

# Planning Committee Meeting

**Council Chamber, Town Hall, High Street,  
Colchester, CO1 1PJ**

**Thursday, 01 December 2016 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. Attendance between 5.30pm and 5.45pm will greatly assist in noting the names of persons intending to speak to enable 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, which is usually published five working days before the meeting, and minutes once they are published. Dates of the meetings are available at [www.colchester.gov.uk](http://www.colchester.gov.uk) or from Democratic Services. Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

### Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to most public meetings. If you wish to speak at a meeting or wish to find out more, please refer to Your Council> Councillors and Meetings>Have Your Say at [www.colchester.gov.uk](http://www.colchester.gov.uk)

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### Access

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### Facilities

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Where our Development Plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable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

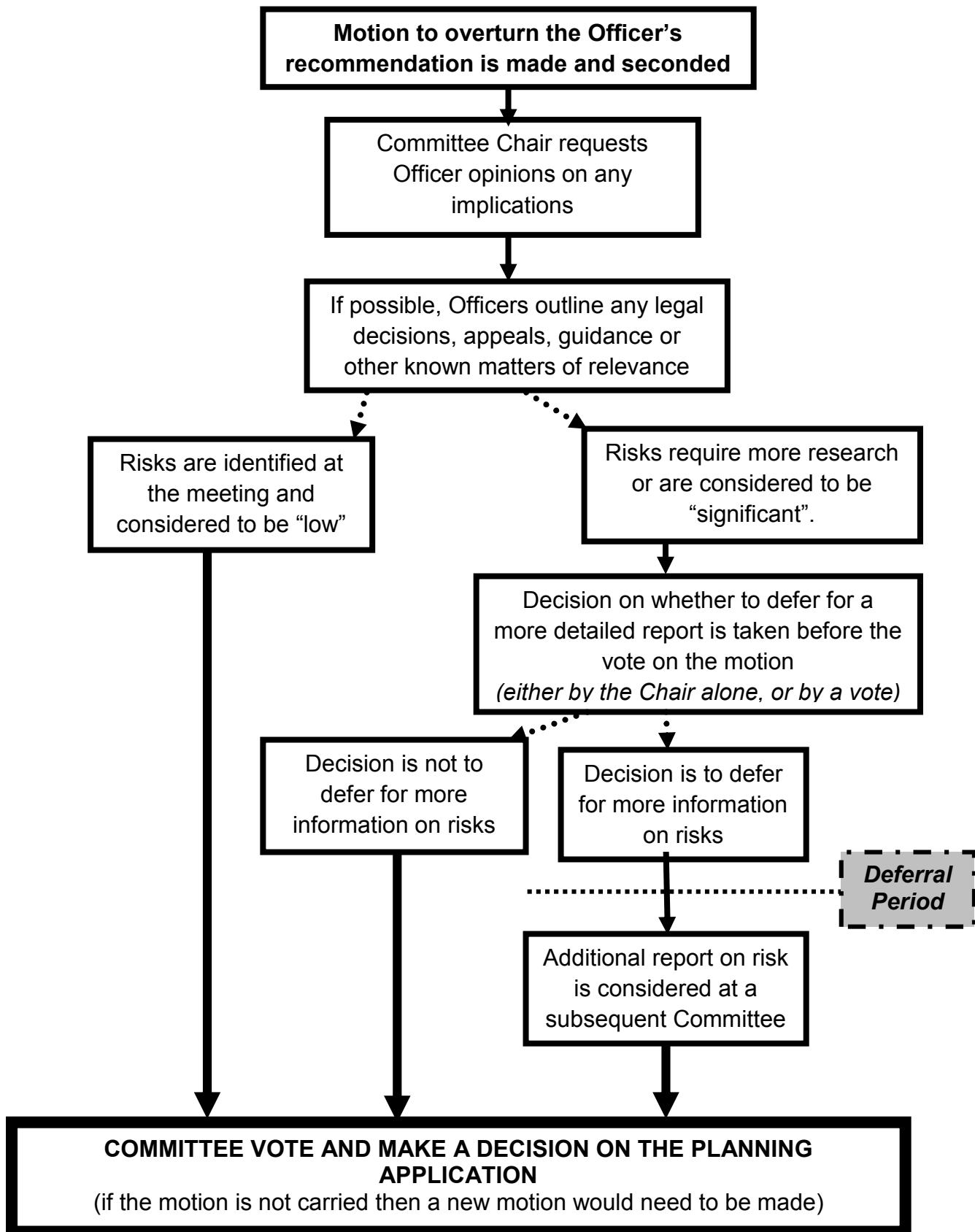
***Interpretation of Class C4***

*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*

## 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.*



**COLCHESTER BOROUGH COUNCIL**  
**Planning Committee**  
**Thursday, 01 December 2016 at 18:00**

**Member:**

Councillor Theresa Higgins  
Councillor Cyril Liddy  
Councillor Lyn Barton  
Councillor Helen Chuah  
Councillor Pauline Hazell  
Councillor Brian Jarvis  
Councillor Derek Loveland  
Councillor Jackie Maclean  
Councillor Philip Oxford  
Councillor Rosalind Scott

Chairman  
Deputy Chairman

**Substitutes:**

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

Councillors Christopher Arnold, Tina Bourne, Roger Buston, Karen Chaplin, Nigel Chapman, Peter Chillingworth, Phil Coleman, Nick Cope, Robert Davidson, Beverly Davies, John Elliott, Annie Feltham, Adam Fox, Martin Goss, Dominic Graham, Dave Harris, Darius Laws, Mike Lilley, Sue Lissimore, Fiona Maclean, Patricia Moore, Gerard Oxford, Chris Pearson, Lee Scordis, Jessica Scott-Boutell, Lesley Scott-Boutell, Paul Smith, Martyn Warnes, Dennis Willetts, Julie Young and Tim Young.

**AGENDA - Part A**  
(open to the public including the press)

Members of the public may wish to note that Agenda items 1 to 6 are normally brief and agenda items may be considered in a different order if appropriate.

An Amendment Sheet is available on the Council's website by 4:30pm on the day before the meeting (see Planning and Building, Planning Committee, Planning Committee Latest News). Members of the public should check that there are no amendments which affect the application in which they are interested. Members of the public please note that any further information which they wish the Committee to consider must be received by 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.

**1 Welcome and Announcements**

- a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.
- (b) At the Chairman's discretion, to announce information on:
  - action in the event of an emergency;
  - mobile phones switched to silent;

- the audio-recording of meetings;
- location of toilets;
- introduction of members of the meeting.

## **2 Have Your Say! (Planning)**

The Chairman to invite members of the public to indicate if they wish to speak or present a petition on any of the items included on the agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

These speaking provisions do not apply in relation to applications which have been subject to the Deferral and Recommendation Overturn Procedure (DROP).

## **3 Substitutions**

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

## **4 Urgent Items**

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent, to give reasons for the urgency and to indicate where in the order of business the item will be considered.

## **5 Declarations of Interest**

The Chairman to invite Councillors to declare individually any interests they may have in the items on the agenda. Councillors should consult Meetings General Procedure Rule 7 for full guidance on the registration and declaration of interests. However Councillors may wish to note the following:-

- Where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest, whether or not such interest is registered on his/her register of Interests or if he/she has made a pending notification.
- If a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting, he/she must not participate in any discussion or vote on the matter at the meeting. The Councillor must withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Where a Councillor has another pecuniary interest in a matter being considered at a meeting and where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgement of the public interest,

the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.

- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

## 6 Minutes

There are no minutes for confirmation at this meeting.

## 7 Planning Applications

In considering the planning applications listed below, the Committee may choose to take an en bloc decision to agree the recommendations made in respect of all applications for which no member of the Committee or member of the public wishes to address the Committee.

### 7.1 162302 Land adjacent to Axial Way, Colchester 17 - 48

Detailed planning application for residential development to provide 88 no. residential dwellings (Use Class C3), comprising 62 houses (2 - 2.5 storeys) and three buildings containing 26 apartments (3 to 4 storeys), associated car parking, cycle parking, public open space and pedestrian/cycle infrastructure, formation of pedestrian and cycle only link to public footpath 162302 land adjacent to axial way Colchester/bridleway and other associated works and improvements at land north of Axial Way, Colchester.

### 7.2 160825 Land at Cuckoo Farm West, Off United Way and Via Urbis Romanae, Colchester 49 - 92

**NOTE: THIS ITEM HAS BEEN WITHDRAWN FROM CONSIDERATION AT THE MEETING**

**Following receipt of a late representation the report has been withdrawn to allow consideration of the matters raised.**

Erection of use class A3/A5 restaurant/hot food takeaway units (in the alternative), erection a use class C1 hotel, erection of use class D2 multiplex cinema, erection of use class D2 leisure units, erection of a use class A3/D2 restaurant/leisure uses (in the alternative), provision of a landscaped piazza that shall include associated landscaped areas, erection of an ancillary multi-storey car park, provision of separate drop-off/parking areas, the provision of cycle/pedestrian link to Tower Lane and associated works including the erection of substations and associated infrastructure apparatus.

### 7.3 162422 83 Ernest Road, Wivenhoe 93 - 98

Erection of replacement ancillary outbuilding for storage.

## 8 Exclusion of the Public (not Scrutiny or Executive)

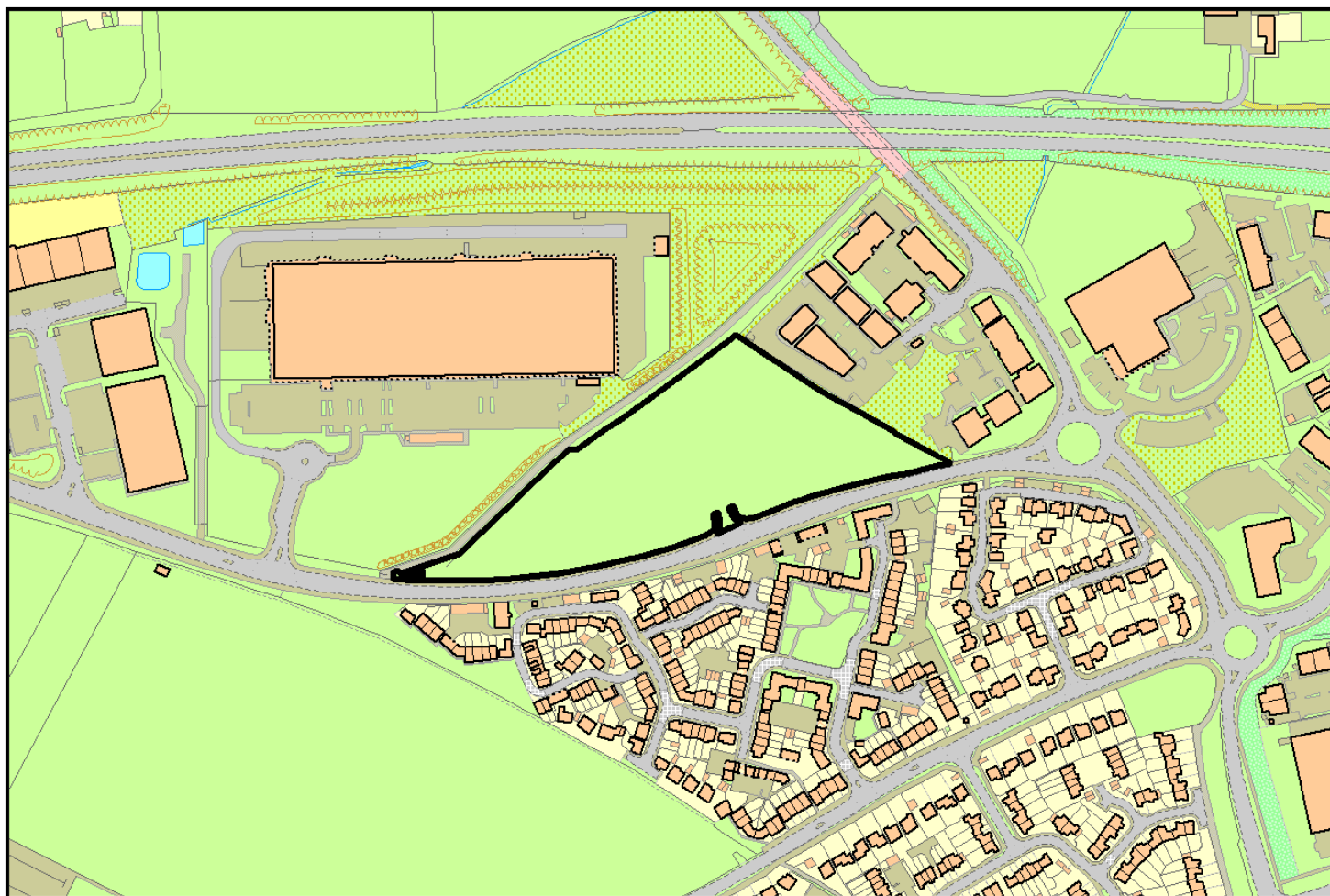
In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this

agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

## **Part B**

(not open to the public including the press)





**Application No:** 162302

**Location:** Land Adjacent, Axial Way, Colchester

**Scale (approx):** 1:2500

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## Committee Report

Agenda item

7

To the meeting of **Planning Committee**  
on: **1<sup>st</sup> December 2016**  
Report of: **Head of Professional/Commercial Services**  
Title: **Planning Applications**

**7.1 Case Officer: Sue Jackson**      **Due Date: 14/12/2016**

**MAJOR**

**Site:** Land adjacent Axial Way, Colchester

**Application No:** 162302

**Date Received:** 14 September 2016

**Applicant:** Persimmon HE And RLMIS Limited

**Development:** Detailed planning application for residential development to provide 88 no. residential dwellings (Use Class C3), comprising 62 houses (2 - 2.5 storeys) and three buildings containing 26 apartments (3 to 4 storeys), associated car parking, cycle parking, public open space and pedestrian / cycle infrastructure, formation of pedestrian and cycle only link to public footpath / bridleway and other associated works and improvements at land north of Axial Way, Colchester

**Ward:** Mile End

**Summary of Recommendation:** Conditional Approval subject to signing of Section 106 Agreement within 6 months from the date of the Committee meeting

### 1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it is a major application and material planning objections have been received; a legal agreement is also required.

## **2.0 Synopsis**

- 2.1 The key issues explored below concern adopted policy and land use designation. The revisions made to the proposal following the refusal of a similar application by the Planning Committee earlier this year will be explained. The response from consultees including that from Environmental Protection will be set out. Representations from Flakt Woods and others including ward councillors and Myland Community Council will be set out and responded to where necessary. Finally section 106 requirements will be explained. The conclusion is that planning permission should be granted subject to conditions and signing of a legal agreement.

## **3.0 Site Description and Context**

- 3.1 The application site is a triangular shaped parcel of land on the north side of Axial Way with an area of approx. 2.14 hectares. It comprises land that was formally part of the Royal London sports ground. It is now unused and overgrown.
- 3.2 A tree lined public right of way (PROW) and bridleway runs the full length of the rear NW boundary and extends from Axial Way exiting at Severalls Lane close to the bridge over the A12; it also separates the site from Flakt Woods. On the NE boundary is 'Cuckoo Point' a development comprising residential and commercial units with a frontage to both Axial Way and Severalls Lane. The flatted buildings on Cuckoo Point have a frontage to both roads comprising buildings of four and six storeys high with two storey commercial units within the site. On the opposite side of Axial Way is residential development, The Myle, which extends to Mill Road, the properties fronting Axial Way are two, three and four storeys high, they are separated from the road by high walls/fencing and parking courts; some dwellings have a flank elevation to the road or face into site. On the NW boundary is the Flakt Woods site, which comprises a substantial industrial building, car park and service yard. The NE corner of the building and the service yard extend along approx. half of the NW boundary of the application site.
- 3.3 West of the site along Axial Way is Easter Park which contains a mix of commercial uses including several car dealerships and the recently opened David Lloyd Tennis Centre. There is also vacant land owned by Colchester Borough Council; Cuckoo Farm/Northern Gateway. Axial Way has a junction with Via Urbis Romanae and United Way and joins the A12 at junction 28. United Way provides access to the Weston Homes Community stadium home to Colchester United FC.
- 3.4 The site is generally flat with mature trees and hedgerows along the NW and NE boundaries, several oak trees are protected by a tree preservation order (TPO). A ditch and low bund extend along the road frontage. Axial Way has a speed limit of 40mph there is an access spur already constructed from the road to the site. There is a cycleway/ pedestrian footway on both sides of the road.

## **4.0 Description of the Proposal**

- 4.1 This full application proposes the erection of 88 dwellings comprising 62 houses and 26 flats. The flats comprise one and two bed units and are located within three buildings one at either end of the Axial Way frontage which are 3 and 4 storeys high and a third building close to the NW corner of the site and is 3 storeys high. The houses are a mix of two, three, and four bed and comprise predominantly detached and semi-detached units with three small terraces of three and four units. The houses are either two or two and a half storey high.
- 4.2 The development comprises the following mix:-  
6 x one bed flats  
20 x two bed flats  
10 x two bed houses  
39 x three bed houses  
13 x four bed houses
- 4.3 This equates to 41 dwellings per hectare, 20% of the units are proposed as affordable units and will comprise 6 one bed flats, 3 two bed flats, 3 two bed houses and 6 three bed houses.
- 4.4 The layout of the buildings has sought to address Axial Way with buildings fronting the road but generally set back behind an internal access road which runs parallel to Axial Way. The houses fronting Axial Way are a mix of two and two and a half storeys with the flatted buildings at either end of this frontage. An area of public open space (POS) is proposed along the rear NW boundary, it includes the trees subject to a TPO on this boundary and extends adjacent to the edge of the bridleway and PROW. Dwellings will front the open space. A pedestrian link is proposed from the site to the PROW. A small cul-de-sac from the west side of the access road will serve a group of houses and one of the flatted buildings. Dwellings on the NE boundary back onto Cuckoo Point, and these gardens include preserved trees.
- 4.5 Parking spaces are generally provided as part of the residential curtilage with the flats and some dwellings having parking spaces within small parking courts. Provision is also made for visitor parking.
- 4.6 The application includes the following supporting documents
- Design and Access Statement
  - Geo-environmental and geotechnical Desk study and site investigation Report
  - Archaeological Desk-Based Assessment
  - Extended Phase 1 Habitat Survey
  - Reptile Survey
  - Bat Survey
  - Noise Impact Assessment
  - Flood Risk Assessment And Drainage Strategy
  - Arboricultural Impact Assessment
  - Transport Assessment
  - Health Impact Assessment

## **5.0 Land Use Allocation**

- 5.1 The site is allocated for residential purposes in the Local Development Framework Site Allocation Document and identified in Policy SANGA1 as a residential site.

## **6.0 Relevant Planning History**

- 6.1 98/1462 Land To The North Of Mill Road, Colchester Outline application for erection of dwellings, B1, B2 and B8 industrial units and the provision of land for part of a spine road Approved 18/07/2001. (This outline application proposed industrial uses on the application site but was never implemented).
- 6.2 F/COL/03/1042 Industrial warehouse and office with associated car parking, access road (section of East West Link Road) together with landscaping, public footpath, holding ponds and temporary foul drainage works.(Revised site area).Applicant Churchmanor Estates and Flakt Woods. This application included the relocation of the Flakt Woods factory from Bergholt Road (Tufnell Way) to Axial Way together with the construction of part of Axial Way from the Severalls Lane junction.
- 6.3 151885 application for Detailed planning application for residential development to provide 87 (No.) residential dwellings (Use Class C3), associated car parking, cycle parking, public open space and pedestrian / cycle infrastructure, formation of pedestrian and cycle only links to adjacent Public Footpath / Bridleway and other associated works and improvements at land north of Axial Way, Colchester.
- 6.4 This application whilst recommended for approval by Officers was refused planning permission at the Planning Committee meeting in July. The application is now subject to an appeal to be considered at a Public Inquiry next year. The reasons for refusal are set out below:-

*The application site is in close proximity to the Flakt Woods industrial premises which generates significant levels of noise. Noise generated from the daily operation of the industrial premises would seriously affect the amenity enjoyed by residents. The proposals fail to include an appropriate scheme of noise attenuation to advice and standards in BS 8233:2014 and BS 4142:2014 that would adequately mitigate noise, including noise arising from periodic external testing of industrially-scaled fans, from the adjacent industrial use and residents would therefore suffer an unacceptable loss of amenity. Furthermore, the proposed mitigation which includes thermal double or enhanced glazing and standard or acoustic trickle vents would result in an unsatisfactory living environment for residents who would be unable to open windows for ventilation as this would negate the noise attenuation provided. This is contrary to Development Policy DP1 Design and Amenity, Adopted October 2010 and revised July 2014, and Core Strategy policy CE1 – Centres and Employment Classification and Hierarchy which seeks to protect and enhance employment uses as the magnitude of the noise nuisance could impose unacceptable restrictions on the Flakt Woods business operation thereby rendering their occupation of the site unviable. The development would fail to improve the conditions in which people live and secure a good standard of amenity contrary to paragraphs 8, 17, 56, 58, 123 of the NPPF.*

*The development fails to provide sufficient parking spaces to satisfy the Councils Adopted Parking Standard in respect of visitor parking resulting in ad hoc parking on the highway to the detriment of highway safety and the visual amenity of the area, contrary to Development Policy DP12: Dwelling Standards and DP19: Parking Standards”.*

## **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 also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

- SD1 - Sustainable Development Locations
- SD2 - Delivering Facilities and Infrastructure
- H1 - Housing Delivery
- H2 - Housing Density
- H3 - Housing Diversity
- H4 - Affordable Housing
- UR1 - Regeneration Areas
- UR2 - Built Design and Character
- PR1 - Open Space
- PR2 - People-friendly Streets
- TA1 - Accessibility and Changing Travel Behaviour
- TA2 - Walking and Cycling
- TA3 - Public Transport
- TA4 - Roads and Traffic
- TA5 - Parking
- ENV1 - Environment
- ER1 - Energy, Resources, Waste, Water and Recycling

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):

- DP1 Design and Amenity
- DP2 Health Assessments
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP12 Dwelling Standards
- DP13 Dwelling Alterations, Extensions and Replacement Dwellings
- DP16 Private Amenity Space and Open Space Provision for New Residential Development
- DP17 Accessibility and Access
- DP19 Parking Standards
- DP20 Flood Risk and Management of Surface Water Drainage
- DP21 Nature Conservation and Protected Lanes

- 7.4 Further to the above, the adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process :

SA H1 Housing Allocations  
SA NGA1 Appropriate Uses within the North Growth Area  
SA NGA2 Greenfield Sites in the North Growth Area  
SA NGA4 Transport measures in North Growth Area  
SA NGA5 Transport Infrastructure related to the NGAUE

- 7.5 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

Backland and Infill  
Community Facilities  
Vehicle Parking Standards  
Sustainable Construction  
Open Space, Sport and Recreation  
The Essex Design Guide  
External Materials in New Developments  
Affordable Housing  
Sustainable Drainage Systems Guide  
Street Services Delivery Strategy  
Managing Archaeology in Development  
North Colchester Growth Area SDP  
Myland Parish Plan  
Myland Design Statement

**NOTE TO OFFICERS:** This list is not exhaustive, please check the list on our website, particularly with regard to Village Design Statements, Development Briefs, Masterplans etc see [Adopted Guidance - Colchester Borough Council](#)

## 8.0 Consultations

### 8.1 Environmental Protection

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

This proposal seeks to address the potential impact to the residential properties of noise emanating from the Flakt Woods factory.

Amendments to the original proposal include:-

- changes to the layout of the development so that the building fabric affords acoustic screening to rear gardens
- on the northern part of the site design of habitable rooms to either be facing away from the factory or to have dual aspect so that there will be an openable window orientated away from the noise source
- a terrace of apartments has been introduced with a car port linking them with the adjacent terrace of houses. This affords a continuous form of development and maximises the acoustic screening provided by the building envelope
- amendments to the houses along the Axial Way frontage have sought to design habitable rooms with single aspects located towards Axial Way.
- improved acoustic screen fence along the frontage to afford greater screening from noise emanating from traffic from Axial Way.

Environmental Protection considers that these proposals will largely address the concerns about noise affecting the residential development. However Flakt Woods will occasionally conduct continuous (day & night) testing on very large industrial fans over a period of several days and this noise cannot be mitigated by the proposals so will still affect the residential properties.

During the course of the application a second Noise Assessment including further mitigation was submitted to which Environmental Protection made the following response ;

« The further revised layout is an improvement from the point of view of noise as it creates a relatively quiet central zone which helps to protect people from noise when they are in their gardens.

BS 8233:2014 Noise Criteria: - This document provides guidance for the acoustic design of residential developments.

The modelling demonstrates that external noise levels in the majority of the gardens will meet the upper limit of the British Standard criterion of 55 dB(A). A small number of units exceed the maximum limit by 1 dB(A).

The British Standard states that it is desirable that the external noise level does not exceed 50 dB (A) with an upper guideline value of 55 dB(A) which would be acceptable in noisier environments. (However, it is also recognized that these guideline values are not achievable in all circumstances where development might be desirable")

The revised internal layout of the housing has sought to maximise the number of habitable rooms which have windows which overlook gardens. Non-habitable rooms such as bathrooms typically face either Flakt Woods or Axial Way. Other features include dual aspect rooms (which have at least one window opening on a quiet façade) or the use of Oriel windows which have the opening casement on the quiet side.

The modelling shows the predicted internal noise level with windows open. Every unit has at least one principle façade which ensures a noise level which meets the British Standard for indoor noise levels with open windows ».

- 8.2 **Arboricultural Officer** generally no objection to the proposals but ideally the visitor spaces within the tree root protection areas should be removed.
- 8.3 The response from the **Highway Authority** is outstanding but they raised no objection to the previous application subject to conditions. They have agreed the proposed improvements to the PROW/bridleway and other transport works together with the highway contributions.



- 8.4 **Landscape Officer** has made specific comments regarding the type of boundary treatment and preferred species of trees. These matters can be secured by a condition requiring a detailed scheme of both hard and soft landscaping to be submitted and agreed.

The landscape officer also comments that clarification is required how the proposed hedge and tree planting outside the site ownership is to be secured and maintained in the long term, or these elements bought back into the site area and layout amended accordingly. This in order to ensure the treatment to the site frontage, negotiated as part of the pre-application discussions, is achievable, as this landscape treatment forms an important part of the emerging character of the street scene.

*Officer comment : A revised drawing has been submitted showing the trees and hedge within the site boundary*

The Landscape Officer has also raised concerns regarding the proposed fencing plan would appear to run contrary to the anticipated landscape design, hampering the opportunity for passive surveillance of the footpath bridleway to the north, which should be seen as a key landscape feature, and compromising the simple hedge enclosure to Axial Way, which is seen as a complementary feature the existing local hedgerow framework.

#### 8.5 **NHS England**

The proposed development is likely to have an impact on the services of 3 main GP practices operating within the vicinity of the application site. The GP practice does not have capacity for the additional growth resulting from this development. The proposed development will be likely to have an impact on the NHS funding programme for the delivery of primary healthcare provision within this area and specifically within the health catchment of the development. NHS England would therefore expect these impacts to be fully assessed and mitigated.

A developer contribution will be required to mitigate the impacts of this proposal. NHS England calculates the level of contribution required, in this instance to be £31,832 to be used at Bluebell Surgery and Mill Road Surgery Colchester. Payment should be made before the development commences.

NHS England therefore requests that this sum be secured through a planning obligation linked to any grant of planning permission, in the form of a Section 106 planning obligation.

Assuming the above is considered in conjunction with the current application process, NHS England would not wish to raise an objection to the proposed development. Otherwise the Local Planning Authority may wish to review the development's sustainability if such impacts are not satisfactorily mitigated.

*Officer comment :- This contribution was requested outside the Development Team process and was not requested by the NHS for the earlier application. However the applicant has confirmed their agreement to pay this financial contribution.*

## 8.6 Natural England

The Wildlife and Countryside Act 1981 (as amended)

The Conservation of Habitats and Species Regulations 2010 (as amended)

Natural England's comments in relation to this application are provided in the following sections.

Statutory nature conservation sites – no objection

Based upon the information provided, Natural England advises the Council that the proposal is unlikely to affect any statutorily protected sites or landscapes.

Green Infrastructure

The proposed development is within an area that Natural England considers could benefit from enhanced green infrastructure (GI) provision. Multi-functional green infrastructure can perform a range of functions including improved flood risk management, provision of accessible green space, climate change adaptation and biodiversity enhancement. Natural England would encourage the incorporation of GI into this development.

Biodiversity enhancements

This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application. This is in accordance with Paragraph 118 of the National Planning Policy Framework. Additionally, we would draw your attention to Section 40 of the Natural Environment and Rural Communities Act (2006) which states that 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. Section 40(3) of the same Act also states that 'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'.

Landscape enhancements

This application may provide opportunities to enhance the character and local distinctiveness of the surrounding natural and built environment; use natural resources more sustainably; and bring benefits for the local community, for example through green space provision and access to and contact with nature. Landscape characterisation and townscape assessments, and associated sensitivity and capacity assessments provide tools for planners and developers to consider new development and ensure that it makes a positive contribution in terms of design, form and location, to the character and functions of the landscape and avoids any unacceptable impacts.

- 8.7 **Urban Design Officer** has raised similar concerns to those raised in respect of the earlier application relating to lack of information on materials and detailing to the buildings ; the location and suitability of the small areas of open space ; and generally the lack of townscape interest.

*Officer comment : it is considered the layout and design are acceptable and the detailed matters including materials can be dealt with by condition.*

The Urban Design Officer also comments that the high screen fencing is unfortunate from a design perspective, in particular the fencing fronting Axial Way, which it is considered will restrict self –policing of Axial Way and discourage walking and cycling. *Officer comment : the fencing is required to mitigate noise from Flakt Woods and traffic noise. Hedge planting and trees are proposed between the fencing and the road which will in time soften their appearance.*

- 8.8 **ECC SUDS** Team is currently considering further information regarding flood risk and treatment of surface water. It is anticipated a formal response will be received prior to the meeting. *Members should note ECC SUDS had no objection to the earlier application subject to conditions.*

8.9 **Anglian Water**

Section 1 – Assets Affected

“Anglian Water has assets close to or crossing this site or there are assets subject to an adoption agreement. Therefore the site layout should take this into account and accommodate those assets within either prospectively adoptable highways or public open space. If this is not practicable then the sewers will need to be diverted at the developers cost under Section 185 of the Water Industry Act 1991. or, in the case of apparatus under an adoption agreement, liaise with the owners of the apparatus. It should be noted that the diversion works should normally be completed before development can commence.”

Section 2 – Wastewater Treatment

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

Section 3 – Foul Sewerage Network

3.1 The sewerage system at present has available capacity for these flows. If the developer wishes to connect to our sewerage network they should serve notice under Section 106 of the Water Industry Act 1991. We will then advise them of the most suitable point of connection.

Section 4 – Surface Water Disposal

4.1 From the details submitted to support the planning application 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 the surface water management. The Local Planning Authority should seek the advice of the Lead Local Flood Authority or the Internal Drainage Board. The Environment Agency should be consulted if the drainage system directly or indirectly involves the discharge of water into a watercourse.

Should the proposed method of surface water management change to include interaction with Anglian Water operated assets, we would wish to be re-consulted to ensure that an effective surface water drainage strategy is prepared and implemented.

Section 5 – Trade Effluent

5.1 Not applicable

- 8.10 **Environment Agency** was consulted on the earlier application and confirmed the proposed development was outside their remit

#### 8.11 **CBC Contaminated Land Officer**

An acceptable report has been submitted for Environmental Protection purposes. It is noted that it is concluded that there are no unacceptable concentrations of potential contaminants within the underlying soils that would pose a potential risk to human health of future site occupants, and no further site investigation or remediation has been recommended. Based on the information provided, these comments would appear reasonable. However, given the low number of sampling locations, should planning permission be granted for this application, Environmental Protection would recommend inclusion of a condition

#### 8.12 **Archaeologist**

This proposal is located in an area of archaeological interest, defined in the Colchester Historic Environment Record. The proposed development is located to the east of early occupation recorded by trial-trenched evaluation (CHER no. MCC3099) and to the north of archaeological features defined by geophysical survey (CHER no. ECC3649). However, no previous systematic archaeological investigation has taken place on this site. There is high potential for encountering buried archaeological remains at this location, given the proximity to known remains. Groundworks relating to the proposed development would cause significant ground disturbance that has potential to damage any archaeological deposits that exist.

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 141), 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. This is consistent with the advice relating to the pre-application enquiry in 2015 (151556).

I will, on request of the applicant, provide a brief for each stage of the archaeological investigation. In this case, a trial-trenched archaeological evaluation will be required to establish the archaeological potential of the site. Decisions on the need for any further investigation (excavation before any groundworks commence and/or monitoring during groundworks) will be made on the basis of the results of the evaluation.

Pre-determination archaeological evaluation is not required for this proposal. However, I would recommend that the applicant undertakes the trial-trenching at the earliest opportunity to assess the archaeological potential at this location, in order to quantify the risk in terms of cost and time for any further archaeological investigation that might be required.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

## **9.0 Parish Council Response**

- 9.1 The Parish Council have stated that MCC would object to this application on the same grounds as the previous application 151885. These grounds were and are: over-development, insufficient parking, lack of open space for size of development. We were and are also concerned about the level of noise from the Flakt Woods factory.

We would also like to draw your attention to the conflict between this application and CBC's own designation of this area as a Strategic Employment Zone.

## **10.0 Representations**

- 10.1 Cllr Martin Goss The application failed at committee for the following reasons:
1. Noise attenuation issues with the original plan. The new plans needs to mitigate these concerns adequately so that properties cannot open windows directly onto the noise areas.
  2. Can extra landscaping be added to help buffer the direct noise zone?
  3. Can triple glazing be added to the most affected properties?
  4. Can terms be added to the deeds that legal action against Flakt Woods cannot be taken for any noise breaches.
  5. Parking needs to meet the current standards. The last application fell short so the new application must offer adequate and compliant parking
  6. A full resident only or yellow line parking scheme must be in place from day 1 of occupation due to parking from the football stadium.
- 10.2 Cllr John Stewart As this application falls within Myland East Ward for which I am the elected Councillor I wish to add an additional comment to those already expressed by MCC. No account appears to have been taken on traffic flows on this road. It is the main by pass road to take HGV traffic off Mill Road and there are regular tailbacks at peak times. The advent of the Northern Gateway will add considerable traffic flows as will the proposed house building on the Rugby Club land which is mandated to exit onto Axial Way. This land was designated for industrial use and provide jobs for local community not housing. The strain on local schools, which has been highlighted in the ECC comments will only get worse as will the strain on health services. The site is too close to Flaktwoods and will be exposed to the factory noise. The current developments of Cuckoo Point and The Male are at least 140 meters away and less affected. I very much object to this application.
- 10.3 Flakt Woods "Thank you for providing a notice of the application reference 162302 which draws our attention to a further application for a residential development adjacent to our boundaries. This application is further to that reference 151885 which we made previous evidence and objections. Having thoroughly reviewed the prior application and this newer application, we continue to have reason to be highly concerned about such a development on this plot and raise our formal objection.

Our concerns remain consistent with those articulated in our letter dated 30/9/2015 and raised in representation at meetings that followed. The basis of this concern is primarily relating to the sound impact our business may have on the potential residents of the development, and actions that may need to be taken that impact on the flexibility and sustainability of our business.

As a reminder of key points raised previously:

- The sound insulation scheme prepared in 2005 for the planning consent of our factory was based on existing housing and potential residential use locations contained in the Local Plan.
- When Flakt Woods moved to Axial Way, the area was intended for commercial development
- The nearest residential location was approximately 140 meters to the south.
- The previous submission and current proposal for housing in the application concerned by Persimmon Homes is so close we remain concerned that sound emanating from our premises may be deemed not to be compliant with standards required and approved by Colchester Borough Council.

Having met with David Moseley of Persimmon homes during September 2016 we were given an opportunity to review their updated plans. David took the opportunity to outline the modifications in the updated proposal including changes in the internal spaces so that living quarters are reoriented, restrictions to window openings, and changes to boundaries and layout of the homes on the border. Whilst we do appreciate they have made improvements to the plan with the goal to address concerns we have made, we are still concerned that this development is inconsistent with the commercial and industrial nature of the Axial Way development and brings a risk of nuisance complaints onto Flakt Woods in the future.

In summary, our concerns are that the sound insulation scheme report and the subsequent building specification for our factory was relevant to neighbours at around 140m or more distance. If houses were to be permitted closer, our building is no longer able to contain sound to achieve the same standard at the closer location. When located at Tufnell Way, there were regular instances of noise complaints against Flakts Woods from the nearby residences. The Axial Way building cannot be upgraded and the consequence is that our sound emissions could be judged unacceptable for new housing in much closer proximity.

If permission for the housing is permitted, as articulated previously we seek unequivocal written assurance from Colchester Borough Council that we would not be served with a noise abatement notice or subject to nuisance action by the Council if a complaint arose. If we cannot obtain this assurance then we would look to lodge an objection to the proposed housing scheme planning application.

Since the last application, we also seek to draw your attention to concern about increased traffic flows on Axial Way, and are concerned that the consequences of the increase in traffic due to residents of this new estate may not have been adequately considered. At morning and evening rush hours it is frequent that the new roundabout at Axial Way and United Way fails to flow effectively, creating a standstill of traffic on Axial Way from United Way through to Severalls Lane, and also over the A12 junction and down onto the Southbound A12 itself. At other times, due to the speed and volume on Axial Way, leaving our premises and turning towards the A12 is very difficult, and further volume for this residential development will aggravate both situations and increase the risks of road traffic accidents on Axial Way and the A12 as traffic backs onto the A12 from the roundabouts that can not handle the existing traffic flows.

As a Colchester based business with over 100 years of history locally, we appreciate the need for further development and housing for the community. We do not believe it appropriate that this space should be developed for residential, and believe it should be reverted back to commercial in keeping with the development intention for Axial Way”.

*Officer comment: It is not possible to provide Flakt Woods with the reassurance they request regarding action relating to noise nuisance. The Council has a statutory duty to investigate complaints and if a statutory nuisance is confirmed prosecution could follow if the cause of the noise nuisance cannot be rectified.*

- 10.4 Essex Bridleways Association wish to make the following comments on the above proposal:

We note the requirement for the developer to make enhancements to the surfacing of the adjacent bridleway and note that the developer has been in discussions with ECC Public Rights of Way department with regard to these enhancements. We do not object to these, however, we request that the adjacent trees and hedgerows on both sides of the bridleway in question are retained in their entirety, save for necessary maintenance to enable healthy growth. We would object to any reduction in height or thinning out of the hedgerow, and we would hope that since the previous application was refused because of possible noise intrusion from the adjacent factory site, retention of the hedgerows will help with noise mitigation from this site.

The full text of all of the representations received is available to view on the Council's website.

## **11.0 Parking Provision**

- 11.1 The adopted parking standards require one parking space for one bed units and two spaces for two beds and above. The development proposal is for 6 one bed and 82 two bed (and above) units requiring 170 spaces and this standard is met. The parking standard also requires one space for every four dwellings (0.25 of a space per dwelling) 88 units require 22 visitor spaces and this requirement is also met.
- 11.2 A total of 88 cycle parking spaces are provided which equates to a dedicated space for each flat and house. Cycle parking stores will be provided within each block and in a secure timber storage shed in the rear gardens of each house.

## **12.0 Open Space Provisions**

- 12.1 The layout includes three areas of open space the most significant area is that on the north-west boundary extending parallel to and linking to the PROW/bridleway. Smaller amenity areas are indicated at either end of tAxial Way. In addition all the dwellings have private gardens and the flats each have a balcony.

## **13.0 Air Quality**

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

## 14.0 Development Team and Planning Obligations

14.1 This application is classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. It was considered that Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990. The Development Team agreed the following Obligations:

- Affordable Housing – 20% which equals 18 units six 1 bedroom Apartment, three 2 bedroom Apartments, three 2 bedroom Houses and six 3 bedroom Houses
- Open Space Sport and Recreation – contribution of £283,448 to fund provision of play space locally, provision of Recreational Facilities on land at Mill Road, provision of Sport and Recreational facilities on land north of the A12 and provision of Sport and Recreational facilities at the Northern Gateway Project
- Community Facilities – Contribution of £107,479.68 to go towards improved/extended building/facilities for the Community Centre that will come forward as part of Severalls Hospital development
- Transport Improvements –
  - (a) contribution of £26,200 towards upgrades to two bus stops to include real time information boards and provision of new shelters (if a bus route is created along Axial Way).
  - (b) Improvements to Public Rights of Way
    - A. creation of a sealed surface approx 3 metres wide for pedestrians/cyclists
    - B. type 1 hoggin surface approx 2 metres wide for horses
    - C. type 1 hoggin surface
    - D. cycle way to be resurfaced and separate signage provided for the bridleway and cycleway
    - E. safety barrier to be provided along bridleway
  - (c) Highway Works
    - 1. Traffic island upgraded to a pedestrian refuge on Axial Way
    - 2. A dropped kerb to be relocated along Severalls Lane
    - 3. Continuation of cycleway markings for approx 5 metres along part of Severalls Lane to the top of the bridleway entrance

## 15.0 Report

### Policy Considerations

15.1 The site is in the North Growth Area and in the Site Allocations document adopted in October 2010. Policy SA NGA1 sets out appropriate land uses and lists uses where development will be accommodated in this area, the application site is identified as a greenfield site for residential development and the document states:

#### “Land at Axial Way

This allocation in Axial Way is a new greenfield site which has previously been allocated for employment purposes. The site has been put forward by the owners of the land and supported by the Council in view of surrounding developments and site constraints. The site measures some 2.3 hectares and is therefore likely to deliver in the region of 70 new units based on assumptions made about density and gross/net site areas”.

The principle of residential development is therefore established by this adopted allocation.



## Design and Layout

- 15.2 The report to Members in respect of the earlier application explained that “the layout has been amended following meetings with officers including the Urban Design Officer. The amendments included a linear public open space parallel to the PROW/bridleway incorporating the preserved trees along this boundary with houses fronting the open space, providing natural surveillance, instead of backing onto this public area. Buildings now face Axial Way providing an active frontage to the street but with sufficient set back to allow hedge and tree planting along the road frontage. Parking spaces were revised so they are no longer in front of houses but are mainly provided on plot at the side of houses with some small parking courts; this amendment makes a considerable improvement to the street scene and public realm areas. These amendments resulted in a reduction in the number of units from 92 to 87.
- 15.3 The buildings fronting the open space will provide a degree of natural surveillance to the PROW/bridleway and the layout includes a link to these paths. The layout includes defined perimeter blocks with houses fronting the principle roads and open space with gardens to the rear and creates well defined public and private realm.
- 15.4 The houses types are of traditional designs but some features having a contemporary feel. A traditional palette of materials is indicated. The flatted buildings have a more contemporary appearance. The adjacent residential developments have a mixed character; Cuckoo Point buildings have a contemporary design with curved metal roofs and a flat roofed central link whereas the dwellings opposite are of a more traditional style. The detailed designs are considered satisfactory in this context but conditions requiring precise materials to be agreed and large scale drawings of architectural features are necessary to ensure they are of appropriate quality for this site on a main distributor road and fronting a PROW”.
- 15.5 Following the refusal of permission this revised application has been submitted. The amendments which have been made to the layout and design relate mainly to the units on the north west boundary of the site and are detailed below
- Amendments to the terrace of houses proposed within the north-eastern part of the site comprising plot 63-66, the principle bedrooms have both a northern and southern aspect. This allows these rooms to have opening windows orientated away from the Flakt Woods and screened from the potential noise source by the building envelope. The second bedroom is located to the rear and as such has a southern aspect. A small first floor room described as an office faces Flakt Woods
  - A terrace of flats, plots 57-62, has been introduced. A car port links the flats with the adjacent terrace of houses and this provides a continuous form of development and maximising the acoustic screening provided by the building envelope. The flats have been designed so that all bedrooms and living rooms are on the south side of the building and therefore have opening windows orientated away from the factory and afforded screening by the building envelope.
  - Plot 56 has been amended and now incorporates a first floor link that adjoins the flats, affording a continuous form of development and maximising the acoustic screening provided by the building envelope. The house does not have any single aspect habitable rooms towards the factory to the north. The opening windows are orientated away from the factory and afforded screening by the building envelope

- The houses on plots 25, 11 and 16 do not have single aspect habitable rooms towards Flakt Woods although they do include a small room described as an office facing Flakt Woods.
- Amendments have been made to the terrace of houses proposed fronting the open space. Within the terrace comprising plot 19-21, the principle bedrooms have both a northern and southern aspect. This would allow those rooms to have opening windows away from the factory and screened from the potential noise source by the building envelope. The Second bedroom is located to the rear and as such has a southern aspect away from the factory. These units include a small room described as an office facing Flakt Woods.
- Oriel windows have been introduced to five houses fronting the northern boundary (plots 17-18, 22-24). The oriel windows will allow the first floor bedrooms to have a dual aspect. This will ensure that they continue to address the street scene and afford surveillance of the open space whilst having an openable window which is orientated to the south, away from the factory building. Flank windows have also been introduced.

15.6 The amended proposal has also sought to avoid habitable rooms with a single aspect towards Axial Way by the following amendments

- The design of the western Apartment Building (plots 1-9) has been altered from the 2015 application so that all bedrooms are orientated away from Axial Way
- The design of the eastern Apartment Building (plots 78-88) has also been altered since the 2015 application so that the bedrooms are orientated away from Axial Way.
- Oriel windows have been introduced to seventeen houses fronting Axial Way (plots 48-53, 40, 30-39). The oriel windows allow the first floor bedroom to have a dual aspect. This will ensure that they continue to address the street scene and afford surveillance whilst having an openable window which is orientated away from Axial Way.

15.7 In addition to the above amendments a revised scheme of boundary screen fencing is proposed. The scheme includes a 1.7 metre fence along the majority of the Axial Way frontage with a hedge and tree planting on the public side. The small open space areas to this frontage will be screened from the road by a 1.5m barrier on a 0.5m bund at one end and a 2m high barrier at the other; this barrier will extend around part of the boundary with the PROW. A 2.5m barrier is proposed along approx half of the NW boundary with a hedge on the development side of the boundary. A 2.2 m fence is proposed along the NE boundary. There are also small sections of 2.2m and 2.5 m screen fencing within the site.

15.8 A ventilation and glazing scheme has also been submitted to demonstrate that all the dwellings have rooms which can meet internal criteria. The scheme proposes a combination of Standard double glazing with non-acoustic trickle vents to all habitable rooms, Standard double glazing with non-acoustic trickle vents to living rooms and acoustic trickle vents to some bedrooms, Standard double glazing with acoustic trickle vents to all bedrooms facing Axial Way or the Flakt Woods factory (but not those overlooking their own garden or have an oriel window which faces the garden) and Enhanced double glazing with acoustic trickle vents to all bedrooms facing Flakt Woods the factory.

#### Scale, Height and Massing

- 15.9 The scale of the development is unaltered. The houses are all of a domestic scale and massing either two storeys or two and a half storeys where accommodation is provided in the roof space. The proposed buildings containing the flats are of three and four storeys. These buildings have a greater scale and mass but are still of a domestic appearance. The flatted buildings are acceptable on the road frontage and provide a satisfactory transition from the mass and scale of the six and four storey buildings of Cuckoo Point and the three and four storey buildings on the opposite side of Axial Way.

#### Impact on the Surrounding Area

- 15.10 There is no adverse impact on surrounding area. The potential for conflict with the Flakt Woods operation is explored below.

#### Impact on Neighbouring Properties

- 15.11 The development includes dwellings on the NE boundary generally this comprises houses with rear gardens to the boundary; these gardens include mature trees and will be well screened from existing buildings. There are the commercial units at Cuckoo Point and a treed amenity area on this boundary and the development will have no adverse impact on the adjacent development. Houses and flats will front Axial Way facing existing residential development. The existing development has a high wall onto the road and dwellings face into the site. The proposed development would not have an adverse impact on existing residents.
- 15.12 The NW boundary of the site is separated from Flakt Woods by a PROW/bridleway. Members will note this company has objected to the application. Flakt Woods was granted planning permission in 2004 to relocate from Bergholt Road to Axial Way. Their planning permission does not restrict working times or days. A condition requiring a scheme of sound insulation to be submitted and approved was discharged on the basis that the nearest residential development was that on the opposite side of Axial Way. At the time the planning application for Flakt Woods was submitted and conditions discharged the application site was allocated for employment use but this allocation was changed to residential when the local plan was reviewed in 2008.
- 15.13 Following their original objection to the earlier application the case officer arranged a meeting at Flakt Woods attended by Flakt Woods MD England and colleagues and their noise consultant; the applicant and noise consultant, an officer from Environmental Protection and the case officer. The meeting included a tour of the building and the outside areas.
- 15.14 Flakt Woods explained the Colchester site currently operates three shifts, including a night shift. The three shift pattern can reduce to two depending on the orders the Company has to fulfil. The Colchester site is used for testing fans and this can mean testing more than one fan at a time. Performance testing is conducted in the Research & Development (R&D) lab located in the NE corner of the factory (closest to the residential site) and the flank wall of the building has a roller shutter door leading into the R&D lab. Whilst most testing is undertaken indoors within the R&D lab, some balance and vibration testing can be undertaken outdoors in the eastern yard; certain tests have to be conducted outdoors due to the constraints of the R&D lab. Flakt Woods has confirmed it is not possible to change the internal layout of the factory. In addition to the testing there is an external waste facility in the NE corner of the site.

- 15.15 The acoustic modelling agreed with Environmental Protection takes account of fan testing and site activity and operations on a typical 24 hour day including fan testing of a typical loud fan during the day time. The mitigation measures proposed are acceptable for these working scenarios. Modelling for the occasional torque testing of very large industrial fans; these tests are obviously dependent on orders, but such tests have been carried out by the factory five times in the past 10 years. The last time Environmental Protection received complaints was in 2013.
- 15.16 Environmental Protection was satisfied that the proposed glazing and ventilation scheme together with the screen fencing proposed under the earlier application was acceptable and the officer recommendation was that planning permission should be granted.
- 15.17 The current application includes further improvements the introduction of a small group of flats in the NE corner enables bedrooms to be located on the rear elevation away from Flakt Woods with these windows being screened by the bulk of the built form itself. Other units along this boundary have secondary windows to the side or rear elevations which allows these properties to have an openable window not facing the main noise source and still meet the noise criteria. The revisions to the layout and screen fencing also result in the majority of the gardens meeting the upper limit of the British Standard criterion of 55 dB(A). Although a small number of units exceed the maximum limit by 1 dB(A) this is considered acceptable.
- 15.18 Acoustic fencing is also proposed which whilst in visual terms is not ideal is required in this instance to mitigate noise in particular traffic noise.

#### Amenity Provisions

- 15.19 The proposed development will not have an adverse impact on the amenity of adjacent properties and raises no issues relating to loss of light or overlooking.
- 15.20 In terms of general amenity, the recommended legal agreement would secure improvements to the PROW/bridleway. These paths exit onto Severalls Lane close to the bridge over the A12 and if the Northern Gateway development on the north side of the A12 goes ahead these paths will form an important link for pedestrians, cyclists and horse riders to cross the A12.

#### Highway Issues

- 15.21 The Transport Assessment indicates there are footways and cycle paths along Axial Way and a PROW to Mill Road, a cycle path along Via Urbis Romanae which also has a priority bus lane. The Park and Ride facility is on the opposite side of the A12. The Assessment concludes the development would have a minimal impact on surrounding transport network and that the proposal can be accommodated within the existing infrastructure. Cycle parking will be provided within each flat block. The Highway Authority requires improvements to the surface and signage of the PROW/Bridleway, Travel packs to encourage use of public transport, walking and cycling, and a pedestrian refuge to the existing crossing of Axial Way.

#### Drainage

- 15.22 Under the Flood Risk Classifications defined within the Technical Guidance to the National Planning Policy, the site is confirmed as being in Zone 1 – Low Probability, in terms of Flood Vulnerability. The NPPF encourages residential development in Zone 1. Surface water will be attenuated and then discharged to a tributary of Salary Brook on the east corner of the site, the discharge rate will be controlled and the scheme includes SUDS for managing surface water runoff. Foul water will be discharged into the existing foul sewer to the south of Axial Way Anglian Water has confirmed there is sufficient capacity.
- 15.23 Anglian Water raises no objection on drainage grounds. It is anticipated the response from ECC SUDS will be available at the committee meeting, no objection was raised to the earlier application subject to conditions.

#### Ecology, Trees and Habitats

- 15.24 The site includes mature oaks subject to a preservation order together with other trees on the NW and NE boundaries. The preserved trees are retained as are the majority of other trees; the two trees to be removed are in poor condition. Work to the retained trees includes removing deadwood, crown lifting and crown reduction. The hedgerows where encroaching onto the site are to be cut back to the boundary this mainly involves removing overgrown blackthorn; a section of hedgerow will have to be removed to create the link to the bridleway. Some hedgerows within the site are to be removed. The trees and hedgerows form green corridors along these boundaries. The application includes an Arboricultural Impact Assessment which considers the impact of the development on trees and hedgerows and the quality of these features. The Arboricultural Officer has requested some visitor parking spaces under Root Protection Areas (RPA) is removed if possible. The applicant's arboriculturalist has indicated no dig or reduced construction will be used and the proportion of space within the RPA is within recommended limits. An Arboricultural Clerk of Works (ACoW) will be required to oversee the protection of trees during the development.
- 15.25 An extended Phase 1 habitat survey and reptile and bat surveys have been submitted. The survey confirms the site is not close to designated sites and has no ecological designations. The site comprises largely unmanaged semi-improved grassland with areas of tall ruderal vegetation and hedgerows and trees on boundaries with a dry ditch along the front boundary.
- 15.26 The survey concludes the trees do not support bat roosts but could in the future, it recommends that if development commences after March 2017 further bat survey work and mitigation is required. The development will have minimal impact on foraging and commuting bats as trees are to be retained. Mitigation measures include lighting to be directed away from mature oak trees and the provision of bat boxes. No reptiles were recorded on the site. Whilst the surveys found no evidence of badgers pre-ground clearance is recommended to ensure the absence of badger setts.

- 15.27 The hedgerow along the NW boundary is classed as important under the Hedgerow Regulations and will be cut back to site boundary. Trees and hedgerows will be enhanced and managed with dead wood removed, gaps planted and the crown lifting of some trees, black thorn will be cut back. Pedestrian/cycle links are proposed from the development to the PROW/bridleway they will be sited outside root protection areas.
- 15.28 The site does not include any protected species and conditions will be imposed to protect trees and hedgerows during the construction period.

## **16.0 Conclusion**

- 16.1 The application site is allocated for residential purposes, this is not an historic allocation, but a recent reallocation from employment use to residential that took place after Flakt Woods had relocated onto the adjacent site. This allocation means residential development is acceptable in principle and the Site Allocation Document suggests 70 dwellings would be appropriate depending on precise site area. To overcome issues of noise from the Flakt Woods and traffic noise high acoustic fencing and other mitigation is required. However with this constraint an acceptable layout has been negotiated and the development includes a traditional built form in keeping with the character of the area.

## **17.0 Recommendation**

- 17.1 APPROVE 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 Commercial Services to refuse the application, or otherwise to be authorised to complete the agreement to provide the following:
- Affordable Housing – 20% which equals 18 units six 1 bedroom Apartment, three 2 bedroom Apartments, three 2 bedroom Houses and six 3 bedroom Houses
  - Open Space Sport and Recreation – contribution of £283,448 to fund provision of play space locally, provision of Recreational Facilities on land at Mill Road, provision of Sport and Recreational facilities on land north of the A12 and provision of Sport and Recreational facilities at the Northern Gateway Project
  - Community Facilities – Contribution of £107,479.68 to go towards improved/extended building/facilities for the Community Centre that will come forward as part of Severalls Hospital development
  - Transport Improvements –
    - (a) contribution of £26,200 towards upgrades to two bus stops to include real time information boards and provision of new shelters (if a bus route is created along Axial Way).
    - (b) Improvements to Public Rights of Way
      - A. creation of a sealed surface approx 3 metres wide for pedestrians/cyclists
      - B. type 1 hoggin surface approx 2 metres wide for horses
      - C. type 1 hoggin surface
      - D. cycle way to be resurfaced and separate signage provided for the bridleway and cycleway
      - E. safety barrier to be provided along bridleway
    - (c) Highway Works
      - 1. Traffic island upgraded to a pedestrian refuge on Axial Way

2. A dropped kerb to be relocated along Severalls Lane
3. Continuation of cycleway markings for approx 5 metres along part of Severalls Lane to the top of the bridleway entrance

- NHS contribution of £31,832 to be used at Bluebell Surgery and Mill Road Surgery Colchester. Payment should be made before the development commences.
- Details of a Management Company and submission of a Management Plan to be agreed by the Local Planning Authority for all the areas which are not either adopted or form part of a private curtilage, including any non-adopted roads and open space

## **18.0 Conditions**

### **1 - Time Limit for Full Permissions**

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

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

### **2 - \*Development to Accord With Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 0PH-124-003 A, PH-124-004 A , PH-124-019 A, PH-124-022A , PH-124-031A , PH-124-034 A, PH-124-041 A , PH-124-045, PH-124-46, PH-124-001, PH-124-002A, PH-124-005, PH-124-007 PH-124-008, PH-124-009, PH-124-010A, PH-124-011, PH-124-012, PH-124-013, PH-124-014, PH- 124-015, PH-124-016, PH-124-017, PH-124-018, PH-124-019, PH-124- 020, PH-124-023, PH-124-024, PH-124-025, PH-124-026, PH-124-027, PH-124-028, PH-124-029, PH-124-030, PH-124-033, PH-124-035, PH-124-036, PH-124-037, PH-124-039, PH-124-040, PH-124-042 PH-124-043 & PH-124-044 .

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

### **3 - Non-Standard Condition/Reason - Excludes Submitted Materials**

Notwithstanding any details shown within the submitted application, this permission expressly excludes the use of the external materials. No works shall take place until details of alternative materials have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out using these approved materials.

Reason: The materials proposed in the application are not considered to be suitable for use on this site and to ensure that appropriate materials are chosen which will secure a satisfactory appearance, in the interests of visual amenity.

### **4 - Non-Standard Condition/Reason - Refuse and Recycling Facilities**

Prior to the first occupation of the development hereby permitted, refuse and recycling storage facilities shall be provided in accordance with a scheme which shall have been previously submitted to and agreed, in writing, by the Local Planning Authority. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times. Reason: The application contains insufficient information to ensure that adequate facilities are provided for refuse and recycling storage and collection.

### **5 - Non-Standard Condition/Reason - Removes Permitted Development Rights to Erect Walls & Fences**

Notwithstanding the provisions of Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no fences, walls, gates or other means of enclosure, other than any shown on the approved drawings, shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority.

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

#### 6 - Non-Standard Condition/Reason - Excludes Permitted Development Right to Install New Windows

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no windows, roof lights, dormer windows or any other form of opening shall be inserted in any elevations or roof slopes of the dwellings. Reason: To ensure the dwellings remain appropriately glazed and ventilated so that the recommended guidelines for internal noise levels can be maintained.

#### 7 -Non-Standard Condition/Reason - Submission of Hard & Soft Landscape Proposal Required

No works shall take place 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 are not acceptable in all respects and require amendment in accordance with the consultation response from the Landscape Officer dated shall 16.09.2015. The landscape details shall include:

- proposed finished levels or contours;
- means of enclosure;
- car parking layouts;
- 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.);
- retained historic landscape features;
- proposals for restoration;
- planting plans;
- written specifications (including cultivation and other operations associated with plant and grass establishment);
- schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and
- 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 - Non-Standard Condition/Reason - 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 - Non-Standard Condition/Reason – Earthworks

No works shall take place until details of all earthworks have been submitted to and agreed, in writing, by the Local Planning Authority. These details shall include 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. The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that any earthworks are acceptable in relation to their surroundings.

#### 10 - Non-Standard Condition/Reason - 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.

#### 11 - Non-Standard Condition/Reason - Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan required

No works or development shall be carried out until an Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan in accordance with BS 5837, have been submitted to and approved, in writing, by the Local Planning Authority (LPA). These documents shall include details of the pedestrian/cycle path/s from the site to the PROW/bridleway, the approved path/s shall be provided in accordance with the approved details prior to the occupation of any of the dwellings and shall thereafter be retained. Unless otherwise agreed, the details shall include the retention of an Arboricultural Consultant to monitor and periodically report to the LPA, the status of all tree works, tree protection measures, and any other arboricultural issues arising during the course of development. The development shall then be carried out strictly in accordance with the approved method statement.

Reason: To adequately safeguard the continuity of amenity afforded by existing trees.

#### 12 - Non-Standard Condition/Reason - Drawings of Architectural Features required

Prior to the commencement of any works, additional drawings that show details of the proposed new windows, balconies, eaves, window/door surrounds, car ports, dormer, doors, verges, cills, and all other architectural features to be used, by section and elevation, at scales between 1:20 and 1:1, as appropriate, shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved additional drawings.

Reason: There is insufficient detail with regard to these details which form important elements of the design and appearance of the buildings.

**13 - Non-Standard Condition/Reason - Habitat and Biodiversity Enhancement Details required**

No works, including ground clearance, shall take place until a scheme of habitat and biodiversity enhancement, mitigation and implementation timetable has been submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with such agreed details. The scheme shall include an inspection of the site to ensure badgers have not colonised.

Reason: To improve biodiversity in accordance with Paragraph 118 of the NPPF and Section 40 and 40(3) of the Natural Environment and Rural Communities Act (2006).

**14 - Non-Standard Condition/Reason - Development to be Carried out in Accordance with submitted documents**

The development shall take place in accordance with the information in the documents, and revised documents, accompanying the application including the Planning Statement, Design and Access Statement, Geo- environmental and Geo technical Desk Study and Site Investigation, Archaeological Desk Based Assessment, Extended phase 1 Habitat Survey, Reptile Survey, Bat Survey, Environmental Noise Assessment, Flood Risk Assessment and Drainage Strategy, Arboricultural Impact Assessment, Transport Assessment and Health Impact Assessment including proposals, conclusions and mitigation.

Reason: To ensure a satisfactory form of development and to ensure the development takes place in accordance with the submitted information to mitigate any adverse impacts.

**15 - Non-Standard Condition/Reason - Acoustic Fencing & Mitigation Measures to be implemented**

Prior to the occupation of any dwelling the acoustic fencing/bunds indicated on the fence plan drawing number PH-124-008 revision A and the ventilation/glazing specification as detailed in the SRL document dated 28 October 2016 and figure 3.4 shall be implemented in full and these features shall thereafter be retained.

Reason These features are required to mitigate noise from adjacent premises and road noise. The dwellings need to be appropriately ventilated and glazed so that the recommended guidelines for internal noise levels under BS 8233 can be met.

**16 - Non-Standard Condition/Reason - Details of Lighting Fixtures required**

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

Reason: To reduce the risks of any undesirable effects of light pollution on the amenity of the area and ecological interests.

#### 17 - Non-Standard Condition/Reason - Details of Cycle Parking for flats required

Prior to the commencement of the development, details of the number, location and design of cycle parking facilities for the proposed flats shall be submitted to and approved, in writing, by the Local Planning Authority. The approved facility shall be secure, convenient and covered and shall be provided prior to occupation and retained for that purpose at all times thereafter. Reason: To ensure appropriate cycle parking is provided in the interest of highway safety.

#### 18 - Non-Standard Condition/Reason - Provision of Travel Information required

Prior to the first occupation of the development, the developer shall be responsible for the provision and implementation of a Travel Information and Marketing Scheme for sustainable transport, which shall have been previously submitted to and approved, in writing, by the Local Planning Authority, to include vouchers for 12 months free bus travel for each eligible member of every residential household. The vouchers to be valid for exchange during the first 6 months following the occupation of the individual dwelling unit.

Reason: In the interests of promoting sustainable development and transport.

#### 19 - Non-Standard Condition/Reason - Garages & Parking Spaces to be provided

Prior to the first occupation of the development, the garage(s) / parking space(s) / car ports shown on the approved plans shall be made available for use for the parking of motor vehicles to be used solely for the benefit of the occupants of the dwelling of which it forms part, or their visitors, and for no other purposes whatsoever. The garage(s) / parking space(s) / car ports shall then be maintained free from obstruction and for this purpose at all times thereafter.

Reason: In order to ensure that the development retains adequate parking provision.

#### 20 - Non-Standard Condition/Reason - Store Building

Prior to the first occupation of plots 24, 25 and 26 the store building shall be erected in accordance with the approved drawing and shall thereafter be retained.

Reason: This structure is required to ensure appropriate mitigation from noise generated by the adjacent commercial premises.

#### 21 - Non-Standard Condition/Reason - 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.

## 22 - Non-Standard Condition/Reason – Contamination

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

## 23 - Non-Standard Condition/Reason – Contamination

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:

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

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.

## 24 - Non-Standard Condition/Reason – Site Investigation

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

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

On request of the applicant, a brief will be provided for each stage of the archaeological investigation. In this case, a trial-trenched archaeological evaluation will be required to establish the archaeological potential of the site. Decisions on the need for any further investigation (excavation before any groundworks commence and/or monitoring during groundworks) will be made on the basis of the results of the evaluation. Pre-determination archaeological evaluation is not required for this proposal. However, it is recommended that the applicant undertakes the trial-trenching at the earliest opportunity to assess the archaeological potential at this location, in order to quantify the risk in terms of cost and time for any further archaeological investigation that might be required.

## 19.0 Informatives

### (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) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

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

(4) All new home owners should be warned about the testing of fans that takes place at Flakt Woods that has not been mitigated against.

(5) 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.

(6) PLEASE NOTE that, with regard to and noise measurement and sound insulation, a competent person is defined as someone who holds a recognised qualification in acoustics and/or can demonstrate relevant experience.

(7) 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.

(8) PLEASE NOTE that the site is known to be contaminated. Please be aware that the responsibility for the safe development and secure occupancy of the site rests with the developer. Tiered risk assessment shall be carried out in accordance with the procedural guidance and UK policy relating to the contaminated land regime. Submission of reports should also be made to the Environment Agency for comment with regard to their remit to protect ground and surface waters from pollution and their obligations relating to contaminated land. The Local Planning Authority will determine the application on the basis of the information made available to it. Please be aware that should a risk of harm from contamination remain post-development and that the applicant had prior knowledge of the contamination, the applicant is likely to be liable for this under Part IIA of the Environmental Protection Act 1990 and as such become an Appropriate Person. In this event the applicant will be lawfully responsible to remove the risk posed by the contamination. Equally if during any site works a pathway for any contaminant on site is created and humans, waters, property or ecological systems are exposed to this the applicant or those acting on his behalf will be liable under Part IIA of the Environmental Protection Act 1990 if the risks are not adequately addressed during the site redevelopment. During investigation and remediation works the applicant and those acting on behalf of the applicant must ensure that site workers, public, property and the environment are protected against noise, dust, odour and fumes. The applicant is advised that should there be a requirement as part of the Remediation Strategy to treat, reuse or remove contaminated material on the site, the Environment Agency must be consulted, as these activities may need to be licensed or permitted. Contaminated materials identified for removal off site must be disposed of at an appropriately licensed landfill site. The Local Planning Authority will provide a Validation Certificate mentioned in Condition 23 for completion by the applicant/developer. This certificate will not only provide confidence in the site for the local authority in terms of development control and the Part IIA regime but will help discharge conditions applied by the approved inspector and also provide confidence for solicitors and homebuyers in the conveyancing process.

(9) PLEASE NOTE: This site is the subject of a Tree Preservation Order.

(10) 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>

(11) PLEASE NOTE A badger sett/s may exist within or adjacent to the application site. Badgers are a statutorily protected species, and it is the developer's responsibility to ensure

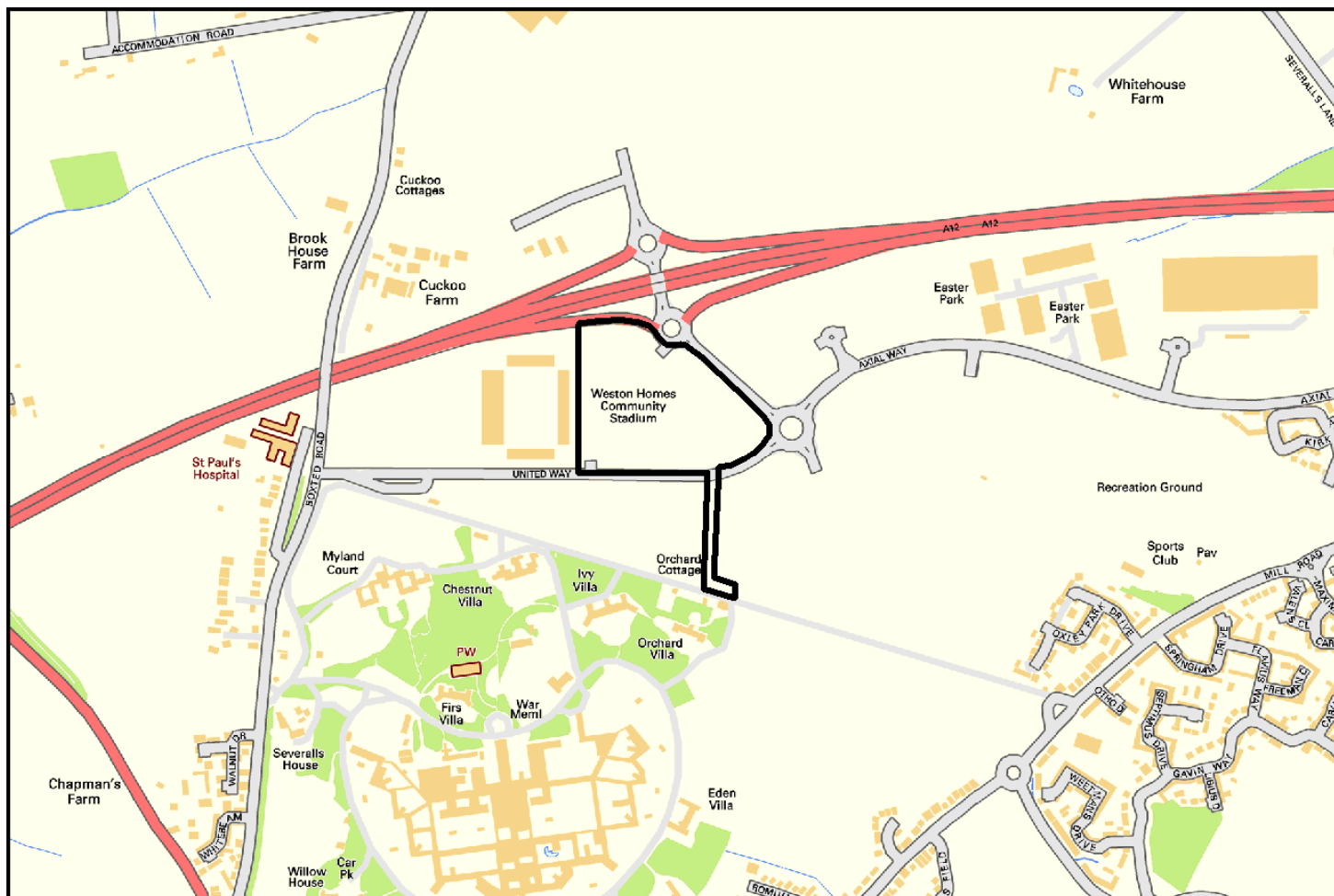
the requirements of the Badgers Act 1991 are fully complied with. Furthermore, if a badger sett is found at any time during the construction phase of the scheme, work should cease in the area and an ecologist should be consulted to ensure legal compliance.

## **20.0 Positivity Statement**

- 20.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.







**Application No:** 160825

**Location:** Colchester Northern Gateway, Land at Cuckoo Farm West, off United Way & Via Urbis Romanae, Colchester, Essex

**Scale (approx):** NOT TO SCALE

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**7.2 Case Officer: Bradly Heffer****MAJOR**

**Site:** Land at Cuckoo Farm West, off United Way & Via Urbis Romanae, Colchester, Essex

**Application No:** 160825

**Date Received:** 13 April 2016

**Agent:** Mr Paul Belton, Cartas Jonas (incorporating Januarys)

**Applicant:** Mr Chris Goldsmith, Turnstone Colchester Ltd

**Development:** Erection of use class A3/A5 restaurant/hot food takeaway units (in the alternative), erection a use class C1 hotel, erection of use class D2 multiplex cinema, erection of use class D2 leisure units, erection of a use class A3/D2 restaurant/leisure uses (in the alternative), provision of a landscaped piazza that shall include associated landscaped areas, erection of an ancillary multi-storey car park, provision of separate drop-off/parking areas, the provision of cycle/pedestrian link to tower lane and associated works including the erection of substations and associated infrastructure apparatus.

**Ward:** Mile End

**Summary of Recommendation:** Conditional Approval subject to signing of Section 106 Agreement

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

- 1.1 This application is referred to the Planning Committee because it is a major full planning application, elements of which are a departure from the adopted Local Plan, on an area of land that is currently owned by Colchester Borough Council, that has received objections and which is recommended for permission. Furthermore, in the event that the Officer recommendation is agreed by Members it would also be necessary to secure a s.106 Agreement to mitigate impacts of the development. Members have to endorse a proposed commitment of the Council to be party to an agreement of this type.

**2.0 Synopsis**

- 2.1 The issues explored below are the planning context of the application site established through its land use allocation and the previous planning history, together with material considerations pertaining to the planning application submission. In recognising that elements of the proposed development are a departure from the adopted Local Plan it is considered that, on balance, material considerations merit a recommendation of approval of the planning application. If Members agree with the Officer recommendation, then it will also be necessary for the proposal to be referred to the Secretary of State under the current call-in procedure.

### **3.0 Site Description and Context**

- 3.1 The site for this proposal (approximately 4.97 hectares in size) is an area of land that forms part of the town identified as the Colchester Northern Gateway (previously known as Cuckoo Farm). Specifically the bulk of the site is located adjacent to the Weston Homes Community Stadium. Immediately to the north the site is bounded by junction 28 serving the A.12 trunk road, while to the east is the third stage of the Northern Approach Road identified as Via Urbis Romanae (VUR). The application site is divided by United Way (which links VUR with Boxted Road). The majority of the site is located to the north of this road, with a linear area of land forming the southern portion of the site that extends from United Way to Tower Lane, which has public right of way and bridleway status. To the south of Tower Lane is the former Severalls Hospital site that has planning permission for residential conversion of some existing buildings, together with new residential development within the grounds.
- 3.2 Generally the site is level, but there are significant differences in height where it meets VUR; the road sitting above the level of the site. United Way is also set at a higher level than the application site – but not as significantly as those roads that bound the north and east.
- 3.3 Currently the majority of the site is given over to grass, it having been used in the past for agricultural purposes. There are also established hedges and trees on the land – reflecting the historic field boundaries associated with the former agricultural use.
- 3.4 To the north of the application site, beyond the trunk road, is the County Council park and ride development, together with a petrol filling station and a fast food restaurant with ancillary ‘drive-thru’ takeaway facility. To the east, on the opposite side of VUR and to the south, on the opposite side of United Way is vacant land. Also located to the south of United Way, and facing the application site is the recently completed David Lloyd tennis leisure centre.

### **4.0 Description of the Proposal**

- 4.1 This full planning application seeks permission for the following:
- Erection of Use Class A3/A5 restaurant/hot food takeaway units (in the alternative) totalling 3 808 sq. m (of which no more than 400 sq. m shall be used as A5 floorspace within a single unit)
  - Erection of a Use Class C1 hotel (80 beds)
  - Erection of a Use Class D2 Cinema (12 screens)
  - Erection of Use Class D2 leisure units (3 286 sq. m)
  - Erection of Use Class A3/D2 restaurant/leisure uses (in the alternative) (688 sq. m)
- 4.2 Members are advised that since the initial submission of the planning application the mix of uses has been revised – specifically with regard to the amount of ‘flexible’ floorspace’. This is explained in supporting information as follows:

‘...The only change that has been made in respect of the mix of uses hereby applied for is in relation to the amount of ‘flexible floorspace’. The original submission sought

permission for 779 sq. m of floorspace within part of the Leisure Curve building and part of the In-line unit building to be flexible A3 or D2 floorspace in the alternative. As a result of the reconfiguration of the leisure curve building, this quantum of flexible floorspace has reduced from 779 sq. m to 688 sq. m. As a result, a slightly higher proportion of the floorspace being proposed is effectively being fixed for either D2 use or A3 use, rather than being flexible space...'

- 4.3 The proposed development would take the form of blocks of built form that would be located on the larger, northern section of the application site. Of these, the eastern-most building would contain the proposed hotel accommodation, located adjacent to VUR and positioned to address this road and its junction with United Way. Immediately to the east of the hotel (between this building and the highway boundary) the space is defined by a reflecting pond that would augment the setting of the hotel building. Located adjacent to the hotel building, to the west, would be a larger building, identified as the Leisure Curve, which would contain D2 leisure floorspace. A service road would be located between the hotel and the Leisure Curve – leading off United Way.
- 4.4 The space between the Leisure Curve and the proposed cinema and A3 restaurant units would be defined by an extensive area that would contain both hard and soft landscaped environments.
- 4.5 The westernmost element of the proposed development would comprise the cinema building, a row of A3 restaurant premises (identified in the submission as the 'In-line units') and car parking facilities to serve the proposed overall development. The cinema building would be the prominent central element within this particular group. The car park facility would be set at three levels and the In-line units would be single storey facilities. To the south of the main area for the proposed development, south of United Way, a linear area of land would contain a shared footpath and cycleway facility that would link United Way with Tower Lane.
- 4.6 The following descriptions of the proposed buildings (included as part of the application submissions) are included in this report for Members' information:

#### Hotel

'...The form of the Hotel is designed to rise out of the elevated verge between the Via Urbis Romanae and the site rising up to its full five storey scale on United Way – the orientation of the building means that its form is gradually revealed as visitors move south from the junction of the A.12...The expression of the form is amplified in scale by the positioning of a reflecting pond to its front mirroring the profile as it rises...'

#### Leisure Curve

'...Similar to that of the hotel, the Leisure Curve form rises out of the elevated verge at its northern end revealing its full scale within the central piazza before dipping slightly at the southern end onto United Way...'

## Cinema

'...The scale and form of the cinema responds directly to its functional requirements...Two approaches have been taken to break down and soften the scale of the building. As part of the overall form a curved roof profile is designed to create additional height centrally in order to screen the rooftop plant requirement whilst minimising the perceived scale at eaves level. This undulating form is also envisioned as a reflection of the urban edge context and the surrounding landscape contours. At a closer scale the elements of the built form are deconstructed and junctions expressed in a similar way to the Leisure Curve in order to break down its overall mass...Ultimately the positioning of the smaller scale of the inline units in front creates a transition between the human scale of the public realm and the cinema building...'

## Inline Units

'...The form of the inline units uses a subtler, undulating roofline to draw the line of movement into the space...The profile of the southern inline block is designed to resolve two edge conditions. In order to present a well-defined active frontage to United Way the curve of the roofline begins at the first apex drawing the eye along a strong southern eaves elevation...'

## Car Park

'...The decked car park has a low profile, the maximum height it reaches along the south and west elevations is 7.5 m (including parapet) and therefore is largely screened from the public realm spaces by the other built forms...Where the north and south elevations are revealed as one moves closer to the site, the horizontal form will be broken down by a layering of façade cladding, greening to the elevation and trees and landform in front...'

- 4.7 As well as information submitted to explain the design approach to the buildings the application submission also includes a Landscape Strategy document that explains the approach taken with regard to landscaping proposals. The following extracts relate to the key landscape 'events' of the central space or 'piazza' and the footpath/cycleway link.

## Central Piazza

'...the concept is to create a space for opportunities, providing a multi-functional space to allow events and activities to unfold. The central piazza becomes the main focal point of the site and is framed by the vertical light columns and bench seating...the space will be filled with elements to encourage the public to pause within the spaces rather than traversing through the space quickly to one of the building attractions...This design integrates play value within the landscape experience...a lighting strategy is being carefully considered to enable a functioning and enjoyable open space in twilight hours...'

### Footpath/Cycleway Link

‘...The new sinuous cycle and pedestrian path is an off-road route for users that provides a link to the Northern site, the stadium and David Lloyd Leisure Club from [the] Severalls site as well as residential communities locally. To help enhance the existing ecology, the route is punctuated by patterned planting of grass, wildflowers and wild shrub species to create a habitat that will increase biodiversity in the area. This not only reinforces the wildlife corridor but creates a vegetative buffer between the roads and buildings. The mass planting of trees to the new cycle/pedestrian path has been created to emulate the woodland effect of Severalls Hospital. This new route has utilised the use of a gap from an existing hedge to the south and will not affect the mature oak tree...’

- 4.8 As well as the specific areas highlighted there are other landscaping elements that have been incorporated into the proposal that contribute to the overall hard and soft landscaping strategy proposed for the site. These include the treatment where it meets United Way and the space identified as the ‘Northern Quarter’ of the site. With regard to the first of these, the plans include the provision of a boulevard landscaping approach – augmented by tree planting that would extend along United Way and VUR. The design approach taken with regard to the ‘Northern Quarter’ is explained as follows:

‘...The public realm space is terminated to the north by a ‘floating’ viewing platform set within a multifunctional structure. The viewing platform is set 4m above the water providing views south through the site towards Severalls woodland and north past the A12 into the countryside beyond. Access is gained to the platform from an elevated walkway to the west which connects to the car park on the upper level. A sinuous slide provides an element of fun for users to reach the bottom and swings out over the water. Alternatively a spiral staircase or sculpted ramp connects the walkway (viewing platform) to the ground plane. The ramp provides a focus for users entering the car park from the roundabout. The bank to the northern boundary will be planted with clear stemmed trees to allow filtered views into central space upon arrival to the site. The column design will allow for art pieces and signage to be incorporated as required in the coming years...’

- 4.9 Due to the nature and extent of the development proposal it is accompanied by an Environmental Statement. The Statement has been submitted to meet the requirements of the Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015. Members are advised that details of the application submission and the Environmental Statement are available to view on the Council’s website.
- 4.10 Members are also advised that since the initial submission of the application the scheme has been amended to achieve minor design and layout improvements, namely revision to the roof of the hotel building, alteration of southern end of the leisure curve building and the position of this building in relation to trees to be retained. An independent assessment of submitted information, in relation to the impact of the proposals on the town centre and sequential issues, has also taken place. The findings of the assessment will be summarised further on in this report.

- 4.11 Members will be aware that a reserved matters proposal (160623) that relates to the same application site was considered by the Committee on 17 November 2016. At this committee it was resolved to grant planning permission. The Secretary of State is currently considering whether to call-in this application and the DCLG has consequently requested that this decision is not issued until a decision has been reached. The main differences between the reserved matters application proposal and this full application is the inclusion of the cinema element in this application, together with the alterations to the proposed organisation of floor space allocated between A3 and D2 uses.

## **5.0 Land Use Allocation**

- 5.1 Within the adopted Local Development Framework the site for this proposal is located within a Strategic Employment Zone which itself forms part of the North Colchester Growth Area.
- 5.2 Within the Local Development Framework Adopted Site Allocations document the defined Strategic Employment Zone is subject to a specific policy – SA NGA 3 Employment Uses in the North Growth Area. This policy states:

‘Within the Strategic Employment Zone allocated on the Proposals Map and falling outside the Growth Area boundary, the following uses will be considered appropriate;

- a) Research and Development, Studios, Laboratories, Hi-Tech (B1b), Light Industrial (B1c), General Industry (B2), Storage and Warehousing (B8). Any such development will be restricted by way of condition to prevent change of use to B1a.
- b) Display, repair and sale of vehicles and vehicle parts, including cars, boats and caravans
- c) Indoor sport, exhibition and conferencing centres
- d) A limited amount of retailing only where this is ancillary to another main use in Class B1b, B1c, B2 or B8
- e) Services and facilities to meet the needs of employees in the Employment Zone
- f) Business uses (B1, B1a) only where already consented
- g) At Cuckoo Farm planning permission exists for a range of uses including an hotel (C1), a public house /restaurant (A3/4), a health and fitness centre (D2) and business units (B1).

## **6.0 Relevant Planning History**

- 6.1 The site to which this planning application relates forms part of a larger site that has been subject to several planning applications as follows:
- O/COL/01/1622  
Outline application for community stadium, health and fitness centre, hotel, pub/restaurant, A3 units, two storey business unit, employment use, associated parking, transport interchange facilities and landscaping.
  - O/COL/01/1623  
Outline application for employment uses.

- O/COL/01/1624  
Residential development (approximately 1500 dwellings including conversion of some retained hospital buildings) mixed uses, including community facilities, employment and retail, public open space, landscaping, new highways, transport improvements, reserved route of the Northern Approach Road Phase 3 (NAR3), and associated development.
- O/COL/01/1625  
Outline application for replacement roadside services to include petrol filling station comprising associated Class A1 retail shop, re-fuelling facilities, car wash and Class A3 roadside restaurant and lorry park.
- F/COL/01/1626  
Detailed application for the construction of the Northern Approaches Road Phase 3 (NAR3) including a new grade separated junction with the A12 and east/west link road to Severalls Lane plus all ancillary highway works (including segregated bus corridor)

A subsequent planning application was submitted for an identical development as proposed under O/COL/01/1622 as follows:

- O/COL/03/0998  
Outline application for community stadium, health and fitness centre, hotel, pub/restaurant, A3 units, employment uses including 2 storey business unit, associated parking, park and ride, transport interchange facilities and landscaping.

This application was determined at the same time as the other applications mentioned above.

6.2 Subsequent applications that relate to the site covered by application ref. O/COL/01/1622 are included below:

- F/COL/06/1727  
'Section 73 application to vary Conditions 9 and 10 of application O/COL/01/1622 which relates to the need for the implementation of a new junction with the A12 trunk road and Northern Approach Road Phase 3 in advance of commencement or occupation of any of the development elements granted by that consent (i.e. the football stadium in this instance).
- F/COL/07/0294  
Variation of condition 47 of application no. O/COL/01/1622
- 071539  
New 10 000 seat capacity community stadium with associated facilities and 2no. 5-a-side football pitches, plus associated landscaping, roadworks and car parking.



- 081644  
Variation of condition 37 attached to O/COL/01/1622 to allow use of the stadium's internal concourses for the holding of a monthly farmers' market on the first Thursday and an annual Christmas fayre and the variation of condition.
- 151216  
Application for approval of reserved matters following outline approval (O/COL/01/1622) (layout, scale, appearance, landscaping, access) for the construction of a racquets, health and fitness complex with associated parking, access and ancillary facilities.
- 152370  
Application for removal or variation of condition 27 following grant of planning permission (O/COL/01/1622). Resubmission of 151682.
- 160623  
Reserved matters application pursuant to outline planning permission O/COL/01/1622 for the erection of Use Class A3 restaurant units (10,400 sq. m), erection of Use Class C1 hotel (80 beds), provision of a landscaped piazza and associated landscaped areas, erection of an ancillary multi-storey car park and the provision of separate drop off/parking areas. This application was considered by committee on 17 November 2016 when it was resolved to grant permission. The decision is currently subject to a holding request by the Secretary of State DCLG pending consideration of whether to call-in the application for determination. A verbal update will be provided at committee on the status quo of this application.

6.3 Additionally, following the outline planning permission for residential development on the former Severalls hospital site, granted under O/COL/01/1624, subsequent reserved matters permissions have been granted as follows:

- 100502  
Development to provide 248 residential units (Phase 1)
- 152733  
Application for approval of reserved matters following outline approval 151401 for the erection of 730 new build residential dwellings, open space, landscaping, parking, access and associated infrastructure.

## **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 also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

- SD1 - Sustainable Development Locations
- SD2 – Delivering Facilities and Infrastructure
- SD3 - Community Facilities
- CE1 - Centres and Employment Classification and Hierarchy
- CE3 - Employment Zones
- UR1 - Regeneration Areas
- UR2 - Built Design and Character
- PR1 - Open Space
- PR2 – People-friendly Streets
- TA1 - Accessibility and Changing Travel Behaviour
- TA2 - Walking and Cycling
- TA3 - Public Transport
- TA5 - Parking
- ENV1 - Environment
- ER1 - Energy, Resources, Waste, Water and Recycling

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):

- DP1 Design and Amenity
- DP2 Health Assessments
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP4 Community Facilities
- DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
- DP10 Tourism, Leisure and Culture
- DP17 Accessibility and Access
- DP19 Parking Standards
- DP20 Flood Risk and Management of Surface Water Drainage
- DP21 Nature Conservation and Protected Lanes
- DP25 Renewable Energy

7.4 Further to the above, the adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

- SA NGA1 Appropriate Uses within the North Growth Area
- SA NGA3 Employment Uses in the North Growth Area
- SA NGA4 Transport measures in North Growth Area

7.5 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

- Community Facilities
- Vehicle Parking Standards
- Sustainable Construction
- Open Space, Sport and Recreation
- External Materials in New Developments
- Cycling Delivery Strategy

## Myland Design Statement

- 7.6 Members are advised that the Myland and Braiswick Neighbourhood Plan has been through the examination in public and referendum stages and is due to be 'made' i.e. adopted by Colchester Borough Council towards the end of this year.

## 8.0 Consultations

- 8.1 The following comment has been received from the Spatial Policy Team:

'The current application is for a site covered by a 2006 approval for the Community Stadium and associated leisure, hotel and restaurant uses. A reserved matters application (160623) is under consideration to secure detailed approval for elements of the outline consent that the current scheme is compliant with, including, inter alia, the restaurants and hotel. The full application also includes a proposal for a cinema which was not explicitly permitted in the original permission.

As planning policy comments to the reserved matters application noted, the issue of the principle of development is not in question as the adopted Local Plan specifically notes the approved uses for the site. Site Allocations Policy NGA3 (Employment Uses in the North Growth Area point g) states 'At Cuckoo Farm planning permission exists for a range of uses including an hotel (C1), a public house/restaurant (A3/4), a health and fitness centre (D2) and business units (B1)'.

The leisure and town centre planning implications of the full proposal are accordingly the key planning policy issues. These have been assessed for the Council by Nathaniel Lichfield and Partners, and this critique provides the basis for planning policy comments on the proposal.

NLP state that Core Strategy Policies CE1 and CE2 pre-date the NPPF and these policies did not form part of the Focused Review carried out by the Council to bring selected elements of the adopted Local Plan into compliance with the National Planning Policy Framework. These policies should be afforded less weight where they are inconsistent with the NPPF, but NLP go on to note that the Council's hierarchy is still an important consideration in determining the location of new Town Centre development. They refer to a recent Secretary of State decision relating to retail development [in] Exeter which supports the view that while the NPPF only sets two specific tests regarding town centre uses, it does expect local plans to fill the gaps around deciding the location of such development by providing a network and hierarchy of centres, further to the criteria in NPPF para 23. In Exeter, this meant that the proposed development was considered to contrary to these aspects of the development plan and the appeal was dismissed.

It is accordingly appropriate for the Council to consider whether the scale and nature of development in Northern Gateway is appropriate in terms of the two specific tests required by the NPPF: the sequential test assessing alternative sites in higher order centres and the impact test assessing likely harm development could have on the network of centres. The hierarchy included in Council policies CE1 and CE2 reflects the direction in [NPPF] para 23 for the Council to 'define a network and hierarchy of

centres that is resilient to anticipated future economic changes'. These policies further the application of the sequential test by setting forth the areas of search and order of preference between centres when applying the sequential approach. The Northern Gateway area is not a designated centre, so appraisal of the scheme needs to involve appraisal of potential alternative schemes in the Town Centre, the preferred location for Town Centre uses, followed by Edge of Centre Locations and Urban District Centres.

#### **Application of the sequential test -**

NLP agree that there are only three potential sites which could accommodate the development in higher ranked centres. NLP conclude that Vineyard Gate, in the Town Centre and the Cowdray Centre, edge of centre can be dismissed as sequentially preferable sites. On Tollgate, they conclude that although it is sequentially preferable to the Northern Gateway in locational terms as it is part within and part edge of an Urban District Centre, it would result in a scale of cumulative development for the site that would be inappropriate for the area's place in the spatial hierarchy. NLP state:

*The Stane Park development along with the Tollgate Village proposals would create a significantly enhanced retail and leisure destination, and in our view this scale of development will create a sub-regional shopping/leisure destination. The creation of a new sub-regional shopping/leisure destination, in competition with Colchester town centre, is not consistent with the hierarchy set out within the adopted development plan (Policies CE1 and CE2).*

*The cumulative impact of the scale of development proposed on Colchester town centre will be far greater if the development is concentrated at Tollgate Village. The diversion of linked retail and leisure trips from the town centre to a greatly expanded Tollgate Village will be significantly more harmful than a leisure only development at Northern Gateway. In addition if the development was relocated to Tollgate Village then the fall-back position could still be implemented at Northern Gateway which would lead to an even greater cumulative impact on the town centre. (Paras 2.34 and 2.35)*

The Northern Gateway proposal is accordingly considered to have met the sequential test on the basis that the only potentially alternative sequential site at Tollgate can be discounted as unsuitable in impact terms.

#### **Impact –**

NLP consider that there is scope for additional cinema seats in Colchester by 2021. They conclude that there is no evidence to suggest the Odeon Cinema would be forced to close due to the loss of trade, and as a result there should be no reduction in local consumer choice. Equally, the Northern Gateway cinema is not considered to jeopardise or delay the Curzon cinema at St. Botolphs. The impact assessment suggests there will be a 38.6% reduction on the existing number of cinema trips in the town centre between 2016 and 2021. As this impact would primarily be in the evening, this is not considered to be significant in the context of the vitality and viability of the town centre as a whole. NLP note, however that the loss of cinema trips in the town centre is a disbenefit of the proposed development that should be weighed against the benefits of the scheme. (Paras 4.11-4.15)

Given that the diversion of trips to the town centre is limited and focussed on evening hours, it is considered that the Northern Gateway proposal would not have an unacceptable impact on Town Centre investment or on vitality and viability.

The applicants have submitted evidence pointing to the general health of the Town Centre, and this conclusion is not disputed by NLP. NLP also note the relevance of other material considerations for Northern Gateway, including the objectives of the Northern Gateway Master Plan Review. The proposals form part of an integrated sports and leisure development scheme for the wider area which relies on cross-subsidy and comprehensive delivery of all elements.

Based on these points and in light of the NLP critique, Planning Policy does not object to the cinema as it would not be of a scale and character that would damage the pre-eminent position of the Town Centre and would further the comprehensive development of the leisure attractions at Northern Gateway.'

- 8.2 The Highway Authority originally queried elements of the Traffic Assessment that accompanied the planning application submission. Following liaison with the Applicant additional information has been provided. Members are advised that the final comments of the Highway Authority will be reported at the Committee meeting.
- 8.3 Highways England has confirmed that it has no objection to the proposal.
- 8.4 The Environmental Control Officer and the Contaminated Land Officer would require the imposition of conditions on a grant of planning permission.
- 8.5 Natural England has confirmed that it has no objection to the proposal on the basis of potential impacts on statutory nature conservation sites. The Council's attention is also drawn to standing advice with regard to protected species and also the opportunity to provide green infrastructure and biodiversity and landscape enhancements to improve the potential ecological value of the site.
- 8.6 ECC as SUDS authority has confirmed it has no objection to the proposal subject to the imposition of conditions on a grant of planning permission.
- 8.7 The Environment Agency has confirmed no objection to the application and has offered advice on drainage and sustainability. A copy of the letter was also forwarded to the applicant's agent by the Agency. Anglian Water Authority did not comment on the proposal but did provide suggested conditions on the reserved matters application 160623. These have also been included in the list of recommended conditions for this application. If any further comments are received these will be reported at the Committee meeting.
- 8.7 Historic England has advised that it does not wish to comment on the application.
- 8.8 When the Council's Landscape Officer was originally consulted on the proposals, additional information regarding landscape impacts was requested. This has since been supplied and the Officer has advised that no objection is raised subject to the imposition of conditions on a grant of planning permission.
- 8.9 Following on from archaeological investigation work being carried out on site and the absence of any finds of significance, the Council's Archaeological Adviser has no comment to make or conditional requirements relating to the proposals.

- 8.10 The Council's Arboriculturalist has confirmed that the proposals as amended i.e. incorporating the minor revision to the position of the Leisure Curve building, would not jeopardise the health of trees that are identified to be retained on the application site.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

## **9.0 Parish Council Response**

- 9.1 Myland Community Council made the following comment:

'MCC is disappointed that our concerns with regard to the proposed car park access road have not been addressed. Our view remains that this is inadequate and will have the potential to create severe traffic problems. It is disappointing that in an otherwise pleasing design the car park access system has been so poorly thought out. We also note that we have yet to have sight of the revised scoping report and are therefore unable to comment on this before the deadline. Whilst MCC has overall support for the project because of these concerns we must confine our response to 'comment' only.'

*Officer comment: Members are advised that the Scoping Opinion referred to by the Community Council relates to the Environmental Statement accompanying the planning application. The Opinion establishes the scope of the Statement i.e. the range of issues and impacts to be covered.*

## **10.0 Representations**

- 10.1 As a result of notification on the originally-submitted scheme, six representations of objection and two of support were received. The objection representations were received on behalf of the Tollgate Partnership, the Odeon cinema chain, M&G Real Estate, CBRE Global Investors, the Colchester Bus Users Group and Colchester Cycle Campaign. The following summarised points are made:

### Barton Willmore on behalf of Tollgate Partnership

All applications should be assessed on their merits and this application requires appropriate justification and assessment against relevant policy matters. The outline permission and reserved matters applications do not represent genuine fall-back positions. The application site is allocated as a Strategic Employment Zone. The proposal will result in the loss of some highest rated employment land without justification and should be refused. The application has failed to undertake an appropriate sequential assessment, including the land at Tollgate West which is sequentially preferable. Both this application and the proposals for Tollgate Village should be considered at the same time to ensure fairness and equitability.

### Metropolis on behalf of Odeon

The inclusion of a cinema as part of the development proposals would have a significant implications for the Odeon cinema in the town centre. The application falls to be determined with regard to the requirements of the NPPF and the applicants have failed to meet its requirements. The proposed increase in D2 floorspace above that established under the outline planning permission raises serious concerns regarding the impact on the vitality and viability of the town centre. Information regarding the need for additional cinema screens is out of date and the town centre is clearly the

preferred location for leisure facilities. The town centre would struggle to compete with the proposal.

GL Hearn on behalf of M&G Real Estate

The applicant has failed to justify this town centre use in an out-of-town location. The proposal will have a detrimental effect on the town centre's vitality and viability and investor confidence. Furthermore the proposal will have implications upon the Council's Strategic Employment Land supply – particularly when the implications of the applications at Tollgate Village and Stane Park are taken into consideration.

CBRE on behalf of the owners of the Odeon cinema building

The scale and scope of the proposed cinema operation is not consistent with the adopted development plan for the area and has not been sufficiently assessed through the planning application submission.

Colchester Bus Users Group

The application fails to make any provision for access for persons who do not own a car and is in an inaccessible location. The application is clearly contrary to relevant national and local planning policy and the fact that CBC would have a financial interest in the scheme means that it should not be determined by CBC as planning authority. The pre-application process engaged in by the applicant was meaningless. The fact that the site is located near to the Park and Ride facility does not mitigate the impact of the development as this facility is not available when the proposed uses will be busy.

Colchester Cycling Campaign

The proposal will worsen car dependency and traffic congestion, bad air quality etc. The proposal will also have a detrimental impact on the town centre in terms of cinema and restaurant viability. The scale of the development should be reduced in order to reduce its impact. If the scheme is approved there should be clear line of sight for the foot tunnel and funds should be set aside for a light-controlled crossing of United Way. Pedestrian and cycle linkage between the site and the Severalls housing estate to the south should also be improved.

10.2 The representations of support are summarised as follows:

- Colchester has grown and residents deserve new leisure facilities. This proposal will also increase Colchester's regional draw.
- The development will be easier to access than those in the town centre and will provide employment opportunities.

10.3 The following comment has been received from Ward Councillor Goss

'The application must be heard in front of the Planning Committee for the final decision if recommendation is approval. The application must ensure ample bus and cycling provision is included. The park and ride must call at this development and also other bus services also encouraged to attend the area so bus stops and shelters must be provided please. Adequate cycling provision with paths and safe cycling storage areas must also be included.'

The full text of all of the representations received is available to view on the Council's website.

## 11.0 Parking Provision

11.1 The proposed development would be served by 750 car parking spaces and 114 cycle parking spaces. Members are advised that if the *maximum* applicable standards were applied to each of the identified uses, based on the proposed floor spaces, the following would be the maximum number of spaces that would result:

- 2339 seat cinema @ 1 space per five seats – 469 spaces
- 4548 sq metres Gross Internal Area for A3/A5 use @ 1 space per 5 square metres (A3 parking standard) – 910 spaces
- 80 bed hotel @ 1 space per bedroom – 80 spaces
- 3344 sq metres D2 Leisure Use @ 1 space per 20 square metres - 167 spaces

11.2 In total therefore the *maximum* number of spaces that could be required under the Council's adopted standards is 1626.

11.3 The following information in relation to parking is included as part of the planning application submission:

'...The proposed parking provision for the development has been guided by Essex Planning Officers Association (EPOA) Parking Standards 2009, adopted by Colchester Borough Council as a Supplementary Planning Document (SPD) in November 2009...In total 750 car parking spaces are proposed in the on-site multi-storey car park. This multi-storey car park also includes 38 disabled spaces. Along the hotel access road a further 3 disabled parking spaces and two drop-off parking spaces are provided for the hotel. The total number of car parking spaces is below the maximum number permitted by the EPOA standards. A car parking accumulation assessment presented in Section 7 of [the] TA [Traffic Assessment] indicates that the proposed provision would adequately meet expected demand. A total of 114 cycle parking spaces will be provided within the development. This is split between 14 spaces for the hotel and 100 spaces across the site for the restaurants, active leisure units and the cinema. Justification for the level of proposed cycle parking is provided in Section 7 [of the Traffic Assessment report]...'

11.4 The following comments are made on behalf of the applicant company in relation to ongoing management of car parking on-site:

'...The proposed multi-storey car park will be managed by a car park operator company. It is proposed that the car park will be operated using automatic number plate recognition (ANPR) technology. ANPR cameras would be situated on each entry and exit lane. Payment equipment will be conveniently located in the pedestrian entrance lobbies of the car park. Tariffs will be payable for parking to minimise any potential abuse, however, bona fide customers will benefit from free parking by way of a validation scheme; customers will be able to obtain validation for their stay from one or more of the tenants' outlets that they visit, be it restaurant, cinema or hotel, for example. A car park charging regime will be established that discourages on-site parking by non-site users. For non-customers (including those that do not validate), standard charges will apply for parking. This will ensure that use of the car park by home and away football



fans visiting Colchester United's adjoining ground is suitably controlled. A Car Park Management Plan (CPMP) will be prepared and implemented prior to occupation of the site. An initial CPMP is submitted in support of this application...'

## **12.0 Open Space Provisions**

- 12.1 The nature of the development is such that there is no specific policy requirement for open space provision to accompany the proposals. That said, Members will note that there is a significant area of open space being provided and this facility will be described in more detail in the body of this report.

## **13.0 Air Quality**

- 13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones. It should be noted that the issue of impacts of the proposed development on air quality is an element that was considered in the Environmental Statement submitted as part of the planning application. Furthermore this has not given rise to concerns from the Environmental Control team.

## **14.0 Development Team and Planning Obligations**

- 14.1 This application is classed as a "Major" application and therefore there was a requirement for it to be considered by the Development Team. It was considered that Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990. The Obligations that would be agreed as part of any planning permission would be:
- Agreement with regard to target a number of job opportunities in leisure and hospitality on jobseekers/returners/college leavers in the Borough
  - Funding to provide three wireless CCTV cameras to cover the site. If the Applicant is to provide cameras agreement would be sought to agree real time monitoring
  - Contribution to ensure litter from site does not impact upon amenity outside of the site.
- 14.2 Members should however note that at the time this report was drafted the mitigation requirements in relation to highways impacts, sustainable transport etc. has not been established. Therefore an update will be provided at the Committee meeting.

## **15.0 Report**

### Principle

- 15.1 Within the adopted Local Plan the application site for this proposal is located within the North Colchester Growth Area (formerly Cuckoo Farm) and forms part of an identified Regeneration Area. Additionally, the site is part of the North Colchester Strategic Employment Zone (SEZ). Previous analysis undertaken on behalf of the Council has established that this SEZ is the highest rated employment site (CBC Employment Land Needs Assessment 2015). In the case of the North Colchester SEZ the relevant policy in the Adopted Site Allocations document of the Local Development Framework (SA NGA3 – Employment Uses in the North Growth Area) identifies the range of uses that would be acceptable in the SEZ as follows:

- (a) Research and Development, Studios, Laboratories, Hi-Tech (B1b), Light Industrial (B1c), General Industrial (B2), Storage and Warehousing (B8). Any such development will be restricted by way of condition to prevent change of use to B1a.
- (b) Display, repair and sale of vehicles and vehicle parts, including cars, boats and caravans
- (c) Indoor sport, exhibition and conferencing centres
- (d) A limited amount of retailing only where this is ancillary to another main use in Class B1b, B1c, B2 or B8
- (e) Services and facilities to meet the needs of employees in the Employment Zone
- (f) Business Uses (B1, B1a) only where already consented
- (g) *At Cuckoo Farm planning permission exists for a range of uses including an hotel (C1), a public house/restaurant (A3/4), a health and fitness centre (D2) and business units (B1). (Officer emphasis).*

15.2 Members will note that criterion (g) of the policy specifically identifies the range of uses that were established through the approval of planning application O/COL/01/1622 as being acceptable within the SEZ. Members will also be aware that the health and fitness centre, approved in principle under the outline planning permission, has subsequently been given reserved matters planning approval and has been completed – the site identified as the David Lloyd tennis facility located to the south of the application site. Lastly the site identified as Cuckoo Farm in the policy is now identified as the Northern Gateway.

15.3 Given the SEZ allocation for the application site, a key issue to be addressed in the consideration of this planning application is the principle of the use of this land for non-industrial purposes, as proposed. In this regard, it is pertinent to note that at a recent appeal decision relating to another a non-conforming land use in a defined SEZ – at Stane Park in Stanway – the Inspector, in allowing the appeal to provide a non-industrial use on the site made the following comments in relation to the provision of employment land in the borough:

‘...The site forms part of a SEZ allocation in the development plan...The Colchester Employment Land Needs Assessment (Nathaniel Lichfield and Partners 2015) is the basis of the emerging local plan to 2032. This identifies a requirement in the range of 22 to 29.8 ha and a supply of almost 77 ha...the current position, as agreed at the Inquiry... is that there are about 65 ha of vacant employment land including SEZ and Local Employment Sites...It was further agreed at the Inquiry that the take up of employment land, based on the last 10 years economic cycle, is in the region of 1 ha per year. The agreed position, therefore, is that there is 65 years’ supply which the Council agreed constituted very substantially more than sufficient land. Based upon the agreed figures, that seems a fair conclusion...’

15.4 Whilst the magnitude of the exact supply of employment land is a moot point, a new employment land study has been commissioned as part of the emerging local plan evidence base. In qualitative terms, a significant supply of employment land is known to exist. In any event, the use of the application site land, for non B-class uses has is long established – following the grant of outline planning permission in 2006,

notwithstanding the fact that the application site forms part of the defined SEZ. This current proposal does not therefore seek any further loss of employment land beyond that established by the previous outline planning permission. It is also of relevance that significant parts of the SEZ have been taken up for employment uses e.g. Flakt Woods and there remain significant areas of the SEZ that are available for employment uses.

- 15.5 Members will also be aware that at the present time the Local Plan is undergoing a Review in order to ensure that a new Plan is in place to serve Colchester until 2033 and beyond. It is the case that as part of the Review of the Local Plan the future development of North Colchester is proposed to include significant leisure, sport and recreation facilities in addition to employment generating uses. Although little material weight can be attached to emerging policy statements at this stage, it is considered useful to include the following extracts for Members' information in order that a proper context for the future aspirations for this part of the town can be established.

- 15.6 The following statement is included within the Preferred Options document:

'...The North Colchester area has been the subject of various planning applications and development in recent years and this is expected to continue through the plan period. The road infrastructure has already seen significant change with Axial Way, United Way, A12 Junction 28 and the Northern Approaches Road all opened by April 2015. The early delivery of the transport infrastructure allowed Colchester United football club to relocate to the Weston Homes Community Stadium in 2008. The stadium was part of a comprehensive development granted planning permission in 2006. The applications allowed for an element of leisure use as well as employment space to support future housing growth in the area. The uses permitted included the community stadium, health and fitness centre, an hotel, public house and other food and drink uses, some of which are under construction. The mix of uses was permitted to enable funding of the stadium and local road infrastructure...'

*Officer comment: the above statement is useful as it highlights the reason why the identified uses such as the hotel, food and drink uses etc. were originally permitted in this location i.e. as a funding source for the community stadium and stage 3 of the Northern Approach Road.*

- 15.7 It is noted that the future approach to land use at the Northern Gateway is proposed to be altered. In relation to the application site the following comment is made:

'...Approximately 4.24 hectares of land adjacent to the community stadium is allocated for mixed use reflecting the planning permission granted in 2006. It is expected that a mixed use leisure and commercial scheme will be delivered to compliment the sport offer elsewhere in the Strategic Economic Area...'

- 15.8 Additionally, the emerging policy for the North Colchester and Severalls Strategic Economic Area contains the following text in relation to the area to which this planning application relates (identified as Zone 2):

'...The area defined on the policies map as zone 2 will be safeguarded for a mix of uses to reflect the extant planning permission and to provide flexibility. Alternative non-B class uses will be permitted where they clearly demonstrate the potential for job creation and provided that they do not undermine or constrain the main purpose of the

economic function of the wider area. Uses may include an appropriate scale of leisure and commercial space and green infrastructure to enhance connectivity. No retail use will be permitted unless it is ancillary to another use...'

- 15.9 Members are also advised that the Myland and Braiswick Neighbourhood Plan has now been through public consultation and referendum and is due to be 'made' by the Council at a meeting scheduled to take place in December. Considerable weight can therefore be attached to it as a material planning consideration. It is pertinent to highlight relevant statements in relation to the Northern Gateway area in order that the possible future direction of development can be understood. The Plan includes the following comment:

*'...MCC and BRA identify the emerging Northern Gateway proposals as having the potential to deliver an array of sport and leisure facilities which will provide much needed opportunities for sport and recreation and which will make an important contribution to the sustainability of the Neighbourhood Plan Area. To that end MCC and BRA will work with CBC to ensure the proposed Northern Gateway sports and leisure development area will help to satisfy resident aspirations. The CBC Sports Strategy and Action Plan, published July 2015 will help to inform these discussions. After all "access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities" is a message at paragraph 73 of the NPPF. There is also a high demand for cultural aspects of leisure on a more local basis, for example performing arts, arts and crafts, further education, cinema and clubs of various types for all ages. These may be catered for in the promised community centres or may need to be found other dedicated venues.*

- 15.10 The following policy statement is also included:

*SPL1 – In harmony with active lifestyles afforded by greenspace provision MCC and BRA will encourage developers and CBC to enable the provision of sport and leisure facilities, as far as possible on the Chesterwell, Severalls Phase 2 and Northern Gateway developments.*

- 15.11 In considering the acceptability in principle of this proposed development taking place on the application site, the current Local Plan contains specific relevant policy by which the application must be judged. This identifies the site as an SEZ and a subsequent employment study for the Council has identified this SEZ as the highest order of this type of site within the Borough. Nevertheless, the site specific policy does recognise a range of leisure uses that were established as acceptable through the planning permission granted under O/COL/01/1622 – identified in a specific criterion. Furthermore the emerging policy base for the site, as highlighted above, does recognise a growing leisure, sport and recreation role for the Northern Gateway location – in addition to its important employment function. As advised, the weight that can be attached to this emerging policy at this stage is limited but it is felt important to advise Members of the developing policy direction.

- 15.12 In relation to the application site, the Council has received two applications for consideration. The first of these is a reserved matters submission that seeks approval for details of the hotel and A3 uses permitted by the outline planning permission, together with landscaping and parking proposals. This application was considered by the committee on the 17.1.16. At this meeting it was resolved to grant permission but this resolution is held in abeyance pending the decision of the Secretary of State whether to call-in the application for determination. Members will be aware that a health and fitness centre has already been approved and erected, identified as the David Lloyd site.
- 15.13 This full application also seeks permission for the hotel element of the development approved at the outline application stage as well as the landscaping and car parking proposals as shown on the reserved matters proposal. The full application differs from the reserved matters proposals in that it includes an increase in the amount of D2 (Assembly and Leisure) development – including the provision of an IMAX multiplex cinema – and a reduction in the amount of A3 floorspace from that established at the outline stage. Notwithstanding the acceptability of the uses established by criterion (g) of the identified policy, given the fact that the proposed cinema is a town centre use, and it will clearly be a primary element of the development (as a main visitor attractor), this planning application has been advertised as a departure from the current Local Plan, given the site's SEZ allocation.
- 15.14 As such, and as made clear in the National Planning Policy Framework (NPPF) it therefore falls for the cinema element of the proposal to be considered in terms of the sequential test with regard to location, and also the potential impact on the vitality and viability of the town centre as the highest order centre in the Borough.
- 15.15 In accordance with the requirements of the NPPF, the proposal to provide a town centre use (such as a cinema) in an out-of-town location has to be justified on the basis that there are no sites available elsewhere that could accommodate the proposed development, and which are locationally-preferable to the proposed site. Members are advised that the planning application's Environmental Impact Assessment submission includes a Leisure and Town Centre Policy Statement that considered this particular issue. The findings of the Statement have been independently analysed by consultants Nathaniel Lichfield and Partners (NLP).
- 15.16 The Assessment considered a number of possible locations that were capable of accommodating the proposed development including sites that could be considered sequentially potentially preferable to the application site. It is important to note that, as part of the process of site consideration, the applicant is not obliged to 'disaggregate' the development proposal – in other words identify locations where *parts* of the development could be provided (this point having been established through case law). The process is therefore concerned with finding sites where the proposed development could be located *in its entirety*. Three sites were identified that were capable of accommodating the development and also could be considered sequentially preferable - namely the Vineyard Gate site, land at the Cowdray Centre, and Tollgate.

- 15.17 Of the identified sites Vineyard Gate was, potentially, the most appropriate as it is located within the town centre and, therefore in the highest order location. However, the redevelopment of the Vineyard Gate site should be a retail-led scheme in policy terms (as identified in the relevant allocation policy SA TC1 (3)) and the proposed scheme does not include any retail element – being a leisure and restaurant based scheme. The location of the proposed development on this site would severely curtail the space available for retail uses. On this basis the site was discounted in the Assessment and the critique undertaken by NLP agrees with this view.
- 15.18 Land at the Cowdray Centre – identified as a ‘Town Centre Fringe Area’ in the applicant’s Leisure and Town Centre Policy Statement - was also considered as part of the sequential assessment and found to be unsuitable. Again, this is on the basis that the site is allocated for a mixed use development of predominantly residential use and an outline planning permission is in place for this type of development (ref. 151850).
- 15.19 In relation to the land at Tollgate West Members will be aware that a previous planning application for a retail and leisure development (including the provision of a cinema) has been refused by the Council and an appeal against this decision is due to take place in February of next year. Furthermore a resubmitted, identical application is with the Council for determination at the present time (24.11.16 Agenda). Additionally Members will also be aware that refusal of planning permission for a food and drink proposal at Stane Park (located near to Tollgate West) was recently overturned at appeal.
- 15.20 The adopted Local Plan identifies the relevant land at Tollgate as being in an Urban District Centre and again, in sequential terms such allocation is preferable to the location of the application site. However, pertinent to the consideration of this location as an alternative to North Colchester include the impacts of extant permission for commercial development at Stane Park and the proposal for a significant retail development identified as Tollgate Village, combined with the proposed development at Colchester Northern Gateway. Importantly, NLP identifies that the proposals for development currently allowed and proposed at Tollgate (without the inclusion of the Colchester Northern Gateway proposals) will seriously undermine the town centre’s viability and vitality. In combination with these the Colchester Northern Gateway scheme would add further pressure on the town centre. The *cumulative* impact of the proposals at Colchester Northern Gateway and those allowed and intended at Tollgate would seriously undermine the town centre’s primacy in the hierarchy of centres. It is noted that the assessment undertaken by NLP reaches this conclusion and that this view is endorsed by Council’s Spatial Policy team. Sequentially therefore it is considered that the application submission has satisfactorily demonstrated that there is no preferable site that is available for the development proposed under this application.
- 15.21 As well as the sequential issue, another issue to be considered is the impact of the development on the vitality and viability of the town centre – not least arising from the effect the development could have on existing cinema provision within the town. Members will be aware that as well as the established Odeon cinema in Head Street, the Council has recently approved another ‘boutique’ cinema, to be operated by the Curzon group, in an empty building in Queen Street. Clearly the provision of a cinema as part of this application proposal will have an impact on these existing and proposed

facilities. The review of the applicant's Assessment, carried out by NLP, does highlight that it doesn't provide sufficient detail regarding this point. That said, NLP has its own expertise with regard to this particular issue – having carried out this type of assessment previously, and provides advice on this particular point.

- 15.22 The findings of NLP in this regard are that although there will be an impact on the number of visits to the cinemas in the town the existing facilities would continue to trade – there being an unmet demand for additional cinema provision in the local region. The NLP findings are that the impact of the development is likely to be felt more during evening periods with a reduction in the amount of linked trips whereby customers to the cinema also patronise local eating and drinking facilities. During the day the vitality of the town centre would not be greatly impacted on the basis that the retail, service and food and drink offer in the town is not heavily dependent on visitors to the cinema.

#### Design, layout and scale

- 15.23 As set out in the adopted Core Strategy, North Colchester is expected to be the focus of significant new development within the Local Plan period. As identified elsewhere in this report specific policies for this planning application site are contained within the adopted Local Development Framework Site Allocations (adopted October 2010). Policy SA NGA1 – Appropriate Uses within the North Growth Area requires that '...All new development should seek to draw on the character of the existing landscape, within and adjacent to individual sites. Proposals should seek a comprehensive integration of identified existing and new green links and desire lines which link both public and private open spaces. All new development will be expected to provide on-site infrastructure as well as provide or contribute towards off site infrastructure improvements to ensure the North Growth Area objectives are achieved.'
- 15.24 The future development of the Colchester Northern Gateway site previously led to the creation of a 'Vision' document for the location – produced on behalf of the Council by Allies and Morrison. The vision document was approved by Cabinet in September 2012 and included the following key aspirations:
- A new gateway for Colchester
  - A cutting edge destination for sport and leisure
  - A distinctive place defined by memorable buildings and spaces
  - An exemplary approach to sustainability
- 15.25 The location of this site at a 'gateway' to the town, requires a development of appropriate presence and quality in order to enhance the overall character of the area and ensure its attractiveness as a destination, both locally and regionally. This is reflected in the relevant Core Strategy policy UR2 – Built Design and Character which states the Council's aim to secure high quality and inclusive design in all developments. Specifically the following statement is made in the policy '...High-quality design should also create well-integrated places that are usable, accessible, durable and adaptable. Creative design will be encouraged to inject fresh visual interest into the public realm and to showcase innovative sustainable construction methods...'
- The architectural approach taken with the submitted scheme follows a contemporary character. In the context of the surroundings it is considered that this approach is appropriate. Firstly because the surrounding form of development follows, generally, a

contemporary approach (for example the Community Stadium, David Lloyd Health and Fitness Centre, commercial development along Axial Way to the east and the restaurant facility to the north of the A.12 trunk road). Secondly, because the use of this type of architecture, within an extensive green 'parkland' setting has sufficient drama and presence. Elements such as curved forms and roofs give the buildings an 'organic' appearance. Furthermore the provision of a high-quality public realm, as part of a bespoke landscaping approach, would further augment the overall visual value of the scheme as a development proposal in this location.

- 15.26 Members will note that the position of buildings is such that important spaces such as United Way and also Via Urbis Romanae are directly addressed by built form.
- 15.27 Members are advised that pre-submission discussions took place with the applicant, in order that issues around layout and design could be addressed prior to the formal submission of the application. Since the submission of the application, additional minor revisions have been secured in order to further improve the design and appearance of the proposed development. Revisions include variation to the design of the roof of the hotel in order to augment its curvature, bringing it closer to the United Way public realm. The roof overhang of the building identified as the Leisure Curve has been reduced and the building itself slightly repositioned in order that its potential impact on a tree to be retained is reduced. A consequence of the relocation is to reduce the space between the Leisure Curve and the Hotel, thereby making the service area between the buildings less prominent and better screened. Another minor revision post-submission is the adjustment of the southern end of the Leisure Curve building in order to improve its visual relationship with United Way – which would be a key public space in the overall development.
- 15.28 Other minor changes that have been secured include the use of muted colour tones for the finishes of the buildings in lieu of the primary colour palette that was originally proposed. This will have the effect of ensuring that the overall appearance of the development is more sensitive in the landscape.
- 15.29 The arrangement of buildings creates a main focal point between that is a key shared space within the development proposals. This space is shown as being treated as a hard and soft landscaped location. The intention is that the space is used, rather than providing merely a pleasant area to walk through on the way to the facilities on offer. To this end the proposed landscaping scheme includes features such as the viewing platform and slide leading off the entrance to the car park at the northern end of the open space. Additionally the central section of the space would incorporate a formal seating area, lighting and features that would add to the attractiveness of this space. It should be noted that the proposed areas of soft landscaping would be bounded by walling features that would provide additional visual interest, and also act as ad-hoc seating that would encourage visitors to linger in the space. The space would also include permanent water features that would add to the overall appearance of the development while at the same time underpinning a sustainable approach to surface drainage. Members are advised that the open space serving the development would be maintained by a management company as opposed to being adopted by the Borough Council.



- 15.30 The overall scale, height and massing of the proposed development is significant. However, it is considered as a planning judgement that the size of the proposed buildings is an appropriate design response to the role that the development would have in defining the character of this important gateway location in the town, and acting as a leisure destination. Clearly the established stadium building is of relatively significant scale; other building that has taken place thus far is admittedly smaller scale in comparison but in this setting still has considerable visual impact. In this context it is considered that the proposed group of buildings would not appear overly large or incongruous. Additionally the location of the buildings is such that they would not appear as an adjunct to existing development (save for the Stadium and the David Lloyd site), but rather as new built form within an essentially 'parkland' setting. It is considered that the scale and massing of the development is an appropriate design response within this type of setting. Of course, a key consideration is also the appearance and subsequent impact of the development when viewed from farther afield – in particular the nearby trunk road and the route of the Northern Approach Road.
- 15.31 In the case of views from the A12 it is case that the Stadium currently dominates views to the south around junction 28. Bearing in mind that the development would in all likelihood act as a sub-regional attractor, it is important that the scale of development is appropriate to the location to underpin its crucial role in the creation of a 'gateway' development, whilst at the same time not being visually overwhelmed by the Stadium. Additionally the proposed development would address the VUR, primarily through the hotel building. Any building in this location is required to have sufficient presence and impact and it is considered the scale of this building, together with its design, would satisfactorily ensure these requirements are achieved.

#### Impact on surroundings and neighbouring properties

- 15.32 In terms of the impacts of the proposed development on the surroundings and the amenity of neighbouring properties it is concluded that the proposal would not be unacceptably harmful. As advised above, it is considered that the visual impact of the proposal would be appropriate, given the location and function of the development. In terms of amenity impact (generated mainly, if not solely, by noise from traffic generated by and visitors to the development), it is considered that the proposal would be acceptable. It is the case that the environmental impacts of the development have been quantified through the Environmental Statement that accompanied the application submission. Therefore issues such as noise and air pollution were considered in detail.
- 15.33 The nearest existing development to the application site is the Stadium which is immediately to the west and the David Lloyd development that is to the south of the main part of the site, adjacent to the proposed footpath and cycleway link between United Way and Tower Lane. As a planning judgement it is considered that the proposed development would not have a deleterious impact on the amenity of these existing developments – not least due to their shared commercial nature. In terms of the nearest residential development, this is located along Bosted Road to the west, with an enclave located further north on this road, to the north of the trunk road. Significant newer residential development is located to the south east of the site – the nearest of which is the dwellings located at Oxley Parker Drive. In both cases it is

considered that the relative remoteness of the development would mean that the amenity of the occupiers of these dwellings would not be unacceptably impaired by the proposed development. The future development of the Severalls hospital site to the south of the site will bring residential development nearer to the application site. Nevertheless it is not anticipated that the proposed development would have a detrimental impact on the amenity of the future occupiers of these dwellings. Again, the site is relatively remote and the Severalls site benefits from significant tree planting that would assist in filtering views, and hence the overall visual impact of the development.

- 15.34 Members should note that whereas the reserved matters proposal also under consideration is impacted by the conditions that were imposed under the outline planning permission, it is the case that the proposed hours of operation of the development covered by this full application (which of course includes a cinema use) are extensive – and would extend into the early hours of the morning. Nevertheless the Environmental Control officer has not raised an objection to the proposed hours of operation. It has also been pointed out by the applicant's agent that the proposed hours of use would reflect the maximum that would be applicable to the development and in all likelihood the regular hours of operation would be less. In any event, as noted by the Environmental Control Officer, the hours of operation that have been applied for would mean that the operator or operators of the facility would have to apply for a license from the Council as Licensing Authority.

#### Amenity Provision

- 15.35 Due to the nature of the development there is no policy requirement for the provision of private amenity as such. The key public element that would be secured as part of the proposal would be the extensive area of open space located at the centre of the proposed development, between the two groups of built form, which will have a significant role in establishing the overall character of the development as experienced by members of the public. The treatment of this space is therefore of fundamental importance as it has to have attractiveness as a facility, in which visitors would want to spend time.
- 15.36 The proposed open space consists of a variety of soft and hard landscape treatments that would include waterbodies, sculptures and street furniture that would also make an aesthetic contribution. The following extracts are taken from the Landscape Strategy that forms part of the application submission:

‘...Soft landscaping will dominate the space, consisting of grassed landscape mounds and hollows, forming informal play areas and serving as a water storage area at times of heavy rainfall. Structure planting will provide a sense of scale to the space and form a microclimate. Seasonal variation in the planting will provide year round interest...The tree planting strategy is divided into five categories: avenue trees, street trees, waterside trees, buffer trees and ornamental trees...The aim is to plant 169 new trees that will complement the retained tree structure, proposed development, hierarchy of spaces and individual character...the furniture strategy seeks to reinforce the unique image of Colchester Northern Gateway and be robust, monolithic and fun in character. The furniture will articulate the brick, timber, metal palette of the buildings and hard landscape and create a contemporary look for the scheme...Public art strategy will form a large part of the public realm, providing a series of interactive pieces that encourage the public to linger, sharing the space with others and increasing a sense

of community. Other pieces will provide links through the site to aid pedestrian legibility and orientation. The emerging art strategy aims to include opportunities for an open call to all artists to create artworks inspired by Colchester's past, present and future for the site. Elements will include interactive art pieces and water fountains, playful benches enabling small children to play on. The landscape will also accommodate some of the internal activities externally, for example adventure golf or bouldering could spill outside...'

- 15.37 As well as the main landscaped open space to the north of the site, the submitted reserved matters includes details of the proposed footpath and cycleway link between the main (northern) part of the site and Tower Lane to the south. This would consist of a shared cycle and pedestrian 'meandering' route set amidst landscaping. The Landscape Strategy document comments on this overall space as follows:

'...The new sinuous cycle and pedestrian path is an off-road route for users that provides a link to the Northern site, Severalls, the stadium as well as residential communities locally. To help enhance the existing ecology, the route is punctuated by patterned planting of grass, wildflowers and wild shrub species to create a habitat that will increase biodiversity in the area...The mass planting of trees to the new cycle/pedestrian path has been created to emulate the woodland effect of Severalls Hospital...'

- 15.38 The provision of this feature would be a practical feature to encourage non-car based trips to the development. This is particularly important bearing in mind that the redevelopment of the Severalls site for *inter alia* residential purposes includes the provision of a link to Tower Lane.

#### Highway Matters

- 15.39 As part of the application submission an assessment of the traffic impacts arising from the proposed development was included. This document *inter alia* also considered the issue of parking provision to serve the development. Members are advised that following on from analysis of the initial Traffic Assessment by consultants working for ECC Highways, further work has been carried out to address queries that had been raised by that Authority.
- 15.40 At the time this report was drafted the final position of the Highway Authority with regard to the proposal had not been provided and Members will be updated accordingly at the Committee meeting. In terms of sustainable transport, the development relies on the road infrastructure provided previously (United Way/Axial Way/VUR). There is a subway link to the east of the VUR and a footway cycleway link southwards to Tower Lane and onwards to Severalls. The developer has proposed to fund a new bus service linking the site to the town centre and rail station. This service would be operated outside the times served by the existing No.11 service. The County Highway Authority sought a modified route to serve a wider area including the Hospital and Rosewood development (Severalls Phase I). The Transportation Policy Manager remains concerned that the proposed solution may lapse after the funding period ceases should the service not prove viable. Further discussions with ECC Passenger Transport has confirmed that they are also supportive of a mixed solution to include extension of some existing bus services and a demand responsive operation to cover the late evening period and provide sustainable access throughout the trading period. These discussions are on-going and officer have requested delegated powers to

negotiate the most effective and economic solution to providing a strategic solution to sustainable transport for the Northern Gateway development. At the time of writing, ECC remain unconvinced that the contribution offered is adequate and this issue will be considered further by Development Team and a verbal update provided at the committee.

### Other Matters

- 15.41 Members will note that the consultation responses received from ECC SuDS team, Environment Agency, Anglian Water Authority, Natural England and Historic England do not raise an objection to the proposal, subject to the imposition of conditions and informatives on a grant of planning permission.
- 15.42 Additionally, the Council's Landscape Planning Officer, Arboricultural Officer and Archaeological Adviser have no objection – again some conditions are requested.

## **16.0 Conclusion**

- 16.1 As demonstrated in this report, the application site is located within a defined SEZ – one of three identified in the borough, the others being located at Stanway and the University of Essex. Additionally, the Zone at North Colchester is recognised as the highest order Zone within the Borough. Relevant policy identifies acceptable uses that may be located within such Zones. Primary Uses are identified as B1b (Research and Development, Studios, Laboratories, Hi-Tech), B1c (Light Industry), B2 (General Industry) and B8 (Storage and Distribution) uses as defined in the Use Classes Order. Secondary uses are identified as B1a (Offices), C1 (Hotels), D2 (Assembly and Leisure) and Sui Generis Uses.
- 16.2 In the case of the North Colchester SEZ a site specific policy, as well as identifying the range of acceptable uses, also includes the uses that were approved as part of the outline planning permission granted under application O/COL/01/1622. An element of the approved uses i.e. the David Lloyd centre has subsequently been provided. A current separate application seeks approval for details relating to the hotel and A3 elements of the permission, under application ref. 160623, together with the car parking to serve the development and the landscaping proposals. Committee has resolved at grant permission for these reserved matters on the 17 November 2016.
- 16.3 This full planning application also seeks permission for the hotel, car parking and landscaping as submitted under the reserved matters application. However, the submission also seeks planning permission to erect a cinema on the site (within the doughnut blank spot at the centre of the reserved matters application 160623) and increase the amount of D2 (Assembly and Leisure) floorspace within the Leisure Curve whilst reducing the A3 element that was established at the outline planning permission stage. As the provision of the cinema would constitute a town centre use, and the site is in an out of town location and is defined as an SEZ, the proposal represents a departure from the adopted Local Plan. Furthermore the requirements of the NPPF are that the provision of a town centre use in this location would have to be justified in terms of the sequential test, and the impact of the proposal on the vitality and viability of the town centre assessed.

- 16.4 In relation to these issues the planning application includes a report that considers the sequential issues pertaining to the proposal, as well a qualitative impact analysis. The report concludes that there is no other site that is firstly sequentially preferable and also available to accommodate the proposed entire development. Also the impact of the cinema on the town centre (including existing and proposed cinema facilities in the town) was acceptable.
- 16.5 The report has been independently assessed by NLP and their assessment did identify some shortfalls. For example, NLP did identify that the assessment did not adequately consider the impact of the proposed cinema on existing/proposed facilities in the town centre. However, NLP are able to carry out this analysis and have concluded that the impact of the proposed cinema on the town centre is not a sustainable reason for refusal. Importantly, the Council's Spatial Policy Team has considered the findings of the application submission and the NLP critique and concludes that there is no policy objection to the proposals.
- 16.6 Leading on from this the Council's aspirations for development at the Northern Gateway are to create a place of appropriate status, reflecting its emerging role as a sport and leisure destination. The facilities proposed on the application site will be a key element within the overall concept, and the quality of development must attain an appropriate standard. It is considered that the submitted scheme achieves this aim. It is considered that the buildings themselves are of a scale and design appropriate to the setting and would enable a context of development to be established here i.e. visually dramatic structures within a landscaped setting. Furthermore the open spaces serving the development should encourage interaction and involvement in their own right and, again, it is considered that the submitted proposals demonstrate that this will be successfully achieved.
- 16.7 A s.106 package has been identified that would mitigate the impacts of the development. Additionally the scheme proposes to create a link with the wider existing Public Right of Way network which would encourage visits to the site by foot and cycle. Given the pending growth of residential development in the vicinity of the application site, in particular at the former Severalls hospital site, it is felt that this improvement will prove increasingly important in the future.
- 16.8 On the basis of the above the officer recommendation to Members is to approve the planning application, subject to the s106 agreement being secured, and also subject to the list of conditions that have been included at the end of this report.

## **17.0 Recommendation**

- 17.1 Members are advised that under the Town and Country Planning (Consultation) (England) Direction 2009 if the recommendation of approval is accepted it will be necessary to refer the application to the Secretary of State in order that a decision can be made with regard to whether the application is to be called in for determination. The following recommendation is made:

1. APPROVE 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 Environmental and Protective Services to refuse the

application, or otherwise to be authorised to complete the agreement to provide the following:

- Agreement with regard to target a number of job opportunities in leisure and hospitality on jobseekers/returners/college leavers in the Borough
- Funding to provide three wireless CCTV cameras to cover the site. If the Applicant is to provide cameras agreement would be sought to agree real time monitoring
- Contribution to ensure litter from site does not impact upon amenity outside of the site.

Plus the mitigation required as a result of further assessment of the highway issues relating to the development - (Members to be advised further at the Committee meeting) to include sustainable transport measures as outlined at paragraph 15.39 above.

17.2 On completion of the legal agreement, the Head of Service be authorised to grant planning permission subject to the following conditions:

## **18.0 Conditions**

### **1 - Time Limit for Full Permissions**

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

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

### **2 - \*Development to Accord With Approved Plans**

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

- C108/P101 - Location Plan (Planning Boundary)
- C108/P102 - Existing North Site Plan
- C108/P103 - Existing South Site Plan
- C108/P104 pl1 - Site Plan
- C108 P105 pl1 - Detailed Site Plan
- C108/P106 - Proposed Car Park Plans
- C108/P107 - Cinema and Inline Restaurants Ground Floor Plan
- C108/P108 - Cinema and Inline Restaurants Auditorium and First Floor Plan
- C108/P109 - Cinema and Inline Restaurants Lower Projection Level Plan
- C108/P110 - Cinema and Inline Restaurants Upper Projection Level Plan
- C108/P111 - Cinema and Inline Restaurants Plant Well Level Plan
- C108/P112 - Cinema and Inline Restaurants Roof Plan
- C108/P113 - Cinema and Inline Restaurants Roof Plan
- C108/P114 - Cinema and Inline Restaurants Section CC
- C108/P115 - Cinema and Inline Restaurants East and South Elevations
- C108/P116 - Cinema and Inline Restaurants West and North Elevations
- C108/P117 pl1 - Leisure Curve Ground Floor Plan
- C108/P118 pl1 - Leisure Curve First Floor Plan
- C108/P119 pl1 - Leisure Curve Sections AA and BB
- C108/P120 pl1 - Leisure Curve West and South Elevations

- C108/P121 pl1 - Leisure Curve East and North Elevations
- C108/P122 pl1 - Hotel Ground Floor Plan
- C108/P123 pl1 - Hotel First and Second Floor Plan
- C108/P124 pl1 - Hotel Third Floor Plan
- C108/P125 pl1 - Hotel Fourth Floor Plan
- C108/P126 pl1 - Hotel East and South Elevations
- C108/P127 pl1 - Hotel West and North Elevations
- C108/P128 pl1 - Leisure Curve and Hotel Roof Plan
- C108/P129 pl1 - Site Sections - Sections 1 and 2
- C108/P130 pl1 - Site Sections - Sections 3 and 4
- C108/P131 - Bin Enclosure
- C108/P132 - Substation Enclosure
- C108/P133 - Inline Units Detailed Part East Elevation
- C108/P134 - Inline Units Detailed Part South Elevation
- C108/P135 pl1 - Detailed Part Leisure Curve Elevation - Two Storey Elevation
- C108/P136 pl1 - Detailed Part Leisure Curve Elevation - Double Height Elevation #
- C108/P137 pl1 - Detailed Part Elevation - Hotel Entrance
- C108/P138 pl1 - Detailed Part Elevation - Hotel South and East Elevation
- C108/P139 - Car Park Facade Conditions Elevation and Section Details
- C108/P144 - Leisure Curve North and South Elevation (roof overhang cutback)
- 595\_PL\_006 P02 - GA Plan
- 595\_PL\_007 P02 - Rendered Landscape Plan
- 595\_PL\_008 P02 - Site Wide Rendered Plan
- 595\_PL\_009 P02 - Cycle Expansion Plan
- MMD-360079-E-DR-00-XX-2701 - External Lighting Layout

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

### 3 - \*Access for Disabled Persons

No works shall take place until a scheme indicating the provisions to be made for disabled people has been submitted to and approved, in writing, by the Local Planning Authority. The agreed scheme shall be implemented before the development hereby permitted is brought into use.

Reason: To ensure that convenient provisions to facilitate access for all.

### 4 - Materials to be Agreed

No works shall take place until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.

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

#### 5 - Surfacing Material to be Agreed

Prior to commencement of the development hereby approved full details of the surfacing materials to be used for all private, non-adoptable accessways, driveways, footpaths, courtyards, parking areas and forecourts shall be submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason: There is insufficient information within the submitted application to ensure that these details are satisfactory in relation to their context and where such detail are considered important to the character of the area.

#### 6 - Non-Residential BREEAM (Part 1 of 2)

No works shall take place until evidence that the development is registered with a BREEAM certification body and a pre-assessment report (or design stage certificate with interim rating if available) has been submitted indicating that the development can achieve a final BREEAM rating level of at least Very Good.

Reason: To ensure that the completed development is sustainable and makes efficient use of energy, water and materials.

#### 7 -Non-Residential BREEAM (Part 2 of 2)

Within 6 months of the occupation of the development, a final Certificate shall have been submitted to the Local Planning Authority certifying that BREEAM rating Very Good has been achieved for this development.

Reason: To ensure that the completed development is sustainable and makes efficient use of energy, water and materials.

#### 8 - Refuse and Recycling As Shown

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

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

#### 9 - Communal Storage Areas

Prior to the first occupation of the development hereby permitted, details of the management company responsible for the maintenance of communal storage areas and for their maintenance of such areas, shall be submitted to, and agreed in writing by, the Local Planning Authority. Such detail as shall have been agreed shall thereafter continue.

Reason: The application contains insufficient information to ensure that the communal storage areas will be maintained to a satisfactory condition and there is a potential adverse impact on the quality of the surrounding environment.



#### 10 - Litter

Prior to the first occupation of the development hereby permitted, equipment, facilities and other appropriate arrangements for the disposal and collection of litter resulting from the development shall be provided in accordance with details that shall have previously been submitted to, and agreed in writing by, the Local Planning Authority. Any such equipment, facilities and arrangements as shall have been agreed shall thereafter be retained and maintained in good order.

Reason: In order to ensure that there is satisfactory provision in place for the storage and collection of litter within the public environment where the application lacks sufficient information.

#### 11 - Non-Standard Condition/Reason - Foul Water Strategy

No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the Local Planning Authority.

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

#### 12 - Non-Standard Condition/Reason - Surface Water Drainage Scheme

No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the Local Planning Authority.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site To ensure the effective operation of SuDS over the lifetime of the development To provide mitigation of any environmental harm which may be caused to the local water environment.

#### 13 - Non-Standard Condition/Reason - Minimise Risk of Offsite Flooding

No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall subsequently be implemented as approved in accordance with a timescale previously agreed in writing with the Local Planning Authority.

Reason: The National Planning Policy Framework paragraph 103 states that Local Planning Authorities should ensure flood risk is not increased elsewhere by development.

#### 14 - Non-Standard Condition/Reason - Surface Water Maintenance Plan

No works shall take place until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed in writing by the Local Planning Authority.

Reason: To ensure appropriate management arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk.

#### 15 - Non-Standard Condition/Reason - Yearly Maintenance Logs

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

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

#### 16 - Non-Standard Condition/Reason - Removal of Permitted Development Rights

Notwithstanding the provisions of Article 3, Schedule 2 Part 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) the development hereby approved shall be used solely as described in the planning application submission documents and supporting materials and for no other purpose(s) in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent in any Statutory instrument revoking and re-enacting that Order with or without modification).

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

#### 17 - \*Full Landscape Proposals TBA

No works shall take place 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:

- PROPOSED FINISHED LEVELS OR CONTOURS;
- MEANS OF ENCLOSURE;
- CAR PARKING LAYOUTS;
- 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.);
- RETAINED HISTORIC LANDSCAPE FEATURES;
- PROPOSALS FOR RESTORATION;
- PLANTING PLANS;
- WRITTEN SPECIFICATIONS (INCLUDING CULTIVATION AND OTHER OPERATIONS ASSOCIATED WITH PLANT AND GRASS ESTABLISHMENT);
- SCHEDULES OF PLANTS, NOTING SPECIES, PLANT SIZES AND PROPOSED NUMBERS/DENSITIES WHERE APPROPRIATE; AND
- 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

## 18 - 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.

## 19 - Earthworks

No works shall take place until details of all earthworks have been submitted to and agreed, in writing, by the Local Planning Authority. These details shall include 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. The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that any earthworks are acceptable in relation to their surroundings.

## 20 - 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.

## 21 - Tree and Natural Feature Protection: Entire Site

No burning or storage of materials shall take place where damage could be caused to any tree, shrub or other natural feature to be retained on the site or on adjoining land (see BS 5837).

Reason: To protect the health of trees, shrubs and other natural features to be retained in the interest of amenity.

## 22 - Tree Canopy Hand Excavation

During all construction work carried out underneath the canopies of any trees on the site, including the provision of services, any excavation shall only be undertaken by hand. All tree roots exceeding 5 cm in diameter shall be retained and any pipes and cables shall be inserted under the roots.

Reason: To protect trees on the site in the interest of visual amenity.

### 23 - Public Art

No works shall take place until a scheme indicating the provision of public art and including a timetable for implementation has been submitted to and approved, in writing, by the Local Planning Authority. This scheme shall thereafter be carried in accordance with the detail approved and retained as such thereafter unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that this development scheme makes a contribution to the Borough in the field of arts and culture and to enhance the appearance of the development and visual amenity.

### 24 - 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.

### 25 - Limits to Hours of Work

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

Weekdays: 8am - 6pm

Saturdays: 8am - 1pm

Sundays and Public/Bank Holidays: Not at all

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.

### 26 - \*Restriction of Hours of Operation

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

Weekdays: 6:30am - 2:00am

Fridays, Saturdays and on Sundays (where followed by a Bank Holiday or other statutory holiday: 6:30am - 3:30am

The hotel will be a 24 hour use.

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. Note: Premises requiring a License will need to apply to the Licensing Authority and each application will be assessed on its own merits; there is no guarantee that the above hours would be approved.

## 27 - \*Restricted Hours of Delivery

No deliveries shall be received at, or despatched from, the site outside of the following times:  
Weekdays: 0700 - 1900

Saturdays: 0800 - 1900

Sundays and Public Holidays: Not at All

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.

## 28 - Food Premises (Control of Fumes and Odours)

Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed 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 and odours 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.

## 29 - Grease Traps Required

Prior to the first use of the development hereby permitted, any foul water drains serving the kitchen shall be fitted with grease traps that shall at all times thereafter be retained and maintained in good working order in accordance with the manufacturer's instructions.

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

## 30 - Site Boundary Noise Levels

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to 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.

## 31 - Restriction of Amplified Music

Prior to the first use or occupation of the development hereby permitted, the level of internal amplified sound shall be restricted by the installation and use of a noise-limiting device that complies with details that shall have been submitted to and agreed, in writing, by the Local Planning Authority. Thereafter, such devices shall be retained and operated in accordance with the approved specification and working order at all times.

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 and disturbance from amplified noise, as there is insufficient information within the submitted application.

### 32 - Self-Closing Doors

Prior to the first use or occupation of the development hereby permitted, all doors allowing access and egress to the premises shall be self-closing and shall be maintained as such, and kept free from obstruction, at all times thereafter.

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.

### 33 - Sound Insulation on Any Building

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

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

### 34 - \*Light Pollution for Major Development

Prior to the first 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 EZ3 SMALL TOWN CENTRES OR URBAN LOCATIONS 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: 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

### 35 - Details of Floodlighting

No works shall take place until details of any floodlighting have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out and maintained in accordance with the approved details.

Reason: To ensure that any floodlighting at the site is of a satisfactory specification and to ensure that it will not cause any undue harm or loss of amenity to the surroundings area.

### 36 - Illuminated Signs

Any externally illuminated sign shall comply with the guidelines in the current "Institution of Lighting Engineers Guidance TR5 Brightness of Illuminated Advertisements".

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

### 37 - External Light Fixtures TBA

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

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

### 38 - Non-Standard Condition/Reason – External Lighting

All external lighting serving the buildings hereby approved shall only be illuminated during the authorised hours of opening of those buildings.

Reason: To control periods of illumination in order to reduce the risks of any undesirable effects of light pollution.

### 39 - 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

#### 40 - 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

#### 41 - Contaminated Land Pt. 3 of 4 (Implementation of Approved Remediation)

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

#### 42 - 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 39, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 40, 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 41.

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.



#### 43 - \*Validation Certificate

Prior to the first OCCUPATION/USE of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 40.

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.

#### 44 - Oil Interceptor Required

Prior to being discharged into any watercourse, surface water sewer or soakaway all surface water drainage shall be passed through an oil interceptor designed and constructed to have a capacity compatible with the site being drained. Roof water shall not pass through the interceptor.

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

#### 45 - Ecological Survey

No works shall take place until an ecological survey of the site shall be undertaken with a detailed assessment of the impact of the proposed development thereon and the survey (together with any intended remedial measures) has been submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with such agreed details.

Reason: To allow proper consideration of the impact of the development on the contribution of nature conservation interests to the amenity of the area.

#### 46 - Non-Standard Condition/Reason – Electric Charging Points

Prior to the commencement of the development hereby permitted a scheme for the provision of electric charging points for vehicles shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the type of charging point to be provided, their location, a timeframe for their implementation and details of their on-going management and maintenance. The development shall be implemented in accordance with the approved details.

Reason: In the interest of promoting sustainable transport modes and reducing pollution.

#### 47 - Non-Standard Condition/Reason - Crossing point on United Way required

Prior to the commencement of works necessary to implement the permission hereby granted details of a pedestrian/cycle crossing of United Way, that would serve the proposed pedestrian /cycle route that would link Tower Lane with United Way, shall be submitted to and agreed in writing by the Local Planning Authority. The agreed scheme shall be implemented to the satisfaction of the Local Planning Authority (in liaison with the Highway Authority) prior to initial beneficial occupation of any part of the development hereby approved and shall be retained as such.

Reason: to ensure that there is a safe point of crossing for pedestrians and cyclists accessing the site from the south, in the interests of promoting sustainable access provision.

## 19.0 Informatives

### (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) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

### (3) – Informative on Conditions stating prior to commencement/occupation

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

### (4) – 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) Informative on Noise and sound Insulation Competent Persons

PLEASE NOTE that, with regard to and noise measurement and sound insulation, a competent person is defined as 'someone who holds a recognised qualification in acoustics and/or can demonstrate relevant experience'.

### (6) – 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.

### (7) – Informative on works affecting Highway land

PLEASE NOTE: No works affecting the highway should be carried out without prior arrangement with, and to the requirements and satisfaction of, the Highways Authority. The applicant is advised to contact Essex County Council on 08456037631, or via email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to Essex Highways, Colchester Highways Depot, 653 The Crescent, Colchester, CO4 9YQ with regard to the necessary application and requirements.

(8) Informative on Public Rights of Way

PLEASE NOTE: The applicant/developer is advised that the application site is, or appears to be, affected by the existence of a public right of way. It should be noted that:

(i) it is an offence to obstruct or divert a public right of way (or otherwise prevent free passage on it) without the proper authority having been first obtained. In the first instance contact should be made with the Public Rights of Way Office, Highways and Transportation Services, Essex County Council, County Hall, Chelmsford, Essex CM1 1QH. The telephone number is 01245 437563. (ii) The granting of planning permission does not authorise the undertaking of any work on a public right of way. Where it is necessary for a right of way to be stopped-up or diverted in order that development may take place, no work may take place upon the line of the right of way until an appropriate order has been made and confirmed (see (i) above). The applicant/developer should note that there is a charge for making a change to the rights of way network. (iii) Where a private means of access coincides with a public right of way, the granting of planning permission cannot authorise the erection of gates across the line or the carrying out of any works on the surface of the right of way and that permission for any changes to the surface must be sought from the highway authority (Essex County Council).

(9) – Informative on Bats

PLEASE NOTE that it is understood that bat roosts exist within the application site. Bats are a statutorily protected species, and it is the developer's responsibility to ensure the requirements of the Wildlife and Countryside Act 1981 which relate to the protection of bats and their roosts are fully complied with.

(10) Non Standard Informative

Any drainage features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.

(11) - Non Standard Informative

Changes to existing water courses may require separate consent under the Land Drainage Act before works take place. More information about consenting may be obtained from ECC as Lead Local Flood Authority.

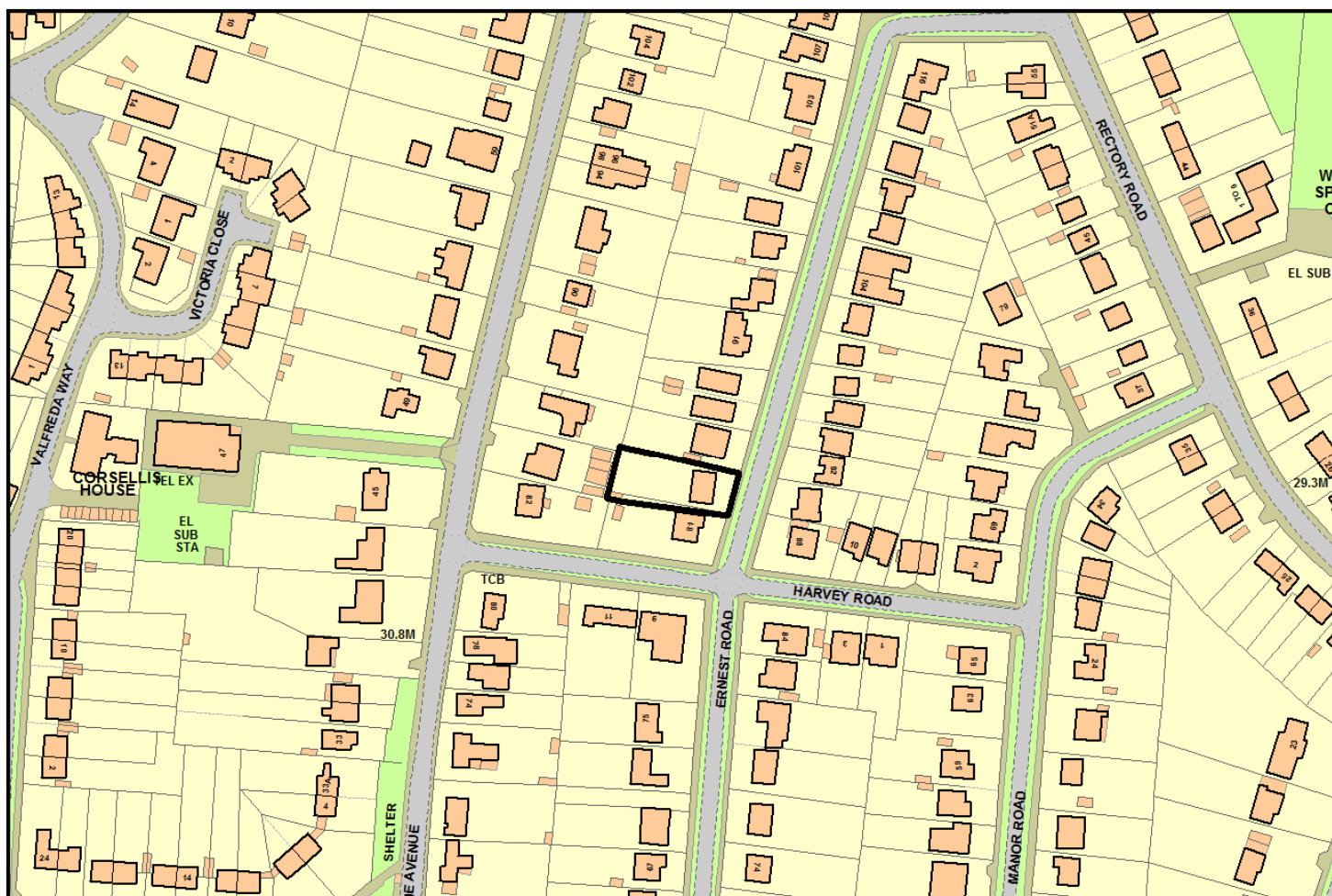
(12) - Non Standard Informative

An application to discharge trade effluent must be made to Anglian Water and must have been obtained before any discharge of trade effluent can be made to the public sewer. Anglian Water recommends that petrol / oil interceptors be fitted in all car parking/washing/repair facilities. Failure to enforce the effective use of such facilities could result in pollution of the local watercourse and may constitute an offence.

Anglian Water also recommends the installation of a properly maintained fat traps on all catering establishments. Failure to do so may result in this and other properties suffering blocked drains, sewage flooding and consequential environmental and amenity impact and may also constitute an offence under section 111 of the Water Industry Act 1991.

## **20.0 Positivity Statement**

- 20.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



**Application No:** 162422

**Location:** 83 Ernest Road, Wivenhoe, CO7 9LJ

**Scale (approx):** 1:1250

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**Site:**                    **83 Ernest Road, Wivenhoe, CO7 9LJ**

**Application No:**   **162422**

**Date Received:**    13 October 2016

**Applicant:**           Mrs Hannah De La Rue

**Development:**     Erection of replacement ancillary outbuilding for storage.

**Ward:**                 Wivenhoe

**Summary of Recommendation:** Conditional Approval

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

- 1.1    This application is referred to the Planning Committee because Hannah de la Rue, the applicant, is an employee of Colchester Borough Council.

### **2.0    Synopsis**

- 2.1    The key issues explored below are the proposal for a new outbuilding to the rear garden of 83 Ernest road. Also discussed is the proximity of the proposal to an established tree.

### **3.0    Site Description and Context**

- 3.1    The site sits in a residential area, dominated by 1960's/70's detached bungalows and chalet dwellings. Many of these having been extended. To the North, South and West lie other residential plots, whilst the East side of the site fronts the highway. The site has front drive parking for 3 or 4 vehicles. To the rear of the site are neighbouring outbuildings and to the South there is a building that is presumed to be an annex. Where the proposal meets the Western border there is a large oak tree to the other side of the boundary.

### **4.0    Description of the Proposal**

- 4.1    The proposal is for an outbuilding in the rear garden of the site.

### **5.0    Land Use Allocation**

- 5.1    The site is located within the defined settlement limits and a residential area where development such as this is acceptable in principle.

### **6.0    Relevant Planning History**

- 6.1    There is no planning history that has relevance to this 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 also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations  
UR2 - Built Design and Character

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):

DP1 Design and Amenity  
DP13 Dwelling Alterations, Extensions and Replacement Dwellings

7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

Sustainable Construction  
The Essex Design Guide  
External Materials in New Developments

## **8.0 Consultations**

8.1 The tree officer at Colchester Borough Council has recommended a condition for an arboriculture impact assessment report and associated method statement.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

## **9.0 Parish Council Response**

9.1 Wivenhoe Town Council have stated that whilst they have no material planning objections, but wish the Council to take the views of neighbours into account.

## **10.0 Representations**

10.1 None received.

## **11.0 Parking Provision**

11.1 Parking provision will remain unaltered.

## **12.0 Open Space Provisions**

- 12.1 This scheme raises no concerns regarding open space.

## **13.0 Air Quality**

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

## **14.0 Development Team and Planning Obligations**

- 14.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

## **15.0 Report**

### Design, Appearance, Materials

- 15.1 The design of the proposed outbuilding is satisfactory. Whilst fairly large in scale, it would be placed to the rear of the garden and would have minimal effect on the character of the area or the setting of the dwelling. The design is fairly standard for an outbuilding. It would have two sets of double doors and a sail hatch to its front and two windows to one side. The materials to be used would be unobtrusive. The external materials would be hardiplank (or similar) to the walls, upvc windows, timber doors and concrete roof tiles.

### Scale, Form

- 15.2 The scale of the proposed outbuilding is not significant. It would be sited 1.5 m from the rear boundary and 0.7m from the Southern boundary. It would be 2.02 m high to its eaves and 3.32 m to its ridge. The footprint is proposed to be 6.9 m long by 4.58 m wide.  
There would be gable ends to its front and rear elevations.

### Amenity

- 15.3 The proposal would not be materially overbearing to neighbours, nor would it cause material, harmful loss of light or overshadowing to neighbouring properties.

### Trees

- 15.4 There is a mature oak tree to the rear of the application site. Development close to this tree will be subject to an arboriculture condition.

## **16.0 Conclusion**

- 16.1 The proposed outbuilding would be of a standard form and would not create amenity issues for neighbours. Subject to an arboriculture condition, the application is recommended for approval.



## **17.0 Recommendation**

17.1 **APPROVE** subject to the following conditions:

## **18.0 Conditions**

### **1 - Time Limit for Full Permissions**

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

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

### **2 - \*Development to Accord With Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 83ER-10,11,and 12.

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

### **3 - Non-Standard Condition/Reason**

No works or development shall be carried out until an Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan in accordance with BS 5837, have been submitted to and approved, in writing, by the Local Planning Authority (LPA). Unless otherwise agreed, the details shall include the retention of an Arboricultural Consultant to monitor and periodically report to the LPA, the status of all tree works, tree protection measures, and any other arboricultural issues arising during the course of development. The development shall then be carried out strictly in accordance with the approved method statement.

Reason: To adequately safeguard the continuity of amenity afforded by existing trees.

## **19.0 Positivity Statement**

19.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

