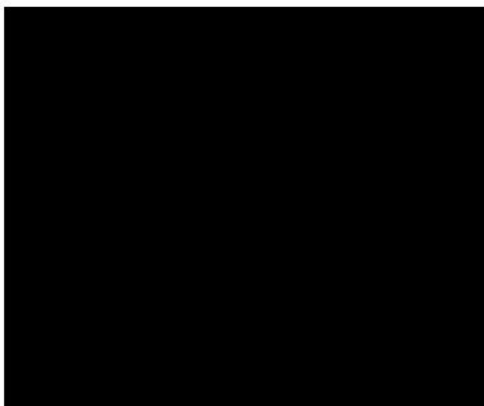
Name:

Signature:

In the presence of:

WITNESS NAME:

SIGNATURE:



EXECUTED as a DEED by

JKS DEVELOPMENTS LIMITED

Acting by:

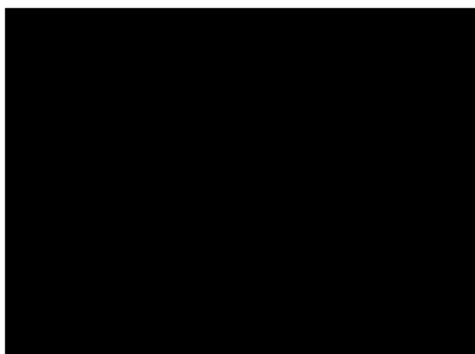
Name:

Signature:

In the presence of:

WITNESS NAME:

SIGNATURE:



BARCLAYS BANK PLC
POWER OF ATTORNEY

1. By this POWER OF ATTORNEY made by deed on 08 March 2022 (the "Deed"), we, Barclays Bank PLC, a company incorporated in United Kingdom and registered in England (registered number 01026167), whose registered office is situated at 1 Churchill Place, London E14 5HP (the "Company") APPOINTS:

All BA4 grade employees working within the Collateral Unit who are employed by Barclays Services Limited, a company incorporated in United Kingdom and registered in England (registered number 01767980), whose registered office is at 1 Churchill Place, London, E14 5HP (the "ServCo"), who are working in the Collateral Unit and who are of BA4 (*leadership and process expert*) Grade (or equivalent) or above jointly and severally as our true and lawful attorneys (each an "Attorney" together the "Attorneys") for and in our own name and on our behalf:

- (a) to sign and execute all forms of written documents, other than acceptances and endorsements of bills of exchange;
- (b) to accept and endorse bills of exchange jointly with some other person duly authorised by the Company for that purpose;
- (c) to sign, execute and deliver all deeds relating to the taking, maintaining, substituting, varying, novating and/or releasing of collateral including, without limitation, security documents, guarantees, bonds, deeds of easements and indemnities, deeds regulating the priority of mortgages, releases, discharges, notices of non-crystallisation, consents to lease, transfers of mortgages, re-conveyances and reassignments of real or personal property, mortgaged, charged or assigned by way of security to the Company; and/or
- (d) to make any declaration, statement, affidavit or proof of any debt due or claimed to be due to the Company in any proceedings taken or hereafter to be taken by or against any person, firm or company under any act for the time being in force in relation to the bankruptcy, insolvency or liquidation of debtors, firms or companies of whatever nature,

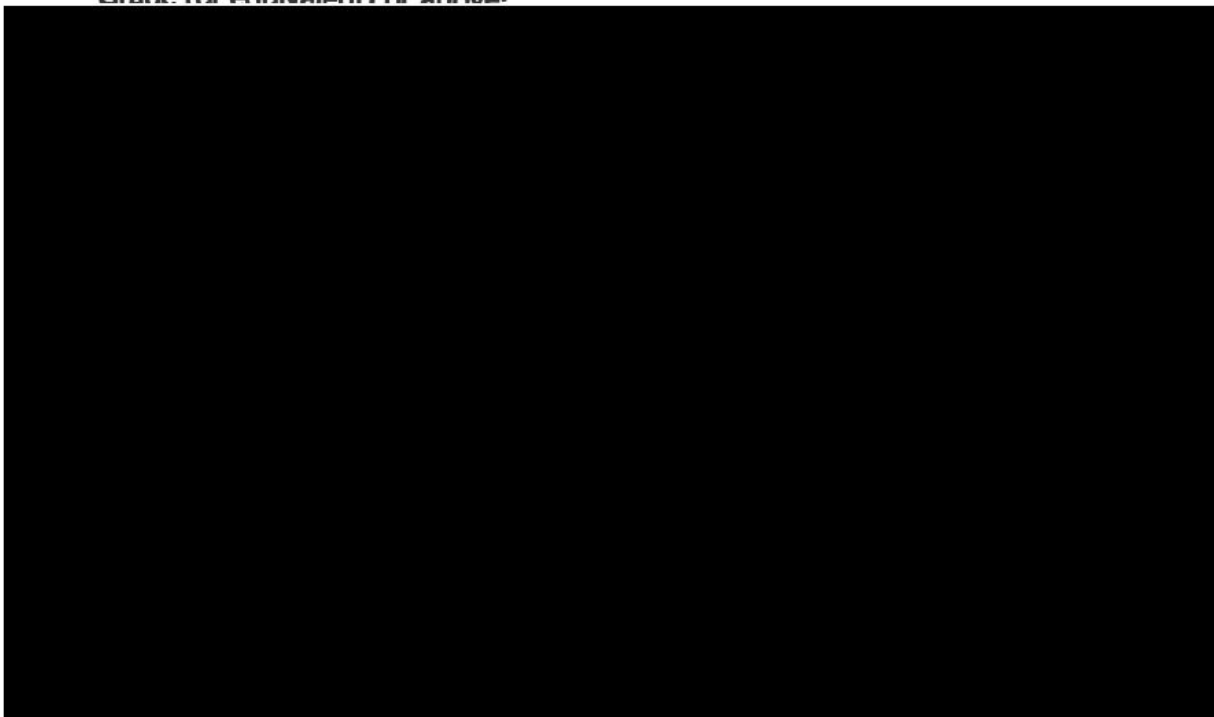
relating to work done in the ordinary course of business of Barclays' Collateral Operations Unit.

2. Any actions authorised by this Deed may be taken by any of the Attorneys and if so taken shall be valid as if done by all Attorneys.
3. By this Deed we ratify and confirm, and agree to ratify and confirm, any act of the Attorneys undertaken in good faith pursuant to this Deed.
4. This Deed shall be effective from and including 21 March 2022 (the "Effective Date") and shall remain in force until the earlier of: (i) the date which is 12 consecutive calendar months from the Effective Date; or (ii) with respect to the powers granted to an individual Attorney appointed under this Deed, the first date on which that Attorney ceases to be employed by a Barclays Group company.

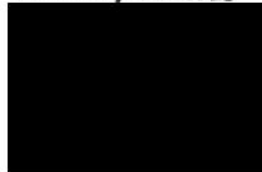
**CERTIFICATE OF AUTHORITY TO THIRD PARTIES
AUTHORISED SIGNATORIES OF BARCLAYS BANK PLC**

I certify that:

- (a) The individual's listed below are employees of Barclays Execution Services Limited are working in the Collateral Unit and are of BA4 (Leadership and Process Agent) Grade (or equivalent) or above.



For Barclays Bank PLC



THIS DEED is

made the 7 day of December 2022
by:

Andrew John Hodgson of Revdor 51 Coach Road, Great Horkesley, Colchester CO6 4AX and Veronica Ellen Mary Scriven of 20 Halstead Road, Colchester CO3 9AE ("the Applicants")

and constitutes a planning obligation by unilateral undertaking for the purposes of Section 106 of the 1990 Act for the benefit of and enforceable by the Council

WHEREAS:-

- A. The Council is the Local Planning Authority for the purposes of the 1990 Act for the City of Colchester within which City the Application Site is located
- B. The Applicants are the executors of the estate of the late Joyce Hodgson and by virtue of the grant of probate dated 1 June 2018 act as proprietors of the freehold title absolute in the Application Site which title is registered at HM Land Registry with title Number EX524896 and have an interest in the Application Site within the meaning of Section 106 of the 1990 Act
- C. The Applicants' Agent submitted a planning application which was given planning reference number 221786 by the Council and if the Council grants the Planning Permission (subject to conditions) the Applicants will firstly be required to enter into this unilateral undertaking and covenant in the manner hereinafter appearing

NOW THIS DEED WITNESETH as follows: -

1. Definitions

1.1 In this Deed the following terms shall have the following meanings: -

"1990 Act"	means the Town and Country Planning Act 1990, as amended
"Application Plan"	means the location plan annexed hereto
"Application Site"	means the land adjacent to 10 Ambrose Avenue, Colchester, CO3 4JY and shown edged red on the Application Plan
"Borough Projects"	means the projects in the City of Colchester that are for the benefit of all persons residing in the City of Colchester and which projects include the provision and/or improvement and/or maintenance of open space sport and recreational facilities such as swimming pools and indoor leisure facilities

"Commencement
of the Development"

means the implementation of the Planning Permission by the carrying out of a material operation described in Section 56 of the 1990 Act and use in this Deed of the terms "Commence the Development" and "Commencement Date" shall be construed accordingly

"Community Facilities"

means the provision of a building or space where community led activities are carried out for the benefit of the community as shall be agreed with the local planning authority

"Community Facilities
Contribution"

means the sum of Two Thousand Eight Hundred and Seventy Two Pounds and Eighty Three Pence (£2,872.83) payable to the Council and which sum shall be increased in accordance with any increase in the RPI figures last published before the date of this Deed and the RPI figures last published before the date the said Community Facilities Contribution is due

"Community Facilities
Contribution Purposes"

means the use of Community Facilities Contribution towards community benefits

"Council"

means Colchester City Council, Rowan House, 33 Sheepen Road, Colchester CO3 3WG

"Development"

means the development described in the Planning Application and permitted by the Planning Permission

"Habitats Sites Mitigation
Contribution"

means the sum of One Hundred and Thirty seven Pounds and Seventy One Pence (£137.71) which is calculated as 1 x (£137.71) per dwelling payable to the Council and which sum shall be increased in accordance with any increase in the RPI figures last published before the date of this Deed and the RPI

figures last published before the date the said Habitats Sites Mitigation Contribution is due

"Habitats Sites Mitigation Contribution Purposes"

means use of the Habitats Site Mitigation Contribution towards Habitats Sites Mitigation

"Habitats Sites Mitigation"

means the mitigation of recreational disturbances of a European designated site as a result of use of the Development and in order to comply with the Conservation of Habitats and Species Regulation 2017

"Notice of Commencement"

means notice in writing to advise of the date that Commencement of the Development occurred

"Open Space Sport and Recreational Facilities Contribution"

means the sum of Six Thousand, Five Hundred and Sixty Pounds and Seventy Nine Pence (£6,560.79) which sum shall be increased in accordance with any increase in the RPI figures last published before the date of this Deed and the RPI figures last published before the date that the Open Space Sport and Recreation Facilities Contribution is due

"Open Space Sport and Recreational Facilities Contribution Purposes"

means the use of Open Space Sport and Recreational Facilities towards (a) the provision and /or improvement and/or maintenance of Open Space Sport and Recreational Facilities in the vicinity of the Application Site and (b) the City Projects

"Planning Application"

means the planning application (including plans, statements and appraisals in support of the said application) submitted by the Applicants' Agent to the Council and which the Council has given planning permission reference number 221786 for the proposed construction of 1x3 bedroom detached house

"Planning Permission" means the planning permission (with conditions) granted by the Council in accordance with the Planning Application

"RPI" means the Retail Price Index published by or on behalf of the Government of the United Kingdom or if the same index shall cease to be published such other index as may be substituted therein

2. INTERPRETATION AND LEGAL EFFECT

2.1 The covenants in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act in respect of which:

- (a) The Applicants are the executors and act on behalf of the late owner of the freehold title to the Application Site and the said Application Site is free from any third-party interests and encumbrances other than those referred to in the title deeds
- (b) The Council is the Local Planning Authority entitled to enforce the provision of this Deed and the covenants contained in this Deed shall be so enforceable
- (c) This Deed shall be binding on all successors and assigns in title of the Applicants and any persons claiming under or through them
- (d) This Deed has been executed as a Deed and shall be registered by the Council as a local land charge against the Application Site in accordance with Section 106(11) of the Act

2.2 This Deed is made pursuant to Section 106 of the Act and all other powers enabling the parties to enter into such a Deed

2.3 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval

2.4 This Deed has immediate effect, but the covenants contained herein shall take effect upon the date that the Council issues the Planning Permission

2.5 If the Planning Permission shall expire before the Commencement of the Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect but without prejudice to any of the covenants that arise to be performed prior to any such expiration or revocation and any contribution already paid to the Council shall forthwith be returned to the Applicants (or their nominated person)

2.6 No person shall be liable for a breach of a covenant in this Deed unless they hold an interest in the Application Site or held such an interest at the date of the breach

3. THE APPLICANTS' COVENANTS

The Applicants HEREBY COVENANT AND UNDERTAKE with the Council that the Applicants will:-

- 3.1 Pay to the Council the Community Facilities Contribution before the Commencement of the Development and shall not Commence the Development unless and until the Community Facilities Contribution has been paid to the Council PROVIDED THAT the Community Facilities Contribution is given on condition that;
- 3.1.1 the Council will only use the Community Facilities Contribution towards Community Facilities Contribution Purposes
 - 3.1.2 the Applicants shall be entitled to request in writing that the Council return to the Applicants any unused part the Community Facilities Contribution (plus interest that has accrued on that unused part) on the tenth (10th) anniversary of the date that the Council received the said Community Facilities Contribution
- 3.2 Pay to the Council the Open Space Sport and Recreational Facilities Contribution before the Commencement of the Development and shall not commence the Development unless and until the Open Space Sport and Recreational Facilities Contribution has been paid to the Council PROVIDED THAT the Open Space Sport and Recreational Facilities Contribution is given on the condition that;
- 3.2.1 the Council will use the Open Space Sport and Recreational Facilities Contribution towards the Open Space Sport and Recreational Facilities Contribution Purposes.
 - 3.2.2 the Council will use no more than thirty five percent (35%) of the Open Space Sport and Recreational Facilities Contribution towards the Borough Projects
 - 3.2.3 the Landowner shall be entitled to request in writing that the Council return to the Landowner any unused part the Open Space Sport and Recreational Facilities Contribution (plus interest that has accrued on that unused part) on the tenth (10th) anniversary of the date that the Council received the said Open Space Sport and Recreational Facilities Contribution
- 3.3 Pay to the Council the Habitats Sites Mitigation Contribution before the Commencement of the Development and shall not Commence the Development unless and until the Habitats Sites Mitigation Contribution has been paid to the Council PROVIDED THAT the Habitats Sites Mitigation Contribution is given on condition that;
- 3.3.1 the Council will only use the Habitats Sites Mitigation Contribution towards Habitats Sites Mitigation Contribution Purposes
 - 3.3.2 the Applicants shall be entitled to request in writing that the Council return to the Applicants any unused part the Habitats Sites Mitigation Contribution (plus interest that has accrued on that unused part) on the tenth (10th) anniversary of the date that the Council received the said Habitats Sites Mitigation Contribution
- 3.4 Serve on the Council a Notice of Commencement (marked for the attention of the Council's Section 106 Compliance Officer) not more than (7) days after Commencement of the Development has occurred.

4. FEES

- 4.1 The Applicants shall pay to the Council the sum of £400 (Four Hundred Pounds) towards the Council's administration costs and the cost of monitoring the performance of the planning obligations that the Applicants are required to observe and perform pursuant to the terms of this Deed should Planning Permission be granted. If Planning Permission is not granted the Applicants will be entitled to a refund of the £400 (Four Hundred Pounds) monitoring fee.
- 4.2 The Applicants shall pay to the Council the sum of £500 (Five Hundred Pounds) for the Council's reasonable and proper legal costs together with all disbursements incurred in connection with its approval and registration of this Deed.

5. INDEXATION OF CONTRIBUTIONS

- 5.1 All financial contributions payable to the Council shall be Index Linked
- 5.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Applicants in writing.

6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 6.1 It is hereby acknowledged that it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights that arise under the said 1999 Act are hereby excluded PROVIDED THAT for the avoidance of any doubt this clause 6.1 does not apply to the Council.

7. DETERMINATION OF DEED

This Deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Applicants; or
- (c) is quashed following a successful legal challenge.

8. LOCAL LAND CHARGE

- 8.1 This Deed is a local land charge and shall be registered as such by the Council.

8.1 This Deed is a local land charge and shall be registered as such by the Council.

9. INTEREST ON LATE PAYMENT

- 9.1 If any contribution due pursuant to this Deed has not been paid to the Council prior to or on the due dates for payment, the Applicants shall pay the Council interest on the contribution or relevant part thereof at the rate of two percent (2%) above the base lending rate of Barclays Bank PLC (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Commencement Date to and including the actual dates of the payments.

10. GOVERNING LAW

- 10.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by
Andrew John Hodgson
in the presence of:

Signature of witness

Name of witness...

Address of witness...

Occupation of witness



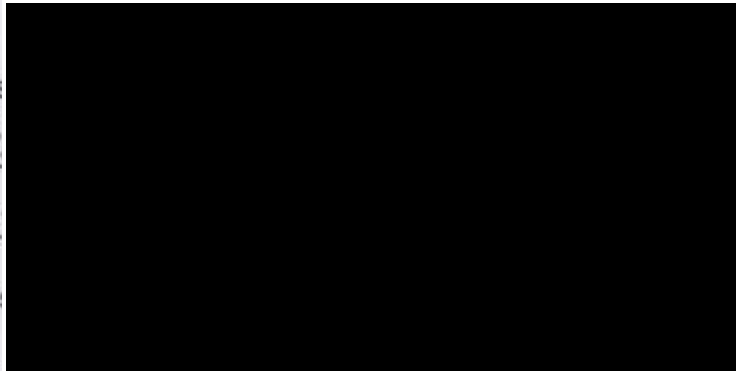
Executed as a deed by
Veronica Ellen Mary Scriven
in the presence of:

Signature of witness

Name of witness...

Address of witness...

Occupation of witness





LOCATION PLAN

SCALE 1:1250.
Page 113 of 160

THIS DEED is

made the 19th day of December 2022

by:

Colbert Developments Limited (Co Reg. No. 11308373) of 47 Butt Road, Colchester, CO3 3BZ (**"the Applicant"**)

and constitutes a planning obligation by unilateral undertaking for the purposes of Section 106 of the 1990 Act for the benefit of and enforceable by the Council

WHEREAS:-

- A. The Council is the Local Planning Authority for the purposes of the 1990 Act for the City of Colchester within which City the Application Site is located
- B. The Applicant is the registered proprietor of the Application Site which freehold titles are registered at HM Land Registry with the following title numbers EX945647, EX539805, EX943073, EX967942 and EX522909 and has an interest in the Application Site within the meaning of Section 106 of the 1990 Act
- C. The Applicant's Agent submitted a planning application which was given planning reference number 220460 by the Council and if the Council grants the Planning Permission (subject to conditions) this will be subject to the Applicant first entering into this unilateral undertaking and covenanting in the manner hereinafter appearing

NOW THIS DEED WITNESETH as follows: -

1. Definitions

- 1.1 In this Deed the following terms shall have the following meanings: -

"1990 Act" means the Town and Country Planning Act 1990, as amended

"Application Plan" means the location plan annexed hereto

"Application Site" means the land east of Albert Street, Colchester, CO1 1RU and shown edged red on the Application Plan

"Commencement"

of the Development"	means the implementation of the Planning Permission by the carrying out of a material operation described in Section 56 of the 1990 Act and use in this Deed of the terms "Commence the Development" and "Commencement Date" shall be construed accordingly
"Community Facilities"	means the provision of a building or space where community led activities are carried out for the benefit of the community as shall be agreed with the local planning authority
"Community Facilities Contribution"	means the sum of Eighteen Thousand Eight Hundred and Seventy Eight Pounds and Sixty One Pence (£18,878.61) payable to the Council and which sum shall be increased in accordance with any increase in the RPI figures last published before the date of this Deed and the RPI figures last published before the date the said Community Facilities Contribution is due
"Community Facilities Contribution Purposes"	means the use of Community Facilities Contribution towards the redevelopment of St Peter Church and Church Hall, Phase 1 to equip the Church with redecorated spaces, new kitchen and toilet facilities, café-style tables and chairs, energy-efficient lighting, and a heating system, providing facilities needed for groups. In respect of Phase 2, the contribution will be used to repair/refurb or rebuild the church hall
"Council"	means Colchester City Council, Rowan House, 33 Sheepen Road, Colchester CO3 3WG
"Development"	means the development described in the Planning Application and permitted by the Planning Permission
"Habitats Sites Mitigation Contribution"	means the sum of One Thousand, Two Hundred and Thirty Nine Pounds and Thirty Nine Pence (£1,239.39) which is calculated as 9 x (£137.71) per dwelling which contribution which sum shall be increased in accordance with any increase in the RPI figures last published before the date of this Deed and the RPI figures last published before the date that the Habitats Sites Mitigation Contribution is due

"Habitats Sites Mitigation Contribution Purposes"	means use of the Habitats Site Mitigation Contribution towards Habitats Sites Mitigation
"Habitats Sites Mitigation"	means the mitigation of recreational disturbances of a European designated site as a result of use of the Development and in order to comply with the Conservation of Habitats and Species Regulation 2017
"Notice of Commencement"	means notice in writing to advise of the date that Commencement of the Development occurred
"Open Space Sport and Recreational Contribution"	means the sum of Forty Three Thousand, One Hundred and Thirteen Pounds and Seventy Five Pence (£43,113.75) which sum shall be increased in accordance with any increase in the RPI figures last published before the date of this Deed and the RPI figures last published before the date that the Open Space Sport and Recreation Facilities Contribution is due
"Open Space Sport and Recreational Contribution Purposes"	means the use of Open Space Sport and Recreational Facilities towards (a) the provision and /or improvement and/or maintenance of Open Space Sport and Recreational Facilities in the vicinity of the Application Site and (b) the City Projects
"Planning Application"	means the planning application (including plans, statements and appraisals in support of the said application) submitted by the Applicant's Agent to the Council and which the Council has given planning permission reference number 222460 for a full application for the erection of 9 dwellings comprising 4 x3 bedroom houses, 4x2 bedroom apartments and 1x1 bedroom apartment

“Planning Permission”	means the planning permission (with conditions) granted by the Council in accordance with the Planning Application
“RPI”	means the Retail Price Index published by or on behalf of the Government of the United Kingdom or if the same index shall cease to be published such other index as may be substituted therein

2. INTERPRETATION AND LEGAL EFFECT

- 2.1 The covenants in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act in respect of which:
- (a) The Applicant is the owner of the freehold titles to the Application Site which Application Site is free from any third-party interests and encumbrances other than those referred to in the charges registers
 - (b) The Council is the Local Planning Authority entitled to enforce the provision of this Deed and the covenants contained in this Deed shall be so enforceable
 - (c) This Deed shall be binding on all successors and assigns in title of the Applicant and any persons claiming under or through them
 - (d) This Deed has been executed as a Deed and shall be registered by the Council as a local land charge against the Application Site in accordance with Section 106(11) of the Act
- 2.2 This Deed is made pursuant to Section 106 of the Act and all other powers enabling the parties to enter into such a Deed
- 2.3 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval
- 2.4 This Deed has immediate effect, but the covenants contained herein shall take effect upon the date that the Council issues the Planning Permission
- 2.5 If the Planning Permission shall expire before the Commencement of the Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect but without prejudice to any of the covenants that arise to be performed prior to any such expiration or revocation and any contribution already paid to the Council shall forthwith be returned to the Applicant (or his nominated person)

- 2.6 No person shall be liable for a breach of a covenant in this Deed unless they hold an interest in the Application Site or held such an interest at the date of the breach

3. THE APPLICANT'S COVENANTS

The Applicant HEREBY COVENANTS AND UNDERTAKES with the Council that the Applicant will:-

- 3.1 Pay to the Council the Community Facilities Contribution before the Commencement of the Development and shall not Commence the Development unless and until the Community Facilities Contribution has been paid to the Council PROVIDED THAT the Community Facilities Contribution is given on condition that;
- 3.1.1 the Council will only use the Community Facilities Contribution towards Community Facilities Contribution Purposes
- 3.1.2 the Applicant shall be entitled to request in writing that the Council return to the Applicant any unused part the Community Facilities Contribution (plus interest that has accrued on that unused part) on the tenth (10th) anniversary of the date that the Council received the said Community Facilities Contribution
- 3.2 Pay to the Council the Open Space Sport and Recreational Facilities Contribution before the Commencement of the Development and shall not commence the Development unless and until the Open Space Sport and Recreational Facilities Contribution has been paid to the Council PROVIDED THAT the Open Space Sport and Recreational Facilities Contribution is given on the condition that;
- 3.2.1 the Council will use the Open Space Sport and Recreational Facilities Contribution towards the Open Space Sport and Recreational Facilities Contribution Purposes.
- 3.2.2 the Council will use no more than thirty five percent (35%) of the Open Space Sport and Recreational Facilities Contribution towards the Borough Projects
- 3.2.3 the Applicant shall be entitled to request in writing that the Council return to the Applicant any unused part the Open Space Sport and Recreational Facilities Contribution (plus interest that has accrued on that unused part) on the tenth (10th) anniversary of the date that the Council received the said Open Space Sport and Recreational Facilities Contribution
- 3.3 Pay to the Council the Habitats Sites Mitigation Contribution before the Commencement of the Development and shall not Commence the Development unless and until the Habitats Sites Mitigation Contribution has been paid to the Council PROVIDED THAT the Habitats Sites Mitigation Contribution is given on condition that;

- 3.1.1 the Council will only use the Habitats Sites Mitigation Contribution towards Habitats Sites Mitigation Contribution Purposes
- 3.1.2 the Applicant shall be entitled to request in writing that the Council return to the Applicant any unused part the Habitats Sites Mitigation Contribution (plus interest that has accrued on that unused part) on the tenth (10th) anniversary of the date that the Council received the said Habitats Sites Mitigation Contribution
- 3.4 Serve on the Council a Notice of Commencement (marked for the attention of the Council's Section 106 Compliance Officer) not more than (7) days after Commencement of the Development has occurred.

4. FEES

- 4.1 The Applicant has already paid to the Council the sum of £400 (Four Hundred Pounds) towards the Council's administration costs and the cost of monitoring the performance of the planning obligations that the Applicant is required to observe and perform pursuant to the terms of this Deed should Planning Permission be granted. If Planning Permission is not granted the Applicant will be entitled to a refund of the £400 (Four Hundred Pounds) monitoring fee.
- 4.2 The Applicant has already paid to the Council the sum of £500 (Five Hundred Pounds) for the Council's reasonable and proper legal costs together with all disbursements incurred in connection with its approval and registration of this Deed.

5. INDEXATION OF CONTRIBUTIONS

- 5.1 All financial contributions payable to the Council shall be Index Linked
- 5.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Applicant in writing.

6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 6.1 It is hereby acknowledged that it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights that arise under the said 1999 Act are hereby excluded PROVIDED THAT for the avoidance of any doubt this clause 6.1 does not apply to the Council.

7. DETERMINATION OF DEED

This Deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Applicant; or
- (c) is quashed following a successful legal challenge.

8. LOCAL LAND CHARGE

8.1 This Deed is a local land charge and shall be registered as such by the Council.

9. INTEREST ON LATE PAYMENT

9.1 If any contribution due pursuant to this Deed has not been paid to the Council prior to or on the due dates for payment, the Applicant shall pay the Council interest on the contribution or relevant part thereof at the rate of two percent (2%) above the base lending rate of Barclays Bank PLC (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Commencement Date to and including the actual dates of the payments.

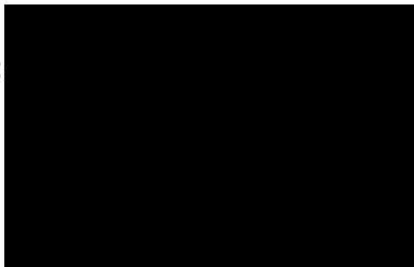
10. GOVERNING LAW

10.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by
Colbert Developments Limited
in the presence of:

Direct





Scrutiny Panel

Item
13

14 March 2023

Report of	Chief Operating Officer	Author	Owen Howell Tel. 282518
Title	Annual Scrutiny Report		
Wards affected	Not Applicable		

This is a report setting out the work of the Scrutiny Panel during 2022/23

1. Executive Summary

- 1.1 This report sets out the work of the Scrutiny Panel during 2022/23 and requests that the Panel recommend the report to Full Council for approval on 19 July 2023.

2. Action Required

- 2.1 The Panel is asked to consider and comment on the draft Annual Scrutiny Report.
- 2.2 The Panel is asked to recommend this report to Full Council for approval on 19 July 2023.

3. Background Information

- 3.1 The Constitution states the Scrutiny Panel shall report annually to the Full Council on its work and make recommendations for future work programmes and amended working methods if appropriate.
- 3.2 The purpose of the report is to inform the Council of the work undertaken by the Scrutiny Panel, and for the Full Council to form an opinion of the effectiveness of the scrutiny function. The final report will be submitted to Full Council for consideration and approval following endorsement by Scrutiny Panel members.
- 3.3 This Scrutiny Report is a descriptive record of the scrutiny reviews undertaken by the Scrutiny Panel in 2022/23. It also provides a report on any work undertaken by the Scrutiny Panel in its role as Crime and Disorder Committee for the Council.
- 3.4 The draft Annual Report gives a general overview of the series of Portfolio Holder briefings received by the Scrutiny Panel during 2022-23. A link has been provided for members to access the relevant minutes for individual briefings on the Council website. The Panel may wish to consider whether it wishes for copies of the minutes of these briefings to be collated to form a background document to the Annual Report when it is presented to Full Council. Whilst detail from individual briefings has been omitted from this report, any resolutions or recommendations which arise from those briefings are shown within the report.

4. Standard and Strategic Plan References

- 4.1 Scrutiny and challenge was integral to the delivery of the Strategic Plan 2020-2023 priorities and direction for the Borough as set out under the strategic themes of:
- [Tackling the climate challenge and leading sustainability](#)
 - [Creating safe, healthy and active communities](#)
 - [Delivering homes for people who need them](#)
 - [Growing a fair economy so everyone benefits](#)
 - [Celebrating our heritage and culture](#)
- 4.2 The Council recognises that effective local government relies on establishing and maintaining the public's confidence, and that setting high standards of self-governance provides a clear and demonstrable lead. Effective governance underpins the implementation and application of all aspects of the Council's work.

5. Appendices

- 5.1 Appendix A – Draft Scrutiny Panel Annual Report 2022-23.

Scrutiny Panel Annual Report 2022-23

This Annual Report demonstrates the contribution made by the Scrutiny Panel at Colchester Borough Council.

Scrutiny Panel Role

The role of the Scrutiny Panel is to examine the Council's policies and strategies from a Borough-wide perspective and ensure that the actions of the Cabinet accord with the Council's policies and budget. The Panel also reviews corporate strategies that form the Council's Strategic Plan, Council partnerships and the Council's budgetary guidelines, and scrutinises Cabinet or Portfolio Holder decisions which have been called in.

The Scrutiny Panel in 2022/23

The function of the Scrutiny Panel continued to be important, given the challenges faced by the Council in addressing the effects of the extreme financial pressures caused by the macroeconomic situation in which the UK finds itself, and the formation of a new Council Administration in May 2022. Pressures on the Budget required the Council to address changes in income and expenditure to continue to provide services in a safe but successful manner under difficult circumstances. As a consequence, the Council was required to continue to innovate and look for different ways to mitigate financial pressures, and to adapt service provision in ways which sought to enable the continued delivery of vital services throughout the Borough, whilst minimising costs. The Scrutiny Panel played an important role in examining the strategic decision making relating to the Council's delivery of services.

The Panel continued to carry out its annual programme of scrutinising the Council's financial affairs, budget setting and performance against its Strategic Plan. In-depth and detailed examination of the Council's draft Budget for 2023-24 was carried out, supported by members of the Cabinet and the Head of Finance/Section 151 Officer and his team.

The success of Scrutiny Panel reviews depended on the involvement of Councillors, Council officers, partner organisations, expert witnesses and members of the public, and the Chairman of the Scrutiny Panel would like to thank everyone for their contribution to the work of the Scrutiny Panel in 2022/23.

Call-ins

The general low level of call-ins and matters of urgency on Scrutiny Panel agendas suggests that the governance arrangements within the Council are working effectively.

One call-in request was received during 2022-23, relating to a decision taken by the Portfolio Holder for Neighbourhood Services and Waste. This decision was published on 9 February 2023 and was as follows:

To agree to change the current free operating model for the Saturday Household Drop-off Service so that the Council only offers a selection of chargeable Saturday collection services to residents' associations, parish councils, managing agents or other organisations, with the fees as set out within the report.

The call-in raised the following concerns:

- No consultation with residents.
- No consultation with staff.
- Will increase fly tipping.
- Will affect those most vulnerable who do not have access to a vehicle.
- Is against the Council's Climate policy as it will increase vehicular movements going to recycling centres.
- Will increase domestic waste collection services

The call-in period was for ten working days, and a call-in request was received on 20 February 2023 and declared valid by the Council's Monitoring Officer, based on the first two concerns raised, as shown above. An additional meeting of the Scrutiny Panel was scheduled for 3 March 2023 in order to consider this call-in.

As Lead member on the call-in, Councillor Lissimore presented and explained the reasons given for challenging the decision in question. Councillor Goss, as Portfolio Holder for Neighbourhood Services and Waste then answered these points and explained how the decision had been taken. The Panel discussed each of the points raised and considered whether enough consultation had occurred, and whether it agreed with the challenges concerning effects on fly tipping, other Council services and on residents.

The Panel noted the explanation of the Portfolio Holder for Neighbourhood Services and Waste regarding the work which officers of the Council had done in relation to this decision, showing that consultation of officers had occurred, however concern was raised that no consultation of the public or councillors had been carried out. The Portfolio Holder explained that only 120 out of 193,000 residents used the service [0.06%], and that consultation was not carried out as the users of the service consisted of less than 1% of the population. The Panel discussed this, and asked questions about Cabinet's approach to consultations and what the percentage of residents being affected by a decision would lead to a consultation. The Panel raised concern that there was no policy or guidance to guide Portfolio Holders as to when consultation should be carried out of residents and councillors in regard to decisions taken.

The Panel considered the concerns regarding the likely effects on vulnerable residents, council services and fly tipping rates. Individual members of the Panel voiced their concerns as to the potential effects, however the Panel decided that the final three points raised in the call-in, as shown above, could

not be evidenced. The view was given that it could not be shown that the decision taken would affect those without a vehicle or go against climate policies due to increasing vehicle journeys to recycling centres (as almost all would need access to a vehicle to transport waste items to the current collection points), or that there would be an increase in use of domestic waste collection services.

The Panel discussed the potential for increased fly tipping, and increased costs of dealing with this. The Portfolio Holder for Neighbourhood Services and Waste gave the view that no increase was expected and therefore no increased cost had been factored into the estimate of the savings generated by this decision. Panel members expressed concern that no information or consideration regarding this issue was contained in the decision report.

RESOLVED that the decision WAS-002-22 [Review of Saturday Household Drop-off Service] be referred back to the Portfolio Holder for Neighbourhood Services and Waste, for further consideration, with the recommendation that the Portfolio Holder addresses the following concerns: -

- (a) That the decision had not been subject to consultation and the Panel was concerned that there did not appear to be a policy or formal guidance to guide Cabinet and individual portfolio holders as to how to approach consultations and in what circumstances they should be carried out;
- (b) That the potential for increased fly tipping which may be caused by this decision has not been addressed, that more data analysis of the likelihood of this happening should have been conducted and content included in the decision report to lay out the expected effects and additional costs to the Council, even if it no increase in fly tipping or Council costs is expected.

Decisions taken under urgency provisions

Certain decisions may be taken by Portfolio Holders or Cabinet under urgency provisions within the Constitution. Decisions taken by Cabinet or Portfolio Holders under urgency provisions are decisions made to take immediate action on urgent matters, which must then be reported on to the Scrutiny Panel at the earliest possible meeting. Such decisions are not subject to the usual decision making/call in process.

The Overview and Scrutiny Procedure Rules state that; 'A decision would be urgent if any delay likely to be caused by the Call-In procedure would seriously prejudice the legal or financial position of the Council or the decision relates to the commencement of a statutory consultation process.'

At the Panel's first full meeting of 2022-23, the Chairman underlined his expectation that, for any decisions taken under special urgency provisions, the Panel would expect to be provided with a clear timeline of the decision making, to show why there had been a need for the special urgency provisions to be used.

No decisions were taken under special urgency provisions during 2022-23 and by the time of the writing of this report.

Pre-decision scrutiny of decision making.

During 2022/23 the Scrutiny Panel conducted proactive scrutiny of key strategies and decisions to be made by Cabinet, including the setting of the Council's draft Budget for 2022-23.

Colchester's Housing Strategy 2022-27

On 5 July 2023, the Panel reviewed the draft Housing Strategy, due to be put before Cabinet for adoption on 6 July 2023.

The Chairman explained that the Panel would look at the Strategy and offer views as to whether it was fit for purpose. Praise was given for the clear presentation and explanation of the key priorities and how the Strategy had been formed around them. Questions were asked as to how to supply the greatest amount of necessary housing for sale and whether funding would be provided to housing associations for affordable housing developments or purchases.

The Panel discussed the lack of affordable housing, the effect this had an increasing demand pressure in the rental market, and evictions from private rental properties, caused by landlords selling up and a variety of other reasons.

The Panel questioned the targets set, such as an increase to 30% for affordable housing as a percentage of new build properties. The Strategic Economic Growth Manager outlined the range of different types of affordable housing schemes possible, with the Council striving to achieve a balance of the different types. The Council now routinely and successfully demanded that 30% of homes in new development be affordable housing. The four main avenues to increase affordable housing were to insist on it being included in developments (as planning gain), for the Council to build affordable housing itself, to buy stock (including homes sold under 'Right to Buy' provisions, and to work with non-profit deliverers (such as alms houses) to help them build more. A Panel member pushed for stronger wording than to 'seek' 30% of properties on new development to be affordable housing, and for the Council to examine why it does not achieve this 30% for all major developments. It was confirmed that the draft Strategy did call for 30% on all major developments, and that the Council sought this from all new major developments.

Members discussed the instances where developers agreed to a set percentage of affordable housing, but later sought to reduce or remove requirements for affordable housing, on viability grounds. Assurance was given that the Council did its best, case by case, to hold developers to the requirement. Any request for variations to the requirement would need to be backed up by evidence to prove unviability. The Panel recommended to Cabinet that the Council retains a target that 30% of the properties to be built for any major development must be required to be affordable housing.

The Panel discussed the possibility of prioritising local people to give them first chance to buy new affordable housing, before it is offered on the open market. The Portfolio Holder explained that, working with CBH, partnership schemes, the Council were looking at ways to offer new properties to local people first, such as the developments on sites formerly used for garages. A member highlighted a pilot trial, where an application for a village development had been granted subject to a local prioritisation scheme being tested when the properties were ready to be sold. Panel members suggested that the draft Strategy contain content that would lay out the Council's approach to prioritising sale of affordable housing to people with local connections or residency.

This item led the Scrutiny Panel to scheduled further consideration of Section 106 developer contributions and on family/local affiliation in letting or sale of new affordable housing. The former was scheduled for 14 March 2023, with the latter scheduled for 8 November 2022 and summarised within this Annual Report.

Draft Economic Strategy

At the Scrutiny Panel meeting on 13 December, the Panel conducted pre-decision scrutiny of the draft Economic Strategy.

the Strategy updated the Council's priorities as to how to boost the local economy, increase infrastructure (such as roads, healthcare, digital economy and broadband coverage), improve pay levels and inspire new projects.

Matt Sterling, Strategic Economic Growth Manager, explained that the Economic Strategy was closely linked to the Housing Strategy, and that it set out high-level priorities, alongside specific projects and actions and fitted these into an action plan. The three main strands of the strategy were firstly data (including economic trends, information and the strategy's evidence base), secondly engagement (with business and public sector representatives, one-to-one and partnership meetings), and thirdly an understanding of the Administration's priorities. All the priorities were intended to boost all parts of the area, urban and rural.

Inclusive economic growth was to be supported, with focus on business innovation and increasing the availability of skills. The Council aimed to leverage additional investment and infrastructure spending, whilst aiming to decarbonise and foster environmental sustainability. The Action Plan would set out how the Council intended to realise its aims.

Work was planned with ECC and the University of Essex on developing new care tech ideas and products. Detailed plans would be produced to court investments.

A digital work hub would be created to serve small technology businesses, alongside a new training hub. Details were given of grants won to increase the amount of training provided locally. A bid for the second round of levelling up funding was described. This included £20m for the city centre, and was accompanied by a bid for £500k from the rural prosperity fund.

The wide range of partnerships was described, including with the North Essex Economic Board, the University and with Colchester Ambassadors. These partnerships supported start up business and firms conducting importing and exporting.

Colbea advised on how to reduce business costs and emissions, assisted by ECC.

The Strategic Economic Growth Manager confirmed that specific targets to improve life chances were a key priority for him. Regarding predictions and expected outcomes, caution was given that it was likely that the more specific predictions were, the less ambitious the plans would be. It was hard to predict the next three years, but the Strategy was to give a clear sense of what the Council would do and for what it would aim. Targets would be set for each year and progress reports produced. The Strategy committed the Council to areas of activity and annual targets would flow from that.

The Panel considered the Strategy in comparison to those of other local authorities and queried what the unique selling points were for Colchester's Strategy. It was asked whether similarities to other plans were inevitable. The Strategic Economic Growth Manager gave assurance that similarities were not surprising, given that tier 2 local authorities had the same powers as each other, the same core responsibilities and similar needs. It was elements such as the commitment to a real living wage which differentiated Colchester's Strategy from many others. The Council was performing well in achieving its targets and more information would be in the development plan and outcomes reports.

More information was requested on what would be done to encourage tourism and whether infrastructure such as the Rapid Transit System (RTS) would give opportunities for new conference facilities and tourist options. The Strategic Economic Growth Manager confirmed work would be conducted on encouraging tourism and visits, within the Strategy. Focus on specific sectors had been avoided in this Strategy, but a bespoke tourism strategy was being considered, as this was a crucial part of the local economy.

The positives shown by the Strategy were discussed, including work with the University and the growth figures shown compared to those elsewhere. Increased income and value could be used to lead to higher wages and salaries. Significant amounts had been spent on training and the tech sector already in the years examined, and large amounts of data gathered relating to this.

The Leader summarised the Strategy as a prospectus to lay out the Council's way ahead, utilising good data and good people to set how the City positioned itself. Partnership with others, including businesses, would be key and was much more effective than it had formerly been.

The Leader and officers were asked what the Council's approach would be towards the large scale migration of workers who lived in Colchester but worked elsewhere. Colchester benefited from the spending of their income, but not from their skills and labour. The Strategic Economic Growth Manager confirmed that

his team had considered this issue and that it was included within the evidence base for the Strategy. The move to home working was a widespread trend and move away from commuting. This represented an opportunity to keep people in higher-paid jobs based in Colchester, but also a challenge as individuals could reside here but work elsewhere.

The Deputy Leader noted that the delivery plan would likely give the details requested by the Panel and that it would be key to see the additional funding leveraged on the back of the funding awards won by the Council. The Chairman expressed the assurance that the Panel had received from the Strategic Economic Growth Manager that metrics would be included in the delivery plan.

The Chairman thanked the Strategic Economic Growth Manager and confirmed that the Panel noted the quality and thoroughness of the report and Strategy, and did not wish to make any formal recommendations to Cabinet.

Local Council Tax Support Scheme 2023/24

The Panel scrutinised the proposed Scheme at its meeting on 13 December 2022 and were briefed on the proposal to increase entitlement from 80% up to 85%. Around 5,500 households were affected, amongst those which had been most hit by UK economic problems. The cost of this change would be around £40k extra per year, expected to be recovered elsewhere such as by reducing write-offs and recovery costs. An overview was given of the consultation responses received.

The Panel discussed the importance of payment requirements being matched to ability to pay, with a need for increased generosity on the part of the Council at this time. In response to questions, the Benefits and Support Manager confirmed that there had been an increase in cancellations of direct debit orders in the past year. A Panel member suggested that direct debits could be promoted as being the easiest way to receive automatic payment of disbursements from Government, such as the recent £150 rebate on council tax, automatically paid to those who were on direct debit schemes.

The Panel agreed that the proposed changes were necessary, the additional cost was not large, and that the Scheme should be recommended for approval.

RECOMMENDED to CABINET that the proposed LCTS scheme for 2023/24 be approved.

Peer Challenge Review report and action plan

The Panel received a report from the Chief Operating Officer inviting it to consider the report on the Local Government Association (LGA) Peer Challenge Action Plan submitted to Cabinet and inviting it to make recommendations to Cabinet. The Chief Operating Officer attended the meeting to present the report and to assist the Panel.

The Chief Operating Officer stressed the importance and impartiality of the LGA Process. The Peer Review process was a key element of sector lead effectiveness and improvement. The Peer Challenge team was constituted of

senior Councillors and officers, and had met over 150 people over the course of three days. The team used a process known as triangulation whereby an issue had to be raised or mentioned three times before it was considered for inclusion in the review. The report and Action Plan addressed the key recommendations made by the Peer Review. The Peer Review Team had also given advice on a wide range of other issues which was being addressed and tracked internally.

Members of the Panel noted that not all the concerns raised by the Peer Review were addressed by the Action Plan, highlighting for example that the concerns around duplication of efforts across the different tiers of local government, scrutiny and diversity, and the recommendation that KPIs were reviewed were not referenced in the Action Plan. The Chief Operating Officer explained that the Key Performance Indicators were being reviewed so that they reflected the new financial realities. The revised KPIs would be reviewed by the Panel at its meeting in March 2023. The Chief Operating Officer reminded the Panel that the Action Plan addressed the key recommendations only and that other issues were being followed up and monitored. There was clear ownership of these issues by named officers. The document tracking these other issues would be circulated to the Panel following the meeting and could be reviewed the Panel in future if it wished. It could also recommend to Cabinet that other issues be included in the Action Plan if it felt they were particularly significant. The Peer Challenge team would review progress against their key recommendations in July, and it was open to the Panel to look again at progress against the Action Plan next municipal year, after this review had taken place.

The Panel indicated that it should look again at the Action Plan again in the next municipal year. It was satisfied that the Action Plan had picked up the most important issues identified by the Peer Review Team and that action was underway to deal with other advice and issues identified. The Panel did not consider that it was necessary to schedule a review of the work on the advice and issues below the key recommendations at this point. Members of the Panel could raise any issues they were concerned about once they had reviewed the tracking document.

The Panel then scrutinised each of the key recommendations in the Action Plan in turn:

1. Focus on City Status. Use this as an opportunity to galvanise partners, improve the Borough's economic and cultural strength and raise the voice of Colchester.
2. Get a firmer grip on the capital programme – manage all risks and improve your planning to ensure you have appropriate strategic finance, programme and project capacity and the resources to deliver.
3. Co-design a compelling and longer-term place based narrative/city vision to define Colchester for the future.
4. Strengthen your political and officer “leaders of place” roles and look beyond Colchester – map your anchor institutions, partners and stakeholders.
5. Review your priorities and projects and refocus on delivering “Brilliant Business As Usual” and strengthen your corporate resources.

6. Strongly consider whether changing your election cycle will help you achieve your goals, ambitions and deliver improved services for Colchester residents.
7. Better define with your staff what “hybrid working” means for Colchester City Council and provide a clear definition. Also clarify how the new Colchester City Council values will be designed and embedded, communicating to staff how these define the Council and will help achieve Colchester’s ambition.
8. Commission an independent review of Colchester Commercial Holdings Ltd and its subsidiaries, also undertake an internal review of Colchester Borough Homes to assess whether the companies are realising the benefits they were established to deliver.

The Panel noted that actions outlined and the proposed timetable in the Action Plan, It was noted that the actions were well underway and that the initial risk assessment of CCHL was due to be reported to Governance and Audit Committee on 17 February 2023. In the circumstances, the Panel did not consider that it was necessary to make a recommendation to Cabinet.

RESOLVED that the Panel review the Peer Review Action Plan again during the course of the 2033-24 municipal year.

RECOMMENDED to CABINET that it consider the following amendments to the Peer Review Action Plan:-

- (a) Recommendation 3 (Co-design a compelling and longer term place based narrative/city vision to define Colchester for the future) to be more clearly defined as it was wider than the sole reference to City Status in the Action Plan implied. It should include clear links to the Strategic Plan, City Centre Masterplan and legacy connections and other longer-term place based issues, such as public transport.
- (b) Recommendation 4 (Strengthen your political and officer “leaders of place” roles and look beyond Colchester – map your anchor institutions, partners and stakeholders) to include a wider reference to the role of all Councillors as community leaders and to explain how relationships with anchor institutions, partners and stakeholders would be strengthened following the mapping exercise.
- (c) Recommendation 5 (Review your priorities and projects and refocus on delivering “Brilliant Business as Usual” and strengthen your corporate resources) to highlight the linkages between the Strategic Plan and the budget and to show how resources will be matched to meet priorities.
- (d) Recommendation 6 (Strongly consider whether changing your election cycle will help you achieve your goals, ambitions, and deliver improved services for Colchester’s communities) to include a timeline and highlight the Boundary Commission review as an essential milestone in the timeline.

Budget setting for 2023-24

At its meeting on 24 January 2023, the Scrutiny Panel scrutinised the draft Budget 2023-24, Capital Programme and Medium-Term Financial Forecast. Members of Cabinet and senior officers presented the extreme financial challenges facing local authorities, and the efforts made to mitigate the worst impacts whilst producing a balanced budget for the coming financial year. The Panel were also informed of the reductions in service which Cabinet felt were necessary in order to produce a balanced budget.

The Panel discussed concerns regarding the reductions to Neighbourhood Services and members' wishes to have more details on these, including plans to charge for garden waste collection. Concerns over the plans to charge for garden waste collection were discussed, including the intention to commence this service in Winter, when demand would be at its lowest, rather than when demand was high and less elastic. The Scrutiny Panel considered impacts on recycling rates. The Leader of the Council and Chief Operating Officer offered additional detail and information on the expectations of uptake of the new collection service, and the budgetary effect expected.

The Panel discussed whether it had been provided with the necessary information to assess the Council's financial position, and the Chairman underlined the Panel's need to identify and then see figures which it considered to be necessary. A reasonable balance between of detail was needed, to ensure appropriate information was provided, but in an understandable way. The Leader of the Council agreed and emphasised the Administration's wish to be transparent, having already scheduled time to go through specific details with members who had voiced concerns. Any data requested would be provided if it were possible to do so.

The Panel discussed the transformative and non-transformative savings listed and the challenges presented in the Budget, where an increase in income had been dwarfed by inflationary costs.

Expected cuts to staffing were discussed and concerns raised that officers such as Zone Wardens should not be lost. Panel members asked for more information as to which jobs would be lost, especially in Neighbourhood Services. It was also noted that response rates in the customer service team were marked to be improved, but this was queried, given that restrictions were being imposed on overtime hours. Suggestions were made by Panel members that workplace levies and leasing of private car parks might be options which could save the Council money. The Leader of the Council agreed that it was important to have officers where they were needed and gave assurance that improvements in customer service response times would be possible with new best practice and improved technology. More information would be provided when possible. In Neighbourhood Services, the proposition was for ten posts to go, although not necessarily through forced redundancies. Richard Block, Chief Operating Officer, underlined how hard decisions had been, needing to look at all options for cutting costs. £13.8m expenditure was still planned for Neighbourhood Services and cuts in other areas would be even more extreme if the Council were to ringfence spending on Neighbourhood Services.

The Scrutiny Panel considered the proposed £50k savings from cuts to Environmental Health and asked if there were any ways to increase income to

avoid a need to reduce services. Mel Rundle, Safety and Protection Manager, explained the situation and gave assurances regarding the teams functions, which included private sector housing, food safety and environmental protection. It did not include licensing matters. The Team could not charge for work such as food safety and environmental protection, and savings were being sought by not replacing certain outgoing officers.

Regarding the proposed recruitment freeze, a Panel member noted that a vacancy factor assumption had already been made, and sometimes caused issues. The members of Cabinet were asked if the recruitment freeze would compound problems. The Panel heard that the vacancy factor allowance was a reflection of gaps between outgoing and incoming officers in roles. The freeze would mean that all vacancies would be reviewed as to whether replacement officers are needed. There would be a full assessment on each post affected. Based on a turnover rate of 15%, it was expected that this freeze would save around £500k. The Panel queried what effect this would have on morale. The Portfolio Holder for Resources explained that staff understood the severity of the budget position and wished to preserve or increase their salaries as far as possible. Officers clarified that recruitment would continue to roles where corporate risk would be increased if vacancies were maintained, or where roles are self-funded or funded from external sources.

A Panel member noted that the Council would be asking staff to take pay cuts, banning overtime and reducing fixed-term positions whilst increasing work pressures on officers, and expressed a preference for reducing the number of services provided, whilst maintaining staff conditions and improving the remaining services provided. The Portfolio Holder for Resources agreed that the Council was having to make the decision to do less, and explain the need for that decision to be made. The Leader explained that the changes to staffing followed the changes and reduction to the management team.

The Panel sought clarification on a wide range of points, seeking to understand and link the data shown across the various finance tables within the report and its appendices. Subjects scrutinised included the Council's pension commitments, treasury management strategy, use of reserves, contingencies for inflationary changes and the audit situation facing the Council and the local government sector.

The Panel, as a result of these considerations, requested and received a significant number of additional briefing notes to clarify aspects of the Council's finances. The Panel also recommended to Cabinet that more information and assurances be provided in the equality impact assessments which accompanied the Budget, that training be given to councillors on effective use of council reserves, that more information be provided on the proposals to charge for garden waste collection, and for pay inflation to be given more prominence in the Council's risk register.

2023-24 Housing Revenue Account estimates and Housing Investment Programme

On 24 January 2023, the Panel considered and discussed the reports provided which detailed the next year's rent increases, which were in line with

Government Policy, and the trading position of Colchester Borough Homes [CBH].

Darren Brown, Finance Manager (Business Partners), set out the proposals for 2023-24 and summarised the report provided. Government had introduced a limit on rent increases to seven percent in 2023-24. There were no indications of a similar restriction for 2024-25 yet. An overview was provided to the Panel of governmental policy changes, but the Finance Manager underlined that the main impacts had arisen from interest rates and high inflation.

The Asset Management Strategy [AMS] included the reviewing of outputs, and a report would be generated on this.

The Finance Manager explained the illustration of the debt curve in Appendix F, between years and to show the expected situations both with and without rent caps being in place. The Council aimed to maintain a healthy debt curve through the next 30 years.

The Panel considered the impact of rent caps, both positive for tenants, but also impacting on the Council and its income.

The Panel questioned and discussed matters such as:

- The management fee and services of Colchester Borough Homes
- Fluctuations in expected capital expenditure borrowing needs in future years
- The Heart of Greenstead Project

The Panel praised the high level of detail in the reports provided, stating that these were laid out in a way that was helpful for non-experts to understand, and approved the approaches and recommended decisions laid out for presentation to Cabinet for approval on 25 January 2023. Cabinet subsequently concurred and approved the recommended decisions.

Scrutiny Reviews at Colchester Borough Council

The Scrutiny Panel held a number of reviews during 2022/23.

Council Tax rebate

On 5 July 2022, the Panel examined how the Council was administering the rebate to assist residents with the increased costs of energy, having been requested by a Panel member at the Panel's meeting held on 7 June 2022. Councillor Cory, Portfolio Holder for Resources, and Samantha Preston, Group Manager – Customer, presented the report and expressed their thanks to the officers who had drawn up the scheme to make rebate payments and roll it out. A high percentage of eligible people paying Council Tax via direct debits had received their rebates. Officers were now focussing on identifying eligible Council Tax payers who did not use direct debits, and to use the options available to find ways to pay out the rebate. The discretionary payment scheme was explained, with details as to how it was and would be used.

The initial announcement of a Council Tax rebate was made in February, and it had been understood to be a challenging task to design and roll out a scheme for making rebate payments. The main challenge was that the Council Tax payment system had been designed to receive payments from the public, rather than to pay out funds. Officers had worked quickly to build this function into the system, then moving to identify eligible non-direct-debit payers of Council Tax and find appropriate ways to provide the rebate to them. An overview of this work was given, along with statistics relating to the percentages of claim rates by eligible Council Tax payers, with an estimated 8,000 residents to be contacted directly by officers to inform them as to how they can claim their rebate. The Panel was informed of the issues which had caused some eligible applicants to be rejected by the Government system, and the ways in which the Council was working to identify those who were in this situation and who were eligible to receive a rebate. Likewise, the Panel was informed of the Council's work to ensure that residents who were not able to engage online were not excluded and were informed of the ways in which they could receive their rebates. Work included direct contact and targeted communications aimed at reaching those who were hardest to contact.

£318k had been allocated for discrete payments to those in need who were not eligible for rebates from the main scheme. The Council was determined that all funding provided to it would be used to assist those residents who were in need. The Panel considered whether it might be useful for it to make recommendations to Cabinet to encourage Cabinet to ensure that no eligible residents were missed and that measures be in place to ensure that all discretionary funding was used to support residents in need. The Portfolio Holder for Resources gave assurance that the Council was already proceeding in line with these suggested recommendations and taking every measure possible, with a last resort being the crediting of individuals' Council Tax accounts with the rebate amounts, where all other options of payment had not been possible. This approach had been approved and the formal policy relating to the Council's payment of rebates would be amended to show this as soon as possible. Priority was being given to help those who were already in receipt of financial support from the Council. The Scrutiny Panel judged that, in light of the assurances given by the Portfolio Holder, recommendations at this stage would be unnecessary, but that they might be merited to show the confidence and approval that the Panel had gained from the assurances given to it.

A Panel member asked how residents could be directed to apply for discretionary funding, including in cases where Council Tax banding of a property was considered to be in need of review, and was told that this information could be provided by officers following the meeting.

RECOMMENDED to CABINET that: -

- a) Cabinet acknowledges and continues to approve of the measures being used by officers to identify those eligible for Council Tax rebates and to pay out these rebates, in line with the robust assurances provided to, and accepted by, the Scrutiny Panel
- b) Cabinet approves of the crediting of eligible Council Tax accounts, as a last resort and where other options for payment of a rebate have been exhausted

Hythe Flooding

This report came to Scrutiny Panel on 5 July 2022 at the request of a Panel member, and that the report was an update on the partnership working underway to remedy the issue of flooding and an opportunity for the Panel to ascertain whether there was any value it could add by scrutinising the Council's approach. The information given did not suggest that any delays had been caused due to any lack of Council financial resource, or by extended decision-making.

Panel members described and discussed the membership of the Hythe Taskforce and its work. After one year of operation, complications had been found, such as the presence of fresh water flooding, with Distillery Lane and Bourne Pond contributing to the problem. Essex Highways and Anglian Water were suggested as responsible agents. Issues were then found with haphazard piping in place to deal with drainage. A Panel member urged all stakeholders to contribute to funding the solutions needed to these issues.

The results of a feasibility study relating to a possible temporary pump was still awaited. The Fire Authority had indicated that it was happy to have personnel on call to operate this as and when necessary.

Concern was raised by a Panel member that there was a lack of scrutiny of the Hythe Taskforce's work, and it was asked whether the funding pot for tackling Haven Road flooding could take section 106 funding contributions.

A Panel member outlined the background of the Hythe Taskforce, which had been brought together by The Honourable Will Quince, MP for Colchester, who sat as the Chairman of the Taskforce. The Taskforce aimed to facilitate cooperation between the agents which had the funding and expertise needed to end the flooding. A Panel member suggested that Will Quince could be invited to attend a future meeting of the Panel to explain the situation and answer questions. One member argued that the Council still had a responsibility to solve the flooding, given its historic operation of a port at the Hythe, and its continued holding of land in the area. The Council had sold off its dredger many years ago, with a lack of dredging suggested by a member as contributing to localised flooding. The Panel discussed whether to recommend that Cabinet took a lead on identifying what action to take and were informed that, whilst the MP's office was not in a position to offer scrutiny of the Hythe Taskforce, Scrutiny Panel had some ability, within its terms of reference, to scrutinise functions outside of those which were the responsibility of Cabinet.

The Panel considered whether it believed that actions were proceeding at an acceptable pace, or whether a scrutiny process could be undertaken whereby the Panel received regular reports, to ensure progress was made. A suggestion was also made that the Council could potentially offer project management services to assist the Taskforce, with the Panel making a recommendation to Cabinet to call for this to be offered. The Panel also discussed whether to recommend that Cabinet look to provide a temporary pump, however a consensus was reached that this was very unlikely to be agreed to, given the need for ongoing funding for its operation.

RECOMMENDED to CABINET that Cabinet offers to provide the project management skills of the Council to assist the multi-agency Hythe Task Force in its work and in its efforts to identify and secure the funds necessary to resolve the flooding in the Haven Road area.

Bus Service Provision

On 5 July 2022, the Panel carried out a review of previous Scrutiny Panel considerations of local bus service provision, and aimed to assess whether a further review could add value.

The Panel considered whether it would be likely that local bus operators would participate in a third Scrutiny Panel review of bus provision, and whether the Panel could potentially make useful recommendations. Concern was raised by members that the Council had no powers over bus services and could not run its own services. It was accepted that sustainable transport was a vital issue for the Borough, but with very limited scope for the Panel to add value, it was argued by one member that the Panel should concentrate on issues where there was the potential for it to add value to the Council's actions or decision making. It was noted by another member that the Panel could examine whether the Local Plan and any associated Council policies or strategies were being carried out appropriately, including external plans and strategies for which the Council was a partner organisation, such as the Town Centre Masterplan.

The Panel considered whether it wished to recommend that Cabinet look at the issue of bus service provision, in the context of the major policies and strategies currently underway. Several members agreed that a larger-scale examination of the issues at play would be a significant job, but likely worth doing. One member of the Panel argued that there had been some success from past Scrutiny Panel reviews, albeit that there was little the Council could do to push for better bus services. Bus station provisions for Colchester was within the Town Centre Masterplan, which could come to the Panel for Scrutiny.

The Panel discussed possible ways to help increase bus usage, including deals, offers and a circular hopper bus system around central Colchester.

RECOMMENDED to CABINET that Cabinet conducts work to consider and examine the potential ways in which the Council can push for improved bus service provision through the Borough, and promote its use by the public, in the context of the Council's current and emerging strategic plans and policies.

Review of Colchester Borough Homes: 2021-22 Performance

On 11 October 2022 the Panel welcomed guests from Colchester Borough Homes [CBH], and Councillor Julie Young, Portfolio Holder for Housing and Communities, to report on the performance of CBH during the preceding year.

the highlights and key points of the annual report being presented to the Panel. This covered subjects such as the demographic and diversity data relating to the Council's tenants, with an assurance that CBH used data effectively to inform and direct its work. The Panel were informed of the 35 homes which had had to be sold, under 'Right to Buy' provisions, as well as the 100 homes added

to the Council's stock through a variety of means. This project aimed to bring good-quality homes into use, with all homes brought into use via the scheme having an EPC [Energy Performance Certificate] rated C or better.

Overall, performance in the key areas monitored was rated as either 'good' or 'very good'. High satisfaction rates had been recorded, which compared well to the rates recorded by CBH's peers.

Problems had been experienced with average letting times, but the average time to re-let a property had reduced from the 30.96 days recorded in the report, and now stood at 23 days.

The Chief Executive provided an update on any eviction proceedings, explaining that Covid-19 had meant a protracted period when no court dates had been available, leading to a backlog. Whilst eviction proceedings remained the option of last resort for CBH, where this had proven necessary, the lengthened waiting time for court action had resulted in the accruing of rent arrears in those cases awaiting court proceedings.

The Panel were informed of the ongoing work to maintain the Council's housing stock and to ensure its quality, even in the face of challenges presented by a tough labour market, which also affected CBH's contractors. 99% of homes had now obtained an electrical safety certificate in the past five years. Building safety remained a priority, and would continue to do so, with CBH mindful of the Social Housing Regulation Bill currently before Parliament. This was expected to lead to more proactive regulation, inspections and additional requirements relating to the Company's key performance indicators [KPIs].

Examples were given of CBH's work in the Borough's communities, including engagement work with residents. More work was now able to take place in person, following the pandemic and end of lockdowns. CBH continued to listen to its tenants and engage with their views, widening the ways in which it did so, and having communication options open to all residents in Council homes.

The work of CBH in addressing, preventing and reducing homelessness was outlined. The Company's priority was to prevent homelessness. During 2020-21, 1,157 homelessness applications had been received by the Housing Solutions Team. 298 instances had been recorded where homelessness was prevented or relieved. 38 people had been helped through initiatives for reducing rough sleeping.

The Panel were briefed on the use of data by CBH to improve its services, with the Housemark benchmarking exercise showing that the company had provided good quality services at a low cost, in comparison to its peers within the region.

The Company's risk management approach, governance arrangements and Strategic Plan were outlined, with a focus on community engagement and outreach. Challenges included difficulties with staff retention in a competitive labour market. The Panel discussed the performance data given, seeking views on how benchmarking might change over the length of the company's Medium Term Delivery Plan. The Panel were informed that there would likely be additional pressure on rent collection, with arrears expected to rise as a result of

increased cost of living. Tenants were being affected by inflation, and ability to pay rent was decreasing. The company did however expect to maintain its performance level in comparison with peers. Increased costs might be experienced, including from dealing with increases in mental health problems and from rising costs of repair works.

The Panel queried the 2022-27 Delivery Plan and asked what assumptions had been made on the housing market and customers' ability to pay, and whether performance targets would need to be adjusted to take account of ongoing economic changes. The Panel were informed that CBH was being ambitious and had extended financial inclusion training to officers of the housing team. Challenges were being considered and plans drawn up to address them, including difficulties in contractor work, as a result of the economic climate. KPI targets were being based on benchmarking data and more information regarding assumptions made (relating to the Delivery Plan) could be circulated to members following the meeting, if they wished to see it. The Chairman requested that this be done.

The Management Agreement between CBC and CBH had previously been extended and was in place until August 2028, but CBH was planning further into the future. The provision of the next generation of housing was a key consideration. CBH would continue to work with Council colleagues and the Portfolio Holder to ensure that all housing KPIs continued to improve, as a key part of succeeding in providing a low-cost, high-quality service to the Council.

Regarding questions relating to CBH's pension liabilities, the Chairman directed that it would be unfair to insist on answers to be given at this meeting, given that this did not form part of the report before the Panel. Philip Sullivan, CBH Chief Executive addressed Councillor Sunnucks' concerns explaining the different deficits relating to the pension scheme, such as any deficits shown in the triennial valuation, which are often dealt with via an individual annual deficit payment, or a change in employer contribution, such as the last time this arose where the employer contribution was increased from 16% to 20%. The debt shown in the accounts was explained as an actuarial debt which would only materialise in the event of a 'cessation event', which would be a circumstance when every employee left the scheme.

The Panel questioned a range of aspects of the work of CBH, asking about the company's relationships with further education colleges, provision of apprenticeships and prioritising of people with local links for housing. The Chief Executive confirmed that the company offered apprenticeships, albeit wanting to do more, as well as being involved with training initiatives expected through the Garden Community project. Regarding prioritisations for housing, the company adhered to the legislation guiding assessments of need and homelessness duty. The Council and CBH worked well together to deal with rough sleeping locally and was one of 20 local authorities in the UK consistently recording that there were fewer than 10 rough sleepers in its area.

The Panel were told that the national policy pushing the sale of council housing was a problem and continued to hurt social housing. Added to this, the increase in mortgage costs would increase the problems caused by private landlords being less able to ease pressure on housing provision. Current national policies

weren't working, and the Chairman of the Board argued that the situation was putting lives at risk. The Portfolio Holder explained that the social value of housing is quantified in the procurement hub and that the Panel would receive a report in November on local links and how these related to lettings.

The Panel asked for information as to how housing officers and other staff were coping with stress, how many properties each officer covered and whether any areas had experienced recruitment problems. The Chief Executive agreed that a number of colleagues had been through difficult times, and the caseloads of housing officers had become more and more complex, with increasing challenges faced by residents. Each officer covered around 700 properties. Recruitment was difficult, and especially so in certain areas such as IT, asset management and specialist roles relating to electrical and mechanical work. The labour market was currently challenging. A member of the Panel raised concern that housing officers had workloads that were too heavy, which had increased whilst officer numbers had decreased. It was queried whether more officers could be recruited.

The Panel examined the relationship between Council and CBH and how much of this involved autonomous working, and how much was directed by the Council. The Chairman of the Board explained that shared services are being considered and confirmed that the Council set the pay scales for CBH too. The company wanted to deliver on the Council's priorities and work collaboratively, but problems with recruitment and retention were experienced due to the restraints on pay. The Portfolio affirmed Cabinet's commitment to working with CBH, with ways to get leaner service provision through collaborative working.

Family/local affiliation in letting and/or sale of local affordable housing and Gateway to Homechoice Allocations Policy

At the Panel meeting on 8 November 2022, Councillor Julie Young, Cabinet Member for Housing and Communities addressed the Panel ahead of the Officer presentation and spoke of the housing crisis that there was in Colchester and drew Members attention to paragraph 4.16 and the unintended consequences if any changes were made to the prioritisation. The Portfolio holder explained that the Councils approach was consistent with other authorities that the Council was in partnership with and advised Members that there was a pilot which was looking into the issue before the Committee. The Cabinet Member requested that the Scrutiny Panel withhold any recommendations until the pilot scheme had concluded and the results analysed.

The Committee heard that there were occasions where the local lettings policy came into play, but these were in very specific cases and drew Members attention to the fact that there was a focus on the 235 people in temporary accommodation and that there were currently around 3,000 households on the Housing register waiting list.

Council's housing allocation policy which was a legal requirement and detailed the prioritisation of need. The Panel heard that any change to the policy would relegate the importance of need when prioritising any other characteristic. The Housing Strategy Co-ordinator outlined that there were two options for securing

housing through local lettings plans and also through Section 106 agreements. Local lettings could be on new developments or existing homes and applied to the specified properties with the agreement of the owner and can help improve areas tackling anti-social behaviour and confirmed that this approach had been taken with new build homes. The officer advised that in Section 106 Agreements the number, type, and size of the affordable houses were agreed at the development stage and were a legally binding agreement. It was noted that the report included in appendix A details of shared ownership. Attention was drawn to paragraph 4.16 and the unintended consequences that could ensue and could lead to households with a higher need may have to wait longer if a Family/ local affiliation policy was introduced. The Officer informed Members that there were instances where there was no interest in properties with an example that a rural property was not near employment centres and public transport links wouldn't make a commute viable.

The Panel were informed that there was a pilot scheme underway in Layer de la Haye where family and local affiliation were being taken into account however it was noted that the pilot may have had more effect in a more built up area.

The Panel questioned the officers regarding the question of need and how this was assessed if someone had moved into the area. The Officer responded that all cases of homelessness had to be assessed under the five tests of homelessness and would be considered on that basis with banding levels taken into account as well as other circumstances which meant assessment on a case by case basis.

Members of the panel praised the Council's services for housing and the work that was being undertaken but were concerned that the efficiency of the team was causing an influx of people from outside of the borough to move into the area to find housing. The Housing Strategy Co-ordinator advised Members that the Gateway to Homechoice register allowed the team to review data of people arriving from other areas and noted that the Council exported more people than importing them into the Council's housing stock.

In response to further questions from the Panel the officer responded that a housing needs survey was carried out for all applicants where they could add preferences of where they would like to live. It was noted from further questions regarding the criteria for housing need that strong and weak affiliations with an area and people could be integrated but would also be conditional to other factors. The Panel heard that the pilot scheme currently underway had the criteria that the applicants had to live and work in the area so that transport issues could be avoided.

Members debated the content of the report noting that the final decision on this was not within the gift of the Panel and that the distortion of the system through the affiliation had some beneficial outcomes but could lead to the system becoming unmanageable and that the results of the pilot scheme should be assessed before making a recommendation.

RESOLVED that the report is noted by the panel and that when the outcome of the pilot scheme is available then the panel will consider whether it should be returned to the Panel for further consideration.

Monitoring of the Council's performance relating to its Strategic Plan Action Plan and Key Performance Indicator Targets

The Scrutiny Panel reviews the Council's performance at regular intervals, receiving the following reports on the dates given:

Year End 2021/22 Performance Report and Strategic Plan Action Plan [5 July 2022]

The Panel noted and discussed the ongoing issues relating to the time to relet council residential properties. The Assistant Director (Corporate and Improvement) agreed that the past year had been particularly difficult, in part because of Covid-related delays to the eviction process, which had led to the properties involved being more badly damaged by the tenants, increasing dilapidation and therefore requiring longer remedial works. It was suggested that this could be raised with Colchester Borough Homes when they next appeared before the Panel.

RESOLVED that the Panel noted the report's contents and were assured as to the explanations given for missed targets, with the exception of the target for building of affordable homes, which would be discussed in a different item.

Year End April 2021 to March 2022 Performance Report 2020-2023 Strategic Plan Action Plan [5 July 2022]

Concern was voiced by one Panel member that the Plan, and its Action Plan, were too large and covered every operation undertaken by the Council, rather than showing a prioritisation. Priorities were hard to discern, given the breadth of the Plan. It was accepted that there would need to be a large Strategic Plan and Action Plan, to represent the work done by the Council, and with Full Council deciding upon the Plan, it was argued that Scrutiny Panel views on content and performance were important when setting and achieving targets. No recommendations were decided at this time, but the Chairman affirmed that the Panel would continue its monitoring and receive further progress reports.

RESOLVED that: -

- (a) Scrutiny Panel had confirmed satisfactory delivery against the Strategic Plan Action Plan and that the Council has made satisfactory progress in meeting its strategic goals;
- (b) Scrutiny Panel would conduct its usual mid-year scrutiny of progress and its normal monitoring activities through the municipal year.

Half Year 2022-23 Performance Report [13 December 2022]

Caution was given that, given the financial pressures, there was a need to examine budget consequences from where extremely high performance was achieved, and the opportunity cost of increasing performance in different areas. Panel members agreed with the importance of balancing performance achievements with the draw they required on officers and finances.

The Panel considered the performance indicators and it was noted that most of the 'red' KPI figures had been habitually so, and for understandable reasons. Performance on sickness leave was discussed, attributable to a number of reasons. The Panel accepted that the causes of sickness levels were not being ignored.

The Panel considered performance in collection of garden waste. It was suggested that not all residents could compost all garden waste. Richard Block, Chief Operating Officer, explained that collection of garden waste would become a statutory duty, via the Environment Act 2021, and that the Council would need to consider whether or not to charge for collections.

RESOLVED that the Scrutiny Panel has reviewed performance against Key Performance Indicators and, where Key Performance Indicators have not been met, ascertained that appropriate corrective action has been taken.

Strategic Plan Action Plan progress [13 December 2022]

The Panel considered the report and the Chairman noted that no major issues were evident within it, and that any recommendations to Cabinet should only be on major issues.

A Panel member highlighted that the inflation assumption for this year had been set at 2% and that the difference between assumption and reality had serious implications for the Council. The Council continued to do its best in very difficult circumstances, but it was impossible to provide the same services on a smaller income and with higher costs. An example given was Leisure World, where energy costs were much higher and income to the Council therefore lowered.

The Leader explained that the time lag between crises and effects meant that it was likely that effects of the 'cost of living crisis' would be reflected in the coming municipal year and the new Strategic Plan. The Council was just managing at present, but services at current levels could not continue indefinitely, with the Council mindful of the stresses on residents that council tax had.

The Panel agreed that, at present, there were no areas of concern on which it wished to make recommendations.

Partnership arrangements

During 2022-23, the Scrutiny Panel conducted the following reviews of subjects involving partnership working between the Council and other organisations.

Business cases of Town Deal Projects

The Scrutiny Panel spent much time reviewing and examining work occurring with partners on delivering the Town Deal projects. On 7 June 2022 the Panel discussed how best to do this, and laid out expectations for reporting and future scrutiny sessions.

On 8 November 2022, the Panel received a detailed report on the progress made on the different projects within the Town Deal. The Executive Director for Place presented the report to the Panel and explained that 14 projects were currently underway with eight being led by partners, but which were ultimately accountable to the Council. It was noted that there was a strong governance structure in place with a large amount of engagement on projects, most notably with Jumbo. The Panel heard that business cases had been submitted in March 2022 to the Department for Levelling Up, Housing and Communities (DLUC) and permission had been given to proceed in August 2022 with the initial funding being provided.

It was noted that the RAG risk approach was currently on amber as some of projects were very complex. The Executive Director for Place confirmed that the risks linked to the projects were reviewed on a continual basis with the main concerns being around escalating costs for labour as well as unexpected delays with supplies. The Panel heard that one of the largest risks was associated with the land acquisition in the heart of Greenstead but that there was no update to give on this. The panel were informed that the aim was to contain any cost issues and that there had been a contribution from Colchester Borough Council for St Nicolas Square which had accelerated the project however it was detailed that archaeology costs had risen. The projects were also being looked at in alignment to try and create efficiencies where it was possible.

The Executive Director for Place explained to the Panel that there was significant oversight of the works from the Town Deal Board and from the Section 151 Officer which had to report into DLUC every six months with progress of the projects. It was noted that there were no significant risks that would compromise the projects and outlined a range of details on each of the projects.

The Panel raised questions on the report and its emphasis upon deprivation and the areas that the projects were targeted and what evidence was there that they would materially affect deprivation in those areas. Questions were raised regarding the completed projects such as those at the Mercury Theatre and how these would contribute to ending deprivation as well as whether the projects that were being undertaken as they could be easily completed.

The Panel heard that the heart of Greenstead project was a £40 million investment which could make a significant difference and intervene to improve skills. It was noted that the Holy Trinity Church Scheme would be offering services to those who were most in need and the Cycling Hub helped provide transport for those who were on a lower income. The Panel heard that the proposals for the digital skills hub would help people to retrain and give them access to digital skills.

The Panel queried whether match funding was being sought on projects as this had been a key aim within the Fund and heard that additional funding was being sought wherever possible and elaborated that there had been an Active Travel fund of £5 million as well as a possible £5 million from the Heritage Lottery Fund. It was noted that Greenstead's match funding was also through Housing Revenue Account (HRA) which would provide long term regeneration of the area. Concern was raised by the Committee over the lack of key performance

indicators for the projects and match funding. The Economic Regeneration Manager responded that there were no specific requirements for match funding or additional funding but commented that as it was only 2 months into the delivery of the project other opportunities may become available. The Executive Director for Place advised Members that the Council would bid for any funding that arose and that a report could be brought back to the Panel on where additional funding was being sought.

Questions were raised from the Panel on the role of the signage changes for the City Status and it was confirmed that this was part of the City Status work plan and further information on this would be provided to the Committee.

A further question was raised regarding the Council's capital programme difficulties and whether it was linked to the Town Deal and would this cause issues for any of the projects. It was confirmed by officers that the review of the Capital Programme had started but outlined that the majority of the projects were not reliant on the programme and were funded.

Future updates were scheduled for the Panel to consider Town Deal progress, with the next update due at the Panel meeting on 15 March 2023.

Review of Arts Organisations in receipt of Council funding.

The Scrutiny Panel had previously held an annual session to hear from the local arts organisations which receive Council funding, namely The Mercury Theatre, FirstSite and the Colchester Arts Centre.

In 2022, the Panel decided to recommend that an all-councillor briefing be held on the work of the arts organisations, rather than a formal scrutiny session. This was in response to a change in the funding arrangements, which moved to a quadrennial awarding process for funding and away from an annual award.

One Colchester Partnership

In 2021-22, the Scrutiny Panel requested the opportunity to question officers of the Council and representatives of One Colchester Partnership and to scrutinise the governance and oversight arrangements introduced when the Safer Colchester Partnership was moved to fall under the oversight of the One Colchester Partnership. A scrutiny session for this was arranged for the Panel's meeting on 15 March 2022, however this was postponed until 2022-23. A wider session for the Panel to hear about and consider the full range of operations and governance arrangements for the Partnership was then arranged for the Panel's meeting on 14 March 2023.

Portfolio Holder Briefings

During 2022-23, the Scrutiny Panel scheduled the following briefings from members of the Cabinet, to be delivered at the Panel's meetings as shown below. Given a new Administration formed after the Borough Council elections held in May 2022, the Panel directed that these only be scheduled in the latter part of the municipal year, to allow Portfolio Holders time to settle in to their new positions:

- Briefing from Cllr Julie Young, Portfolio Holder for Housing and Communities [11 October 2022]
- Briefing from Deputy Leader of the Council and Portfolio Holder for Local Economy and Transformation [13 December 2022]
- Briefing from Portfolio Holder for Resources [24 January 2023]
- Briefing from Portfolio Holder for Culture and Heritage [14 February 2023]
- Briefing by the Leader of the Council [14 February 2023]
- Briefing by Portfolio Holder for Planning and Infrastructure [14 March 2023]
- Briefing by Portfolio Holder for Neighbourhood Services and Waste [15 March 2023]
- Briefing by Portfolio Holder for Environment and Sustainability [15 March 2023]

These briefings were arranged for Portfolio Holders to provide an overview of the work ongoing within their remits, and the main challenges being faced. They also gave the Scrutiny Panel an opportunity to specify particular issues on which members might wish to conduct 'deep dive' scrutiny, going in to more detail. Particular focus was given to actions or work for which the Portfolio Holders were personally responsible.

Whilst these briefings were mainly to facilitate the ability for the Panel's information, they did allow for the Panel to make recommendations to Cabinet or individual Portfolio Holders, and to make resolutions. The following resolution was made on 24 January 2023, resulting from the briefing from the Portfolio Holder for Resources:

RESOLVED that the Head of Finance would circulate a confidential briefing note to members of Scrutiny Panel on the current financial position of the Turnstone project and any potential accounting issues in advance of Full Council's consideration of the Budget for 2023-24

The Panel duly received the necessary confidential briefing paper from the Section 151 Officer, which in turn led to the Panel scheduling an item for it to scrutinise the strip leasing arrangements within the Turnstone project. This was scheduled for confidential session [due to commercial sensitivity] at the Scrutiny Panel meeting on 15 March 2023.

The minutes covering the Portfolio Holder briefings above are available on the Council's website here: [: Colchester Borough Council \(cmis.uk.com\)](https://cmis.uk.com).

Scrutiny Panel operating as Crime & Disorder Committee

The Scrutiny Panel was due to sit as the Crime and Disorder Committee to review the performance and operation of the Safer Colchester Partnership on 13 September 2022. This meeting was moved to 7 November 2022, as the original date fell within the period of national mourning for Her Late Majesty, Queen Elizabeth II.

The review held by the Crime and Disorder Committee provided information on the work of the Safer Colchester Partnership during 2022-23, and provided updates from partner organisations covering their work over the year. Additional detail was given on work done to tackle priorities, such as reducing exploitation, 'hidden harms', domestic abuse and violence and tackling County Lines gangs.

The Committee conducted scrutiny of the work of the Police, discussing the approaches taken to address urban and rural crime and antisocial behaviour. This included use of the Strategic Policing Plan to address hotspots and use prevention methods to stop offences being committed. 27 County Lines gangs had been wound up in the 12 months leading up to this meeting and partnership working with other police services (including the Metropolitan Police) had yielded significant success. The Committee were told of the use of information/data by the Police to more-effectively target offenders and deal with offences.

Councillor Call for Action (CCfA)

There were no CCfA issues brought to the attention of Scrutiny Panel during 2022/23.

Task and Finish Groups

There were no Task and Finish Groups commissioned by the Scrutiny Panel 2023/23.

Appendix

Appendix A – Schedule of Meetings and Reviews for 2022/23.

Schedule of meetings and reviews

Scrutiny Panel 2022/23

Councillor Willetts (Chairman)*, Councillor Lissimore (Deputy Chairman)*,
Councillor Laws, Councillor Lilley, Councillor McCarthy, Councillor Scordis, Councillor Smith.

7 June 2022	<ul style="list-style-type: none"> • Work Programme 2022-23 • Town Deal Reporting
5 July 2022	<ul style="list-style-type: none"> • Council's disbursement of rebate payments on Council Tax • Year End 2021/22 Performance Report and Strategic Plan Action Plan • Housing Strategy • Annual Scrutiny Report • Briefing note on Hythe Flooding • Recap report on previous Scrutiny Panel reviews of local bus services • Work Programme 2022-23
16 August 2022	Meeting cancelled due to lack of business [caused by deferral of items to later meetings]
13 September 2022 (Crime and Disorder Committee)	Meeting postponed until 7 November 2022 due to the period of national mourning for Her Late Majesty
11 October 2022	<ul style="list-style-type: none"> • Briefing from Cllr Julie Young, Portfolio Holder for Housing and Communities • Economic Growth Strategy Deferred • Review of Colchester Borough Homes: 2021-22 Performance, and discussion of Key Performance Indicator Targets for '23-24 • Work Programme 2022-23
7 November 2022 (Crime and Disorder Committee)	<ul style="list-style-type: none"> • Safer Colchester Partnership (Crime and Disorder Committee)
8 November 2022	<ul style="list-style-type: none"> • Update on Town Deal projects' progress • Family/local affiliation in letting and/or sale of local affordable housing and Gateway to Homechoice Allocations Policy • Work Programme 2022-23

13 December 2022	<ul style="list-style-type: none"> • Briefing by Deputy Leader of the Council and Portfolio Holder for Local Economy and Transformation • Draft Economic Strategy [Was due to come before Scrutiny Panel on 16 August 2022 and then 11 October 2022 but delayed to 13 December 2022] • Half Year 2022-23 Performance Report • Strategic Plan Action Plan progress • Local Council Tax Support – Year 2023/24 • Work Programme 2022-23
16 January 2023	<ul style="list-style-type: none"> • Peer Challenge Review report and action plan • Work Programme 2022-23
24 January 2023	<ul style="list-style-type: none"> • Briefing by Portfolio Holder for Resources [focus on Budget 2023-24] • Budget Strategy for 2023-24 • 2023-24 Revenue Budget, Capital Programme, Medium Term Financial Forecast and Treasury Management Investment Strategy • Housing Revenue Accounts Estimate and Housing Investment Programme • Work Programme 2022-23
14 February 2023	<ul style="list-style-type: none"> • Briefing by Portfolio Holder for Culture and Heritage • Briefing by the Leader of the Council • Corporate Key Performance Indicator Targets for 2022-23. Deferred due to drafting of new Strategic Plan • Work Programme 2022-23
3 March 2023	<ul style="list-style-type: none"> • Call in of decision taken by the Portfolio Holder for Neighbourhood Services and Waste – ‘Review of Saturday Household Drop-off Service’
14 March 2023	<ul style="list-style-type: none"> • Briefing by Portfolio Holder for Planning and Infrastructure • Collection of Section 106 developer contributions • One Colchester Partnership • Scrutiny Panel Annual Report • Work Programme 2022-23

15 March 2023	<ul style="list-style-type: none"> • Briefing by Portfolio Holder for Neighbourhood Services and Waste • Briefing by Portfolio Holder for Environment and Sustainability • Town Deal projects progress report • City Status Programme
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14 March 2023

Report of	Chief Operating Officer	Author	Owen Howell ☎ 282518
Title	Work Programme 2022-23		
Wards affected	Not applicable		

1. Executive Summary

- 1.1 This report sets out the current Work Programme 2022-2023 for the Scrutiny Panel. This provides details of the reports that are scheduled for each meeting during the municipal year.

2. Action Required

- 2.1 The Panel is asked to consider and approve the contents of the Work Programme for 2022-2023, or request amendments, additions and/or deletions.

3. Background Information

- 3.1 The Panel's work programme evolves as the Municipal Year progresses and items of business are commenced and concluded. At each meeting the opportunity is taken for the work programme to be reviewed and, if necessary, amended according to current circumstances. The draft work programme for 2022-23 is appended to this report. This contains the items which are reviewed each year by the Panel.
- 3.2 The Forward Plan of Key Decisions is included as part of the work programme for the Scrutiny Panel, and this is included an **Appendix A**.

4. Standard References

- 4.1 There are no particular references to publicity or consultation considerations, or financial, equality, diversity, human rights, community safety, health and safety, environmental and sustainability or risk management implications.

5. Strategic Plan References

- 5.1 Scrutiny and challenge is integral to the delivery of the Strategic Plan 2020-2023 priorities and direction for the Borough as set out under the strategic themes of:
- [Tackling the climate challenge and leading sustainability](#)
 - [Creating safe, healthy and active communities](#)
 - [Delivering homes for people who need them](#)
 - [Growing a fair economy so everyone benefits](#)
 - [Celebrating our heritage and culture](#)

- 5.2 The Council recognises that effective local government relies on establishing and maintaining the public's confidence, and that setting high standards of self-governance provides a clear and demonstrable lead. Effective governance underpins the implementation and application of all aspects of the Council's work.

Appendices

Appendix A – Scrutiny Panel Work Programme, 2022-23

Appendix B – Forward Plan of Key Decisions: 1 April 2023 – 31 July 2023

Work Programme for 2022/23

Scrutiny Panel meeting – 7 June 2022
Scrutiny Panel Chairman's briefing – 1 June 2022
<ol style="list-style-type: none"> 1. Town Deal Reporting 2. Work Programme 2022-23
Scrutiny Panel meeting – 5 July 2022
Scrutiny Panel Chairman's briefing – 30 June 2022
<ol style="list-style-type: none"> 1. Council's disbursement of rebate payments on Council Tax 2. Year End 2021/22 Performance Report and Strategic Plan Action Plan 3. Housing Strategy 4. Annual Scrutiny Report 5. Briefing note on Hythe Flooding 6. Recap report on previous Scrutiny Panel reviews of local bus services 7. Work Programme 2022-23
Scrutiny Panel meeting – 16 August 2022 Meeting cancelled for lack of business
Scrutiny Panel Chairman's briefing – 11 August 2022
<ol style="list-style-type: none"> 1. Work Programme 2022-23
Scrutiny Panel (Crime and Disorder Committee) - 13 September 2022
Scrutiny Panel Chairman's briefing – 8 September 2022
<ol style="list-style-type: none"> 1. Safer Colchester Partnership (Crime and Disorder Committee)
Scrutiny Panel – 11 October 2022
Scrutiny Panel Chairman's Briefing – 6 October 2022
<ol style="list-style-type: none"> 1. Briefing from Cllr Julie Young, Portfolio Holder for Housing and Communities 2. Economic Growth Strategy Deferred 3. Review of Colchester Borough Homes: 2021-22 Performance, and discussion of Key Performance Indicator Targets for 2023-24 4. Work Programme 2022-23
Scrutiny Panel meeting - 8 November 2022
Scrutiny Panel Chairman's briefing – 3 November 2022
<ol style="list-style-type: none"> 1. Budget Strategy for 2023-24 2. Update on Town Deal projects' progress 3. Family/local affiliation in letting and/or sale of local affordable housing and Gateway to Homechoice Allocations Policy 4. Work Programme 2022-23

Scrutiny Panel meeting - 13 December 2022
Scrutiny Panel Chairman's briefing – 8 December 2022
<ol style="list-style-type: none"> 1. Briefing by Deputy Leader of the Council and Portfolio Holder for Local Economy and Transformation 2. Draft Economic Strategy [Was due to come before Scrutiny Panel on 16 August 2022 and then 11 October 2022 but delayed to 13 December 2022] 3. Half Year 2022-23 Performance Report 4. Strategic Plan Action Plan progress 5. Local Council Tax Support – Year 2023/24 6. Work Programme 2022-23
Scrutiny Panel meeting - 16 January 2022
Scrutiny Panel Chairman's briefing – 11 January 2022
<ol style="list-style-type: none"> 1. Peer Challenge Review report and action plan 2. Work Programme 2022-23
Scrutiny Panel meeting - 24 January 2023
Scrutiny Panel Chairman's briefing – 19 January 2023
<ol style="list-style-type: none"> 1. Briefing by Portfolio Holder for Resources [focus on Budget 2023-24] 2. Budget Strategy for 2023-24 3. 2023-24 Revenue Budget, Capital Programme, Medium Term Financial Forecast and Treasury Management Investment Strategy 4. Housing Revenue Accounts Estimate and Housing Investment Programme 5. Work Programme 2022-23
Scrutiny Panel - 14 February 2023
Scrutiny Panel Chairman's briefing – 9 February 2023
<ol style="list-style-type: none"> 1. Briefing by Portfolio Holder for Culture and Heritage 2. Briefing by the Leader of the Council 3. Corporate Key Performance Indicator Targets for 2022-23. Deferred: See 'Items still to schedule' 4. Work Programme 2022-23
Scrutiny Panel – 3 March 2023
Scrutiny Panel Chairman's briefing – 27 February 2023
<ol style="list-style-type: none"> 1. Call-in: Decision WAS-002-22
Scrutiny Panel meeting– 14 March 2023
Scrutiny Panel Chairman's briefing – 9 March 2023
<ol style="list-style-type: none"> 1. Briefing by Portfolio Holder for Planning and Infrastructure 2. Collection of Section 106 developer contributions 3. One Colchester Partnership 4. Scrutiny Panel Annual Report 5. Work Programme 2022-23

Scrutiny Panel meeting– 15 March 2023
Scrutiny Panel Chairman's briefing – 9 March 2023
<ol style="list-style-type: none"> 1. Briefing by Portfolio Holder for Neighbourhood Services and Waste 2. Briefing by Portfolio Holder for Environment and Sustainability 3. Town Deal projects progress report 4. City Status Programme

Items still to schedule, when possible:

- Corporate Key Performance Indicator Targets for 2022-23. This was due to come for consideration at the meeting of 14 February 2023, however at the request of the Chief Operating Officer, this has been deferred to a future meeting, so that the new set of KPI targets can be considered once a new Strategic Plan has been approved by Council.
- Previous Council negotiations with Alumno [Monitoring Officer advice is that this will only be able to be scrutinised in open session once the current ongoing legal situation is resolved regarding the Queen Street site]
- Planning trial of local prioritisation for property purchasing [relating to a recent planning application] [Officer advice is that this is at an early stage and is likely to need to wait until 2023-24 to be ready for meaningful scrutiny of scheme and outcomes]

