

Planning Committee Meeting

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

Thursday, 20 January 2022 at 18:00

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

Information for Members of the Public

Access to information and meetings

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

Dates of the meetings are available here:

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

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

Have Your Say!

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

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

Audio Recording, Streaming, Mobile phones and other devices

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

Access

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

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Covid 19

Please could attendees note the following:-

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

COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 20 January 2022 at 18:00

The Planning Committee Members are:

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

The Planning Committee Substitute Members are:

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

Councillors:

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

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

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

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

Live Broadcast

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

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

1 Welcome and Announcements

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

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

2 Substitutions

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

3 Urgent Items

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

4 Declarations of Interest

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

5 Have Your Say(Hybrid Planning Meetings)

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

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

6 Minutes of Previous Meeting

No minutes of previous meetings are submitted for approval at this meeting.

7 Planning Applications

When the members of the Committee consider the planning applications listed below, they may decide to agree, all at the same time, the recommendations in the reports for any applications which no member of the Committee or member of the public wishes to address the Committee.

7.1	212810 Man Energy Solutions UK Limited, St Leonards Works, Port Lane, Colchester, CO1 2NX	7 - 46
	Outline planning application with all matters reserved save for access for the demolition of all existing buildings and structures and the creation of a residential development with associated open space and infrastructure.	
7.2	211788 - Land West of 194 and East of 202 Old London Road, Marks Tey, Colchester, Essex	47 - 108
	Development of the site for commercial, business and service (Class E c and g), general industrial (Class B2) and storage and distribution (Class B8) purposes with associated access, parking including provision for lost residents on-street parking and landscaping, including diversion of a public right of way, and off-site highway improvement to the Old Landon Road and its junction with the A120.	
8	Amendment to Legal Agreement -Application 190665 - Land between Via Urbis Romanae & Mill Road, Land South of Axial Way, Colchester	109 - 112
	This report seeks a proposed amendment to the legal agreement process and also requests additional conditions as required for this hybrid application that was considered by the Planning Committee on 29 July 2021 when it was resolved to Approve subject to a s.106 agreement and conditions	
9	Exclusion of the Public (not Scrutiny or Executive)	
	In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).	
	Planning Committee Information Pages v2	113 - 124

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



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Item No: 7.1

Application: 212810

Applicant: Louise Durose

Agent: Miss Alice Routledge

Proposal: Outline planning application with all matters reserved save for access for the demolition of all existing buildings and structures and the creation of a residential development with associated open space and infrastructure.

Location: Man Energy Solutions UK Limited, St. Leonards Works, Port Lane, Colchester, CO1 2NX

Ward: Old Heath & The Hythe

Officer: Nadine Calder

Recommendation: Approval subject to s.106 legal agreement and conditions

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it is an application for major development, and the recommendation is for approval subject to a legal agreement. The application has also attracted objections.

2.0 Synopsis

- 2.1 The key issues for consideration are the principle of the proposed development in terms of land use allocation; noise mitigation measures; highway safety; wildlife impact; flood risk and contamination.
- 2.2 The site has most recently been used for commercial purposes but is now vacant. It is the subject of an emerging allocation for residential development. Based on the information submitted, it is considered that the site is able to accommodate up to 130 dwellings without appearing cramped or overdeveloped. The scheme is also acceptable from a highway safety point of view. Subject to appropriate conditions, there is unlikely to be any detriment to the amenity of the surrounding area or significant impact upon existing important vegetation, wildlife, flood risk or contamination. A 30% provision of affordable housing would be required.
- 2.3 The application is subsequently recommended for approval subject to a legal agreement.

3.0 Site Description and Context

- 3.1 The site is irregular in shape and occupies approximately 3 hectares on land to the east of Port Lane, Colchester. MAN Energy Solutions occupied the premises from mid-19th century until recently, operating as a new engine build and overhaul facility. The site is now vacant. It comprises three distinct areas:
- The offices are formed from a previous northlight area of factory complex, comprising single storey sheds of primarily brick construction under a flat decked roof;
 - The main factory comprises a steel framed building in two main bays under a steel framed roof. The factory was built in two phases, 1970 and 1974 and has a useful working height of 12 metres. To the rear of the main factory is the engine test area which has a maximum eaves height of approximately 15 metres; and
 - Numerous outbuildings, including warehousing, boiler houses, training schools and stores, surround the main factory and offices.

- 3.2 The southern part of the site is regular in shape. However the north western area is disrupted by an existing warehouse building which falls outside of the applicant's ownership. The position of this building creates a narrow pinch point in the north west corner.
- 3.3 The site is concreted together with car parking and vehicle loading, plus an area which is bunded for fuel tanks associated with the engine testing and heating.
- 3.4 The site is adjoins residential development to the north and east. To the south of the site is the Port Lane Industrial Estate, accessed from Chandlers Row. Further south is housing fronting Port Lane and Old Heath Recreation Road. Port Lane runs along the western boundary of the site. To the south-west is Old Heath Recreation Ground, which provides local children's playground facilities and a café. To the north-west of the site is an industrial unit and associated hardstanding.
- 3.5 Vehicular access to the site is currently gained off Port Lane, approximately 10m to the south of the Port Lane/Harsnett Road junction. This access also serves the adjacent Regulateurs Europa site.

4.0 Description of the Proposal

- 4.1 This application is an outline planning application with all matters reserved save for access for the demolition of the existing buildings and structures and erection of residential development up to 130 dwellings including 30% affordable housing. The application is supported by a Land Use and Building Heights Parameter Plan which seeks approval for the scale parameters. All future reserved matters would be required to comply with the approved Parameter Plan.
- 4.2 The proposed residential development is envisaged to accommodate buildings up to four-storeys in height. The Parameter Plan shows up to 2.5 storey development concentrated to the south and east of the site, up to three-storey development to the north and west, and an area of four-storey development towards the centre of the site.
- 4.3 A singular vehicular access to the site is proposed from Port Lane, utilising a former existing access to the site. The adjacent industrial site occupied by Regulateurs Europa would continue to be able to use the vehicular access off Port Lane.
- 4.4 Pedestrian and cycle access would be taken from Port Lane. The internal site layout would be designed such that the site can be suitably accessed by refuse vehicles via Port Lane.

5.0 Land Use Allocation

- 5.1 The site lies within the East Colchester Regeneration Area and is allocated as an Employment Zone in the Adopted Local Plan (Site Allocations DPD (2010) – Core Strategy Policy CE3). Within the emerging Colchester Borough Local Plan 2017-2033 in Section 2, the site forms part of a housing allocation (Policy EC3, 'Land at Port Lane'), which is identified to accommodate up to 130 new dwellings. The weight of emerging Policy EC3 is considered below.

6.0 Relevant Planning History

- 6.1 There is some planning history relating to the commercial use of the site, however, none of this is particularly relevant to the current proposal.

7.0 Principal Policies

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

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

SD1 - Sustainable Development Locations
CE1 - Centres and Employment Classification and Hierarchy
CE3 - Employment Zones
H1 - Housing Delivery
H2 - Housing Density
H3 - Housing Diversity
H4 - Affordable Housing
UR1 - Regeneration Areas
TA1 - Accessibility and Changing Travel Behaviour
TA2 - Walking and Cycling
TA3 - Public Transport
TA4 - Roads and Traffic
TA5 - Parking
ENV1 - Environment

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

DP1 Design and Amenity
DP3 Planning Obligations and the Community Infrastructure Levy

DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
DP14 Historic Environment Assets
DP17 Accessibility and Access
DP19 Parking Standards
DP20 Flood Risk and Management of Surface Water Drainage

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

SA EC1 Residential development in East Colchester
SA EC2 Development in East Colchester
SA EC8 Transportation in East Colchester

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

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

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

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

Adopted Local Plan and Emerging Local Plan Status – March 2021

Overview

The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan has yet to complete examination, with hearing sessions undertaken in April 2021. Consultation on major modifications was recently completed and representations reported to the examiner. The examiner’s final report on Section 2 is imminently expected with adoption in February or March. Section 2 policies must be assessed on a case by case basis in accordance with NPPF paragraph 48 to determine the weight which can be attributed to each policy. However, given the advanced stage of the plan weight may be afforded to Section 2 policies depending on the substance of any outstanding representations.

Core Strategy Policy SD1 is fully superseded by policies SP5 and SP6 of the Section 1 Local Plan. Policies SD1, H1 and CE1 are partially superseded by policies SP3, SP4 and SP5 in relation to the overall housing and employment requirement figures. The remaining elements of policies SD1, H1 and CE1 are relevant for decision making purposes.

The Council can demonstrate a five year housing land supply.

Adopted Section 1 Local Plan

On 1st February 2021, Full Council resolved to adopt the modified Section 1 Local Plan in accordance with Section 23(2)(b) of the Planning and Compulsory Purchase Act 2004. The final version of the Adopted North Essex Authorities' Shared Strategic Section 1 Local Plan is on the council's website [here](#).

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. Section 2 of each plan contains policies and allocations addressing authority-specific issues.

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

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

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

Emerging Section 2 Local Plan

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

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

The Emerging Local Plan submitted in October 2017 is at an advanced stage, with Section 1 now adopted and Section 2 undergoing examination with hearing sessions completed in April. The examiners proposed modifications have undergone a further round of public consultation and the Inspector's final report is expected imminently with adoption likely to follow shortly afterwards. Section 1 of the plan is therefore considered to carry full weight as an up to date part of the Development Plan.

Section 2 will be afforded some weight due to its advanced stage. However, as it is yet to complete examination, the exact level of weight to be afforded will be considered on a site-by-site basis reflecting the considerations set out in paragraph 48 of the NPPF. Proposals will also be considered in relation to the adopted Local Plan and the NPPF as a whole.

5 Year Housing Land Supply

Section 1 of the Emerging Local Plan was adopted by the Council on the 1 February 2021 and therefore carries full weight.

Section 1 includes strategic policies covering housing and employment, as well as infrastructure, place shaping and the allocation of a Garden Community. Policy SP4 sets out the annual housing requirement, which for Colchester is 920 units. This equates to a minimum housing requirement across the plan period to 2033 of 18,400 new homes.

Although the Garden Community is allocated in Section 1, all other site allocations are made within Section 2 of the Plan which is still to complete examination. Within Section 2 the Council has allocated adequate sites to deliver against the requirements set out in the strategic policy within the adopted Section 1. All allocated sites are considered to be deliverable and developable.

In addition and in accordance with the NPPF, the Council maintains a sufficient supply of deliverable sites to provide for at least five years' worth of housing, plus an appropriate buffer and will work proactively with applicants to bring forward sites that accord with the overall spatial strategy. The Council has consistently delivered against its requirements which has been demonstrated through the Housing Delivery Test. It is therefore appropriate to add a 5% buffer to the 5-year requirement. This results in a 5 year target of 4,830 dwellings ($5 \times 920 + 5\%$).

The Council's latest published Annual Housing Position Statement (May 2021) demonstrates a housing supply of 5,597 dwellings which equates to 5.79 years based on an annual target of 920 dwellings which was calculated using the Objectively Assessed Housing Need (OAHN). This relates to the monitoring period covering 1.4.21 to 31.3.26 and will be updated in April 2022.

The LPA's 5YHLS has been tested at appeal and found to be robust, the most recent cases being on Land at Maldon Road, Tiptree (Appeal Ref:

APP/A1530/W/20/3248038) and Land at Braiswick (Appeal Ref: APP/A1530/W/20/324575).

In accordance with paragraph 73 of the NPPF, the adoption of the strategic housing policy in Section 1 of the Local Plan the adopted housing requirement is the basis for determining the 5YHLS, rather than the application of the standard methodology.

Given the above, it is therefore considered that the Council can demonstrate a five year housing land supply.

Appendix 1 – Policies Superseded from the Core Strategy Focused Review 2014 by the Shared Strategic Section 1 Local Plan

General Local Plan Status

The Colchester emerging Local Plan (eLP) was submitted to the Planning Inspectorate in October 2017. The Plan is in two parts with Section 1 being a shared Strategic Plan for the North Essex Authorities (Colchester, Braintree, and Tendring). Following Examination in Public (EiP) the Section 1 Local Plan was found sound and Colchester Borough Council adopted the Section 1 Local Plan on 1 February 2021 in accordance with Section 23(2)(b) of the Planning and Compulsory Purchase Act 2004.

Policy SP2 should be referred to when applying the Habitats Regulations requirements to secure RAMs contributions where appropriate. This does not update the approach that the Council have been implementing but the Policy context has updated status with the adoption of Section 1 which includes a specific policy covering this issue.

A few policies in the Core Strategy are superseded in part by the adopted Section 1 Local Plan, and SD2 in full only. This is outlined below in detail and a summary table for all Section1 Policies.

Policy SD2 – Full

The Borough Council will work with partners to ensure that facilities and infrastructure are provided to support sustainable communities in Colchester. New facilities and infrastructure must be located and designed so that they are accessible and compatible with the character and needs of the local community.

New development will be required to provide the necessary community facilities, open space, transport infrastructure and other requirements to meet the community needs arising from the proposal. Development will also be expected to contribute, as appropriate, to strategic projects that support sustainable development and the wider community.

The Council will seek to ensure that new development makes a reasonable contribution to the provision of related facilities and infrastructure. This will either be through a planning obligation (usually contained within a Section 106

agreement) and/or, if applicable, through a Community Infrastructure Levy (CIL) payment, following adoption of a CIL charging schedule.

A CIL charging schedule would set a specified charge for each square metre of gross internal floorspace, related to the use class of the development. CIL payments will contribute to the provision of infrastructure to support development. Planning obligations and s278 agreements will continue to be used to make individual applications acceptable. The Council will publish a list of infrastructure to be funded through CIL to ensure developers do not pay twice for the same item of infrastructure. The viability of developments will be considered when determining the extent and priority of development contributions.

Is replaced by SP6.

Policy SD2 is no longer relevant.

Policy SD1 – In Part

Colchester Borough Council will promote sustainable development and regeneration to deliver at least 14,200 jobs between 2001 and 2021 and at least 19,000 homes between 2001 and 2023.

When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that applications can be approved wherever possible and to secure development that improves the economic, social and environmental conditions in the area.

Planning applications that accord with the policies in this Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay unless material considerations indicate otherwise.

Is replaced by SP1.

All other parts of SD1 remain relevant.

Policy H1 – In Part

The Borough Council will plan, monitor and manage the delivery of at least 19,000 new homes in Colchester Borough between 2001 and 2023.

Is replaced by SP3 and SP4.

All other parts of H1 remain relevant.

Policy CE1- In part

The Borough Council will encourage economic development and will plan for the delivery of at least 14,200 jobs in Colchester between 2001 and 2021

Is replaced by SP5.

All over parts of CE1 remain relevant.

Section 1 Adopted Policy	Context of Section 1 Policy	Relevant Core Strategy Policy status
<p>Policy SP 1 Presumption in Favour of Sustainable Development</p>	<p>Restates national Policy</p>	<p>Replaces SD1 - in part.</p> <p>Following text of SD1 is replaced by SP1.</p> <p><i>Colchester Borough Council will promote sustainable development and regeneration to deliver at least 14,200 jobs between 2001 and 2021 and at least 19,000 homes between 2001 and 2023.</i></p> <p><i>When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that applications can be approved wherever possible and to secure development that improves the economic, social and environmental conditions in the area.</i></p> <p><i>Planning applications that accord with the policies in this Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay unless material considerations indicate otherwise.</i></p>

Policy SP 2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)	Statutory requirement under the Habitats Regs- Policy provides a new authorisation for contributions	New policy relevant to confirm approach implementing the Habitats Regulations. Full status for decisions post 1.02.2021
Policy SP 3 Spatial Strategy for North Essex	Strategic – relies on Section 2 eLP for Spatial hierarchy and Colchester strategy	High level N/A
Policy SP 4 Meeting Housing Needs	Sets the housing supply figure for the Plan period at 920 per year. Section to allocate sites and determine the spatial distribution	Replaces H1 - in part. Following text of H1 replaced by SP4. <i>The Borough Council will plan, monitor and manage the delivery of at least 19,000 new homes in Colchester Borough between 2001 and 2023.</i> All other parts of H1 remain relevant
Policy SP 5 Employment	Strategic target – relies on Section 2 eLP to allocated sites	Replaces CE1 – in part. Following text from CE1 replaced by SP5. <i>The Borough Council will encourage economic development and will plan for the delivery of at least 14,200 jobs in Colchester between 2001 and 2021.</i> All other parts of CE1 remain relevant.
Policy SP 6 Infrastructure & Connectivity	Strategic and restates national policy Section 2 covers matters specifically	High level/Garden Community – Section A Sections B, C, D and E of policy apply to all allocations and development proposals in the North Essex Authorities area. These sections replace SD2.
Policy SP 7 Place Shaping Principles	Strategic / restates national policy and eLP Section 2 covers matters specifically	High level N/A

Policy SP 8 Development & Delivery of a New Garden Community in North Essex	New- specific to the Garden Community	Garden Community N/A
Policy SP 9 Tendring/Colchester Borders Garden Community	New- specific to the Garden Community	Garden Community N/A

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

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

Affordable Housing
Community Facilities
Open Space, Sport and Recreation
Cycling Delivery Strategy
Sustainable Drainage Systems Design Guide
Managing Archaeology in Development.

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.
- 8.2 The Archaeological Officer raised no objection to the proposal subject to a condition to record and advance understanding of the significance of any heritage asset before it is damaged or destroyed.
- 8.3 The Contaminated Land Officer raised no objection to the proposed development in principle, with an additional risk assessment and, where found necessary, remediation, dealt with by way of conditions.
- 8.4 Environmental Protection raise no objection to the proposed development subject to a conditions which requires additional information to be provided to ensure that all residential units are designed so as not to exceed the noise criteria based on figures by the World Health Authority Community Noise Guideline Values. They also recommend that a 2.1 metre close boarded fence is provided around the boundary of the properties closest to the remaining factory to prevent noise nuisance to residents.
- 8.5 The Historic Buildings and Areas Officer raises no objection to the proposal in principle, but strongly encourages the detailed design to reflect the heritage of the existing site.

- 8.6 The Landscape Officer, following additional viewpoints being considered within the Townscape & Visual Assessment, does not raise an objection to this outline application.
- 8.7 The Tree Officer raises no objection to the proposal.
- 8.8 The Urban Design Officer raises no objection to the proposal in principle, subject to the open space being removed from the illustrative Masterplan and this not forming part of an approval.
- 8.9 Anglian Water raise no objection to the proposed development subject to the submitted Flood Risk Assessment and Drainage Strategy Report being made an approved document.
- 8.10 The Environment Agency has not provided any comments at the time of writing this report.
- 8.11 Essex County Fire & Rescue Service raise no objection to the proposal.
- 8.12 Essex Police strongly recommends that the developer seeks to achieve Secured by Design-Homes 2019 accreditation for this development.
- 8.13 Health and Safety Executive does not advise, on safety grounds, against the granting of planning permission in this case.
- 8.14 The Highway Authority raised no objection to the proposal subject to conditions, including the priority junction to be completed with the required visibility splays prior to the first occupation of the proposed development and the submission of a construction traffic management plan, Travel Plan and Residential Travel Packs. Additional requests, to be provided through a S106 Agreement include the provision of a minimum 3.5-metre-wide footway/cycleway along the two sections of the proposal site's Port Lane frontage and the widening of PROW 143 to a consistent minimum width of 3.5m.
- 8.15 The Lead Local Flood Authority raise no objection to the proposal.
- 8.16 Natural England raise no objection to the development subject to appropriate mitigation, as set out in the Council's Appropriate Assessment, being secured.

9.0 Parish Council Response

- 9.1 This area is non-parished.

10.0 Representations from Notified Parties

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

10.2 Four letters of objection (including ones from Colchester Civic Society and Colchester Cycling Campaign) and two general comments were received. The reasons for commenting/objecting can be summarised as follows:

- Proposed density is too low, resulting in urban sprawl and car dependence;
- Scheme appears to be an acceptable balance of density and open space;
- Insufficient parking provision within the site;
- What will stop cars parking on the grass verge along Port Lane?;
- Height of some of the buildings will likely be very intrusive to existing residents;
- Why are the taller houses proposed at the front of the estate?;
- Potential overlooking;
- The frontage along Port Lane would benefit from some shrubs/foliage;
- Hope that the ultimate development is of housing with a level of quality design that reflects the strong characterization of the neighbouring 19th century developments and brings an enhancement to the area;
- Port Lane is already a busy road;
- Additional traffic and only one entrance could cause problems;
- The proposed access is in the worst place it could be;
- Will construction access be in the same location?;
- Where will the site cabins be?;
- Shame that no building on this site was deemed worthy of a level of protection to retain a piece of our industrial heritage;
- Proposed Smart Energy Amenity Area is the most unfortunate kind to create a link to the proud legacy of the Paxman past;
- The last remaining building on the site (known as “The House on the Hill”) is the last opportunity – the building should be retained and made suitable as a home for the Paxman collection of the Colchester Engineering Society that is currently seeking a suitable venue; and
- Where will children go to school?.

11.0 Parking Provision

11.1 This is an outline application; however, the application confirms that parking is proposed to be policy compliant and electric charging points would be provided. Cycle parking for each dwelling would also be provided within the curtilage of each dwelling.

11.2 This matter would be addressed via reserved matters and a condition is proposed to ensure the reserved matters submission will satisfy the Council's adopted parking standards for cars and cycles.

12.0 Accessibility

12.1 This application is in outline form only with the design, layout and appearance of the proposed dwellings being a reserved matter. Notwithstanding this, for current allocations the accessibility standard would be expected to meet Building Regulations 2015 Part M4 Cat 2 for all affordable housing with the exception of upper floor dwellings. This is in lieu of Lifetime Homes as set out in Policy DP12. This could be secured via the S106 Agreement.

13.0 Open Space Provisions

- 13.1 This is an outline application with all matters except access reserved. Details of the layout and landscaping of the scheme would therefore be provided as part of a reserved matters application rather than at this stage. It would be necessary, however, to secure that at least 10% public open space is provided on site in accordance with adopted Policy DP16 and emerging Policy DM18. This can be secured via a condition.

14.0 Air Quality

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

15.0 Planning Obligations

- 15.1 As a “Major” application, there was a requirement for this proposal to be considered by the Development Team. It was considered that Planning Obligations should be sought. The Obligations that would be agreed as part of any planning permission would be:

Community – £373,467.90

Ward Projects 65% - £242,754.13

- Wimpole Road Methodist Church
Is within walking distance of the development site and have a full list of projects to upgrade and improve their offering and accessibility to the community.

Borough 35% - £130,713.76

To support strategic Community Facilities

This calculation is based on 130 x 3 bed units. The calculation would be updated once the actual mix of unit sizes are known (for the purposes of the S106 Agreement, the request could be tariff based). This figure may increase and decrease accordingly.

Housing – 39 Affordable Housing Units

The below criteria must be used when detailing the tenure mix.

The tenure mix should be no less than 80% affordable rent and no more than 20% shared ownership.

Request would be evenly apportion the affordable units per unit type.

We would request that the affordable housing should meet the enhanced accessibility standard of Part M4 cat 2 (Building Regulations 2015) in lieu of lifetime homes, in accordance with the requirements in DP12 (Development Policies 2014).

Council would request 5% (2 dwellings) for both options is designed to meet Part M4 Cat (3) (2) (a) or Part M4 Cat 3 (2) (b).

Museums - £5,000

Design, manufacture and installation of a memorial plaque in stone or bronze to commemorate the history of Paxman Engineering on the site. This is to be displayed in a suitably prominent position accessible to the public, either as a freestanding item or incorporated into a new structure such as a building or boundary wall.

Sustainable Transport - £180,000.00

Projects

- £150,000 Contribution towards improved walking and cycling in the local area. This will give better access from the site to Hythe, Tesco superstore and University.
- £20,000 Contribution towards a car club, which will provide an electric car club cars and management costs. This will support the emerging Colchester Car club network which is also being funded by secured S106 contributions and Defra funding and support a lower-car development providing an alternative to first or second car ownership. Electric charger point and designated onsite car parking space to be provided.
- £10,000 towards supporting/expanding an Old Heath/New Town bike hub offering shared ebikes/ecargo bikes for residents to use. This will complement the car club and offer a complete range of shared transport choices residents have access to as an alternative to first or second car ownership. This will support the growth of localised Bike Hubs that will develop in line with the car club.

We would also require land be made available to widen the PROW along the southern boundary of the site to enable the PROW to be widened in accordance with LTN 1/20.

A shared footway/cycleway would require a total of 3 metres [Officer Note: The Highway Authority requested a minimum of 3.5 metres width, see next page]. Should the applicant agree to this widening, the contribution request towards improved walking and cycling in the local area could be reduced from £150,000 to £75,000.

Parks & Recreation - £515,479.40

Ward 65% - £335,061.61

- Café Improvements Old Heath Rec - £80,000
- Footpath/Landscape Improvements at Old Heath Rec - £160,061.61
- Old Heath Rec Playground/Gym Equipment Improvement - £30,000
- Hatcher Crescent Playground Improvement - £65,000

Borough 35% - £180,417.79

- Duncan's Gate Improvements – £80,417.79
- Leisure World Improvements (Commercially Sensitive) - £100,000

- If onsite gym facilities provided contribution figure would be amended by approx. £30,000
- Maintenance required if adopted by CBC - £18,598.80, figure will need to be re-calculated if additional gym facilities provided onsite.

The calculation would be updated once the actual mix of unit sizes are known (for the purposes of the S106 Agreement, the request could be tariff based). This figure may increase and decrease accordingly.

Archaeology - £15,153.00

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

£753 for enhancement of the Colchester HER

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

NHS - £34,800.00

£17,400 Castle Gardens Medical Centre and branches

£17,400 East Hill Surgery

Highway Authority

A minimum 3.5-metre-wide footway/cycleway along the two sections of the proposal site's Port Lane frontage

Widen Footpath 143 Colchester to a consistent minimum width of 3.5 metres along the proposal site's frontage

Education - A contribution would be required in accordance with standard formula as follows:

Early Years & Childcare - approx. £202,000

Primary - approx. £673,000

Secondary - no contribution being sought

16.0 Report

Environmental Impact Assessment ("EIA") Screening

- 16.1 A screening exercise has been undertaken as part of this application. The proposed development falls within the description at Section 10(b) of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended), namely urban development projects. The total development will not exceed the threshold in Column 2 of the table in that Schedule as the development would not (i) include more than 1 hectare of urban development which is not dwellinghouse development; or (ii) include more than 150 dwellings; and (iii) the overall area of the development would not exceed 5 hectares. Furthermore, the site is not "sensitive" as defined by the Regulations.
- 16.2 Consequently, while there may be some impact as a result of this development, it is not considered that a proposal of this type, size and scale at this location would result in a significant environmental impact. An EIA is therefore not required. In reaching this conclusion, the selection criteria for screening in the EIA Regulations and the guidance in the Planning Practice Guidance have been

taken into account and consideration has been given to the potential impacts of the proposed development as submitted in support of this application. Any identified potential impacts will need to be subject of specialist assessments and to appropriate mitigation measures, and these will be assessed in the paragraphs below.

Principle of Development / Local Plan Overview

- 16.3 In the context of the Adopted Local Plan (Core Strategy / Site Allocations), the site is brownfield land and is allocated as a designated employment zone. The buildings on the site were formerly in employment use prior to the operation ceasing. Therefore, the proposal for residential development on this site would be contrary to Core Strategy Policy CE3, without demonstrating there is no longer a need for any employment use of the site and meeting other tests. However, as the site is allocated for housing development in the emerging Local Plan within Policy EC3, which is very advanced in its preparation, a pragmatic approach is suggested with very significant weight to be given to the emerging Policy context rather than that of the current Adopted Plan.
- 16.4 The relevant elements of the Adopted Local Plan comprise the Section 1 Shared Strategic Local Plan (adopted February 2021), the Core Strategy (Focused Review 2014) and the Site Allocations DPD (2010). It must be acknowledged that as the site is allocated as an Employment Zone in the current adopted Local Plan, the proposed development would be contrary to key policies, including CE3 and the distribution elements of policies SD1 and H1 of the Core Strategy. All other elements of Policies SD1 and H1 are superseded by Policies in the Section 1 Strategic Plan including SP1, SP3, SP4 and SP5. Policies SP3, SP4 and SP5 provide the strategic overview for housing and employment growth and delivery directing towards the emerging Section 2 Local Plan to provide more details in respect of the spatial strategy and housing distribution. It is therefore reasonable and justified for the primary policy context for determining this application to be the emerging Local Plan, provided that the relevant policies can be afforded sufficient weight.
- 16.5 The emerging Local Plan includes a Shared Strategic Section 1 (with Braintree and Tendring District Councils) and a Section 2 which includes Colchester specific policies and allocations. The Local Plan has been subject to two separate examinations, with Section 1 being adopted in February 2021.
- 16.6 The emerging Section 2 Local Plan is currently subject to examination with hearing sessions held for a two-week period in April 2021. The Council are currently awaiting the Final Report from the Inspector following a six-week public consultation on the Main Modifications considered necessary to make the Plan sound. This ended on 18th November 2021 and it is anticipated the adoption of Section 2 will be February / March 2022.
- 16.7 Policy EC3 in emerging Section 2 of the Local Plan is subject to a Main Modification but this is unrelated to this site, as it is to add the policy requirements for another site which had previously been omitted from this part of the Plan in error. This is not relevant to the proposed site allocation

within the Policy and no representations were received to the consultation on the Modifications in respect of this Policy which accordingly attracts very significant weight.

- 16.8 The Framework also advocates consideration of other factors, including the weight which can be afforded to emerging local plans when they reach an advanced stage of preparation. In this respect Paragraph 48 states that authorities may give weight to emerging plans according to the stage of preparation, the extent to which there are unresolved objections to relevant policies (and the significance of these objections - the less significant the greater the weight that can be given) and the degree of consistency of the relevant policies to the Framework (the closer the policies are to policies in the Framework, the greater the weight that may be given). For the purposes of this application, it is considered that the emerging Section 2 Local Plan as a whole is afforded significant weight. The policy comments which follow therefore primarily relate to the emerging Section 2 Local Plan and any other matters, as relevant.
- 16.9 Shared Strategic Section 1 Local Plan (Adopted February 2021)
The key Policies relevant to the principle of this proposal include:
- SP1 Presumption in Favour of Sustainable Development.
 - SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
 - SP3 Spatial Strategy for North Essex
 - SP4 Meeting Housing Needs
- 16.10 As adopted policies, these are all afforded full weight. As the site is allocated for housing development in the emerging Section 2 Local Plan, it is considered that the proposal complies with Policies SP1, SP3 and SP4. In respect of SP2, it will be necessary for this to be complied with and the Local Planning Authority ("LPA") being satisfied that the Habitats Regulations are complied with.
- 16.11 Emerging Section 2 Local Plan
The key Policies relevant to the principle of this proposal include:
- SG1 Colchester's Spatial Strategy
 - SG2 Housing Delivery
 - EC3 East Colchester
- Other Policies including ENV5, DM21, DM23 and DM24 relate to specific issues including contamination, flood risk and access and will be addressed by other Officers / consultees.

- 16.12 Policies SG1 and SG2 were subject to Main Modifications with proposed changes which are not substantial to the intention of the policies and primarily reflect consequential changes as a result of the final content of Section 1 and other matters referred to elsewhere in the plan (such as with reference to policies related to Other Villages and the Countryside to ensure consistency through the Plan). These are not therefore relevant to this application. Representations were very limited with a small number objecting specifically to the proposed changes and matters of principle within the Policies or reference to other locations within the Spatial Strategy. Again none of these points having any bearing of the intention of the policy or implications of it in respect of this proposal.
- 16.13 Policy EC3 was subject to a Main Modification but this was to add the policy requirements for another site which, as set out above, had previously been omitted from this part of the Plan in error. This has no bearing on the part of the policy which relates to this site allocation. Furthermore, no representations have been received in response to the consultation on the Modifications to this Policy.
- 16.14 Therefore, these key policies (as amended in the Main Modifications schedule) relevant to the principle of the proposal can be afforded very significant weight. The other relevant emerging Policies referred to (ENV5, DM21, DM23 and DM24) were not subject to any modification or where a modification was proposed this was inconsequential to the intention of the Policy. Very significant weight can therefore also be afforded to these emerging Policies.
- 16.15 The proposal is for outline permission for up to 130 dwellings with all matters save for access reserved. The planning submission clearly indicates that the proposal the subject of this application is for 130 dwellings which complies with the emerging Policy EC3. The policy also requires specific provisions in relation to contamination, access and flood risk. These matters will be addressed below. Provided they are complied with to the satisfaction of the LPA, it is confirmed that a proposal which is fully compliant with the relevant policy requirements set out in the relevant emerging Policies should be afforded very significant weight.
- 16.16 In summary, although the proposal is contrary to the key policies in the Adopted Local Plan, it is fully supported by recently Adopted Section 1 Strategic Policies and the well-advanced emerging Section 2 Local Plan. Having considered the relevant policies against Paragraph 48 of the Framework, it is appropriate to afford very significant weight to the emerging Local Plan Policies in the determination of this application. In this context, it is concluded that Policy support can be given to the proposal the subject of the application in principle.

Loss of Employment Land

- 16.17 The proposed development would result in the loss of allocated employment land, which would be contrary to adopted Policy DP5.
- 16.18 The application submission explains in detail that the premises are no longer suitable or viable for the applicant owing to the bespoke nature of the accommodation, the site currently being bounded by housing to the north, east and west and the impact of losing one of their main clients, which was compounded by the subsequent effect of the COVID-19 pandemic. The applicant has since vacated the site.
- 16.19 In addition to the above, with the site being the subject of an emerging allocation for housing development, which, as established in the above paragraphs, can be attributed significant weight, it must be concluded that the LPA has accepted the loss of employment land on this site. As a result, the conflict with adopted Policy DP5 is considered to be outweighed by the proposal's compliance with other relevant policies, as set out above.

Design, Layout and Scale

- 16.20 The application is submitted in outline form with scale, layout, appearance and landscaping forming the reserved matters. The final design and layout of the proposed development would therefore be the subject of a submission of detail with the appropriate reserved matters and this would have to demonstrate that all relevant adopted space, amenity and parking standards are satisfactorily met.
- 16.21 Notwithstanding the above, the proposed development was reviewed by the Council's Urban Design Officer who noted that design considerations are limited to whether the quantum of development proposed is appropriate in the context of the site and whether the application demonstrates that the site is capable of accommodating the quantum of development proposed in an appropriate manner.
- 16.22 The wider allocation for this site is proposed to accommodate up to 130 dwellings. The application site comprises of the majority of this wider allocation, minus a parcel of land in the north western corner which remains in commercial use. The fact that the entire allocation is not being brought forward in a comprehensive manner is less than desirable in design terms. That said, the application site measures 3ha in size and as such the application seeks to achieve a density of approximately 40dph. This is consistent with the site's urban context and as such is considered appropriate in design terms. On this basis, it is considered that the site is likely capable of accommodating the proposed quantum of development without contradicting the site's context and existing character.
- 16.23 However, as a result of the retained commercial use within the wider allocation, the application site is of an awkward shape, with sensitive edges both internally and externally. This may impact the application site's ability

to accommodate the proposed quantum in an appropriate manner in design terms. On this basis, it should be ensured that any approval allows for a reduction in proposed quantum if required, in order to achieve an appropriate standard of design.

- 16.24 Given the existing site constraints and density proposed, it is less than desirable in design terms to fix the point of access to the site without having an understanding of the future internal layout of the proposal. However, it is considered that the proposed point of access is unlikely to completely prejudice the achievement of an acceptable standard of design at a reserved matters stage.
- 16.25 The application seeks permission to remove all existing structures on the site, including a potential non-designated heritage asset. Said structure is of modest architectural interest and makes an insignificant contribution to the townscape. As such, its retention should be considered primarily on heritage grounds and this will be addressed in the paragraphs below.
- 16.26 In terms of building heights, there is little evidence of four storey structures in the vicinity of the site and as such this increased height for built form would need to be justified in design terms. However, the Parameter Plan sets out maximum heights and as such does not prejudice anything lower that may prove more acceptable in design terms.
- 16.27 The Parameter Plan, together with the indicative Masterplan, originally sought to prescribe the location of the proposed Public Open Space ("POS"), however, similar to the access, it is less than desirable in design terms to fix the location of the POS without having an understanding of the future internal layout of the site. Unlike the access, it is considered that this may prejudice achieving an acceptable standard of design at a reserved matter stage. The location of the POS has therefore been removed from the Parameter Plan, which now simply identifies the land as "residential accommodation including open space, landscaping, access and other associated infrastructure" rather than separating built development from open space provision.
- 16.28 Overall, the outline proposals appear broadly acceptable in design terms.

Residential Amenity

- 16.29 The impact of the proposed development on the residential amenities of existing neighbours as well as future occupiers of the site will be assessed as part of the reserved matters application.

Impact on the Surrounding Area

- 16.30 The application site is allocated for residential purposes in the emerging local plan and is located amongst residential development. As such, it is held that the proposed residential development of the site would not have an adverse impact on the surrounding area. Indeed given the established industrial use, the residential use of the site is likely to improve residential amenity for surrounding homes.

Landscape and Trees

- 16.31 Landscape is another matter that is reserved for consideration at reserved matters stage. The application however is supported by a Townscape and Visual Appraisal which considers the townscape character and key views that may influence the potential for development on this site. The originally submitted document was updated following a request to include a viewpoint analysis from the western end of the Grade II listed Wivenhoe Park to the east of the site to analyse how the setting to the Park might be impacted by the proposed development. The updated document was reviewed by the Council's Landscape Officer who was confirmed that, based on the information submitted, there are no landscape conflicts resulting from the proposed development.
- 16.32 For the sake of continuity and to help soften the street scene, it is recommended that a reserved matters application includes a landscape layout with linear feature of trees to the Port Lane frontage that complements and is similar to the existing relatively new unit frontage treatment to Port Lane just to the north of the site and that groups and linear features of large trees are proposed in the areas of POS and any smaller pockets of open space (i.e. the north eastern and north western corner), to soften and act, at maturity, as focal points within the development but also acting to help to soften and re-tree the skyline when viewed across the Colne Valley to the east.
- 16.33 The site contains a number of existing trees, as a result of which an Arboricultural Impact Assessment was submitted. This was considered by the Council's Arboriculture Officer and agreed in principle.
- 16.34 It is concluded that the development, subject to conditions, can be carried out without causing material harm to existing trees and soft landscaping features, with the details of the landscape aspect relating to the proposed development being determined by way of a reserved matters application.

Highway Matters

- 16.35 Access is the only matter to be considered as part of this outline application. Vehicular access to the site is proposed to be taken directly from Port Lane utilising a former existing access to the site. A detailed access drawing is submitted in support of the application and this shows that visibility splays of 2.4m x 43m, which are commensurate with Manual for the Streets

guidance for 30mph roads, can be achieved from this access. The road is also proposed to have appropriate street lighting designed to adoptable standards.

- 16.36 Pedestrian and cycle access would be provided in a similar manner to the vehicular access. The Highway Authority has raised no objection to the proposed development subject to conditions relating to the provision of a Construction Traffic Management Plan, to include, but shall not be limited to, details of vehicle/wheel cleaning facilities within the site and adjacent to the egress onto the highway, the development not being occupied prior to the priority junction off Port Lane providing vehicular and pedestrian access to the site with the above mentioned visibility splays being completed and the provision of a Travel Plan and Residential Travel Packs. These conditions are considered to be reasonable and necessary to make the proposed development acceptable and would therefore need to be imposed on any planning permission that may be granted.
- 16.37 As parking and cycling provision are not matters for consideration at this outline stage, conditions are proposed requiring the reserved matters to comply with the Council's adopted parking and cycle standards.

Drainage and Flood Risk

- 16.38 Core Strategy Policy SD1 and Development Plan Policy DP20 require proposals to promote sustainability by minimising and/or mitigating pressure on (inter alia) areas at risk of flooding. Policy DP20 also requires all development proposals to incorporate measures for the conservation and sustainable use of water. A Flood Risk Assessment and Drainage Strategy Report has been submitted. The site is within Environment Agency Flood Zone 1 and a Flood Risk Assessment is required as the site exceeds 1 hectare. The documents have been reviewed by Essex County Council as the Lead Local Flood Authority and Anglian Water who requested that the report is made an approved document should planning permission be granted. Subject to this, it is considered that the proposed development would comply with the aims of the above-mentioned policies.

Noise

- 16.39 A Noise Impact Assessment has been submitted in support of this application to identify, measure and assess the potential impact of any existing noise sources in the immediate vicinity of the site upon proposed residential receptors. The report concludes that with mitigation measures being implemented, no adverse impact is predicted day or night at the receptors due to road traffic and/or commercial/industrial sound. Proposed mitigation measures include (amongst others) barriers in order to control commercial sound, insulation of facades for certain dwellings due to the impact of sound internally associated with road traffic and commercial sound.

- 16.40 Environmental Protection has raised no objection subject to conditions relating to additional information being provided to ensure that all residential units are designed so as not to exceed the noise criteria based on figures by the World Health Authority Community Noise Guideline Values and the provision of a 2.1 metre high close boarded fence around the boundary of the properties closest to the remaining factory to prevent noise nuisance to residents. Details for this fence would have to be confirmed via condition.
- 16.41 Subject to conditions, it is therefore considered that the proposed development would not result in an adverse impact on residential amenity, in accordance with adopted Policies DP1 and SP7.

Ecology

- 16.42 Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity and a core principle of the Framework is that planning should contribute to conserving and enhancing the natural environment. Development Plan Policy DP21 seeks to conserve or enhance biodiversity and geodiversity in the Borough.
- 16.43 The application includes an Ecological Assessment, which sets out the findings of an 'extended' Phase I Habitat Survey and desk study, Preliminary Bat Roost Assessment (PBRA), bat emergence/re-entry surveys and Biodiversity Net Gain (BNG) at the site. This report finds that the site contains habitats which could support roosting bats and nesting birds as a consequence of which a licence from Natural England that sets out appropriate mitigation measures would be required to carry out any works that have the potential to disturb roosting bats within the buildings.
- 16.44 The report also considers that the majority of habitats that are being lost to the development are of negligible ecological importance and require no specific mitigation. Those habitats of local ecological importance (dense scrub, broadleaved scattered trees) that would be lost to the development would be more than mitigated through the proposed habitat creation, which would achieve a net gain of some +440% habitat units (based on the submitted information).
- 16.45 The report at Section 3 provides mitigation and enhancement recommendations which should be actioned through the production of a Construction Environmental Management Plan, Landscape and Ecological Management Plan and a sensitive bat lighting strategy. This could be secured via condition. Accordingly, subject to appropriate wildlife enhancement and mitigation conditions it is considered that there would not be an unacceptable impact upon wildlife on the site.
- 16.46 In addition to the above, a RAMS wildlife mitigation payment would be required for £127.30 per dwelling. This payment could be secured via the

S106 agreement that would be required to secure the necessary financial contributions to mitigate the proposed development. The proposal would thus accord with Policy DP21 which provides that development should conserve or enhance biodiversity.

Historic Environment

16.47 This application affects a site associated with Paxmans, which was one of the major employers within Colchester for many years. There are no listed buildings on the site and the Hythe Conservation Area is situated to the north of the site, some distance away. The 'House on the Hill' is the only building on site which has been identified as having some historic interest, as it is evidence of some of the older factory buildings that were on the site.

16.48 It is not usually appropriate to attempt to make design or heritage comments on Outline applications, as there is insufficient detail to assess whether the proposed development might have a positive or negative impact on the area.

16.49 However it is possible to make general comments. The Framework states in paragraph 197 that "in determining applications, local planning authorities should take account of (...) c) the desirability of new development making a positive contribution to local character and distinctiveness. In terms of non-designated heritage assets it states:

"203. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

In this case, the demolition of the 'house on the hill' results in the complete loss of the significance of the non-designated asset with mitigation being provided through recording and interpretation. The Civic Society has highlighted the significance they attribute to this mid C20 building as the sole survivor from the industrial complex. This matter has been carefully considered and given the limited intrinsic interest, otherwise than as a reminder of the former use, it is concluded that the loss of the building is outweighed in the planning balance by the provision of new homes and could not justify refusal. Furthermore, it is considered that the recording the building (preservation by record) and the provision of on-site interpretation setting out the history of the illustrious industrial past use will further mitigate this loss.

16.50 As the site is part of the evidence remaining in the town of its industrial past, the site itself could be considered a non-designated heritage asset. This is not to suggest that the site should be preserved as it is nor that housing should not be constructed on the site, but instead that the architecture of the new buildings should take its cue from industrial buildings of the period the area was developed, rather than the more domestic character of the

surrounding area. This would be a means of enabling the site to reflect its industrial past, thereby making a positive contribution to local character and distinctiveness by respecting what is unusual and significant about this particular site.

- 16.51 Without details of what exact form the new development would take, it is impractical to attempt to make more detailed comments on the proposal, but should be above be taken into account by the developer and by the council in determining future detailed applications, it is considered unlikely that the re-development of the site for residential purposes would cause harm to the local area in heritage terms.
- 16.52 The Archaeological Advisor notes that the proposed development site is large in area, and has not been subject to archaeological investigation before. It has archaeological potential, given its location in the wider archaeological landscape, being roughly between historic Colchester and its port at The Hythe. Significant prehistoric, Roman and medieval remains were revealed during investigations to the east at the University of Essex in the last circa 20 years (e.g. Colchester HER nos. 5389, 8972, 3102 & 3103). To the west, the Colchester Garrison project also unearthed remains spanning the prehistoric and Roman periods (CHER nos. 5466, 10083 & 10084). Berechurch Dyke (CHER no. 2116), part of the Late Iron Age defensive system of Colchester, is roughly 500m to the west, and may continue towards the proposed development site, given its orientation at its easternmost known extent. Bourne Mill (CHER no. 6925), to the south west, is a surviving Elizabethan building, most likely a fishing lodge, and a Scheduled Monument.
- 16.53 Therefore, groundworks at the proposed development site have potential to impact on archaeological remains. The construction of the existing industrial structures may have had a detrimental impact on survival, but this is unclear without intrusive evaluation.
- 16.54 Any permission granted should consequently be the subject of a planning condition to record and advance understanding of the significance of any heritage asset before it is damaged or destroyed.
- 16.55 Subject to the above, the development would be in compliance with Policy DP14 which seeks to protect Colchester's historic environment.

Contaminated Land

- 16.56 Development Plan Policy DP1 requires new development to undertake appropriate remediation of contaminated land. The Contaminated Land Officer confirms that the submitted Phase 1 Geoenvironmental Site Assessment is acceptable for Environmental Protection's purposes. It is noted that the investigations are to include the ground gas monitoring, however appropriate asbestos surveys are also required before any demolition works are carried out to prevent creation of any new contamination linkages. The photos on plate 6 appear to show a basement,

therefore additional risk assessment should be provided to cover their intended use and Environmental Protection will require information as to the suitability of backfill to be used where relevant.

- 16.57 However, based on the information provided, it would appear that unacceptable contamination would not preclude development, with the additional risk assessment and, where found necessary, remediation, dealt with by way of conditions.

Other Matters

- 16.58 The Recommended Decision (as set out below) has been shared with the Agent and (pre-commencement) conditions have been agreed under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.

17.0 Conclusion

- 17.1 To summarise, taking into account all of the above, the proposal to provide up to 130 residential dwellings on this site is acceptable in principle. The final details of the scheme will have to be the subject of a submission of detail within the appropriate reserved matters and these will have to demonstrate that the design, layout, appearance and landscaping element of the proposed development are acceptable.

18.0 Recommendation to the Committee

- 18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990, within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Service to refuse the application, or otherwise to be authorised to complete the agreement. The Permission will also be subject to the following conditions:

1. ZAC - *Time Limit for Outline Permissions Part 1 of 3*

No development shall be commenced until plans and particulars of "the reserved matters" referred to in the below conditions relating to APPEARANCE, LANDSCAPING, LAYOUT AND SCALE have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details. Reason: The application as submitted does not provide sufficient particulars for consideration of these details.

2. ZAD - Time Limit for Outline Permissions Part 2 of 3

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

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. ZAE - Time Limit for Outline Permissions Part 2 of 3

The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

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

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

MP_00_0000 Rev 05 Location Plan Site Boundary

MP_00_1001 Rev 05 Parameter Plan Land use & Building Heights

78313-CUR-00-XX-DR-TP-75001-P05 Proposed Access Arrangement

Phase 1 Geoenvironmental Site Assessment (Reference:14-756-R1-4, dated 30th September 2021)

Preliminary Arboricultural Impact Assessment (TG Report No. 13829_R02d_RA_CW Rev D, dated 9th December 2021)

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

5. Archaeology

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

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

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

The site investigation shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority. The development shall not be occupied or brought into use until the site investigation and post investigation assessment has been

completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

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

6. ZLN – Building Recording of ‘House on the Hill’

Prior to the commencement of any works, an appropriate programme of building recording (including architectural/historical analysis) has been carried out in respect of the ‘House on the Hill’. This record shall be carried out by an archaeologist or building recorder, or an organisation with acknowledged experience in the recording of standing buildings who shall have previously been agreed, in writing, by the Local Planning Authority. The recording shall be carried out in accordance with a written specification, and presented in a form and to a timetable, which has previously been agreed, in writing, with the Local Planning Authority.

Reason: To secure the proper recording of the non-designated Heritage Asset to facilitate preservation by record.

7. Non Standard Condition - Landscape Details

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

- Updated Townscape and Visual Appraisal.
- Finished levels or contours, where notable changes are proposed.
- Means of enclosure.
- Car parking layouts and other vehicle and pedestrian access and circulation areas.
- Hard surfacing materials.
- Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.).
- Proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. Indicating lines, manholes, supports etc.).
- Earthworks (including the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform)
- Planting plans (drainage and building foundation detailing shall take account of the position of the trees as so indicated).
- Written specifications.

- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
- Implementation timetables and monitoring programs.

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

8. ZFE - Landscape Management Plan

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

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

9. ZGX - Contaminated Land Part 1 of 4 (Site Characterisation)

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

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

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

10.ZGY - Contaminated Land Part 2 of 4 (Submission of Remediation Scheme)

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

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

11.ZGZ - Contaminated Land Part 3 of 4 (Implementation of Approved Remediation Scheme)

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

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

12.ZG0 - Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 8, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 9, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 10.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the

development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

13.ZG3 - *Validation Certificate*

Prior to the first OCCUPATION of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 11.

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

14.ZAN - Site Levels Plan

No works shall take place until detailed scale drawings by cross section and elevation that show the development in relation to adjacent property, and illustrating the existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill, have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be completed in accordance with the agreed scheme before the development is first occupied.

Reason: In order to allow more detailed consideration of any changes in site levels where it is possible that these may be uncertain and open to interpretation at present and where there is scope that any difference in such interpretation could have an adverse impact of the surrounding area.

15.ZPA – Construction Method Statement

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

the parking of vehicles of site operatives and visitors;

hours of deliveries and hours of work;

loading and unloading of plant and materials;

storage of plant and materials used in constructing the development;

the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

wheel washing facilities;

measures to control the emission of dust and dirt during construction; and

a scheme for recycling/disposing of waste resulting from demolition and construction works.

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

16.Non Standard Condition - Priority Junction

Prior to the proposed access being brought into use, a priority junction off Port Lane to provide vehicular and pedestrian access to the proposal site shall be provided or completed. The priority junction shall have but not

limited to a minimum 2.4 x 43 metre visibility splay in both directions as measured along the nearside edge of the Port Lane carriageway. The visibility splays shall then be retained and maintained free from obstruction clear to ground thereafter.

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

17.ZJX - *Internal Estate Road Junction*

Prior to each internal estate road junction being first used by vehicular traffic, that junction shall be provided with a clear to ground level visibility splay with dimensions of 25 metres by 2.4 metres by 25 metres on both sides. Such visibility splays shall be retained and maintained free of any obstruction clear to ground in perpetuity.

Reason: To ensure intervisibility between users of the highway at or approaching the road junction in the interests of highway safety.

18.ZJF - *Cycle Parking TBA*

Prior to the first occupation of the development hereby permitted, details of the provision for the storage of bicycles sufficient for all occupants of the development shall be submitted to and agreed, in writing, by the Local Planning Authority. The agreed cycle parking provisions shall thereafter be maintained and made available for this use at all times.

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

19.Non Standard Condition - Individual vehicular accesses

Prior to the first occupation of each dwelling on the development hereby permitted, the individual proposed vehicular access for that dwelling shall be constructed at right angles to the adjacent carriageway or highway boundary and to a width of 3.7 metres and each shared vehicular access shall be constructed at right angles to the highway boundary and to a width of 5.5 metres and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety.

20.Non Standard Condition - Residential Travel Packs

Prior to first occupation of the development hereby permitted, the developer shall be responsible for the provision, implementation and distribution of Residential Travel Information Packs for sustainable transport for the occupants of each dwelling, approved by Local Planning Authority, to include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the Developer to each dwelling free of charge.

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

21.Non Standard Condition - Travel Plan

No part of the development shall be occupied before a Travel Plan has been prepared in accordance with Essex County Council guidance and submitted to, and approved in writing by the Local Planning Authority.

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

22. Non Standard Condition - Carriageways

All carriageways should be provided at 5.5 metres between kerbed footways or 6 metres where vehicular access is taken but without kerbing.

Reason: To ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety.

23. Non Standard Condition - Footways

All footways should be provided at no less than 2 metres in width.

Reason: To ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety.

24. Non Standard Condition - Off street car parking

All off street car parking shall be provided in precise accord with the details contained within the current Parking Standards which shall be maintained free from obstruction and retained thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety.

25. ZIV - *Garages 6m Back*

Any garage provided with its vehicular door facing the highway or proposed highway shall be sited a minimum of 6 metres from the highway boundary.

Reason: To ensure that the vehicle to be garaged may be left standing clear of the highway whilst the garage door is opened and closed, in the interests of highway safety.

26. Non Standard condition - Internal carriageway layout

The proposed internal carriageway layout shall provide vehicular turning facilities for service and delivery vehicles of at least size 3 dimensions and of a design which shall be approved in writing by the Local Planning Authority, shall be provided within the site which shall be retained and maintained free from obstruction thereafter.

Reason: To ensure that vehicles using the site access may enter and leave the highway in a forward gear, in the interests of highway safety.

27. Non Standard Condition - Foul water drainage scheme

Prior to the construction above damp proof course, a scheme for on-site foul water drainage works, including connection point and discharge rate, shall be submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of any phase, the foul water drainage works relating to that phase must have been carried out in complete accordance with the approved scheme.

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

28. Non Standard Condition - Noise mitigation

The development hereby permitted shall be carried out in accordance with Section 5 (Mitigation) of the e3P Noise Impact Assessment (Reference: 50-284-R1-3, dated 30th September 2021).

Reason: The site is adjacent to a busy road and commercial premises and the dwellings need to be adequately insulated to protect the future residents from undue noise.

29. Non Standard Condition - Noise Mitigation

All residential units shall be designed so as not to exceed the noise criteria based on figures by the World Health Authority Community Noise Guideline Values given below:

*Dwellings indoors in daytime: 35dB LAeq 16 hours

*Outdoor living area in day time: 55dB LAeq 16 hours

*Inside bedrooms at night time 30dB LAeq 8 hours (45 dB LA max)

*Outside bedrooms at night 45dB LAeq 8 hours (60 dB LAmx)

Such detail as shall have been agreed in writing by the local planning authority based on the submitted and approved survey and appropriate consequential noise mitigation measures shall be implemented prior to occupation of the development of the site and thereafter maintained.

Reason: To ensure that there are acceptable levels of noise to residents

30. Z00 - Ecology

The development hereby permitted shall be carried out in accordance the recommendations set out within the Tyler Grange Ecological Assessment (TG Report No. 13829_R03b_ZD_CW Rev B, dated 30th September 2021).

Reason: To ensure that adequate measures are taken to protect wildlife species.

31. ZPD - Limits to Hours of Work

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

Weekdays: 08:00 – 18:00

Saturdays: 08:00 – 13:00

Sundays and Bank Holidays: no working

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

32.ZPE - Limits to Hours of Construction Deliveries/Worker Traffic

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

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

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

Sundays and Bank Holidays: **no deliveries**

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

33.Non Standard Condition - Provision of Open Space

The reserved matters application shall include at least 10% of the site area to be laid out for use as amenity open space, and shall include a landscape scheme, implementation timetables, monitoring programme and management plan to be submitted and approved by the Local Planning Authority. The open space shall be provided in accordance with the approved details.

Reason: In order to ensure that the development provides an adequate provision of open space(s) that are usable for public enjoyment after the development is completed.

34.Z00 - Fibre Broadband

The construction of the dwellings shall include the installation of empty ducting to allow the provision of fibre broadband.

Reason: In the interests of delivering sustainable economic growth.

19.0 Informatives

19.1 The following informatives are also recommended:

1. ZT0 – Advisory Note on Construction & Demolition

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

2.ZT1 – Informative on Street Naming & Numbering

For the safety of residents, it is the developer's obligation to ensure that

1. street name signs are in place before the first property is occupied on any new street, and
2. each property is marked with a house number visible from the highway before occupation.

3.ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development.** This is of critical

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

4.ZTB - Informative on Any Application With a Site Notice

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

5. ZTG - Informative on Section 106 Agreements

PLEASE NOTE: This application is the subject of a Section 106 legal agreement and this decision should only be read in conjunction with this agreement.

6.ZUJ - Informative on Archaeology:

PLEASE NOTE The submitted scheme of archaeological investigation should be in accordance with an agreed brief. This can be procured beforehand by the developer from Colchester Borough Council. Please see the Council's website for further information: <http://www.colchester.gov.uk/article/13595/Archaeology-and-the-planning-process>

7.ZTV - Informative on New Roads Serving Over 5 Dwellings

PLEASE NOTE that the applicant is advised by Essex County Council Highway Authority that all housing developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to The Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate Notice by Essex County Council within 6 weeks of building regulations approval being granted and prior to the commencement of any development must usually provide them with guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specifications sufficient to ensure future maintenance as a public highway.

8.ZTM - Informative on Works affecting Highway Land

All work within or affecting the highway should be laid out and constructed by prior arrangement with and to the requirements and satisfaction of the Highway Authority, details to be agreed before commencement of the works. An application for the necessary works should be made to development.management@essexhighways.org

9. Highway works

Prior to any works taking place in the highway the developer should enter into an agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works

10. Creation of new street

All residential developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose

access) will be subject to the Advance Payments Code, Highways Act 1980. The developer will be served with an appropriate notice within 6 weeks of building regulations approval being granted and prior to commencement of the development must provide guaranteed deposits, which will ensure the new street is constructed in accordance with a specification sufficient to ensure future maintenance as highway by the Highway Authority

11. EV Charging points

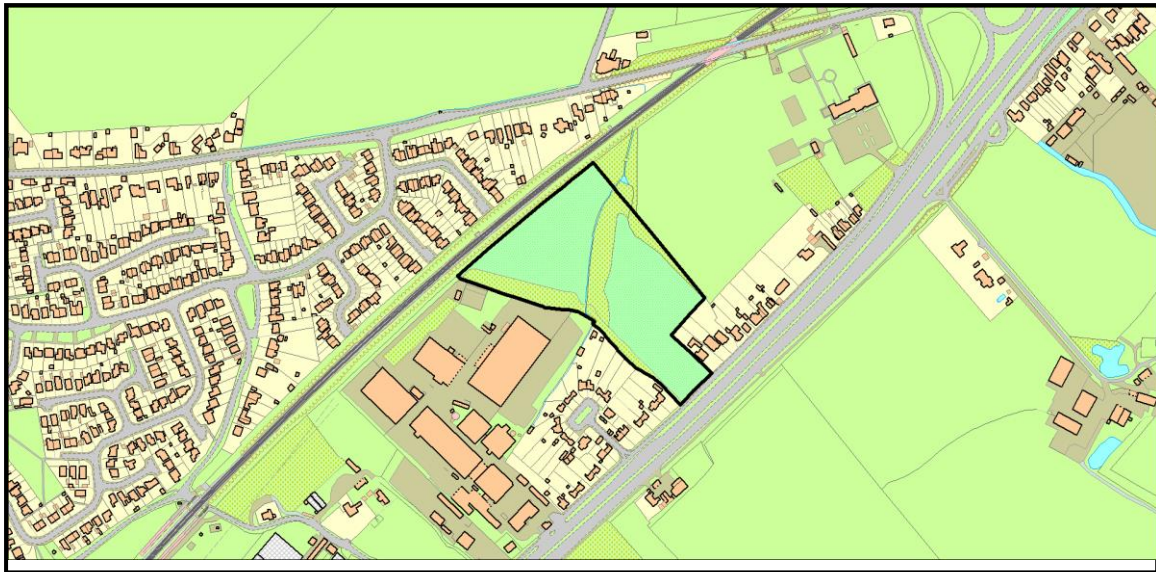
Residential development should provide EV charging point infrastructure to encourage the use of ultra-low emission vehicles at the rate of 1 charging point per unit (for a dwelling with dedicated off road parking) and/or 1 charging point per 10 spaces (where off road parking is unallocated)

12. Acoustic fencing

A 2.1 metre close boarded fence would be required around the boundary of the properties closest to the remaining factory to prevent noise nuisance to residents.

20.0 Positivity Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



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Item No: 7.2

Application: 211788

Applicant: Marks Tey Ltd.

Agent: Mr Michael Ward, Strutt & Parker

Proposal: Development of the site for commercial, business and service (Class E c and g), general industrial (Class B2) and storage and distribution (Class B8) purposes with associated access, parking including provision for lost residents on-street parking and landscaping, including diversion of a public right of way, and off-site highway improvement to the Old Landon Road and its junction with the A120.

Location: Land west of 194 and east of 202 Old London Road Marks Tey, Colchester, Essex.

Ward: Marks Tey & Layer

Officer: Majid Harouni

Recommendation: Approval subject to conditions and section 106 legal agreement.

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the application is classified as a major and objections have been received.

2.0 Synopsis

- 2.1 The application is for full planning permission for the erection of four blocks to create 9 individual commercial units comprising industrial (Class E(c and g), B2 and B8) and provision for associated estate access, car parking, HGV parking, cycle shelter, refuse storage, residents parking, diversion of the existing PROW, landscaping, ecology mitigation, suds and off-site highway works under section 278 of the Highway Act.
- 2.2 The principle of the planning application, in delivering new commercial units in a sustainable location with predominantly industrial and employment-related uses is supported. The site is allocated in the adopted plan within the Site Allocations DPD (2010) as an existing employment site with a proposed allocation for extension to the east. Appropriate uses being set out in Development Policy DP5. Whilst the proposal involves a modest amount of office floor space, this is not considered to have a detrimental impact on the site's primary economic function in accordance with Core Strategy Policy CE1 (Centres and Employment Classification and Hierarchy) promotes economic development through the regeneration and intensification of previously developed land. Policy CE3 states that Employment Zones will accommodate business developments that are not suited to Mixed-Use Centres, including industry and warehousing.
- 2.3 The proposal is considered to introduce a well-designed and contextual building that would relate and enhance the adjoining existing commercial site (Anderson site) and contribute to local employment opportunities, vitality, and wider Colchester economy in accordance with Development policies DP1 and DP5 of the adopted local plan.
- 2.4 The proposed development is considered to have been designed to minimise the impact on neighbouring amenities and would not affect daylight, sunlight and privacy or outlook of neighbouring properties to an unacceptable extent. As such, the application is considered acceptable and in accordance with Development Policy DP1 (Design and Amenity) of the adopted local Plan.
- 2.5 The proposal is considered to be in a sustainable location and measures have been designed and incorporated into the scheme to address sustainable urban drainage, ecology, landscaping and noise issues in accordance with planning policies. The proposal would involve off-site highway improvement which would require a separate highways agreement under section 278 of the Highway Act with the Highway Authority, in this case, National Highways (Highway England).

2.6 Finally, the application includes a section 106 agreement with suitable planning obligations and financial contributions to mitigate the impacts of the development, thus the planning application is considered to be acceptable and in accordance with adopted planning policy, subject to the planning conditions and planning obligation listed.

2.7 The application is subsequently recommended for approval.

3.0 Site Description and context

3.1 The application site is situated outside the defined settlement boundary of Marks Tey on the north side of Old London Road, between Nos.194 to 202 Old London Road from the south and bounded by the Railway line to the north. It also extends beyond the rear garden boundary of properties 192 and 190 Old London Road. The land comprises an irregular shaped vacant field that measures about 3.13 hectares and is relatively flat.

3.2 The Old London Road runs parallel with A12 and thus only the northern section of Old London Road is developed and consist of primarily a mix of established commercial and residential properties. The residential dwellings comprise bungalows and two-storey residential properties and the Anderson's commercial estate. Intermittently there are undeveloped gaps between properties along the northern section of Old London Road including the application site.

3.3 The application site shares the boundary along its northwest corner with the Anderson's Commercial Estate and is separated by a low-level gate, but no estate road currently continues into the application site.

3.4 The site currently has no vehicular access onto Old London Road and only Public Right of Way 144-15 runs along its western boundary. This PROW terminates at the site northern boundary due to the removal of the former footbridge over the main railway line.

3.5 To the east of the site are the playing fields associated with the Marks Tey Village Hall and beyond the railway track to the north is the heart of the residential settlement.

3.6 The application site is located within the countryside albeit sandwiched between Old London Road and the railway line. However, the site is not located in an isolated position, public transport and railway station are within a short walking distance.

4.0 Description of the proposal

4.1 The application seeks planning permission for the following:

- Erection of four new detached buildings providing 12,517sqm of total employment floor area subdivided into 9 individual units.

Block	Units	B8 & B2 floor area m2	Ancillary office floor area sqm	Total Floor area sqm	Ridge height m
800	810	1,566	153	1,719	13.2
	820	1,180	144	1,324	
	830	690	144	834	
	840	1,386	153	1,539	
900	910	936	153	1089	13.2
	920	784	144	928	
	930	794	153	947	
1000	1	3,263	453	3,716	13.8
1100	1	0	421	421	8.35
Total	9	10,599	1,918	12,517	

- Provision for a new vehicular and pedestrian access from Old London Road, with the estate road to continue up to the site northwest boundary with the adjoining Anderson site.
- The blocks are designed to meet expected occupier requirements and maximise the flexibility of the space.
- Provision of 115 car and 8 HGV parking spaces (loading, unloading bays and turning) including 11 disabled spaces and provision for 10 motorbike parking and 28 under cover bicycle shelter spaces close to individual blocks. EV charging will be made available at 10% of the total car parking spaces across the site, equal to 12 EV charging stations.
- The units include ancillary office elements and block1000 includes loading docks and other ancillary space.
- With the proposed internal floor area, using recognised employment densities (Employment Density Guide 2015, HCA) for employment buildings, the proposed blocks have the potential to generate between 270 and 339 full-time equivalent jobs.
- Provision for diversion of the existing dead-end PROW from the western side of the site to the eastern boundary and creation of new pedestrian and cycle path to connect the application site via parish Council's land to provide the opportunity for new footpath and cycleway link to A120.
- Landscaping planting, hard landscape enhancements and suds drainage
- Provision for 7 on-site residents car parking spaces to offset the loss of on-street car parking on Old London Road.
- Erection of 3.5m close boarded acoustic fence along the south-eastern, southern and south-western boundary of the site.
- Off-site highway improvements to facilitate better HGV movements along the Old London Road and its junction with A120.

5.0 Land use allocation

- 5.1 The site forms part of the wider Employment Zone identified in Colchester Borough Council's adopted Site Allocations DPD (2010). The site is listed as a Local Employment Zone (para.3.14) which includes the following comments:

Further development of the site will require:

- Contributions to assist with any junction improvements required by the Highways Agency/ECC and contributions towards public transport, cycling and walking links;
- A travel plan;
- Contributions to increase capacity of Copford Sewerage Treatment works;
- Retention of Hedgerows;
- Incorporation of SuDS scheme.

6.0 Relevant Planning History

- 6.1 202373- Development of the site for commercial business and service purposes (within Class E and g) and business purposes (B2 and B8) with associated hard surfacing, access, and parking.

The application was withdrawn to address comments from local residents, Parish Council and Colchester Borough Council Officers.

7.0 Principal Policies

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. Colchester's adopted Development Plan comprises the Core Strategy (adopted 2008, reviewed 2014), the Development Plan Policies (October 2010, reviewed 2014), the Site Allocations Plan (adopted 2010).

The National Planning Policy Framework (NPPF) must be considered in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

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

SD1 - Sustainable Development Locations

CE3 - Employment Zones

TA1 - Accessibility and Changing Travel Behaviour

TA2 - Walking and Cycling

TA3 - Public Transport

TA4 - Roads and Traffic

TA5 - Parking

ENV1 - Environment

ENV2 – Rural Community

ER1 - Energy, Resources, Waste, Water and Recycling

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

DP1 Design and Amenity

DP2 Health Assessments

DP3 Planning Obligations and the Community Infrastructure Levy

DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses

DP17 Accessibility and Access

DP18 Transport Infrastructure Proposals

DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

DP25 Renewable Energy

- 7.4 Adopted Local Plan and Emerging Local Plan

Submission Colchester Borough Local Plan 2017-2033:

Overview

The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan was examined with hearing sessions in April 2021 and consultations undertaken on suggested modifications in late 2021. Consultation responses on the modifications were reported to the Inspector and his final report is now awaited imminently. Section 2 of the Plan may then be formally adopted. Section 2 policies must be assessed on a case-by-case basis in accordance with NPPF paragraph 48 to determine the weight which can be attributed to each policy.

Core Strategy Policy SD1 is fully superseded by policies SP5 and SP6 of Section 1 Local Plan. Policies SD1 and CE1 are partially superseded by policies SP4 and SP5 in relation to the overall housing and employment requirement figures. The remaining elements of policies SD1 and CE1 are relevant for decision-making purposes.

Adopted Section 1 Local Plan

On 1st February 2021, Full Council resolved to adopt the modified Section 1 Local Plan in accordance with Section 23(2)(b) of the Planning and Compulsory Purchase Act 2004. The final version of the Adopted North Essex Authorities' Shared Strategic Section 1 Local Plan is on the council's website.

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. Section 2 of each plan contains policies and allocations addressing authority-specific issues.

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

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

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

Emerging Section 2 Local Plan

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

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

The Emerging Local Plan submitted in October 2017 is at an advanced stage, with Section 1 now adopted and Section 2 completed hearing sessions in April. The final Inspector's report is awaited on Part 2 of the ELP. Section 1 of the plan is therefore considered to carry full statutory weight.

- 7.5 CBLP Section 2 Site specific Policy SS11: Marks Tey has been subject to modifications by Inspector to include the land to the east of the former Andersons Timber Yard site as a Local Employment Area (Policy SS11: Marks Tey) following modifications suggested by the Inspector as part of the Section 2 CBLP examination. This reinstated the application site as an employment allocation. The modified policy now reads:

Policy SS11: Marks Tey

“14.192 The site known as Anderson’s will be retained as a Local Employment Area having been reviewed as part of the Council’s evidence update on employment. Policy SS11: Marks Tey

Growth within the Marks Tey area will largely be guided by the following documents in addition to this Local Plan:

(i) The Marks Tey Neighbourhood Plan to be developed will provide flexibility, including the scope for the allocation of any small parcels of land for development to be considered in the Neighbourhood Plan at the appropriate time.

The Anderson’s site is allocated as a Local Economic Area as shown on the Policies Map. This policy should be read in conjunction with the generic Neighbourhood Planning policy SG8.”

7.6 Other Emerging Local Plan Policies that are relevant include the following:

SP1 Presumption in Favour of sustainable development

SP4 Providing for Employment and Retail

SP5 Infrastructure and Connectivity

SP6 Place Shaping Principles

SG1 Colchester’s Spatial Strategy

SG3 Economic Growth Provision

DM6 Economic Development in Rural Areas and Countryside

DM15 Design and Amenity

DM23 Flood Risk and Water Management

7.7 Appendix 1 contains additional information regarding the Emerging Local Plan policies superseded by the Emerging Local Plan.

7.8 Marks Tey Parish Council has produced a Neighbourhood Plan which is now at an advanced stage.

Following the submission of the Marks Tey Neighbourhood Plan to the Council, the Plan was published, from 22 February to 5 April 2021, inviting representations, in accordance with The Neighbourhood Planning (General) Regulation 2012 - Regulation 16.

An Inspector was appointed by Colchester Borough Council with the consent of Marks Tey Parish Council, to independently examine the Marks Tey Neighbourhood Plan and to prepare a report of the examination.

The Examiner’s Report which was issued on 29 October 2021 concluded that subject to modifications recommended by the examiner being made, the Marks Tey Neighbourhood Plan met the Basic Conditions set out in

legislation and should proceed to a referendum. A core objective of the plan states:

Business and Employment. Regenerating the main sites in the parish, particularly through environmental improvements including the London Road parade of retail businesses. **Also helping to turn the now closed Andersons timber merchants and surrounding area into a modern industrial area. (bold emphasis added).**

The NP contains a site specific policy as follows:

“POLICY MT15 – ANDERSON EMPLOYMENT SITE AND FORMER BY-PASS NURSERIES SITE

The Anderson Employment site shown on Map 6.10 is allocated for employment uses. Development is anticipated to come forward in 2028.

The following site-specific requirements apply:

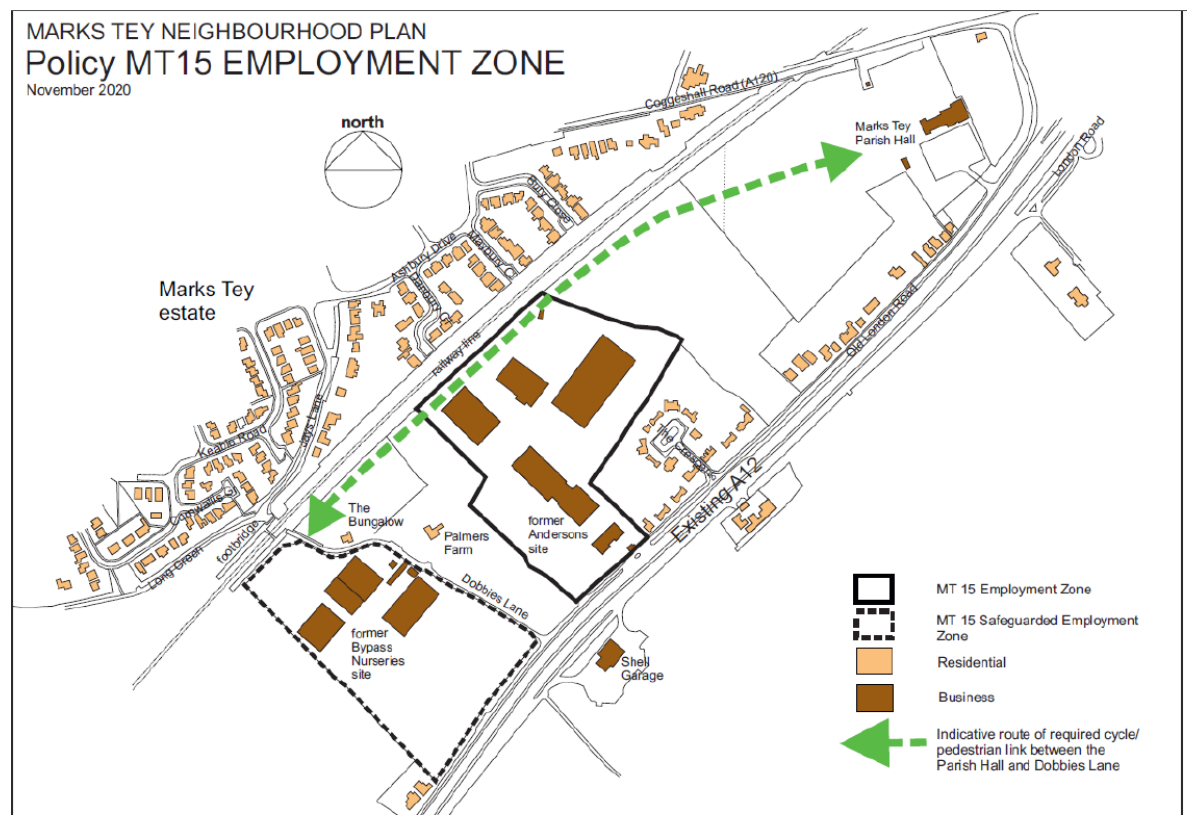
- all schemes must maintain or enhance residential amenity for neighbouring houses or for future occupiers of any new residential development;
- all schemes must incorporate a new pedestrian and cycle way connection providing a safe and attractive route from Marks Tey Parish Hall through to Dobbies Lane;
- access to and from the site is via an improved direct access on to the A12 and once the planned improvements to the A12 by Highways England have been implemented and the adjacent existing road has been detrunked; and
- provision of a work-place travel plan in line with Essex County Council guidance

Subject to any scheme not prejudicing the primary function of the site as employment sites, limited residential development will be allowed where this is needed to make redevelopment of this site viable.

The adjacent former By-Pass Nurseries site shown on Map 6.10 is safeguarded for employment use subject to those uses being consistent with the existing edge of settlement rural location. All schemes must maintain or enhance residential amenity and landscape character.”

it is considered the Draft NP is relevant and can be given some weight given its advanced stage, pending the referendum on the plan which has yet to be formally made. The examiner modified the policy to include the current application site within the allocation (see below and in the report section titled ‘Principle of Development’. In essence this modification was required to reflect the current allocation in the adopted and emerging Section 2 CBLP 2017-2033 (Policy SS11: Marks Tey).

The plan below is an extract from the Marks Tey NP policy which has since been updated to include the application site to the immediate east of the former Anderson's site.



Map 6.10 - Policy MT15 – Anderson employment site and former by-pass nurseries site

As a direct consequence of this modification to the CBLP Section 2 Policy SS11, the Marks Tey Neighbourhood Plan examiner suggested that the MTNP policy MT15 should also be modified to include the current application site as part of the policy allocation to achieve conformity with the current adopted site allocation in the adopted LDF Site Allocation DPD as a Local Employment Site and the Section 2 CBLP Local Economic Area allocation in the modified Policy SS11: Marks Tey. The application site is thus allocated for employment purposes in the current adopted local plan, emerging CBLP and the Marks Tey Neighbourhood Plan and the principle of employment use on the application site is in conformity with all of these documents. The MTNP has yet to undergo referendum in March 2022.

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

- The Essex Design Guide
- External Materials in New Developments
- EPOA Vehicle Parking Standards
- Sustainable Construction
- Cycling Delivery

- Sustainable Drainage Systems Design Guide
- Managing Archaeology in Development
- Developing a Landscape for the Future
- ECC's Development & Public Rights of Way
- Planning Out Crime
- Air Quality Management Guidance Note, Areas & Order

8.0 Consultation

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

Highway Authority (National Highways – formerly Highway England)

- 8.2 Given the fact there have been no reported incidents on Old London Road, in the last five years and the development is only adding a small number of vehicles in the peak hours and a total of 360 total vehicles (96 HGV's) spread throughout the day. The developer has also produced a risk assessment which states the increase in risk is acceptable without the alterations to the parking.

Highway England in their response of 22/10/2021 raised no objection subject to the following:

- 1- Before any development on planning application 211788 commences the developer shall have submitted and approved in writing by the local planning authority in consultation with Highways England the following design details relating to the required improvements to Old London Road, including a new access to the site, and the easing of the radius kerb at the junction between the Old London Road and the A120, as shown in outline on Link Engineering Drawing number MTS-LE-GEN-XX-DR-CE-001 Rev A dated 13th May 2021 and MTS-LE-GEN-XX-DR-CE-010 Rev A dated 6th May 2021.

Scheme details shall include drawings and Documents showing:

- i- How the improvement interfaces with the existing highway alignment and carriageway markings including lane destinations.
- ii- Full construction details relating to the highway improvement. This should include any modifications to existing structures or proposed structures with supporting analysis.
- iii- Full Signing and lighting details.
- iv- Confirmation of compliance with Departmental standards (DMRB) and policies (or approved relaxations/departures from standards).

- v- Evidence that the scheme is fully deliverable within the land in control of either the applicant or the Highway Authority.
- vi- An independent stage 2 Road Safety Audit (taking account of and stage 1 Road Safety Audit recommendations carried out in accordance with Departmental Standards (DMRB) and Advice Notes.
- vii- A construction Management Plan detailing how construction traffic will be managed.
- viii- An equality impact assessment.

In addition, the recommendations contained in AECOM Technical Note 'DX117TN03 ISSUED' must be addressed as part of the development of the design.

- 2- The above scheme approved by the Local Planning Authority shall be implemented and completed to the satisfaction of the Local Planning Authority in consultation with the Highways Authorities and NO beneficial occupation shall take place unless and until the junction improvements shown in outline on Link Engineering Drawing numbers MTS-LE-GEN-XX-DR-CE-001 Rev A and MTS-LE-GEN-XX-DR-CE-010 Rev A, have been delivered and are fully operational.
- 3- The total floor areas of the development shall not exceed a Gross Floor Area of 12,517sqm comprising a mix of E (c&g), B2 and B8 floor space.
- 4- No part of the development hereby approved shall be brought into use unless and until the travel Plan has been approved in writing by the Local Planning Authority who shall consult with Essex County Council as Highway Authority.

The Travel Plan shall be in line with prevailing policy and best practice and shall as a minimum include:-

- The identification of targets for trip reduction and modal shift
- The methods employed to meet these targets
- The mechanisms for monitoring and review
- The mechanisms and review
- The penalties to be applied in the events that targets are not met
- The mechanisms for mitigation
- Implementation of the travel plan to an agreed timescale or timetable and its operation thereafter
- Mechanisms to secure variation to the Travel Plan following monitoring and reviews

Whilst not a condition of the grant of permission, the developer should, in conjunction with National Highways, make every endeavour to close the existing substandard access between Old London Road and the A12 known as the Anderson Gap.

Reason: To ensure that the A12 and A120 trunk roads continue to serve their purpose as a part of a national system for through traffic in accordance with Section 10 of the Highways Act 1980, and to satisfy the reasonable requirements of road safety.

A travel plan is required to encourage sustainable travel behaviour to and from the proposed development in accordance with national planning policy to encourage sustainable travel and to ensure that the A12 continue to serve its purpose as a part of a national system for through traffic in accordance with Section 10 of the Highways Act 1980, to satisfy the reasonable requirements of road safety.

Highways Act Section 175B

In accordance with Section 175(b) of the Highways Act 1980 (as inserted by The Infrastructure Act 2015) National Highways consents/does not consent to the formation of an access on to the Old London Road. This consent is valid only for application 211788 and to the layouts shown on drawing numbers MT2-LE-GENXX-DR-CE-001 Rev A MT2-LE-GEN-XX-DR-CE-010 Rev A.

- 8.3 On 25/11/2021 revised comments were received from Highways England asking for a delay in determination of this application until 6/05/2022 to enable Highways England to undertake assessment for Traffic Regulation Order along, Old London Road.
- 8.4 On 15/12/2021 further representation were received from Highways England and stating that:

“Further to our previous holding response, further information has been submitted by the applicant and discussion held with Borough and County Council. We have reconsidered the likely highway impact of this development and have concluded that it is unlikely the proposal would lead to a road safety problem or a severe impact in capacity terms. It is recognised that whilst there is no guarantee that the major upgrade of the A12 being upgraded at this location. Plans are at an advanced stage and it is programmed for works to commence in 2023-2024 and that will remove all through traffic from Old London Road. Therefore, we recommend the following conditions are imposed upon any permission granted.”

The revised comments lifted Highways England previous holding objection and recommended approval subject to the same terms and conditions as Highways England response of 22/10/2021 mentioned above.

Essex County Highway Officer

- 8.5 From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to the following requirement:
1. No occupation of the development shall take place until the following have been provided or completed:
 - a) Improvements to Footpath 15 Marks Tey (details shall be agreed with the Local Planning Authority prior to commencement of the development)
 - b) A travel plan in accordance with Essex County Council guidance

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking, in accordance with Policy DM1, DM9 and DM10 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011

Notes:

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

Archaeology Officer

- 8.6 A programme of predetermination archaeological trial trenching was carried out by the applicant's archaeologists in 2017. Several archaeological features were identified, but the evaluation was only half completed, due to ecological constraints.

Despite the evaluation being incomplete, more information is now available regarding the archaeological resource on-site than before. The limited number of archaeologically significant features identified suggests that the presence of highly significant archaeology (worthy of preservation in situ) on the proposed development site is highly unlikely.

The evaluation should be completed, but this can take place as a condition on consent – sufficient archaeological information is available for the planning application to be determined.

There are no grounds to consider refusal of permission in order to achieve preservation in situ of any important heritage assets. However, in accordance with the *National Planning Policy Framework* (Paragraph 205), any permission granted should be the subject of a planning condition to record and advance understanding of the significance of any heritage asset before it is damaged or destroyed.

The following archaeological condition is recommended:

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

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

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

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

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

Informative:

The applicant should request a new archaeological brief from CBC – the old WSI is no longer sufficient.

SuDs

- 8.7 Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object to the granting of planning permission.

We also have the following advisory comments:

We strongly recommend looking at the Essex Green Infrastructure Strategy to ensure that the proposals are implementing multifunctional green/blue features effectively. The link can be found below.

<https://www.essex.gov.uk/protecting-environment>

Natural England

- 8.8 No comments to make

Ecology Consultant

- 8.9 No objection subject to securing ecological mitigation and enhancement measures.

Summary

We have reviewed the Ecological Impact Assessment (EclA) for this site (Ramboll, June 2021) and the letter relating to reptile mitigation strategy and method statement (Brindle & Green, Oct 2021) relating to the likely impacts of development on protected & Priority species and habitats and the identification of proportionate mitigation.

We are satisfied that there is sufficient ecological information to support determination of this application.

This provides certainty for the LPA of the likely impacts on protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.

We note that the application site supports species including foraging and commuting bats, reptiles, breeding birds and invertebrates. However, although suitable aquatic habitat for Gt crested newt (GCN) exists within the site boundary, eDNA results from 2021 were negative and we support the statement that other protected species were scoped out from further surveys. The site has therefore been assessed as of ecological importance up to Local Level.

We are satisfied that mitigation measures to reduce impacts on habitats and protected species have been outlined and support the recommendation of securing these through the implementation of a Construction Environmental Management Plan (CEMP) for biodiversity. This would need to include the

appropriate timing of vegetation clearance works to avoid impacts on nesting birds and the implementation of root protection zones around trees to be retained.

Bats:

We note that the trees on the site are considered to have negligible potential to support roosting bats and that the bat activity surveys have informed the mitigation measures. However, the lux contours on the submitted External Lighting layout Rev P002 (Johns Slater and Haward, June 2021) indicate that there will be light spillage onto the boundary vegetation. This is in conflict with the EclA which states that a wildlife-sensitive lighting strategy will be designed in consultation with a bat ecologist to ensure the site remains suitable for use by foraging and commuting bats. This strategy would control lighting on site so as to avoid unnecessary illumination of bat foraging and commuting habitat. Specifically, this strategy should mandate that the illumination of boundary features should be minimised so as to conserve their integrity for use by bats.

We therefore recommend that an updated wildlife sensitive lighting strategy is secured by a condition of any consent so that it is also designed to encourage roosting bats to occupy the site in the boxes proposed.

Reptiles:

We also note that the reptile surveys were carried out during the optimal survey period during 2019 and that the application site supports a 'Good' population of both slow worm and common lizard. We are satisfied that the submitted reptile mitigation strategy and method statement is likely to be appropriate with translocation of these protected species within the red line boundary. However, we highlight that further reptile surveys may be needed to inform the final mitigation strategy as the 2019 survey results are already considered to be out of date in line with CIEEM advice on the lifespan of ecological reports and surveys (2019).

We recommend that a final reptile mitigation strategy is therefore secured as a condition of any consent as well as a long-term Landscape and Ecological Management Plan (LEMP) for the reptile receptor site.

We therefore recommend that the mitigation measures identified in the Ecological Impact Assessment (EclA) for this site (Ramboll, June 2021) and the updated version of the Reptile Mitigation Strategy and Method Statement (Brindle & Green, Oct 2021) should be secured and implemented in full. This is necessary to conserve and enhance protected and Priority species particularly bats and reptiles.

This is necessary to provide the LPA with certainty of likely impacts on protected species and that appropriate mitigation can be secured either by a condition of any consent or a mitigation licence from Natural England.

Biodiversity Net Gain:

We welcome the provision and retention of bird and bat boxes and the use of native plant species or species with a known value to wildlife as biodiversity enhancements. However, we would also expect to have a Biodiversity Net Gain (BNG) design stage report to demonstrate how the development will deliver net gain for biodiversity as required by NPPF (2021). We advise that it is not possible to require any specific % until secondary legislation is enacted to deliver mandatory BNG as described in the Environment Act 2021. As there is no detail on whether habitats on-site would be adequately compensated or not to support net gain,

We recommend that a Biodiversity Enhancement Strategy is secured by a condition for any consent.

This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006 as updated by the Environment Act 2021. Impacts will be minimised such that the proposal is acceptable, subject to the conditions below based on BS42020:2013.

We recommend that submission for approval and implementation of the details below should be a condition of any planning consent.

Recommended conditions

1. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

“All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Impact Assessment (EclA) for this site (Ramboll, June 2021) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

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

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

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

“A construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority.

The CEMP (Biodiversity) shall include the following.

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

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

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

3. PRIOR TO COMMENCEMENT: FINAL REPTILE MITIGATION STRATEGY AND METHOD STATEMENT

“No development shall take place (including any demolition, ground works, site clearance) until a final Reptile Mitigation Strategy and Method Statement based on a review of the population estimate surveys has been submitted to and approved in writing by the local planning authority,

The content of the method statement shall include the following:

- a) purpose and objectives for the proposed works;
- b) detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);
- c) extent and location of proposed works shown on appropriate scale maps and plans;

- d) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
- e) persons responsible for implementing the works;
- f) initial aftercare and long-term maintenance (where relevant);
- g) disposal of any wastes arising from works.

The works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.”

Reason: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended), s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2020 and s17 Crime & Disorder Act 1998.

4. PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT STRATEGY

“A Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) timetable for implementation;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant). The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.”

Reason: To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species).

5. PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

“A lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall be based on identifying those features on-site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.”

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

6. PRIOR TO OCCUPATION: LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN

“A Landscape and Ecological Management Plan(LEMP) for the reptile receptor site shall be submitted to, and be approved in writing by, the local planning authority prior to occupation of the development.

The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organisation responsible for the implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long term implementation of the plan will be secured by the

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

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

Landscape Officer

- 8.10 The submitted landscaping is not satisfactory and the following condition is recommended:

Landscape management plan Bespoke:

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

- Finished levels or contours, where notable changes are proposed.
- Hard surfacing materials.
- Earthworks (including the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform)
- Retained historic landscape features and any proposals for restoration.
- Planting plans (drainage and building foundation detailing shall take account of the position of the trees as so indicated).
- Make on-site sanctuary provision for reptiles'/wildlife mitigation.
- Written specifications.
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
- Implementation timetables and monitoring programs.

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

Arboricultural Officer

- 8.11 No objection subject to conditions.

Urban Design Officer

- 8.12 No objection to the layout and form of the development.

Environmental Agency

- 8.13 No comments to make

Anglian Water

- 8.14 Anglian Water has advised that there are assets owned by them or those subject to an adoption agreement within or close to the development and that the site layout should accommodate these assets.

The foul drainage from this development is in the catchment of Copford Water Recycling Centre which currently does not have the capacity to treat the flows from the development site. Anglian Water is obligated to accept the foul flows and would therefore take the necessary steps to ensure that there is sufficient treatment capacity should planning permission be granted.

The proposed method of surface water management does not relate to Anglian Water operated assets. As such, we are unable to provide comments on the suitability of surface water management.

Contaminated Land Officer

- 8.15 Should this application be approved; Environmental Protection would recommend inclusion of the following conditions:

ZGX - Contaminated Land Part 1 of 4 (Site Characterisation)

ZGY - Contaminated Land Part 2 of 4 (Submission of Remediation Scheme)

ZGZ - Contaminated Land Part 3 of 4 (Implementation of Approved Remediation Scheme)

ZG0 - Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)

ZG3 - *Validation Certificate*

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

information has been supplied by the applicant and Environmental Protection wish to ensure that development only proceeds if it is safe to do so.

Environmental Protection Officer

- 8.16 Should planning permission be granted Environmental Protection recommends the following conditions:

Construction Method Statement

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

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

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

Limits to Hours of Work

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

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

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

EV Charging points

The development should provide EV charging point infrastructure to encourage the use of ultra-low emission vehicles at the rate of 1 charging point per 10 spaces.

Noise

The accompanying acoustic report has concluded that there will be no impact on current noise levels from traffic and the general operation of the site, including deliveries and HGV movements, owing to the high ambient noise levels that currently exist and taking into account the proposed mitigation from the 3.5-metre-high acoustic barriers. However, the following condition is recommended to cover any potential impact of noise from external plant, machinery or equipment:

Site Boundary Noise Levels (external plant, machinery or equipment)

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

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

Acoustic barriers

The 3.5 metres high, high-density acoustic barriers shown on the submitted plans shall be erected prior to first use. Installation shall be overseen by a competent person. Details of long-term maintenance of the barriers shall be submitted to Colchester Borough Council for approval.

Unit 1110

This unit is located very close to a dwelling house and has the potential to impact its amenity from deliveries and general operation. We, therefore, recommend the following conditions:

Restriction of Hours of Operation

The use hereby permitted shall not OPERATE/BE OPEN TO CUSTOMERS outside of the following times:

Weekdays: 07:00-21:00

Saturdays: 07:00-21:00

Sundays and Public Holidays: 10:00-16:00

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

Restricted Hours of Delivery

No deliveries shall be received at, or despatched from, the site outside of the following times:

Weekdays: 07:00-21:00

Saturdays: 07:00-21:00

Sundays and Public Holidays: No deliveries.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from delivery vehicles entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

Industrial Processes (Control of Fumes, Odours, Dust etc. if applicable)

Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme devised by a competent person for the control of fumes, smells and odours, and dust that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. The control measures shall thereafter be retained and maintained to the agreed specification and working order.

Reason: To ensure that there is a scheme for the control of fumes, odours, dust, and smell in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

Light Pollution for Major Development

Prior to the first OCCUPATION/USE of the development hereby permitted, a validation report undertaken by competent persons that demonstrates that all lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) fully complies with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ2 shall be submitted to, and agreed in writing by, the Local

Planning Authority. Any installation shall thereafter be retained and maintained as agreed therein.

Note: Care should be taken to ensure luminaires are directed downwards or shielded to prevent glare and light-spill at all residential properties bordering the site.

Reason: In order to allow a more detailed technical consideration of the lighting at the site, as there is insufficient information submitted within the application to ensure adequate safeguarding of the amenity of nearby properties and prevent the undesirable, disruptive and disturbing effects of light pollution.

Surface Water Treatment

(Note: For car parks containing 50 spaces or more, or discharging to a sensitive environment).

All surface water arising from the car park/s shall be treated in accordance with current Environment Agency guidance.

Reason: To prevent unnecessary pollution of the groundwater environment quality in the area and/or blocking of the drainage system.

Essex County Fire and Rescue Services

- 8.17 In view of the above, due to what would be considered an excessive distance to the nearest existing statutory fire hydrant, No.10/3021 shown on the enclosed plan, it is considered necessary that should the development proceed, new fire hydrants are provided within the curtilage of the site. (*Officer Note: This matter will be addressed under Building Regulations*)

9.0 Marks Tey Parish Council

- 9.1 At present this area is served by a narrow road unsuitable for HGV's that are unable to pass. This application would significantly increase all vehicle movements adding to the already poor air quality. With the impending changes to the A12 and Junction 25 Highways England has indicated that the proposed new road layout will further increase the traffic flow around the properties in Old London Road and will, with the positioning of the new roundabout, dissect the existing housing. We have put forward proposals to Highways England to provide direct access to the former Andersons site but Highways England has rejected these on the grounds of cost. As Bypass Nurseries are served by the same stretch of narrow road the same would apply to both sites.

In view of this, we are unable to support any further developments in this area until infrastructure improvements have been made and measures are taken to improve air quality in this and the surrounding areas.

10.0 Representations from Notified Parties

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

- At 8.35m high flank elevation, the proposed building near residential units will intrude into these properties and will represent an eyesore.
- The scale and height of the buildings are out of character.
- The chosen colour for the buildings closer to domestic residential properties is not appropriate.
- The buildings closer to residential properties should be sited further away from the shared boundary edge to reduce the impact on amenities.
- Our outlook will be altered from the countryside to tall buildings. This will harm our outlook.
- There should be a restriction on hours of activities to 8 am to 5 pm Monday to Friday.
- There should be a restriction on floodlighting to prevent light pollution and light intrusion into the amenities of the residents.
- A physical barrier should be installed to prevent access to A12 from the Anderson site and this application site.
- Old London Road is a residential road and not suitable for large commercial vehicles.
- There is no room for HGVs to pass each other. This will cause congestion on the road and restrict residents on-street parking.
- The Old London Road is an official cycle route and the proposal will impact cyclists unless there is a segregated cycle path.
- Noise from the new development and associated vehicular movement will impact the local resident's amenities.
- There is already congestion and accidents at the A12/A120 roundabout near the junction with Old London Road, this proposal will add to it.
- The proposal will give local residents very little benefits beyond increased pollution, congestion and even more on-street parking limitation within the surrounding.
- The residents' whole existence will be blighted in everything they do.
- The proposal will not enhance and increase the local infrastructure and will increase demand on-road system, adversely impact on road safety access and egress.
- The Traffic Assessment is misleading and omits vehicular movements current or planned for Anderson Site.
- Loss of on-street parking would mean residents park over ¼ mile away on the applicant's site and not visitor or delivery parking.
- The proposal will aggravate local air quality and impact the health and wellbeing of residents.
- The proposal will impact local wildlife.

Colchester Cycle Campaign

- 10.2 Colchester Cycling Campaign objects to this plan. If it is considered for approval, mitigation should be carried out and completed at the same time as the development. If any work is outstanding it should be subject to a legal agreement and funded via a 20-year Section 106 or CIL agreement. See the table below for a list of mitigation measures.
- Highways England should consider this scheme not as a standalone but as a major part of other recent planning applications in this area, which all add to motor traffic.
- This particular application is disappointing in terms of provision for active travel: it is likely to increase dependence on short to medium-distance commuting by a car while further undermining cycling through increased traffic and greater danger, especially in Old London Road.

Note that paragraph 109 of the National Planning Policy Framework states that “development should only be prevented or refused ... if there would be an unacceptable impact on highway safety, or residual cumulative impacts on the road network would be severe”....

No estimate is given of the effect of increased motor traffic on cyclists in Old London Road, with the focus being on the ability of two heavy goods vehicles to pass each other.

While Old London Road falls within the remit of Highway England, it is not by nature a trunk road but a lightly trafficked mixed-use street. It should be subject to the design set out in the Manual for Streets (MfS) and not the Design Manual for Roads and Bridges.

Page 144 of Manual for Street states: "The DMRB is not an appropriate design standard for most streets, particularly those in lightly-trafficked residential and mixed-use areas."

The applicant's documents also make no mention of [Local Transport Note 1/20](#) on cycling infrastructure or the government's [Gear Change](#) document, which have been published for more than a year. These should have been used to shape the application.

Paragraph 3.4.5 of the transport assessment mentions the National Cycle Network routes 1 and 13. These are irrelevant when the site is so cut off for cyclists and is likely to be so for some time.

There is no indication of the type of cycle parking that the developer intends to provide, whether the security is sufficient and whether it is covered. The applicant seems to have ignored the requirement at 3.6.2 of the [Essex Parking Guide](#) that “cycle parking should be conveniently located adjacent to entrances to buildings”.

No comprehensive consideration of current or future air quality has been made.

Local Member of Parliament Rt Hon Priti Patel

- 10.3 Has written in on behalf of her constituent, Mr Warner's concern about the scale of the development and its impact, as well as additional traffic and pollution on Old London Road.

In this letter, Rt Hon Priti Patel also refers to objections received from other local residents and asks that their comments be fully considered and also she be kept updated with the progress of the application, when a decision is likely to be made and if this is going to be determined by the Planning Committee.

Cllr Kevin Bentley CBC & Leader of Essex County Council

- 10.4 As one of the local Members I can only support what Gerald and others are saying. When I use this junction to attend PC meetings you can take your life in your hands to emerge onto the A120. This would be bad future planning in my opinion and almost certainly against the Climate Change work of ECC.

11.0 Parking Provision

- 11.1 The scheme proposes on-site car parking spaces and cycle parking
- Provision of 115 car and 8 HGV parking spaces (loading, unloading bays and turning) including 11 disabled spaces and provision for 10 motorbike parking and 28 bicycle shelters close to individual buildings.
 - Electric Charging stations for 10% of the total car parking spaces proposed, equal to 12 electric charging stations.
 - Provision for 7 on-site residents car parking spaces to offset the loss of on-street car parking to road widening/highway improvement.

12.0 Accessibility

- 12.1 The development will be laid out to achieve accessibility for disabled occupants. All disabled car-parking bays are located as close to the main entrance as possible, with cycle shelters providing security and protection for bicycles. Safe pedestrian routes from these shelters will meet up with the route between the car park and the building.
- 12.2 All levels within the car parking areas will have a gradient of less than 1:25, enabling wheelchair access and ambulant disabled to access the site without difficulty.
- 12.3 All main entrances into the unit will be 'wheelchair friendly' level entry, with automatic or manual opening doors. The doors will meet all current Building Regulations Part M requirements, with full height tubular steel handles for ease of opening.
- 12.4 The reception area to the main office areas will be suitably sized to accommodate wheelchair users. Internal corridors will be a minimum of 1500mm wide at the pinch point. All doors will have a minimum clear opening of 800mm suitable for wheelchair access.

13.0 Open Space Provisions

13.1 N/a

14.0 Environmental Protection (Air Quality)

14.1 On the basis of the air quality impact assessment, there is no need for any further air quality mitigation other than the requirement for EV charging points and a residential travel plan.

15.0 Environmental and Carbon Implications

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

16.0 Planning Obligations

16.1 As a “Major” application, there was a requirement for this proposal to be considered by the Development Team. It was considered that Planning Obligations should be sought. The Obligations that would be agreed upon as part of any planning permission would be:

- i- Footpath link to A120: Payment of £45k to Marks Tey Parish Council to delivery diversion of footpath 144-15 involving a 3.5m wide pedestrian and cycle path from the eastern boundary of the application over the Marks Tey Parish Council land towards the northeast to connect with the pavement of A120.
- ii- Archaeology contribution £14,400 toward museum-quality display cases, design and display material.
- iii- Contribution of £753 towards enhancement of the Colchester HER £348 to mitigate the information from the archaeological, if no archaeological remains are affected by the development.
- iv- Obligation: To provide 7 on-site car parking spaces in perpetuity for the benefit of the residents of Old London Road and as shown on drawing 18204 PO103 Revision J.
- v- Travel Plan Monitoring contribution: Payment of contribution of £6,132 toward monitoring of the Travel Plan by Sustainable Travel Planning Team.

17.0 Report

Principle of the Development

- 17.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004, Section 70(2) of the Town and Country Planning Act 1990 and Paragraph 47 of the National Planning Policy Framework require that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
- 17.2 Adopted Core Strategy Policy CE1 (Centres and Employment Classification and Hierarchy) promotes economic development through the regeneration and intensification of previously developed land and allocation of land necessary to support employment growth at sustainable locations. This Policy seeks to protect and enhance employment throughout the Borough and encourage economic diversity and business development to facilitate small and medium enterprises. A mix of business types and premises will be sought in employment developments to provide opportunities for all businesses and create diverse and successful economic environments.
- 17.3 Core Strategy Policy CE3 states that Employment Zones will accommodate business developments that are not suited to Mixed-Use Centres, including industry and warehousing. The supporting text to this policy goes on to state that Local Employment Zones will also be maintained to support small to medium scale enterprises, provision of incubator units and grow-on space to support the development of small and medium-sized businesses. The policy encourages rural businesses and local employment delivery. Policy DP5 of LDF (Appropriate Employment Uses and Protection of Employment Land and Existing Businesses) states that appropriate uses within designated employment zones will include (a) Business (B1), general industrial (B2), storage and distribution (B8). The site is allocated as a local employment site within the Site Allocations DPD (2010) and suitable uses are set out in Development Policy DP5. The proposals are in conformity with these relevant adopted policies.

The site forms part of the wider Employment Zone identified in the adopted Site Allocations DPD (2010). The site is listed as a Local Employment Zone (para.3.14) which includes the following comments:

Further development of the site will require:

- Contributions to assist with any junction improvements required by the Highways Agency/ECC and contributions towards public transport, cycling and walking links;
 - A travel plan;
 - Contributions to increase capacity of Copford Sewerage Treatment works;
 - Retention of Hedgerows;
 - Incorporation of SuDS scheme.
- 17.4 Policy SG4 of the emerging Section 2 emerging Colchester Borough Local Plan (CBLP) seeks to safeguard the Local Economic Areas in Colchester primarily for B Class uses to protect and enhance employment provision.

Local Economic Areas are listed in Table SG4 and include the former Andersons Timber Yard site.

The application site to the east of the Andersons site is also now allocated as a Local Employment Area (Policy SS11: Marks Tey) following modifications suggested by the Inspector as part of the Section 2 CBLP examination. This reinstated the application site as an employment allocation. The modified policy now reads:

Policy SS11: Marks Tey

“14.192 The site known as Anderson’s will be retained as a Local Employment Area having been reviewed as part of the Council’s evidence update on employment. Policy SS11: Marks Tey

Growth within the Marks Tey area will largely be guided by the following documents in addition to this Local Plan:

(i) The Marks Tey Neighbourhood Plan to be developed will provide flexibility, including the scope for the allocation of any small parcels of land for development to be considered in the Neighbourhood Plan at the appropriate time.

The Anderson’s site is allocated as a Local Economic Area as shown on the Policies Map. This policy should be read in conjunction with the generic Neighbourhood Planning policy SG8.”

As a direct consequence of this modification to the CBLP Section 2 Policy SS11, the Marks Tey Neighbourhood Plan examiner suggested that the MTNP policy MT15 should also be modified to include the current application site as part of the policy allocation to achieve conformity with the current adopted site allocation in the adopted LDF Site Allocation as a Local Employment Site and the Section 2 CBLP Local Economic Area allocation in the modified Policy SS11: Marks Tey. The application site is thus allocated for employment purposes in the current adopted local plan, emerging CBLP and the Marks Tey Neighbourhood Plan and the principle of employment use on the application site is in conformity with all of these documents. The MTNP has yet to undergo referendum in March 2022.

Para.11 c) of the Framework states that proposals that accord with an up-to-date development plan should be approved without delay.

- 17.5 In general terms paragraphs 80 to 82 of the NPPF seek to build a strong, competitive economy. This includes creating conditions where businesses can invest, expand and adopt. In addition, planning decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of SMEs and storage and distribution operations at a variety of scales in suitable and sustainable locations.
- 17.6 The Site Allocations DPD identifies the former Anderson Site and the land the subject of this application as a Local Employment Zone. Following modifications suggested by the Inspector as part of the Section 2 CBLP this

site allocation is now carried forward to the emerging local plan (Policy S11) which is at an advanced stage. Furthermore, the application site has now also been allocated in the Marks Tey Neighbourhood Plan for employment purposes. Given the advanced stage of the Marks Tey Neighbourhood Plan this allocation can be given some weight and reinforces the policy position of the application site in the adopted and emerging local plan.

- 17.7 While the proposal also includes office floor space in individual units, this would represent a small proportion of the overall proposed floorspace and the development would be industrially-led with the majority of floorspace in either B2, B8 or E(c&g) uses and as such the proposal would be wholly consistent with the above-mentioned policies and would provide investment in terms of delivering high-quality buildings both internally and externally and yield local employment opportunities. The proposed uses accord with emerging policy SG4 of the CBLP.
- 17.8 In the light of the above, it is considered that in land use terms, the proposed development to be acceptable in principle for (Class E (c and g), general industrial (Class B2) and storage and distribution (Class B8) uses is compatible with national and local plan policy. Furthermore, given the future local economic benefits and employment opportunities, the development will deliver, the application is supported subject to the assessment of design, amenity, ecology, landscape, suds and highway/transport impact. These matters are considered below.

Design, Appearance and Character

- 17.9 The NPPF confirms that the Government attaches great importance to the design of the built environment and notes that good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people. Core Strategy Policies ENV1, Local plan Policy DP1 and emerging local plan policy DM15 seek to optimise site potential through the design lead approach and are concerned with good quality and contextual design in all developments. These policies require new developments to respect and enhance the characteristics of the site, its context, and surroundings by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance, and shape of the development.
- 17.10 Adopted Development Policy DP1 point (i) states that development proposals must demonstrate that they and any ancillary activities associated with them will:
- i) Respect and enhance the character of the site, its context, and surroundings in terms of its architectural approach, height, size, scale, massing, density and proportions, materials....
 - ii) Provide a design and layout that takes into account the potential users of the site including giving priority to pedestrian, cycling and

public transport access and the provision of satisfactory access provision for disabled people and those with restricted mobility.

iii) Protect the existing public and residential amenities, particularly with regard to privacy, overlooking, security, noise and disturbance, pollution (including light and odour pollution), daylight and sunlight.

iv) Create a safe and secure environment.

- 17.11 Essex design guide which has been adopted by the Council as an SPD also provides guidance for Commercial, Industrial and Large Footprint Buildings also provides guidelines and principles for good design, e.g., how buildings look and fit into their setting, the layout and arrangement public spaces and appearance of the development.
- 17.12 The proposed development has been refined through the pre-application process and discussion with officers and consultation as part of application 202373 (see planning history above). Specifically, the relocation of block 1000 further away from the southern boundary, reduction in its ridge height from 16.3m to 13.8m and replacement of units 1110, 1112 and 1113 with a total floor area of over 950sqm with a single block 1100 with a total floor area of 421sqm. Also, to offset the loss of on-street residents parking spaces, 7 parking spaces are proposed on the application site for use by local residents. These spaces would be secured in perpetuity by an obligation in the proposed s.106 agreement.
- 17.13 The blocks are designed as a propped portal to allow maximum flexibility in design based around the likely operational practicalities required by the future occupiers.
- 17.14 Each building is accessed from the spine road servicing all units from the Old London Road. Where possible ancillary offices have been orientated to address internal estate road creating a sense of arrival and opportunity for natural surveillances through secure by design.
- 17.15 As the table in section 4.1 above shows the development will provide a range of units to suit a range of market demands. The units range from a 690 sqm warehouse area with an ancillary 144sqm office floor area to the largest unit with a warehouse floor area of 3263sqm and ancillary office floor area of 453sqm.
- 17.16 The scale, height, massing, and location of the blocks in the context of their sitting and viewpoints receptors have been carefully considered to ensure minimum impact on the surrounding occupiers and wider landscape.
- 17.17 The closest proposed building blocks to the residential properties to the south are blocks 1000 and 1100. The height of block 1100 which is closest to the adjoining dwelling is very similar to the height of other two-storey houses along Old London Road and as such would relate well with its surroundings and it will be occupied for Class “E(c and g)” uses.

- 17.18 As regard block 1000, this building would be sited over 50m away from the curtilage of the closest houses and a minimum distance of 70m back-to-back. This building is to have a ridge height of 13.8m and an elevation of over 91m wide facing the houses. It is considered that although blocks 1000 and 1100 will be visible from the rear aspect of the houses to the south and east, given the overall height and distance, it is not considered their impact will be significant. In addition, new landscaping, and tree planting along the shared boundary with the houses would further assist and soften their visual impact in the long run.
- 17.19 All blocks in this development are coordinated to include the same cladding finishes and colours, such that the units read together as one cohesive development. Each block has been designed to create a contemporary simplistic aesthetic with high-quality material. The units will be broken up vertically with various elements and broken up horizontally with changes in cladding colours. Large curtain walls are proposed near the entrances and on frontages.
- 17.20 The overall impression of the scale of the building is much reduced through the definition of each block component. The careful articulation of the use of external finish materials helps to draw the eye away from the overall height and reduces the perception of scale.
- 17.21 In conclusion it is considered that the development to be a well-considered proposal that, while developing the site to its maximum capacity, is considered to sit comfortably within its context and provide for good quality contemporary industrial and commercial buildings and employment units.
- 17.22 The scheme design and architecture is considered consistent with relevant adopted local plan policies, Essex Design Guide and the NPPF as a result, the application is supported on design grounds.

Residential Amenity

- 17.23 The Development Plan contains policies which seek to appropriately safeguard the amenities of residential occupiers when considering new development. LDF Policy DP1 states that all development must be designed to a high standard and avoid unacceptable impacts on amenity. The emerging CBLP Section 2 policy DM15(v) requires all development including new buildings to be designed to a high standard, positively respond to its context..., protect and promote public and residential amenities, particularly with regards to privacy, overlooking, security, noise, and disturbance, pollution, (including light and odour pollution), day light and sunlight. In addition, the adopted Essex Design Guide (as SPD) also provides guidance on the protection of residential private amenities. Paragraph 130(d) and (f) of the NPPF says that Planning policies and decisions should ensure that developments:

- d) Establish or maintain a strong sense of place, using the arrangement of street spaces, building types and materials to create attractive, welcoming, and distinctive places to live, work and visit.
- f) Create places that are safe, inclusive, and accessible and which promote health and well-being, with a high standard of amenity for existing and future users

17.24 In this instance representations have been received from the local residents and the Parish Council regarding the potential adverse impact of the development on the amenities currently enjoyed. It is acknowledged that there are residential properties along the application site boundaries to the south, east and west. However, it must be noted that only block 1000 with its B8 use and associated individual service yards and loading bays which is the closest to residential properties would be at least 50m away from the curtilage boundary of the adjoining residential properties with an intervening area of landscape green buffer and fencing providing relief. This distance is considered sufficient to prevent the proposal from overlooking, or causing any detrimental level of overshadowing. It is not considered that the proposed block 1000 would have an overbearing impact given the intervening distance between it and the nearest properties and the fact that there is an area of green space inbetween.

It is acknowledged that block 1000 will have a considerable height and would therefore have more of a potential impact than a residential property, for example, but this has been taken into account and the impact is not considered to be detrimental. As regards block 1100, it is considered that this building would have an overall height similar to a two-storey house and will be used for Class E (c&g) which are uses acceptable in residential areas.

Overall, it is considered that none of these units will cause significant harm to the amenities of the occupiers of the residential properties. Moreover, to further mitigate any potential harm from the proposed uses and associated operations and construction activities; Environmental Protection has recommended restrictions on the hours of construction and operation of the units including deliveries to and from the site.

17.25 In addition, as stated in paragraphs 17.17 and 17.18 above, the orientation, height and distance of blocks 1000 and 1100 to the adjoining residential properties would be such that the proposal will not cause overlooking or significant impact on the outlook, sunlight and daylight of these properties.

17.26 On balance therefore it is considered the impact of the development upon the amenities of the local residents will be in compliance with the above-mentioned plan policies and the impacts acceptable in compliance with the policies identified.

Air Quality and Noise Impact

- 17.27 Concerns have been raised that the development will result in the generation of noise and harm local air quality. The application has been accompanied by noise and air quality reports which have been considered by the Environmental Protection team and no concerns have been raised subject to the recommended conditions.
- 17.28 With regard to air quality no concern has been raised subject to conditions regarding the provision of electric charging points (EVC), implementation of a travel plan and submission of a Construction Management Plan for approval by the Local Planning Authority prior to the commencement of development to ensure that dust and pollution during the construction phase are controlled.
- 17.29 With respect to the noise issue, the submitted noise assessment report considered that the key issue for the site is the access and HGV movements to and from the site. The report recommended the erection of a 3.5m high acoustic barrier along the site's southern boundary to address potential noise from the site. It is considered subject to the implementation of the acoustic barrier and restriction on the operating and delivery hours the noise impact would not be significant, as the adjoining residential properties affected are also more exposed to general background traffic noise from A12.
- 17.30 Overall, the Environmental Protection does not raise any significant concerns and therefore it is considered that the proposed development would result in any detrimental harm to local residents as a result of noise or air quality subject to implementation of the conditions suggested.

Ecology and Biodiversity

- 17.31 Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. DPD Policy DP21 and Core Strategy Policy EV1 (vi) seek to conserve and enhance biodiversity. This is also reflected in paragraph 170 of the NPPF which at bullet point (B) suggests that recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services... and (d) minimising impact on and providing net gains for biodiversity,....
- 17.32 The applicant submitted a phase 1 Environmental assessment report and an ecological impact assessment report which has been assessed by the County ecologist. No formal objection is raised and recommended planning conditions relating to action required in accordance with ecological appraisal recommendations contained in the Ecological Impact Assessment (EclA) for this site (Ramboll, June 2021), Construction Environmental Management Plan for Biodiversity, Final Reptile Mitigation Strategy and Method Statement, Biodiversity Enhancement Strategy.

- 17.33 The applicant's proposed lighting scheme is considered to be inappropriate and detrimental to wildlife. To address this issue, it is recommended the proposed lighting scheme not be approved and a condition is imposed requiring submission of Wildlife Sensitive Lighting Design Scheme and Landscape and Ecological Management Plan (LEMP) for the reptile receptor site.
- 17.34 Subject to the above conditions to secure ecological enhancement measures, it is considered that the proposed development accords with adopted Policies ENV1 of the Core Strategy, DP21 of the local plan and the requirements of the NPPF which seek to minimise impacts on biodiversity and, where possible, to provide net gains for biodiversity.

Flooding Risk and Drainage

- 17.35 Adopted Development Policy DP20 (Flood risk and Management of Surface Water drainage) of the local plan requires all development proposals to incorporate measures for the conservation and sustainable use of water. These measures shall include an appropriate Sustainable Drainage System to minimise the risk of increased flooding both within the development boundary and off-site. The above policy also states that "The use of SuDS will be particularly important as part of greenfield developments to manage surface water run-off rates...". Also, Policy DM23 (Flood Risk and Water Management) of the emerging Local Plan states that "development proposals will be required to deliver or contribute to the delivery of flood defence/protection measures and/or flood mitigation measures to minimise the risk of increased flooding both within the development boundary and off-site in all flood zones and ensure that the development remains safe throughout the life of the development. This consideration is reiterated in the NPPF, which states that development should ensure that flood risk is not increased elsewhere.
- 17.36 The application site is situated within Flood Zone 1, which is defined as having little or no risk of flooding from rivers or streams. Such zones generally comprise land assessed as having a very low risk of flooding.
- 17.37 The applicant submitted a FRS report which has been examined by the Essex County Council Local Flood Authority. Concerns were raised initially and additional information was requested to fully assess the proposal. Additional information and drainage strategy were subsequently submitted by the applicant to address the raised concerns. Upon further assessment of the information provided, County Local Flood Authority removed their objection subject to the implementation of the surface water drainage as approved and an informative.
- 17.38 The Environment Agency has also not objected to this application subject to a condition to ensure the development does not have an impact on water quality.

- 17.39 Anglian Water notes that foul drainage from this development is in the catchment of Copford Water Recycling Centre which currently does not have the capacity to treat the flows the development site. Anglian Water however states that they are obligated to accept the foul flows from the development with the benefit of planning permission and would therefore take the necessary steps to ensure that there is sufficient treatment capacity should the Planning Authority grant planning permission. No objection has been received from Anglian Water to this development.
- 17.40 The proposal as submitted is therefore considered acceptable and in compliance with the local plan policies and the NPPF and will not create any enhanced flood risk.

Highway and Transportation Matters

- 17.41 Adopted CS Policies TA1 to TA4 seek to improve accessibility and change travel behaviour. CS Policy PR2 requires development proposals to create secure attractive, safe and people-friendly streets. The Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 17.42 The application has been accompanied by a Transport Statement and a Stage 1 Highway Safety Audit report. The proposal would involve the creation of a new vehicular and pedestrian access onto the Old London Road. Although it is noted that the Old London Road has limited street lighting and as a result is not well lit; it benefits from a footway along its northern side that joins the A120 (Coggeshall Road) to the northeast of the site. The site, therefore, benefits from pedestrian and cycle connectivity and can access the public transport facilities in Marks Tey. Furthermore, the A12 benefits from a segregated footway/cycleway which runs parallel along the eastbound carriageway.
- 17.43 The closest bus stop is located approximately 600m northeast of the site adjacent to the junction of Old London Road with A120. Marks Tey Railway Station is located approximately 1km northeast of the site.
- 17.44 The proposal would involve the diversion of the existing dead-end PROW footpath 144-15 and the creation of a 3.5m wide pedestrian and cycle path from the eastern boundary of the application over the Marks Tey Parish Council land towards the northeast to connect with A120 to facilitate easier connection to public transport. This is in conformity with the requirements of the MTNP site specific policy and would be secured via a contribution of £45k in the s.106 agreement. The exact route and details of this cycle and footpath diversion have not been finalised, although the applicant has agreed to pay the contribution to the Parish Council towards its construction and upkeep.
- 17.45 To ensure that the proposed site access and its associated sightlines and the industrial estate internal road can accommodate HGV movements the

applicant has carried out a satisfactory HGV tracking as shown in drawing MT2-LE-GEN-XX-DR-CE-001 Rev B to ensure that the proposed layout would be satisfactory and would not cause harm to highway safety.

17.46 The proposal would involve off-site highway works under section 278 of the Highway Act comprising improvements to the Old London Road and its junction with the A120 to facilitate better HGV movements. These highway works would consist of the following:

- New pedestrian and vehicular access onto the Old London Road (drawing MT2-LE-GEN-XX-DR-CE-001 Rev B);
- Changes to on-street parking arrangements on the Old London Road (drawing MT2-LE-GEN-XX-DR-CE-001 Rev B); and
- The improvements include widening of the Old London Road and realignment of the bend as it turns towards the A120. This is to provide a more compliant route for the passage of HGVs and other vehicles.
- To rationalise the existing on-street parking bays along the Old London Road into two sections allowing HGVs to pass each other safely alongside other road users.
- Improvements work to the Old London Road junction with A120 involving changes to the curb line in order to accommodate HGVs. (drawing MT2- LE-GEN-XX-DR-CE-010 Rev A.

17.47 The above highway improvements have been discussed at length with National Highways (Highways England) who is the Highway Authority in this location. Highways England in their final response of 15/12/2021 raised no objection, subject to the conditions as set out in paragraph 8.2 above in this report.

17.48 A Travel Plan has been submitted with this application and sets out proposals to encourage alternative modes of transport to the car. Notwithstanding the travel plan submitted Highways England has asked for a condition to be imposed to require the submission of a more detailed travel plan to promote sustainable travel as part of the sales package, and subsequently once the site is occupied. The Travel Plan would need to be monitored for a period of five years. If the application were to be approved, this and monitoring contribution would be secured as part of a section 106 agreement.

17.49 Although both the County Highway Authority and Highways England have considered the impacts of the proposal on the road network, as well as the highway safety. Neither has objected to the application. Whilst the concerns expressed in respect of the potential impact of vehicular traffic are appreciated, it is important to note that the Framework advises that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. In the light of the submitted evidence and, given the fact that the responsible highway authority (Highways England in this case) have not raised any objection to

this application subject to appropriate conditions and highway works, it is considered that a refusal on the highway ground cannot be substantiated. The application site is also located in an accessible location that accords with the requirements set in the Framework and adopted local planning policies. Whilst it is noted that both the adopted local plan and emerging MTNP (MT15) site specific policies refer to access to and from the site to be via an improved direct access on to the A12, this cannot be achieved and is not a requirement supported by the highway authority.

Parking

17.50 CS Policy TA5 refers to parking and states that development proposals should manage parking to accord with the accessibility of the location and to ensure people-friendly street environments. DPD Policy DP19 states that the Council will refer developers to the Essex Planning Officers Association (EPOA) Vehicle Parking Standards which was adopted by Colchester Borough Council as a Supplementary Planning Document (SPD) in November 2009.

17.51 The Vehicle Parking Standards provides guidelines on car parking standards for new developments. This set out the following standards:

- B1 – Offices: 1 space per 30m²
- B2 – General Industry: 1 space per 50m²
- B8 – Warehousing: 1 space per 150m²

The parking provision for commercial development is based on maximum standards.

17.52 The proposed development has made on-site car parking provision for 115 spaces including 11 disabled spaces, 10 motorcycle parking spaces, 28 covered bicycle spaces and 8 HGV parking bays. In addition, the proposal would provide 7 on-site car parking spaces for the local residents to offset the loss of on-street car parking spaces that will result due to off-site highway improvement.

17.53 As part of the sustainability programme the proposal will ensure that 10% of the total car parking spaces will provide Electric charging points (EVC). This will be secured by a planning condition.

17.54 Given the above, the proposed parking provision is considered to accord with the requirements of Policy DP19 of the local plan, TA5 of the CS and the adopted parking standards.

17.55 A number of concerns have been raised regarding highway safety issues by the local residents and the Parish Council and all these matters have been considered by the Highways England and Essex County Council Highway Authority and covered in this report. In the light of the available evidence and, given the fact that the responsible Highway Authority (the Highways England) has not raised an objection to this application, it is considered that a refusal on the highway cannot be substantiated. In view of the above, the

proposal is considered acceptable in terms of transport/ highways subject to appropriate planning conditions and S106 contributions.

Contamination

- 17.56 DPP Policy DP1 requires all development to avoid unacceptable environmental impacts; part (vi) requires the appropriate remediation of contaminated land.
- 17.57 A contamination report has been submitted in support of the application. This report assumes a continued use on the site and therefore does not specifically assess the contamination risks for the proposed redevelopment. Moreover, the site visit was limited to the exterior areas only. Both the Environment Agency and the Council's Contaminated Land Officer have recommended that a further application-specific assessment of potential risks be undertaken. Whilst further assessment is required, the Contaminated Land Officer has advised that, based on the information provided, it would appear that this site can be made suitable for the proposed use, with contamination matters dealt with by way of planning conditions.
- 17.58 It is also noted that the submitted report does not include any survey of potentially asbestos-containing materials (ACM). The applicant has a duty and responsibility under the Control of Asbestos Regulations 2012 with respect to asbestos in existing buildings and an informative is proposed to remind the applicant of this duty.

Archaeology

- 17.59 The site falls within an area which has previously been the subject of archaeological investigation. Despite the evaluation being incomplete, more information is now available regarding the archaeological resource on-site than before. The limited number of archaeologically significant features identified suggests that the presence of highly significant archaeology (worthy of preservation in situ) on the proposed development site is highly unlikely. The Council Archaeological Advisor does not raise any objections to the proposal subject to conditions for a programme of archaeological works to be carried out no objection is raised.

Landscaping and visual impact

- 17.60 The site is flat and enclosed by existing boundary hedges and scattered trees across the site. The applicant has submitted a tree report, a landscaping scheme as well as a visual assessment. These have been assessed and although there is no objection to the tree report submitted, the removal of several trees will increase the visibility of the site. There are concerns about the adequacy and benefits of the landscaping scheme submitted.
- 17.61 It is considered that the development of such a major scale and physical extent on what is currently a greenfield site- albeit one where is allocated for

employment purposes, will give rise to substantial effects on the local landscape and views across the surrounding areas. It is felt that the submitted landscaping scheme would not deliver the degree of visual mitigation and screening along the site boundaries and it does adequately integrate SuDs mitigation with the on-site ecology issues with the wider site's landscaping. To address these issues and to reduce the impact of the development a more suitable landscaping and appropriate tree planting together with a long term management and maintenance scheme should be submitted. It is therefore recommended that an appropriately worded condition, as stated in paragraph 8.10 above, be imposed.

Environmental and Carbon Implications

- 17.62 CS Policy ER1 sets out the Council's commitment to carbon reduction through the promotion of efficient use of energy and resources, alongside waste minimisation and recycling. This Policy encourages Non-residential developments to achieve a minimum BREEAM rating of 'Very Good'.
- 17.63 New developments need to help address the challenges of climate change and sustainability, and therefore contribute positively towards the future of Colchester. In support of achieving sustainable development, the Council has committed to being carbon neutral by 2030. The Framework has at its heart the promotion of sustainable development. To achieve this aim, a condition is recommended requiring the new buildings to achieve a BREEAM rating of 'Very Good'.
- 17.64 Consideration of this application has taken into account the Climate Emergency and the sustainable development objectives set out in the Framework. It is considered that on balance the application represents sustainable development.

Other Matters:

Environmental Impact Assessment

- 17.65 Consideration has been given to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) given the size of the development and this development falling within the scope of a Schedule 2 development (Section 10(a)). In this instance, in the context of guidance within the National Planning Practice Guidance, it is not considered that the development would result in any impacts of more than local significance. Accordingly, the Local Planning Authority does not consider that an Environmental Impact Assessment needs to be submitted in support of the application.
- 17.66 Development Plan Policy DP2 requires all development to be designed to help promote healthy lifestyles and avoid causing adverse impacts on public health, with Health Impact Assessments (HIA) being required for residential development in excess of 50 units and non-residential development in excess of 1,000sqm. Whilst the scheme meets this criterion an HIA has not been submitted. The relevant individual health impacts (including Noise, Air

Quality, and Active Travel) have all been considered individually as part of each relevant themed supporting report. It is considered that these matters have been afforded appropriate consideration.

- 17.67 The application has been the subject of extensive negotiation with officers including environmental protection officers and as a result, the proposals have been substantially amended to address the areas concerning the impact on amenities, provision of access and parking for the disabled and also through the recommended planning conditions which minimise any adverse impact on the health and wellbeing of the local residents. On balance, the proposal is considered to be acceptable in relation to policy DP2 of the local plan.

Conditions and Development Obligations

- 17.68 The conditions are set out at the end of the report. Officers have considered the need for all of the conditions in the context of the six tests contained in paragraph 55 of the Framework and the advice contained in the NPPG. The conditions are considered necessary to ensure that the development is of a high standard, creates acceptable living conditions for nearby residents, as well as a high-quality public realm for the benefit of workers and visitors, is safe and sustainable, minimises the impact on the environment and complies with the relevant development plan policies. Additionally, the conditions comply with the requirements of paragraphs 54 and 55 of the Framework and are considered to meet the other statutory tests.
- 17.69 As a procedural matter under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the Planning Agent has confirmed that they agree to the recommended pre-commencement conditions

18.0 Conclusion

- 18.1 The current application will deliver new and enhanced employment opportunities in a sustainable and accessible location. The site is allocated for employment uses in the adopted and emerging local plans and the emerging MTNP. There would be economic benefits as a result of construction activity and the end uses would create additional jobs. There is sufficient evidence to be confident that the development overall would not have a severe impact upon the highway network in terms of capacity or be detrimental to highway safety once off-road highway improvements have been carried out and would not cause significant harm to the amenity of local residents, ecology, cause flood risk. Therefore, on balance, having considered all material planning considerations and the representations received, the proposals are considered acceptable and recommended for approval.

19.0 Recommendation to the Committee

- 19.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990, within 6 months from the date of the Committee meeting. The legal agreement is to secure the following contributions/obligations:

- i- Contribution of £45k to Marks Tey Parish Council to delivery diversion of footpath 144-15 involving a 3.5m wide pedestrian and cycle path from the eastern boundary of the application over the Marks Tey Parish Council land towards the northeast to connect with pavement of A120.
- ii- Contribution of £14,400 toward museum quality display cases, design and display material.
- iii- Contribution of £753 towards enhancement of the Colchester HER.
- iv- Contribution of £348 to mitigate the information from the archaeological impacts if no archaeological remains are affected by the development.
- v- Obligation to provide 7 on-site car parking spaces in perpetuity for the benefit of the residents of Old London Road and as shown on drawing 18204 PO103 Revision J
- vi- Contribution of £6,132 towards monitoring costs of the Travel Plan by Sustainable Travel Planning Team.

In the event that the legal agreement is not signed within 6 months, to delegate authority to the Assistant Director to refuse the application, or otherwise to be authorised to complete the agreement.

That Permission is then **GRANTED** subject to the following conditions, with delegated authority for officers to add or amend relevant conditions where necessary:

Statutory Time Period

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

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

Approved Drawings and Documents

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

MT2-LE-GEN-XX-DR-CE-001 Rev B Highway improvement
MT2-LE-GEN-XX-DR-CE-010 Rev A Highway improvement
MT1-LE-GEN-XX-DR-CE-520 Rev D Drainage Strategy

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Site plan P0102 Rev C

Site layout plan P0103 Rev J

External surface plan PO104 Rev D

Unit 1100 Floor Plan P1100 Rev C

Unit 1100 Roof Plan P1102 Rev C

Unit 1100 Floor and elevations Plans P1103 Rev C

Unit 1000 warehouse area building floor plan P1000 Rev C

Unit 1000 office floor plan P1001 Rev C

Unit 1000 office roof plan P1002 Rev C

Unit 900 Building Floor Plan P0900 Rev C

Unit 900 Office Floor Plan P0901 Rev C

Unit 900 Elevations and floor Plan P0903 Rev C

Unit 800 Building Floor Plan P0800 Rev C

Unit 800 Roof Plan P0802 Rev C

Unit 800 Elevation and floor Plan P0803 Rev C

Flood Risk Assessment May 2021 prepared by Link Engineering

Boundary fencing drawing P0105 Rev E

Cycle shelter drawing P0106 Rev D

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

Highways

3. Before any development forming part of planning application 211788 commences the developer shall have submitted to and approved in writing by the local planning authority in consultation with Highways England the following design details relating to the required improvements to Old London Road, including a new access to the site, and the easing of the radius kerb at the junction between the Old London Road and the A120, as shown in outline on Link Engineering Drawing number MTS-LE-GEN-XX-DR-CE-001 Rev A dated 13th May 2021 and MTS-LE-GEN-XX-DR-CE-010 Rev A dated 6th May 2021.

Scheme details shall include drawings and Documents showing:

- i- How the improvement interfaces with the existing highway alignment and carriageway markings including lane destinations.
- ii- Full construction details relating to the highway improvement. This should include any modifications to

- existing structures or proposed structures with supporting analysis.
- iii- Full Signing and lighting details.
- iv- Confirmation of compliance with Departmental standards (DMRB) and policies (or approved relaxations/departures from standards).
- v- Evidence that the scheme is fully deliverable within the land in control of either the applicant or the Highway Authority.
- vi- An independent stage 2 Road Safety Audit (taking account of and stage 1 Road Safety Audit recommendations carried out in accordance with Departmental Standards (DMRB) and Advice Notes.
- vii- A construction Management Plan detailing how construction traffic will be managed.
- viii- An equality impact assessment.

In addition, the recommendations contained in AECOM Technical Note 'DX117TN03 ISSUED' must be addressed as part of the development of the design.

Reason: To ensure that the A12 and A120 trunk roads continue to serve their purpose as a part of a national system for through traffic in accordance with Section 10 of the Highways Act 1980, and to satisfy the reasonable requirements of road safety.

4. The above scheme approved by the Local Planning Authority shall be implemented and completed to the satisfaction of the Local Planning Authority in consultation with the Highways Authorities and NO beneficial occupation shall take place unless and until the junction improvements shown in outline on Link Engineering Drawing numbers MTS-LE-GEN-XX-DR-CE-001 Rev A and MTS-LE-GEN-XX-DR-CE-010 Rev A, have been delivered and are fully operational.

Reason: To ensure that the A12 and A120 trunk roads continue to serve their purpose as a part of a national system for through traffic in accordance with Section 10 of the Highways Act 1980, and to satisfy the reasonable requirements of road safety.

5. The total floor areas of the development shall not exceed a Gross Floor Area of 12,517sqm comprising a mix of uses E (c & g), B2 and B8 floor space as set out in the application details.

Reason: To ensure that the A12 and A120 trunk roads continue to serve their purpose as a part of a national system for through traffic in accordance with Section 10 of the Highways Act 1980, and to satisfy the reasonable requirements of road safety.

6. No part of the development hereby approved shall be brought into use unless and until a revised travel Plan has been submitted to and approved in writing by the Local Planning Authority who shall consult with Essex County Council as Highway Authority.

The Travel Plan shall be in line with prevailing policy and best practice and shall be in accordance with Essex County Council guidance and as a minimum include:-

- The identification of targets for trip reduction and modal shift
- The methods employed to meet these targets
- The mechanisms for monitoring and review
- The mechanisms and review
- The penalties to be applied in the events that targets are not met
- The mechanisms for mitigation
- Implementation of the travel plan to an agreed timescale or timetable and its operation thereafter
- Mechanisms to secure variation to the Travel Plan following monitoring and reviews

Reason:

To ensure that the A12 and A120 trunk roads continue to serve their purpose as a part of a national system for through traffic in accordance with Section 10 of the Highways Act 1980, and to satisfy the reasonable requirements of road safety and to protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking, in accordance with Policy DM1, DM9 and DM10 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

7. The commercial units hereby permitted shall not be occupied, until the area shown on Site layout plan P0103 Rev J, as vehicle parking spaces, motor bikes and bicycle shelters shall have been provided, surfaced and drained. Thereafter the parking spaces shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (Order) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking and cycle storage spaces.

Reason: Development without provision of adequate accommodation for the parking of vehicles, motor bikes and bicycle storage is likely to lead to hazardous on-street parking and be contrary to Policy DP19 of the local plan.

Archaeology

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

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

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

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

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

Biodiversity and net gain

9. All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Impact Assessment (EclA) for this site (Ramboll, June 2021) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

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

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

10. A construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority.

The CEMP (Biodiversity) shall include the following:-

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

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

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

11.No development shall take place (including any ground works, site clearance) until a final Reptile Mitigation Strategy and Method Statement based on a review of the population estimate surveys has been submitted to and approved in writing by the local planning authority,

The content of the method statement shall include the following:

- a) purpose and objectives for the proposed works;
- b) detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);
- c) extent and location of proposed works shown on appropriate scale maps and plans;

- d) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
- e) persons responsible for implementing the works;
- f) initial aftercare and long-term maintenance (where relevant);
- g) disposal of any wastes arising from works.

The works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.

Reason: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended), s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2020 and s17 Crime & Disorder Act 1998.

12.A Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) timetable for implementation;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant). The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.

Reason: To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species).

13.A lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall be based on identifying those features on-site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

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

- 14.A Landscape and Ecological Management Plan (LEMP) for the reptile receptor site shall be submitted to, and be approved in writing by, the local planning authority prior to occupation of the development.

The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organisation responsible for the implementation of the plan.
- h) Ongoing monitoring and remedial measures.

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

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

Landscape

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

- Finished levels or contours, where notable changes are proposed.

- Hard surfacing materials.
- Earthworks (including the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform).
- Retained historic landscape features and any proposals for restoration.
- Planting plans (drainage and building foundation detailing shall take account of the position of the trees as so indicated).
- Make on-site sanctuary provision for reptiles'/wildlife mitigation.
- Written specifications.
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
- Implementation timetables and monitoring programs.

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

16. ZFE - Landscape Management Plan NS

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

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

17. ZFQ - Tree and Natural Feature Protection: Protected Areas

No works shall take place until all trees, shrubs and other natural features not scheduled for removal on the approved plans have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

Contaminated Land

18. No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local

Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

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

(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;

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

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

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

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

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

20. No works shall take place other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved. The Local Planning Authority must be given two weeks

written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning Authority.

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

- 21.** In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition PART 1 OF CONDITION 17, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition PART 2 OF CONDITION 17, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition PART 3 OF CONDITION 17.

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

- 22.** Prior to the first OCCUPATION/USE of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 17.

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

Construction Method Statement

- 23.** No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:
- the parking of vehicles of site operatives and visitors;

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

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

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

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

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

Mitigating Air Quality and sustainability

25. Prior to the use of the commercial units hereby permitted the development shall provide EV charging stations infrastructure at the ratio of 1 charging points per 10 car parking spaces to encourage the use of ultra-low emission vehicles.

Reason: In the interest of sustainability and air quality of the area and in compliance with paragraph 107 of the NPPF.

Noise Control and amenity

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

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

- 27.** The 3.5 metres high, high-density acoustic barriers shown on the submitted Boundary fencing drawing P0105 Rev E shall be erected prior to first use of any of the commercial units hereby permitted. Installation shall be overseen by a competent person. Details of long-term maintenance of the barriers shall be submitted within two months of erection of the acoustic barriers for approval in writing by the Local Planning Authority. The acoustic barriers shall be retained during the lifetime of the development.

Reason: In the interest of amenities of the occupier of the residential properties.

Residential amenity and control of uses

- 28.** Notwithstanding the provisions of the Use Classes Order and GPDO or any subsequent amendment, the Block 1100 hereby approved shall be used only for uses within the Class E (c & g) of the use classes Order and not for any other use falling within Class B2 and B8 of the Use Classes Order, or any other used which may be permitted by the provisions of the GDPO.

Reason: In the interest of amenities of the occupier of the residential properties.

- 29.** The block 1110 hereby permitted shall not OPERATE/BE OPEN TO CUSTOMERS outside of the following times:

Weekdays: 07:00-21:00

Saturdays: 07:00-21:00

Sundays and Public Holidays: 10:00-16:00

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

- 30.** No deliveries shall be received at, or despatched from, the site outside of the following times:

Weekdays: 07:00-21:00

Saturdays: 07:00-21:00

Sundays and Public Holidays: No deliveries.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from delivery vehicles entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

Pollution Control

- 31.** Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme devised by a competent person for the control of fumes, smells and odours, and dust that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. The control measures shall thereafter be retained and maintained to the agreed specification and working order.

Reason: To ensure that there is a scheme for the control of fumes, odours, dust, and smell in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

- 32.** All surface water arising from the car park/s shall be treated in accordance with current Environment Agency guidance. (For car parks containing 50 spaces or more or discharging to a sensitive environment).

Reason: To prevent unnecessary pollution of the groundwater environment quality in the area and/or blocking of the drainage system.

- 33.** Prior to the occupation of the development, a signed verification report carried out by a qualified drainage engineer (or equivalent must be submitted to and approved by the Local Planning Authority to confirm that the Sustainable Drainage System has been constructed as per the agreed scheme and plans. This should also include details of whom will be undertaking the management and maintenance of the SuDs features.

Reason: This condition is sought in accordance with paragraph 163 of the NPPF to ensure that a suitable surface water drainage scheme is designed and fully implemented so as not to increase flooding risk on-site or elsewhere.

- 34.** Notwithstanding the lighting scheme submitted, having regard to the terms of the requirements of condition 13 above, and condition 33. below a revised lighting scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall have special regard to avoiding adverse impacts on wildlife, the residential amenity of neighbouring properties and the semi-rural location of the site in accordance with the CBC External Artificial Lighting Planning Guidance Note for zone EZ2.

Reason: The submitted lighting details are not considered appropriate and it is necessary to mitigate potential adverse impacts upon wildlife and residential amenity.

- 35.** Prior to the first OCCUPATION of any of the commercial units hereby permitted, a validation report shall be undertaken by competent persons that

demonstrates that all lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) fully complies with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ2 shall be submitted to, and agreed in writing by, the Local Planning Authority. Any installation shall thereafter be retained and maintained as agreed therein.

Reason: To ensure that the lighting scheme as installed is in compliance with the approved lighting scheme details in order to mitigate potential adverse impacts upon wildlife and residential amenity.

Promoting Sustainable Transport

36. None of the commercial units hereby permitted shall be occupied until the PROW 144-15 diverted route for pedestrian and cyclist shall have been made available for use and maintained in good usable condition thereafter.

Reason: In the interest of sustainability and amenity and in compliance with the Travel plan.

Informatives

1. The applicant attention is drawn to the following points in preparation and submission of details pursuant to conditions 3 and 4 for approval in writing by the LPA.
 - The above requirement should be imposed by way of negative planning conditions or planning obligation agreements as appropriate
 - Prior to any works taking place in the highway, the developer should enter into an agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works
 - All or some of the above requirements may attract the need for a commuted sum towards their future maintenance (details should be agreed with the Highway Authority as soon as possible)
 - All work within or affecting the highway should be laid out and constructed by prior arrangement with and to the requirements and satisfaction of the Highway Authority, details to be agreed before commencement of the works. An application for the necessary works should be made to development.management@essexhighways.org
2. The applicant is advised to request a new archaeological brief from CBC's Archaeological Advisor as the former WSI is no longer considered adequate.
3. You are strongly recommended looking at the Essex Green Infrastructure Strategy to ensure that the proposals SuDs are implementing multifunctional green/blue features effectively. The link can be found below. <https://www.essex.gov.uk/protecting-environment>

4. PLEASE NOTE that any storage of hazardous materials as defined in the Town and Country Planning Hazardous Substances Regulations will require a separate consent.
5. Note: Care should be taken to ensure luminaires are directed downwards or shielded to prevent glare and light-spill at all residential properties bordering the site.

Footnote

Note: Interpretation of Class E c) and g)

c) the following kinds of services principally to visiting members of the public

i. financial services; ii. professional services (other than medical services); iii. any other services which it is appropriate to provide in a commercial, business or service locality.

g) i) office ii) the research and development of products or processes or iii) any industrial process, (which can be carried out in any residential area without causing detriment to the amenity of the area

Planning Committee

Item
8

Date 20 January 2022

Report of	Place and Client Services	Author	Chris Harden 07908 452381
Title	Amendment to the Legal Agreement format/Conditions for Planning Application 190665 Land Between Via Urbis Romanae & Mill Road, Land South of, Axial Way, Colchester		
Wards affected	Highwoods		

This report seeks a proposed amendment to the legal agreement process and also requests additional conditions as required for this hybrid application that was considered by the Planning Committee on 29 July 2021 when it was resolved to Approve subject to a s.106 agreement and conditions

1. Decision(s) Required

- 1.1 Members are asked to endorse the proposed amendment to the Legal Agreement process and to agree additional conditions as required for this application. The report is put to members to ensure complete transparency of the decision process. The Borough Council is the applicant for the proposal and the application relates to the following:

“190665: Hybrid planning application

- Outline application for healthcare campus (5ha) of up to 300 older people's homes (C3), 4,300sqm private acute surgical hospital (C2), (1,200sqm.) medical centre (D1), 3,600sqm, 75-bed care home (C2), up to 45100 sqm offices (B1a); up to 350 homes (C3), with ancillary retail & food & drink of up to 1000m2 of retail (A1), up to 500m2 of food and drink (A3), digital network of ultra-fast broadband; 2 points of vehicular access from public highway, pedestrian boulevard & community green (4.5ha). All matters apart from access to be reserved in relation to outline elements of proposals.

- Detailed consent for a 1st phase of infrastructure to include the creation of a pedestrian boulevard and associated landscaping, and a renewable energy centre & heat distribution network.

Land Between Via Urbis Romanae & Mill Road, Land South of, Axial Way, Colchester”

- 1.2 The recommendation previously agreed by the planning Committee was as follows: “Authority to Approve subject to completion of a Section 106 Legal Agreement following conclusion of the viability assessment review and agreement concerning quantum of contributions required/viable and authority for minor alterations to conditions if required.”

2. Reasons for Decision(s)

- 2.1 On 29 July 2021 Members resolved to grant planning permission for 190665, subject to the prior completion of a Section 106 Agreement to secure affordable housing (30%), a

£2.3 million financial contribution (to be allocated in accordance with the committee report, as amended) and the carrying out of a reassessment of viability in the scheme at some stages during the construction of the development.

- 2.2 Solicitors have been appointed to progress the Section 106 Agreement, with Holmes & Hills acting for the Borough Council as the local planning authority and Pinsent Masons acting for Colchester Amphora Housing Limited (CAHL) (on behalf of the council as landowner), which is a development/trading company wholly owned the Borough Council.
- 2.3 At the present time, it is not possible for the Council to complete a Section 106 Agreement, as the Council is both the local planning authority and the landowner. The Council cannot enter into a bilateral contract with itself, and there are currently no third parties (including CAHL, who intend to develop the housing development, excluding the over 55's) who can enter into a Section 106 Agreement and covenant to deliver the planning obligations.
- 2.4 The legal advice that your officers have received is that the only way for the planning permission to be issued is if the Council (as landowner) enters into a Section 106 unilateral undertaking (the "106 UU") to:
 - (a) commit to complying with an agreed form of Section 106 bilateral Agreement (the "Agreed Form 106"), the draft of which will be appended to the 106 UU, and
 - (b) commit to not disposing of its freehold interest (whether by freehold transfer or grant of a leasehold interest) in the site without first imposing a legally enforceable obligation on the transferee to enter into the Agreed Form S106.
- 2.5 As this process is somewhat different to the process outlined in the authorised recommendation it is considered this needs to be brought to the attention of and agreed by the Planning Committee in the interests of the transparency of the decision process.
- 2.6 In addition, there will be extra conditions imposed on the planning permission to prohibit commencement of all or any part of the development unless the appropriate Section 106 Agreement has been completed to secure the planning obligations related to the relevant part of the development.
- 2.7 It is also considered that the restriction on the occupancy of the over 55's housing can be secured by a condition on the planning permission rather than by planning obligations. A condition can also be added with regard to Details of Management arrangements for areas of Public Open Space. Authority is sought for minor alterations to conditions or additional conditions if deemed to be required. It is requested members grant authority for the precise wording of the condition revisions/additions as will be required as detailed above.

3. Alternative Options

- 3.1 If Members decide not to accept the suggested amendments above it is considered the application would be unlikely to be able to be progressed to determination.

4. Supporting Information

- 4.1 The full Committee report relating to the above application 190665 is available online on the Borough Council's website under Planning Committee 29.7.21 if more detail on the case is required.

5. Strategic Plan References

- 5.1 The scheme remains compliant with the Strategic Plan.

6. Consultation

- 6.1 The appointed solicitors have advised that the abovementioned amendments to the recommendation and legal agreement process should be agreed by the Planning Committee in the interests of the transparency of the decision process.

7. Publicity Considerations

- 7.1 None

8. Financial Implications

- 8.1 As the applicant for the site is Colchester Borough Council, there will be financial implications for the Council if the application cannot progress to a decision via revised Legal Agreement arrangements

9. Equality, Diversity and Human Rights Implications

- 9.1 None directly arising from this report.

10. Community Safety and Health and Safety Implications

- 10.1 None directly arising from this report.

11. Risk Management Implications

- 11.1 None directly arising from this report.

Material Planning Considerations

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

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

The following approach should be taken in all planning decisions:

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

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

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

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

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

The above list is not exhaustive

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

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

- matters specifically controlled through other legislation

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

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

Planning Obligations

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

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

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

Human Rights, Community Safety and Equality and Diversity Implications

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

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

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

Using Planning Conditions or Refusing Planning Applications

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

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

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

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

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

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

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

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



Colchester Borough Council Development Management

Highway Safety Issues

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

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

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

Parking Standards

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

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

For residential schemes:

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

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



Colchester Borough Council Environmental Control

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

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

Best Practice for Construction Sites

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

Noise Control

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

Emission Control

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

Best Practice for Demolition Sites

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

Noise Control

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

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

Emission Control

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

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

Class A1. Shops

Use for all or any of the following purposes—

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

Class A2. Financial and professional services

Use for the provision of —

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

Class A3. Restaurants and cafes

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

Class A4. Drinking establishments

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

Class A5. Hot food takeaways

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

Class B1. Business

Use for all or any of the following purposes—

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

Class B2. General industrial

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

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

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

Class C2. Residential institutions

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

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

Class C3. Dwellinghouses

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

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

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

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

Class C4. Houses in multiple occupation

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

Class D1. Non-residential institutions

Any use not including a residential use —

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

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

(c) for the provision of education,

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

(e) as a museum,

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

(g) as a public hall or exhibition hall,

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

Class D2. Assembly and leisure

Use as —

(a) a cinema,

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

(d) a dance hall,

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

Sui Generis Uses

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

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

Interpretation of Class C3

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

Interpretation of Class C4

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

Supreme Court Decision 16 October 2017

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

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

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

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

Deferral and Recommendation Overturn Procedure (DROP) Flowchart

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

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

