

# Planning Committee Meeting

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

**Thursday, 09 June 2022 at 18:00**

**The Planning Committee** deals with planning applications, planning enforcement, public rights of way and certain highway matters. If you wish to come to the meeting please arrive in good time. Usually, only one person for and one person against each application is permitted.

# Information for Members of the Public

## Access to information and meetings

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

Dates of the meetings are available here:

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

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

## Have Your Say!

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

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**COLCHESTER BOROUGH COUNCIL**  
**Planning Committee**  
**Thursday, 09 June 2022 at 18:00**

**The Planning Committee Members are:**

Cllr Lilley  
Cllr Barton  
Cllr Chapman  
Cllr Chuah  
Cllr Mannion  
Cllr McLean  
Cllr Maclean  
Cllr McCarthy  
Cllr Nissen  
Cllr Tate  
Cllr Warnes

Chair  
Deputy Chair

**The Planning Committee Substitute Members are:**

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

**Councillors:**

Tracy Arnold	Molly Bloomfield	Michelle Burrows	Roger Buston	Mark Cory
Pam Cox	Adam Fox	Mark Goacher	Jeremy Hagon	Dave Harris
Mike Hogg	Sue Lissimore	Andrea Luxford Vaughan	Patricia Moore	Beverly Oxford
Gerard Oxford	Kayleigh Rippingale	Lesley Scott-Boutell	Paul Smith	Dennis Willetts
Barbara Wood	Julie Young	Tim Young		

# **AGENDA**

## **THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING**

### **(Part A - open to the public)**

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

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

#### **1 Welcome and Announcements**

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

#### **2 Urgent Items**

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

#### **3 Substitutions**

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

#### **4 Declarations of Interest**

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

#### **5 Minutes of Previous Meeting**

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

#### **6 Have Your Say**

At meetings of the Planning Committee, members of the public may make representations to the Committee members. These Have Your Say! arrangements will allow for one person to make representations in opposition and one person to make representations in support of each planning application. Each representation may be no longer than three minutes. Members of

the public wishing to address the Committee either in person or remotely need to register their wish to address the meeting by e-mailing [democratic.services@colchester.gov.uk](mailto:democratic.services@colchester.gov.uk) by 12.00 noon on the working day before the meeting date.

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

## **7 Planning Applications**

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

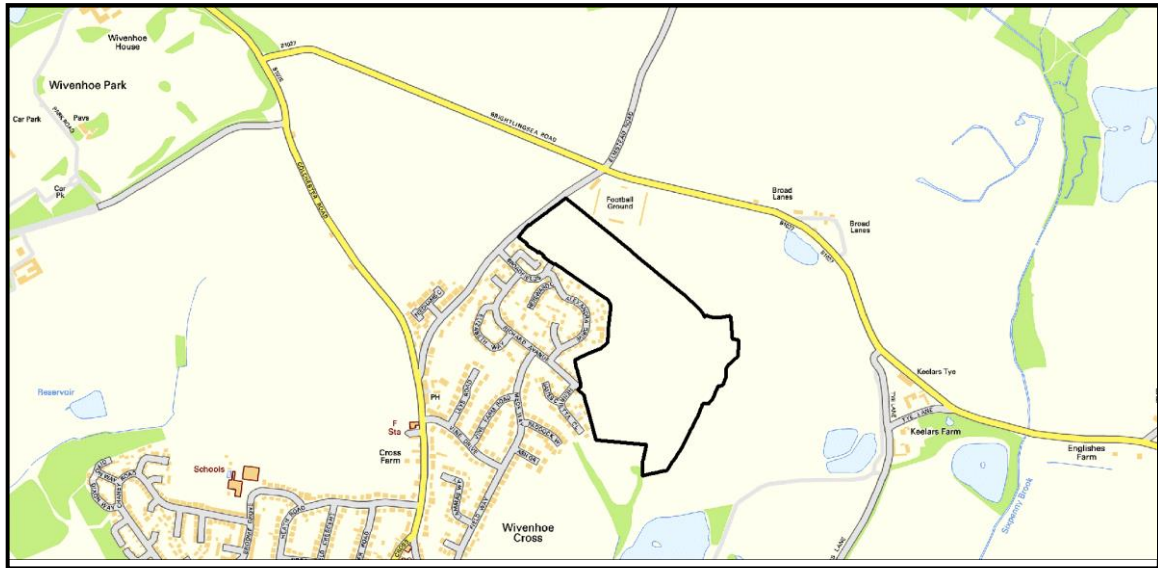
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|-----|---|-----------|
| 7.1 | <b>210965 Land at Broadfields, Wivenhoe</b>   | 7 - 52    |
|     | Construction of residential development, access, landscaping, public open space and associated infrastructure works.  |           |
| 7.2 | <b>211788 Land west of 194 and east of 202 Old London Road, Marks Tey</b>   | 53 - 122  |
|     | Development of the site for commercial, business and service (Class E c and g ), general industrial (Class B2) and storage and distribution (Class B8) purposes with associated access, parking including provision for lost residents on-street parking and landscaping, including diversion of a public right of way, and off-site highway improvement to the Old Landon Road and its junction with the A120. |           |
| 7.3 | <b>220959 Rear of 192-200 Mersea Road, Colchester</b>   | 123 - 134 |
|     | Retrospective planning for the construction of a single dwelling, following approval ref: 182342.   |           |
| 7.4 | <b>220994 2 Colchester Bike Kitchen and 3 Portal Precinct</b>   | 135 - 142 |
|     | Shopfront signage for unit 3 Colchester Bike Park and e-Cargo Bike Library, and unit 2 Colchester Bike Kitchen - to be mounted on existing facia.   |           |
| 8   | <b>Changes to the Planning Scheme of Delegation</b>   | 143 - 148 |
|     | The Committee will consider a report which seeks to amend the scheme of delegation to allow certain additional application types to be determined by officers rather than considered by the Planning Committee.   |           |
| 9   | <b>Exclusion of the Public (not Scrutiny or Executive)</b>  |           |
|     | 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).

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



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## Item No: 7.1

**Application:** 210965  
**Applicant:** Taylor Wimpey Uk Ltd  
**Agent:** Savills  
**Proposal:** Construction of residential development, access, landscaping, public open space, and associated infrastructure works  
**Location:** Land at, Broadfields, Wivenhoe, Colchester  
**Ward:** Wivenhoe  
**Officer:** James Ryan  
**Recommendation:** Approval

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

- 1.1 This application is referred to the Planning Committee because it was called in by Cllr Mark Cory for the following reason:

*This application contravenes numerous Wivenhoe Neighbourhood Plan policies.*

In a following representation he noted:

*Matters relating to the Wivenhoe Neighbourhood Plan site location boundaries, as well as associated issues with traffic and transport impacts; the access road; Elmstead Road impacts including Broad Lane junction; cycle path position; adjacent landownership must be confirmed as public (Councils) or Fields in Trust; quality of housing and environmental standards; ensuring affordable homes at 30%; and a localised priority scheme for Wivenhoe.*

## **2.0 Synopsis**

- 2.1 The key issues for consideration are the compliance with the Wivenhoe Neighbourhood Plan. Other issues include flood risk and drainage; impacts on ecology, highways, heritage, landscape and trees; and design. Matters of contamination, amenity, and climate change are also considered, along with other material planning considerations
- 2.2 The proposed development has been assessed in line with both current and emerging planning policy and the site allocation in the Wivenhoe NP, with the benefit of consultation responses and representations from third parties. It is acceptable that there are elements of the scheme that do not comply with the Wivenhoe NP policy, in particular the use of land to the north of the power lines for residential use.
- 2.3 Consideration of the planning benefits of the proposed development has resulted in a balanced judgement which concludes that the benefits of the scheme, in particular the market housing provision, the affordable housing provision and the ample on-site open space and provision of sports pitches, strongly outweighs the lack of complete compliance with the NP. On that basis, the application is subsequently recommended for approval subject to a number of planning conditions, together with a s106 agreement securing developer contributions/obligations.

## **3.0 Site Description and Context**

- 3.1 The whole site extends to 11.58 hectares, and it is located within Wivenhoe at the northeastern edge of the town. The site is approximately 2 km from southeastern edge of Colchester and lies to the south of Broad Lane Sports Ground and Elmstead Road. The site comprises of undeveloped open land and the eastern section of the site forms part of the non-statutory designated Wivenhoe Cross Pit Local Wildlife Site (LoWS) which is not to be developed.



- 3.2 The area of site to be developed for residential extends to 3.5 hectares, the area to be set aside for sports pitches extends to 2 hectares and new open space will comprise 5.18 hectares of land. In addition, access will be created to the eastern LoWS parcel creating public access.
- 3.3 The site is not subject to historic designations, but the eastern part of the site is a local wildlife area. The site is located in Flood Zone 1.
- 3.4 Access to the site is taken from Richard Avenue, one of the roads that makes up the relatively spacious post war housing area in this section of northern Wivenhoe.

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

- 4.1 The scheme proposes the construction of residential development (Use Class C3), access, landscaping, public open space, and associated infrastructure works. In total, 120 dwellings are proposed.

#### **5.0 Land Use Allocation**

- 5.1 The site is agricultural land, now uncropped. The LoWS is a wildlife area and will remain so.

#### **6.0 Relevant Planning History**

- 6.1 There is no relevant planning history.

#### **7.0 Principal Policies**

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

##### **7.2 Local Plan 2017-2033 Section 1**

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

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

- 7.3 Appendix A of the Section 1 Local Plan outlines those policies in the Core Strategy Focused Review 2014 which are superseded. Having regard to the strategic nature of the Section 1 Local Plan, policy SD2 of the Core Strategy is fully superseded by policies SP5 and SP6 of the Section 1 Local Plan. Policies SD1, H1 and CE1 of the Core Strategy are affected in part. The hierarchy elements of policies SD1, H1 and CE1 remain valid, as given the strategic nature of policies SP3, SP4 and SP5 the only part of the policies that are superseded is in relation to the overall requirement figures.
- 7.4 The final section of Policy SD1 which outlines the presumption in favour of sustainable development is superseded by policy SP1 of the Section 1 Local Plan as this provides the current stance as per national policy.
- 7.5 All other Policies in the Core Strategy, Site Allocations and Development Management Policies and all other adopted policy which comprises the Development Plan remain relevant for decision making purposes.
- 7.6 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations  
SD2 - Delivering Facilities and Infrastructure  
SD3 - Community Facilities  
H1 - Housing Delivery  
H2 - Housing Density  
H3 - Housing Diversity  
H4 - Affordable Housing  
UR2 - Built Design and Character  
PR1 - Open Space  
PR2 - People-friendly Streets  
TA1 - Accessibility and Changing Travel Behaviour  
TA2 - Walking and Cycling  
TA3 - Public Transport  
TA4 - Roads and Traffic  
TA5 - Parking  
ENV1 - Environment  
ENV2 - Rural Communities  
ER1 - Energy, Resources, Waste, Water and Recycling

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

DP1 Design and Amenity  
DP2 Health Assessments  
DP3 Planning Obligations and the Community Infrastructure Levy  
DP4 Community Facilities  
DP13 Dwelling Alterations, Extensions and Replacement Dwellings  
DP14 Historic Environment Assets  
DP15 Retention of Open Space and Indoor Sports Facilities

DP16 Private Amenity Space and Open Space Provision for New Residential Development  
 DP17 Accessibility and Access  
 DP18 Transport Infrastructure Proposals  
 DP19 Parking Standards  
 DP20 Flood Risk and Management of Surface Water Drainage  
 DP21 Nature Conservation and Protected Lanes  
 DP25 Renewable Energy

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

7.9 The Neighbourhood Plan for Wivenhoe is very relevant to this scheme. This forms part of the Development Plan in this area of the Borough.

7.10 Submission Colchester Borough Local Plan 2017-2033:  
 The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan is at an advanced stage having recently been found sound following examination. Section 2 will be afforded significant weight due to its advanced stage.

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

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

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry significant weight in the consideration of the application.

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

The Essex Design Guide  
 External Materials in New Developments  
 EPOA Vehicle Parking Standards  
 Backland and Infill  
 Affordable Housing  
 Community Facilities  
 Open Space, Sport and Recreation  
 Sustainable Construction  
 Cycling Delivery Strategy  
 Sustainable Drainage Systems Design Guide  
 Street Services Delivery Strategy  
 Planning for Broadband 2016  
 Managing Archaeology in Development.  
 Developing a Landscape for the Future  
 ECC’s Development & Public Rights of Way

## **8.0 Consultations**

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

### **8.2 Anglian Water**

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

Objection regarding surface water – please see relevant section of main report below.

### **8.3 Arboriculture Planner**

No objection subject to tree protection and canopy cover increase via landscaping condition.

### **8.4 Cadent Gas**

No objection.

### **8.5 Contaminated Land**

The findings of the investigation seem reasonable and are acceptable to the EP Team. No further information is required however please apply an unexpected contamination condition.

### **8.6 Environmental Protection**

No objection, request conditions.

### **8.7 Essex County Fire and Rescue**

Essex County Fire and Rescue Service is not satisfied with the proposals for the following reasons:

- Access to numerous plots, including plot NT42 to the bottom of the plan cannot be accessed by a fire service appliance within the required 45m.
- The turning circles provided for plots NT42, PA25a, and PA25b do not meet the turning circle requirement as outlined in the table below.
- The fire appliance tracking as shown on the submitted plans, shows the fire appliances making contact with building CP6.

A possible solution is to consider sprinklers in the affected premises.

*Officer response:*

*The applicants have confirmed that they will meet the requirements of the Building Regulations. They will therefore fit a sprinkler system to any of the plots that require it to meet the building regulations at that detailed design stage. This is held to be acceptable.*

#### 8.8 Essex Minerals

By virtue of the site being adopted through the Wivenhoe Neighbourhood Plan under proposed site WIV29 it falls outside of that part of Policy S8 which concerns land in Mineral Safeguarding Areas. No potential conflict is assessed between the proposed development and operations at Wivenhoe Quarry.

Condition a Site Waste Management Plan.

#### 8.9 Essex Police

Thank you for opportunity to comment on this application. Essex Police would like to see this applicant seek to achieve a Secured by Design award in respect of this development.

#### 8.10 Highway Authority

From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to conditions.

#### 8.11 LLFA (ECC SuDS)

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

#### 8.12 Landscape Advisor

In conclusion; there are no objections to this application on landscape grounds in principle, this however is provided the above recommendation of further boundary treatment planting gapping up is/are secured via a bespoke condition.

#### 8.13 Natural England

Conduct an HRA/AA.

*Officer response: This has been carried out.*

#### 8.14 NHS North Essex CCG

Please be aware that this planning application has been reviewed by the CCG and due to the only practice within 2km of the proposed development currently being under capacity, no further mitigation request will be made.

#### 8.15 Places Services Ecology

No objection subject to securing: a) A proportionate financial contribution towards effective visitor management measures in line with Essex Coast RAMS; and b) Ecological mitigation and biodiversity enhancements.

#### 8.16 Sport England

A detailed updated response received 26.05.2022. Sport England support the contribution towards the school pool but have an objection to the level of contribution towards the on site pitches. See relevant section of the report.

#### 8.17 Urban Design

Full comments set out in design section below.

### **9.0 Parish Council Response**

#### 9.1 The Parish Council have stated that:

1) The proposed development contravenes the adopted WNP in that the area of development extends north of the settlement boundary as stipulated in the plan. The proposal includes development north of the pylons which is in contravention of the WNP.

2) The proposal includes the following allocation of housing types:

1 bed- 0

2 bed- 45

3 bed -50

4 or more bed- 25

WTC accept that whilst the numbers comply with the WNP (Policy WIV 29) the density of the development south of the pylons could be increased so that the development area does accord with the WNP.

Policy Wiv 29 also stipulates 'a minimum of 45 dwellings shall be provided with one or two bedrooms which should be designed as homes suitable for older people, single people, or for young couples. They could be bungalows, terraced properties or apartments;'. WTC request that the development includes a number of apartments, terraced properties, including one bedroomed properties. The housing needs of the residents of the town were taken into consideration in the WNP and have not changed. The town needs additional smaller properties for both young and elderly residents.

3) The ownership of the strip of land to the south of the proposed development is in contention but was included in the settlement area in the WNP. Whilst WTC accept that this is not part of the planning application, it should be noted that this

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area would have provided sufficient land for 10 dwellings and yet TW are proposing to build 30 dwellings north of the pylons. The Inspector agreed to 120 dwellings in the settlement area. WTC maintain that TW are proposing to build 30 houses north of the pylons as the housing density is too low.

4) Experience has taught WTC that ownership and responsibility for maintenance of open spaces, cycle paths and pathways must be confirmed by the applicant at the time when planning permission is given.

In consultation with TW, WTC have been assured that the open spaces will be maintained by a management company with the costs covered by management fee from the residents, the cycle paths, pathways and lighting adopted by highways and the sports areas to either be managed by CBC or WTC.

WTC request confirmation of this agreement as in section 11 of the Design and Access Statement it states on open spaces that; It is expected that the main roads will be adopted by Essex County Council as part of the highway, whilst all areas of public open space will be adopted and managed by the town council (details to be agreed).

While later in the same section it states: It is envisaged that all public and communal landscape spaces will be maintained either through adoption by the local authority or placed under the control of an estate management company. A plan identifying the short- and long-term maintenance operations and management aspirations of these spaces is included as part of the soft landscape proposals

TW also confirmed verbally that the wildlife area, even though it does not form part of the application, will be maintained by the management company.

Further representations were then received from Wivenhoe Town Council following further consultations, these reaffirmed the objection above and noted how notwithstanding the amendments made, the scheme still fails to comply with the NP.

*Officer response: Many of these issues are addressed in the main report but in short, the housing mix is held to be acceptable and is what the applicants would like to be assessed. The use of land north of the powerlines will be addressed in the main report. Officers do not agree that this scheme is too low in density, but consider it is to of an appropriate density compared to the character of the area immediately around it. The management of the POS and the other areas of the site will be agreed via the legal agreement, but it is correct to state that the applicants intend to use a management company to do this. A landscape management plan condition is proposed to ensure the non-privately owned areas are maintained.*

## 10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties and the Wivenhoe Society. 31 representations raising objections have been received and 19 general observations were received.

10.2 The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.

- This will ruin the area.
- The scheme is unacceptable in principle
- This scheme is harmful to highway safety.
- There will be traffic gridlock.
- There should be an access off of Elmstead Road and not Richard Ave.
- This is harm wildlife/ecology.
- More parking in the main estate will cause hazards.
- There needs to be a construction access on Elmstead Road.
- How can Elmstead Road be acceptable for HGV use?
- The scheme does not comply with the NP Policy.
- There should not be any dwelling north of the power lines.
- The cycle link does not go anywhere.
- The playground is needed on site.
- Wivenhoe does not have the infrastructure capacity to cope with this development. – eg Schools, Doctors, shops, chemists etc.
- This will harm air quality.
- This will swallow up the village.
- We will become part of Colchester.
- The traffic on Clingloe Hill is very bad.
- The drainage on site is poor, this will make it worse.
- The dwellings will overlook the neighbours.
- The proximity to Wivenhoe FC will result in terrible traffic jams.
- The scheme should be flipped so they face the Elmstead Road and then more space would be available for the housing.
- I do not object to new houses being built.
- TW should contribute to the community.
- The cycle route is near existing dwellings and will cause disturbance.
- Who will deal with the lighting on site – other developments have suffered from a lack of responsibility being taken.
- An HRA should be carried out.
- Elmstead Road should have footways and speed bumps installed.
- There should be 30% affordable homes.
- The open space/sports pitch should be passed to the Wivenhoe & District Sporting Facilities Trust.
- There should be a fence to contain the dogs.
- No commitment to zero carbon homes.
- The amended scheme have not addressed our concerns.
- Why do we need new football pitches – we need multi use.



- Where is the parking for the new football pitches?
- Will the pitches need lighting?
- EV charging?
- The developers have not dealt with the fact they do not own the area of land to the south that is needed for compliance with the plan.

*Officer response: Many of these matters are dealt with in the report below. The site is allocated in the WNP so it is considered that the principle is acceptable. It is not considered that this scheme will create materially harmful coalescence with Colchester. The matter of the land to the north of the pylons is considered in the report below. The suggestion that the access point should be on Elmstead Road would result in a scheme that further deviates from the NP which the applicants want to avoid. Highway safety, parking, ecology, drainage and impact on amenity is dealt with below. The detail of the football pitches will be set out in the legal agreement and they will be passed to CBC. The dog walking area could be fenced – that would be dealt with via the landscaping condition. EV charging will be provided and the scheme will meet the new uplifted Building Regs. An HRA has been carried out. The policy requires 20% affordable homes. The allocation of the affordable units will be via the usual mechanisms. It is not considered that the new cycle/footway will cause material harm to existing neighbours. Community contributions to mitigate the development have been agreed.*

## **11.0 Parking Provision**

11.1 The scheme meets the adopted standards in terms of on-plot and visitor parking.

## **12.0 Accessibility**

12.1 The applicants state that the preparation of the scheme has been undertaken in line with current best practice contained in BS8300:2018 (Design of an accessible and inclusive built environment) and Building Regulations Approved Document M (2016 edition). It is the intention of the applicant that everyone can enjoy the new homes with no discrimination and no barriers.

12.2 The site is already broadly flat, therefore all routes throughout the sites and all approaches to the buildings can be designed to be step-free and to minimise gradients. Careful design of roads and paths will also ensure that level access can be achieved to every house. Car parking is conveniently located in relation to the home it serves, connected by step-free and well-lit routes.

12.3 All of the proposed affordable housing will meet Part M4 (2) Building Regulations and 39 of the market housing will too. 1 affordable unit will also meet Part M4 (3) Building Regulations and will be a fully wheelchair accessible home.

### **13.0 Open Space Provisions**

- 13.1 5.81 ha of open space will be provided on site far in excess of the minimum 10% needed. The land for two football pitches are provided within the site, located close (ie next to) the football club to the east. These will be taken on by CBC – more detail in relevant section below.

### **14.0 Air Quality**

- 14.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones. The scheme has been accompanied by an Air Quality assessment and that considered the potential air quality impacts associated with the proposed residential development.
- 14.2 It was noted that there is the potential for dust and PM10 impacts during the construction phase, however, with the proposed mitigation measures in place secured via a construction management plan condition, these impacts will be not significant.
- 14.3 The impact of additional emissions associated with the development on local air quality was assessed and is considered not significant. This is based on the fact that concentrations will be well below the relevant objectives and impacts at each receptor modelled will be negligible.
- 14.4 The impact of local air quality on future residents of the development was also considered. It is considered that air quality for future residents will be good and no mitigation is required. Overall the AQA concluded that there are no air quality constraints to the proposed development which is in accordance with local and national policy and guidance.

### **15.0 Planning Obligations**

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

#### **Community - £320,040.65**

Project - Broomgrove School Community Swimming Pool upgrade including changing room provisions. There is a lack of sports provision in the ward and this project aims to positively impact on the health and wellbeing of the community by offering opportunity for exercise.

#### **Parks & Recreation – £529,609.75**

Project – Football Pitches Land is being transferred to Council for Football Pitches

£390,109.77 – for delivery of Football Pitches  
£139,500 – Maintenance of Football Pitches

The applicants have noted that they do not wish the rest of the site to be adopted by CBC and will manage it themselves via a management company, however if CBC were to take it on that would require a contribution of circa £850,000 for the ongoing upkeep.

### **Education –**

Secondary travel for Education - £119,472.00  
Primary School Travel contribution: £796,244.40,  
Early Years and Childcare contribution (10.80 places) at £17,268.00 per-place, PUBSEC index-linked from January 2020;

It is noted that the need for the travel contribution has been queried with ECC Education and may fall away.

### **Affordable Housing –**

Planning Officer to confirm with applicant that the applicants have discussed with a Housing Association they're happy to take 4x4 Beds as AR due to current affordability issues.

*Officer response – this has been confirmed and the provision of four bedroomed affordable dwellings was actually increased at the requests of the Housing Officer in order to make the on site provision proportionate.*

Affordable housing should meet the enhanced accessibility standard of Part M4 cat 2 (Building Regulations 2015) in lieu of lifetime homes, in accordance with the requirements in DP12 (Development Policies 2014). Council would request 5%(1) of affordable homes is designed to meet Part M4 Cat (3) (2) (a) or Part M4 Cat 3 (2) (b).

### **Archaeology - £15,153**

£14,400 for museum display case, design and display material  
£753 for enhancement of the Colchester HER  
£348 will be required if no archaeological remains are affected by the development, to integrate the information from the archaeological investigations.

## **16.0 Report**

### Principle

- 16.1 Neighbourhood Plan Policy WIV 23: Additional dwellings in the Wivenhoe Parish, states that new residential development will be supported on the four sites allocated for development in Policies WIV28-31 with a cumulative capacity of around 250 dwellings and additionally on windfall sites within the settlement boundary.

- 16.2 The site is allocated under Policy WIV29 of the Neighbourhood Plan. The site allocation total area comprises a 11.58 hectares and is allocated for a **minimum of 120 dwellings** subject to a number of conditions as follows:
- i. Minimum of 45 dwellings with one or two bedrooms;
  - ii. No more than 25 dwellings shall have four bedrooms or more;
  - iii. Dwellings should be designed for older residents or active retirees should preferably be built to the Lifetime Homes standard;
  - iv. 20% of all properties to be affordable housing;
  - v. it can be demonstrated that the development will not have a detrimental impact on wildlife, as evidenced through an appropriate wildlife survey;
  - vi. vehicle access into the residential part of the site shall be provided from Richard Avenue;
  - vii. 2 hectares of land to the northern part of the site adjacent to Broad Lane Sports Ground as indicated on Figure 35 shall be provided for additional sports pitches;
  - viii. a dedicated footpath / cycleway along Elmstead Road to link up Broad Lane Sports Ground with the built-up part of Wivenhoe shall be provided;
  - ix. a shared-use footpath and cycle track provided directly linking the development to the facilities at Broad Lane Sports Ground and linking with the public footpath to the south of the site;
  - x. a contribution shall be paid towards the creation of a combined footpath/cycle track linking the new development to the public footpath (FP No. 14) from The Cross;
  - xi. contributions towards open spaces, sports, recreational facilities and community facilities shall be required in line with Borough Policies current at the time any application for planning permission is made
- 16.3 The layout for the proposed scheme is based on the Neighbourhood Plan which allocates the land for residential development, open space and sports pitches and play areas to the south. However, the applicants note that what they refer to as '*necessary deviations*' are made as a result of technical constraints necessitating some residential development to the north of the electricity pylons.
- 16.4 The residential area extends to approximately 3.51 ha, of which 0.7ha sits to the north of the pylons and 2.81ha located to the south of the pylons. The residential area is off set from the site boundaries in response to the site's numerous constraints and to provide adequate separation with the neighbouring houses to the west.
- 16.5 A surface water attenuation basin has been positioned at the lowest point of the site in the southeastern corner and has been integrated into the landscaping scheme. The Local Wildlife Site to the east is not being developed as part of proposal.
- 16.6 2 ha of land for sports pitches are proposed at the northern end of the site adjacent to existing facility at the Broad Lane Sports Ground.

### Housing Mix

- 16.7 The 120 dwellings will comprise of 2, 3 and 4-bedroom houses, responding to the Neighbourhood Plan, as follows:
- 2 Bed 45 (37.5%)
  - 3 Bed 50 (41.7%)
  - 4 Bed 25 (20.8%)
  - Total 120 (100%)
- 16.8 Both private and affordable dwellings include the provision of family-sized units (3 bed or larger units) including three-bedroom units.
- 16.9 The NPPF does not set any specific policy requirements in relation to affordable housing but requires local planning authorities to ensure that their policies meet the full, objectively assessed needs for market and affordable housing. The unmet need is significant and affordable housing represents an important public benefit.
- 16.10 Adopted Core Strategy Policy H3 which seeks to secure a mix of housing types and tenures and Policy H4 requires the provision of 20% affordable housing in new housing schemes.
- 16.11 Part iv of Neighbourhood Plan Policy WIV29 requires 20% of all properties to be affordable or that percentage relevant in policy at the time of the application being submitted.
- 16.12 In terms of affordable units, the proposed housing mix comprises of 96 private sale units and 24 affordable units, which equates to 20% on-site affordable housing provision. The affordable housing to be provided as shared ownership, and affordable rent. The proposal delivers a tenure split of 79:21 in favour of Affordable Rent. This is policy compliant.
- 16.13 The WTC comments looking for more smaller properties including 1-bedroom properties is noted however the applicants consider their mix to be appropriate. It does meet the requirements of the NP and is therefore held to be acceptable.

### Density

- 16.14 Although density is not specified within Policy WIV 29, it states that 4.06 hectares of the land is suitable for the erection of a minimum of 120 dwellings of mixed typologies. This equates to a minimum density of 30 dwellings per hectare for the residential land allocated on the site.
- 16.15 The proposed development will have a residential density of 34 dwellings per hectare (dph) with 120 dwellings on only 3.5 hectares of land. The scheme has a slight increase in density against the baseline set by the Neighbourhood Plan. This minor departure is nominal as the

proposal is to be provided on a smaller area of land than the neighbourhood plan allows for.

#### WIV 29 departures

- 16.16 Figure 35 of WIV 29 is supported by a map which sets out where residential, open space, sports fields, new sports fields and play areas should be provided.
- 16.17 The proposal broadly aligns with these locations but does not comply completely.
- 16.18 Paragraph 12 of the NPPF sets out that “Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.”
- 16.19 In this case the development plan is considered to be up to date; therefore, the LPA needs to consider whether the material considerations which we set out below indicate that the plan should not be followed.
- 16.20 The applicant is of a clear view that material considerations do exist and have made the following justifications:
- 16.21 Post submission discussions have centred around the positioning of the residential area proposed against that identified within Figure 35 of the Neighbourhood Plan. In particular the provision of residential to the north of the east – west pylons.
- 16.22 In addition the re-positioning of the land for sports pitches to the north of the wider site, adjacent to the existing sports pitches was discussed. However, this is considered to be acceptable, due to the better synergy that this land would have with existing sporting facilities between Elmstead Road and Brightlingsea Road.
- 16.23 The residential area identified in red on Figure 35 of the WIV 29 Allocation extends to 4.06ha for a minimum of 120 dwellings. However, the primary material consideration is that the residential area allocated is constrained and in the applicant’s opinion, only 2.81ha is in fact developable. This is a significant material consideration when assessing the proposal.

16.24 The applicants cite the following limitations:

- Along the northern boundary is it not possible to build up to the pylons due to their being a no build zone of either side.
- The eastern boundary is characterised by trees and the root protection zones extend into the residential area.
- A large proportion of the southern part of the site is dedicated to the national playing fields association (Fields in Trust), and therefore cannot be developed.
- Along the western boundary, the developable area is reduced further by no build zones along the existing water easements
- In addition, the engineers have advised that an attenuation basin should be provided in the south eastern corner to address the technical drainage and flood requirements which arise with residential use.

16.25 The applicants argue that this in turn renders the residential requirements of the Neighbourhood Plan unfeasible within the developable area (2.81 hectares) within the residential allocation that remains. If a minimum of 120 units were considered on a smaller parcel, this would result in a minimum density of 42.7 dwellings per hectare. This would appear completely at odds with the surrounding contextual residential character. This would be even more unfeasible if the necessary design requirements for residential use and the local and regional level were taken into account. In short, the design (detailed later) would be more cramped and far less landscape led than the current proposal.

16.26 Officers consider that the proposed density is acceptable as more land is given over to public open space, which is a benefit to the scheme and the wider area. Whilst some representations have noted they would prefer a higher density scheme, so that the land to the north of the power lines would not be utilised, it is considered that this is not likely to result in a design appropriate to the area. It would result in a cramped form of development wholly out of keeping with the rural feel of this edge of settlement location. It would not leave sufficient space for the planting and open space within the development that the application before members enjoys. This would significantly diminish the sense of place that could be created.

16.27 It is also noted that a number of the representation were seeking an alternative approach, that being a single access off of Elmstead Road instead of Richard Avenue, and potentially the built form being brought north to sit along the Elmstead Road frontage. Regardless of the merits of this approach, it is not an approach that has been taken by the applicants as it is a far greater deviation from the neighbourhood plan than the application before Members now.

- 16.28 It is important to note that the applicants state that they have reviewed the evidence base to the Wivenhoe Neighbourhood Plan and consider that there is a notable absence of any evidence which explains why the residential area as shown in Figure 35 was selected to only be to the south of the pylons. They consider this to be an arbitrary line and state that it doesn't represent a physical boundary line. Furthermore, they note and extensive existing built area to the west which extends north of the pylons. This too is a very important material consideration.
- 16.29 Officer consider that moving development north, outside of the defined settlement limit as show in the NP must be assessed not only on the wording of the policy but as a matter of planning judgement. This judgment comes down to a matter of demonstrable harm. Development north of the power lines must be assessed in landscape terms. That matter is dealt with in the relevant section below.

### Sports Pitches

- 16.30 WIV 28 requires at *vii. 2 hectares of land to the northern part of the site adjacent to Broad Lane Sports Ground as indicated on Figure 35 shall be provided for additional sports pitches.*
- 16.31 This scheme does deliver the requirements of the NP. It does provide the land which will be passed to CBC. The land could then be passed to another party. The applicants are also providing a contribution for the laying out of the pitches and the future maintenance of them as set out in the relevant section above.
- 16.32 Sport England have stated that the site should provide formal space to play sports on which it could do. Formal pitches need to be perfectly flat, have their own drainage system and have demands for other items such as fencing, changing rooms, and some have lighting etc. They would not be open to the public for recreational use as they are maintained to be used for club use only. Sport England are concerned and have a (non-statutory) objection as at this stage the precise cost of the pitches is not known and are worried that the financial contribution may not be enough to fully deliver the pitches leaving CBC with a shortfall.
- 16.33 Sport England are also concerned that if the space is to be used formally, it will generate a number of associated impacts on the football club next door in terms of need for changing facilities and parking etc. They are also concerned that the contribution proposed has been derived from the SPD but not a formal appraisal of the site by a pitch specialist and therefore it is unclear as to what the full cost would be. This means further money may be needed to complete the work.
- 16.34 This is not held to be a reason for refusal of planning permission. The NP's requirements are met (save for the position of the pitches being different which is held to be a benefit). The contribution as set out in the section above is what the Parks and Recreation Team have requested to deliver the pitches and then maintain them. It would not be reasonable to



expect 120 dwellings to deliver a contribution above what is expected via the SPD, particularly when the land is being passed to the Council for free.

- 16.35 Through the landscaping condition and legal agreement it will be possible to ensure the land for the sports pitches will be passed to the Council in a reasonable state, ready for the delivery of the pitches. Once the land has been passed to the Council it will be up to the Parks and Recs Team to deliver the pitches. It is noted that in the event that it transpires more money is needed to do this than this scheme secures, the P&R team could use this as a spend purpose for other applications in the area. The same is true for the potential improvements to the Football Club next door. Other applications may be able to contribute toward improvements there, but it is not reasonable to expect this scheme to contribute more than the SPD sets out.

#### Highway Implications

- 16.36 Core Strategy policy TA4 seeks to make the best use of the existing highway network and manage demand for road traffic. The policy makes it clear that new development will need to contribute towards transport infrastructure improvements to support the development itself and to enhance the broader network to mitigate impacts on existing communities. Development Plan policy DP17 requires all development to maintain the right and safe passage of all highways users. Development Plan policy DP19 relates to parking standards in association with the Vehicle Parking Standards SPD. Recently adopted Section 1 Policy SG1 states that development that reduces the need to travel will be encouraged. Emerging Plan Policies DM15, DM20, DM21, and DM22 have similar requirements to adopted policy, with particular emphasis on enhancing accessibility for sustainable modes of transport. NP policy WIV 17 echoes these sentiments. WIV 18 requires cycle and pedestrian connectivity improvements.
- 16.37 In accordance with the requirements of WIV the scheme has an access from Richard Avenue. An access on Elmstead Road has not been suggested as the NP requires the access to be taken from Richard Avenue.
- 16.38 In addition, the NP has a number of highway criteria:
- viii. a dedicated footpath / cycleway along Elmstead Road to link up Broad Lane Sports Ground with the built-up part of Wivenhoe shall be provided;
- This has been requested as a condition by the Highway Authority.*
- ix. a shared-use footpath and cycle track provided directly linking the development to the facilities at Broad Lane Sports Ground and linking with the public footpath to the south of the site;

*This is shown on the landscape drawing and will be secured via the landscaping condition, but due to land ownership issues it does not reach as far as the PRow to the south.*

x. a contribution shall be paid towards the creation of a combined footpath/cycle track linking the new development to the public footpath (FP No. 14) from The Cross;

*This has not been secured as the link to FP14 cannot yet be made due to a piece of intervening land that is not in the applicant's ownership. It is not therefore likely to be delivered.*

- 16.39 The scheme and the accompanying Transport Statement have been assessed by the Highway Authority and they have no objection to the scheme subject to conditions.
- 16.40 Whilst the representation noting the highway implications of this scheme have been carefully considered, in terms of traffic impact, paragraph 111 of the NPPF states that 'development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'. Given that the Highway Authority have no objections to the proposed development in terms of transport and highway impact, and that a range of mitigatory measures can be secured, it is concluded that it cannot be demonstrated that the proposed development would have an unacceptable or severe impact on the road network. A refusal on these grounds is not considered to be justified or sustainable at appeal.

#### Proposed Design/Layout

- 16.41 The Government guidance on design is provided by the National Design Guide and National Model Design Code, both of which form part of the governments Planning Practice Guidance. The National Design Guide seeks to deliver places that are beautiful, enduring and successful by setting out the characteristics of well-designed places and outlining what good design means in practice. Whilst the National Model Design Code sets out clear design parameters to help establish what good quality design looks like and provides a common overarching framework for design. These documents are intended to help create beautiful and distinctive places, with a consistent and high quality standard of design.
- 16.42 At a local level these policies are carried through and adopted as part of the Colchester Borough Council Local Plan 2001-2021. Relevant policies include Core Strategy Policy UR2 and Development Policy DP1, which seek to secure high quality and inclusive design in all developments and avoid unacceptable impacts on amenity. These policies are supported by more detailed guidance provided supplementary planning documents such as the Essex Design Guide.

16.43 In terms of housing density and diversity, Core Strategy policies H2 and H3 require developments to make efficient use of land and relate to their context. A range of housing types and tenures across the Borough is sought in order to create inclusive and sustainable communities. The Section 2 Local Plan can now be given very considerable weight. Section 2 Local Plan Policy DM10, also requires a range of housing types and tenures for the same reason. Section 2 Local Plan Policy DM9 makes specific reference to the setting of important heritage assets; access and local road network; scope to enhance walking and cycling access to local amenities and public transport; and existing landscaping, trees, and hedgerows; matters that have been considered above. Section 2 Local Plan Policy DM15 sets out the criteria for a well-designed development. It is of particular relevance with regard to setting design standards and amongst other requirements seeks to ensure proposed developments respect and enhance the character of the site, its context and surroundings in terms of its layout, architectural approach, height, scale, form, massing, density, proportions, materials, townscape and/or landscape qualities, and detailed design features.

16.44 The NP Policy WIV 27 'Design and Access' sets out the criteria for developments that requires a Design and Access Statement such as this one.

The in house Urban Designer has provided the following comments:

16.45 "The proposed spatial strategy has its misgivings, namely its insular nature, fragmented appearance and the peripheral positioning of the POS. All of which are less than desirable in design terms, however they are somewhat dictated by the sites physical and policy constraints. A lack of green/blue infrastructure and incidental/informal spaces within the residential parcels remains. As a result, the proposal retains a relatively formal and engineered character, giving prominence to vehicular movements. That said, in response to the sites context, the spatial approach adopted appears relatively logical in terms of the areas suitable for residential development and the location of strategic open space, SUDs and primary estate roads. The layout also deals with sensitive edges appropriately and achieves adequate pedestrian permeability and connectivity. On this basis the spatial strategy adopted is considered broadly acceptable in terms of achieving the quantum of development proposed in an appropriate manner."

16.46 "Parking courts are utilised in places and facilitate the use of terracing with pedestrian frontage adjacent to some areas of POS. This reduces vehicular prominence adjacent to some areas of POS and provides the most discernible variance in the character of the built environment across the site. It is noted that car ports have been added to parking courts and between a number of units and this has provided a modest level of enhancement. However, the homogeneity in the positioning of the proposed built form and the low ratio of built frontage to parking remain a predominant feature. As such, the failure of the majority of the proposed built form to create any genuine sense of enclosure remains."

- 16.47 “The previous revisions to the scheme established a site wide identity, through the consistent application of form, detailing, materiality and proportions of the built environment. The form and materials are relatively consistent with the sites surrounding context, whilst the application of detailing and materials seek to establish a more unique design aesthetic. This approach and the ‘stand-alone’ identity established, are considered acceptable given the sites relatively self contained nature. More recent amendments to the scheme have sought to enhance the prescribed character areas, however their subtlety inhibits their impact and the road hierarchy continues to lack definition. A number of elevational treatments have also been subject to subtle amendments in order to enhance the contribution the built environment makes to the quality of the public realm.”

#### Design Policy Compliance

- 16.48 “The proposal provides a substantial area of public open space and facilitates key pedestrian and cycle links within the wider area. The spatial strategy adopted achieves good levels of; pedestrian permeability, access to open space and connectivity to surrounding land uses. That said, the layout retains a somewhat formal/engineered character. The proposed built environment does fail to adequately enclose space in places, or provide incidental areas of POS, however it does achieve a relatively strong identity. Additionally, though the prescribed character areas are lacking, there is some diversity in the areas in public realm across the site. Combined, it is considered these neutral/positive features of the proposal could establish a sense of place within the proposal.”
- 16.49 “As highlighted above, elements of the design of the proposed development have been improved, whilst others remain substandard in design terms. A number of the negative elements of the design are dictated by existing site constraints and the quantum of development proposed. It is considered that the proposed spatial layout makes relatively effective use of the land and provides wider public benefits. Though the standard of place making may not be optimal, a distinct site identity is established, and diverse areas of public realm are achieved. As such a balanced judgement is required as to whether the negative elements of the proposed design are considered acceptable in the context of the wider material planning considerations relevant to this application.”
- 16.50 Therefore it is clear that the quality of the design is a matter of planning judgement. This has been carefully considered by officers and the scheme as amended, on balance, is held that the scheme is acceptable in design terms.

### Impact on Surrounding Area

- 16.51 Core Strategy Policy ENV1 seeks to conserve and enhance Colchester's natural and historic environment, countryside and coastline, with Core Strategy policy UR2 and Development Plan policy DP1 seeking to secure high quality and inclusive design in all developments, respecting and enhancing the characteristics of the site, its context and surroundings. These principles are also reflected in adopted Local Plan Section 1 Policy SP7 which can be given full weight and Section 2 Plan Policy DM15 which can be given very considerable weight. In addition, Section 2 Plan Policy PP1 requires suitable design and screening/landscaping to minimise any negative impacts on surrounding landscape.
- 16.52 Paragraph 20 of the NPPF stipulates that policies should set out an overall strategy for the design of quality places and make sufficient provision for the conservation and enhancement of the natural, built and historic environment including landscapes and green infrastructure.
- 16.53 The scheme has been accompanied by a Landscape Appraisal and in turn this has been assessed by the Council's in-house Landscape Advisor. This is a key issue as the fundamental difference between this scheme and the requirements of WIV are the dwellings that sit north of the high voltage power lines.
- 16.54 An addendum to the originally submitted Landscape and Visual Impact Assessment (LVIA) has been prepared by Arc and has been submitted in support of this application. Following comments received following the submission, an amendment was made to the scheme proposals and the LVIA update accordingly which referenced the scheme changes and the updates to the National Planning Policy Framework (NPPF).
- 16.55 The Arc addendum has been prepared to further consider the particular effects of the submitted scheme proposals on land to the north of the power lines and which falls outside the area previously assessed by the original LVIA. To assist in considering the visual effects of development to the north of the power line, a series of verified views have been prepared which illustrate the visibility of the proposed development from 6 locations.
- 16.56 The objections to this from many parties are noted, but the question that must be asked is 'does proposed the layout cause materially harmful impact on landscape interests compared to a policy compliant scheme'?
- 16.57 As set out by the LVIA, the answer is 'no'.
- 16.58 In summary, the proposed development will only be visible from locations within close proximity to it. There is some visibility from public rights of way and public open spaces, however these are not located in designated landscapes or in locations identified as being sensitive. The new houses will be of a similar scale and form to those within the adjacent Broadfields housing estate and buildings have been designed to reflect the

architectural styles and materials traditionally found in this part of Essex albeit a contemporary interpretation of it. Whilst the new housing will appear into parts of the view where currently there is no built form, once planting has been established, which will assist in assimilating buildings into the view, the LVIA considered that there will be no adverse effects on visual amenity.

- 16.59 In addressing the effects of the proposed layout which extends beyond the land allocated within the Neighbourhood Plan, the introduction of houses to the north of the power line will inevitably change the extent of houses visible, however again this will only be a change experienced from very limited locations. The view from the path along Elmstead Road will see the housing extend further east however this will be a limited and localised change for a short stretch of path. It is not considered that the additional houses will result in any harm to the visual amenity and from that location. Similarly, whilst from some locations housing to the north of the pylons will be visible from within the Crosspit Local Nature Site, the nature of the change will be very limited and will not notably change the experience of walking through the area compared with a development that only extended to the south of the pylons.
- 16.60 To summarise, it is very clear that the scheme as proposed will bring dwellings closer Elmstead Road than the high voltage power lines but they are still set a significant distance back from the road. There is still space for the proposed football pitches between the dwellings and the Elmstead Road junction. It will not, therefore, create a hard urban edge on the approach to Wivenhoe from this direction.

#### Landscaping

- 16.61 In terms of landscaping, the detail planting proposals within the residential sections of the site have been developed to reinforce the street scene as well as to create individual identity within different areas of the scheme. In this respect, the street tree planting and frontage hedgerows provide the landscape framework along the primary and secondary routes and spaces. Different streets will be assigned different tree species as well as single species hedges. This allows identifiable changes in the street scene and a sense of place to be identified. Along the tertiary routes, as well as within the smaller housing cells, peripheral areas of the scheme and where built form abuts open space, a pallet of shrubs, ornamental grasses and herbaceous planting will be selected to create the individuality and variation in texture, colour and form. This also reflects a change to either smaller scale or a softer character of development type.
- 16.62 The precise detail of the landscaping will be dealt with via condition.

### Impact on Neighbouring Amenity

- 16.63 Development Plan policy DP1 and Emerging Plan Policy DM15 require all development to be designed to a high standard that protects existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, and daylight and sunlight.
- 16.64 This scheme has been designed to be compliant with the Essex Design Guide in terms of overlooking and back-to-back distances. Whilst the dwellings nearest to the existing residential dwellings face on to the western boundary they will have upper floor windows so the guidance for back-to-back distances has been followed, that being 25m back to back where the angle is less than 30 degrees and 15m where it is more than 30 degrees.
- 16.65 Due to the degree of separation between the proposed dwellings and the existing, there are no concerns with regards to oppressiveness or loss of light to the existing neighbours.
- 16.66 It is also noted that the western boundary has a good level of existing screen planting already, much of which is covered by a TPO, however this is gappy in places, in particular further south. This boundary planting can be significantly bolstered with landscaping that will be secured via the landscaping condition. The addition of planting will help further filter any views from the new dwellings.
- 16.67 It is accepted that the scheme will intensify the use of the access point and in turn that will cause an increase in noise and disturbance to existing dwellings. This is an inevitable consequence for development of this type. The NP is clear that the site should be served via the access point that is proposed and therefore in this instance the increase in noise and disturbance is held to be acceptable.
- 16.68 The impact this scheme has on neighbouring residents has been carefully considered. New development such as this will have an impact on the neighbours who have been used to living next to an undeveloped site. There will be some overlooking that they did not previously experience but this is held to be within tolerable levels. Neighbours will also notice the change in terms of vehicle movements also but it is not held to be a matter that warrants refusal of a scheme of this scale.

### Amenity Space Provision

- 16.69 It is clear from the layout that all dwellings can be provided with gardens in excess of the minimum standards as set out in the Local Plan Policy DP16. This is held to be acceptable.

## Ecology

- 16.70 Section 40 of the Natural Environment and rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity and a core principle of the NPPF is that planning should contribute to conserving and enhancing the natural environment. Development Plan policy DP21 seeks to conserve or enhance biodiversity and geodiversity in the Borough. New developments are required to be supported by ecological surveys where appropriate, minimise the fragmentation of habitats, and maximise opportunities for the restoration, enhancement and connection of natural habitats.
- 16.71 A Preliminary Ecological Appraisal was carried out also with a wintering Bird Survey. These surveys have demonstrated that the site supports a foraging/commuting bat assemblage of local to district value, a breeding and wintering bird assemblage of local value, and a low population of grass snake of site value. Hedgehog are also known to be present on site. Mitigation and enhancement measures are proposed for these species, including precautionary working methods, retention and protection of existing habitats and new habitat creation. This will be secured via condition.
- 16.72 As Wivenhoe Cross Pit LoWS lies partially within the site and is directly adjacent to the proposed development area, direct impacts on this site such as pollution events, noise and lighting disturbance during construction are possible. This will require mitigation guided by the production of a Construction Ecology Management Plan (CEMP: Biodiversity), recommended to be secured by planning condition. Due to the ecological sensitivity of this part of the site, the existing treeline boundary feature between the arable field and LoWS will be retained and the layout design includes a minimum 10m buffer between the treeline and the edge of the built development. The ecology report further recommended that a Biodiversity Mitigation & Enhancement Strategy (BMES) is secured via planning condition and prepared prior to occupation; the BMES should include provisions for the LoWS area, detailing measures to minimise disturbance to sensitive features and enhance the site for wildlife long term.
- 16.73 The scheme, and the wintering bird survey has been independently assessed by Place Services ecologists. They are now satisfied with the scheme subject to the conditions noted at the end of the report.
- 16.74 Through implementing the recommended mitigation and enhancements, it is considered that all significant negative impacts from the proposed development upon protected and notable habitats and species will be fully be mitigated in line with relevant wildlife legislation and national and local planning policy related to biodiversity.

## Biodiversity Net Gain, Canopy Cover and Trees

DC0901MWeV9.3



- 16.75 In terms of Biodiversity Net Gain (BNG) Other proposed features comprise public open space and attenuation basins, and it is anticipated that the appropriate management of these features for biodiversity could achieve a measurable Net Gain in terms of area habitats.
- 16.76 Biodiversity net gain calculations have been provided. The net gain assessment evidences a prospective future biodiversity net gain of 2.66 habitat units across the wider site, a net positive change of 35.88%. This is in excess of the 10% future mandatory requirement set to be brought into legislation under the forthcoming Environment Bill, evidencing the high biodiversity value offered by the proposed development scheme as a whole.
- 16.77 In terms of tree matters and Canopy Cover (CC), a Tree Survey/AIA has been provided. The existing trees on site will be retained and protected (save for some loss at the proposed access point) so the canopy cover from these trees will not change significantly, instead new planting will increase existing canopy cover.
- 16.78 The internal area of the site is currently vacant with no tree cover for the most part, only those trees around the edges. It is therefore held that a 10% canopy increase can easily be achieved with new tree planting incorporated in a soft landscape design, that can be conditioned as part of a planning consent with the scheme.

#### Public Rights of Way

- 16.79 This scheme does not impact upon existing public rights of way. It will provide a new link through the site to one of the cul-de-sac's on Alexandra Drive and to Elmstead Road which is beneficial. It will also provide a link towards Henrietta Close, however as the applicants do not own the land to the south, the footpath will stop at the boundary. This is clearly not ideal, but it is sensible for it to be provided to allow a future link which may potentially be possible at a later date.
- 16.80 Representations have noted this lack of full link and state that the failure to provide it means the scheme is unacceptable. Whilst it is unfortunate it is a matter of land ownership and officers do not consider that the lack of the full link warrants a refusal of a scheme with the other planning benefits that are demonstrated.

#### Flood Risk

- 16.81 Core Strategy Policy SD1 and Development Plan Policy DP20 require proposals to promote sustainability by minimising and/or mitigating pressure on (inter alia) areas at risk of flooding. Policy DP20 also requires all development proposals to incorporate measures for the conservation and sustainable use of water, including the appropriate use of SUDs for managing surface water runoff. Emerging Plan Policies CC1 and DM23 state that development will be directed to locations with the least impact on

flooding or water resources. Major development proposals required to reduce post development runoff rate back to the greenfield 1 in 1 year rate, with an allowance for climate change. On brownfield sites where this is not achievable, then a minimum betterment of 50% should be demonstrated for all flood events. In addition, emerging plan policy DM24 requires all new residential development to incorporate Sustainable Drainage Systems (SuDS) appropriate to the nature of the site.

- 16.82 NP Policy WIV 24 requires development to provide evidence that local infrastructure will be provided and/or improved relative to the size and scale of the development proposed. This requirement will apply to all infrastructure, including education provision and flood prevention (fluvial, sea and surface water).
- 16.83 NP Policy 26 requires development to be located to minimise the risk of fluvial and surface water flooding; and (ii) provide, wherever possible and appropriate to do so, sustainable drainage, as outlined in the Essex County Council SuDs Guide (or any successor document). It states that wherever possible this should be designed using above ground drainage features to help ensure robust treatment to improve the quality of water entering into local water bodies. The system should also promote wildlife habitats as well as green and blue corridors; and (iii) maximise the use of permeable surfaces wherever possible.
- 16.84 The NPPF also establishes policy relating to flood risk management. The main focus of the policy is to direct development towards area of the lowest possible flood risk without increasing the risk elsewhere. The NPPF advises that the sequential test should be used to steer new development to areas with the lowest risk of flooding. This a requirement for developments located in either Flood Zone 2 or 3.
- 16.85 The site is located in Flood Zone 1, at low risk from flooding. The principle of residential and other development on the site is considered acceptable through the allocation of the site in the Neighbourhood Plan.
- 16.86 A Flood Risk Assessment has been prepared by Stormor and submitted with this application. The assessment considered that the site would not be at risk of flooding from fluvial sources, sewers, groundwater, or artificial sources. It also outlines the principles of a drainage strategy which includes an attenuation basin in the south east corner of the residential area.
- 16.87 There is a public surface water sewer running adjacent to the eastern site boundary which connects to a 610mm diameter public surface water sewer to the south east of the site. There are public foul water sewers within Henrietta Close and Richards Avenue, to the west of the site. These sewers connect to the pumping station at the southern end of Henrietta Close. The proposed surface water drainage strategy for the site demonstrates a system of SuDS and attenuation features to provide

sufficient storage to avoid flooding within the site during the 1 in 100 year storm event + 40% allowance for climate change.

- 16.88 After a number of amendments, the LLFA (ECC SuDS team) are happy with the scheme subject to conditions. On that basis, the site will therefore not be at risk of flooding or increase the flood risk to others as a result of the proposed development.
- 16.89 Anglian Water commented on an earlier iteration of the drainage strategy and were satisfied with the foul water but not the surface water approach. The strategy was amended to attempt to overcome their objection and they required clarification that the LLFA were satisfied with the applicants approach. The LLPA is satisfied and the response from the LLFA has been sent to Anglian Water. On the basis that the full details will be conditioned at the LLFA's request as can be seen at the end of this report, this is not held to be a matter that warrant a refusal of this scheme.

#### Land Contamination

- 16.90 Development Plan policy DP1 requires new development to undertake appropriate remediation of contaminated land. Emerging Plan Policy ENV5 supports proposals that will not result in an unacceptable risk to public health or safety, the environment, general amenity or existing uses due to land pollution.
- 16.91 Policy DP1 – Design and Amenity confirms that development will need to undertake appropriate remediation of contaminated land. Paragraph 178 of the NPPF, also states that a site should ensure it is suitable for its proposed use taking account of ground conditions and any risks arising from land contamination.
- 16.92 A contaminated land assessment and Ensafel letter with additional gas testing supporting evidence has been provided to support this application carried out by Dr Melissa Morales.
- 16.93 The report concludes that no potential sources of contamination were identified at the application site, and as such no further recommendations were given or works necessary. The inhouse Contaminated Land officer agrees with these findings and subject to an unexpected contamination condition is satisfied with the scheme.

#### Agricultural Land Classification

- 16.94 No assessment of agricultural land value was submitted with this application as the applicants argue that the land is allocated in the WNP and therefore it is not necessary to provide one.
- 16.95 Whilst this scheme will therefore result in the loss of agricultural land, although it is not in food production currently, this is convincingly

outweighed by the public benefits of the scheme, namely the provision of housing and affordable housing in particular. The agricultural land in the Borough generally falls within these categories and this constraint is not unique to this site.

#### Health Implications

- 16.96 Policy DP2 of the adopted Local Plan requires all developments in excess of 50 units to be accompanied by a Health Impact Assessment to identify the potential health consequences on a given population and maximise the health benefits and minimise potential adverse effects.
- 16.97 In accordance with Policy DP2 an HIA has been prepared by Hodkinsons and is submitted in support of the application at the site. This concludes that the proposed development will benefit from features in its design, and its location, that will positively influence the health of the occupants as well as to local residents. It is also not considered to have any significant adverse impact on the provision of healthcare or educational facilities within the local or wider area.
- 16.98 The NHS has commented on this scheme and have not requested an mitigation (ie they have not requested a financial contribution).

#### Heritage

- 16.99 Both Core Strategy Policy ENV1 and Development Plan Policy DP14 seek to conserve and enhance Colchester's historic Environment. Development Plan Policy DP14 makes it clear that development will not be permitted that will adversely affect a listed building, conservation area, historic park or garden, or important archaeological remains. Emerging Plan Policy DM16 states that development affecting the historic environment should seek to conserve and enhance the significance of the heritage asset.
- 16.100 The relevant legislation for the review of the application from a heritage perspective includes Planning (Listed Buildings and Conservation Areas) Act (1990), whose Section 66 (1) requires that the decision to grant planning permission for development which affects a listed building or its setting shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 16.101 The application site does not contain any listed buildings and is not located in a conservation area, or by a historic park or garden. Whilst there are some listed buildings in Wivenhoe, they are removed from the immediate vicinity of the site therefore it is not considered that either scheme has a material impact on the setting of any listed buildings in the wider area.

### Archaeology

- 16.102 In terms of below ground heritage, the applicant has now completed an archaeological trial trenching evaluation in line with CBC's requirements. The Council's in house Archaeologist has reviewed a copy of this report (Colchester Archaeological Trust 2021).
- 16.103 The evaluation revealed archaeological features dating to the Middle Iron Age, Late Iron Age, Roman and medieval/post-medieval periods, largely concentrated in the southern half of the site. This included cremated human remains, and at least one ditched enclosure.
- 16.104 It is therefore considered that there are no grounds to consider refusal of permission in order to achieve preservation in situ of any important heritage assets. However, in accordance with the National Planning Policy Framework (Paragraph 205), any permission granted should be the subject of a planning condition to record and advance understanding of the significance of any heritage asset before it is damaged or destroyed and that is suggested at the end of this report.

### RAMS

- 16.105 Development proposals must not have an adverse effect on the integrity of habitat sites. Emerging Plan Policy ENV1 states that development proposals that have adverse effects on the integrity of habitats sites will not be supported.
- 16.106 NP Policy WIV32 requires that all residential development within the zones of influence of Habitats sites will be required to make a financial contribution towards mitigation measures, as detailed in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), to avoid adverse in-combination recreational disturbance effects on Habitats sites.
- 16.107 A Recreational disturbance Avoidance and Mitigation Strategy (RAMS) has been completed as part of the plan in compliance with the Habitats Directive and Habitats Regulations. Further to Section 1 Policy SP2, contributions are required from qualifying residential development, within the Zones of Influence as defined in the adopted RAMS, towards mitigation measures identified in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The proposed development has been considered in line with Natural England guidance, which concludes that the whole of Colchester Borough is within the zone of influence for the East Coast RAMS and that, unless a financial contribution is secured (to fund avoidance and mitigation measures in line with the RAMS), the proposed development is likely to have a significant effect upon habitat sites through increased recreational pressure, when considered in-combination with other plans and projects.

- 16.108 A contribution is included as part of the s106 requirements (see Section 15 of this report) and the proposed development is therefore considered to be in accordance with emerging policy ENV1 and acceptable in respect of its impact upon habitat sites. In addition to this, on site SANGs are suggested on the layout plan, this being a dog walking area.

#### Climate Crisis and Sustainability Measures

- 16.109 WIV 26 criterion (iv) states that development is encouraged to incorporate, at the build stage, technologies such as solar panels, which reduce reliance on fossil fuels.
- 16.110 EV charging will be conditioned at one charging point per parking space.
- 16.111 The applicants have submitted an energy statement. A total of total of 84kWp Photovoltaic array across the site will be installed which will ensure a further 10% reduction in energy demand for the residents. The precise location of the PV's will be dealt with via condition to ensure they are installed on the most appropriate roofs for solar gain.
- 16.112 It is also noted that as of the 14<sup>th</sup> June this year, the updated building regulations will come in to force. The 2022 revisions to Part-L of the Building Regulations consider the overall energy usage of the property. Whilst the uplift to the regulations will make it difficult to achieve compliance with gas and oil-fired boilers it is not impossible, but any such properties would need to be fitted with other energy efficiency measures such as PV or other renewables to demonstrate compliance. This is held to secure compliance with the sentiments of WIV 26(iv).

### **17.0 Conclusion and Planning Balance**

- 17.1 It is accepted that this scheme does not comply fully with the Wivenhoe NP Policy WIV29 as part of the residential area sits outside of the area allocated for such on the policy. That is the section that sits north of the high voltage power lines. Due to land ownership, it also cannot provide some of the linkages the NP requires.
- 17.2 In terms of the planning balance and the **environmental role** of sustainability it is accepted that the scheme will have a minor to moderate adverse impact on landscape interests, however there is only a marginal difference between siting dwellings north of the power lines and siting dwellings no further than the power lines as set out in the LVIA. It is also accepted that there will be a potentially very minor impact on neighbouring amenity and an intensification on the highway network. It is however held that this scheme, subject to conditions suggested, has the potential to be a well-designed, beautiful development befitting this edge of settlement location and has the potential to provide significant Biodiversity Net Gain and Canopy Cover Increase. This scheme will also secure a Landscape and Ecological Management Plan (LEMP) for the Wivenhoe Cross Pits LoWS for the benefit of ecology and the wider community.

- 17.3 In terms of the **economic role**, this scheme will be beneficial as new dwellings equal new residents who will use local and Borough wide facilities. The scheme will also generate new Council Tax receipts and the New Homes Bonus. Limited weight can also be given to the economic benefit that comes from the employment generated in the construction phase.
- 17.4 In terms of the **social role** this scheme provides very convincing benefits, namely the provision of both market housing and provision of affordable housing which form a generous and important contribution to the Councils' housing land supply. Very significant weight should be given to this in the planning balance. In addition, a large area of on-site open space for play and also dedicated land for the provision of sports pitches are a benefit of the scheme that many other developments of a similar quantum do not provide. The scheme also provides a number of contributions that will not only mitigate the development but will provide wider community benefit.
- 17.5 It is officers' opinion that notwithstanding the elements of the scheme that do not accord with the Wivenhoe NP, the scheme still accords with the Development Plan as a whole. No material consideration point toward the refusal of this scheme that will deliver the minimum of 120 dwellings as set out in the NP.
- 17.6 A refusal of the scheme because of the deviations from the NP would not, in officers opinion, be sustainable at appeal and would not deliver the much needed houses (both market and affordable) and the other significant social and environmental benefits as set out above. On that basis, the planning balance tips convincingly in favour of an approval.

## **18.0 Recommendation to the Committee**

- 18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990, within 6 months from the date of the Committee meeting AND subject to the resolution of the concerns of Anglian Water with regards to the outflow of the attenuation basin. No approval will be issued until Anglian Water have confirmed their acceptance of the scheme.

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

The Permission will also be subject to the following conditions for which delegated authority is requested to add to an amend as necessary.

#### 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.Approved Drawings

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

Full lists as per Drawing Issue Sheet Rev F

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

#### 3.Highways

Prior to commencement of the development a construction traffic management plan, to include but shall not be limited to details of vehicle/wheel cleaning facilities within the site and adjacent to the egress onto the highway, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the agreed plan

Reason: To protect highway efficiency of movement and safety.

#### 4.Highways

Prior to commencement of the development details of a footway/cycleway along Elmstead Road between the Broad Lane Sports Ground and the existing built-up part of Wivenhoe shall be submitted to and approved in writing by the Local Planning Authority

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

#### 5.Highways

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

- a) The vehicular and pedestrian access arrangements off Richard Avenue as shown in principle on the planning application drawings
- b) Upgrade to Essex County Council specification the two bus stops which would best serve the proposal site (details shall be agreed with the Local Planning Authority prior to commencement of the development)



- c) Provided it can be delivered to the required highway design standards within the extent of highway and/or land under the control of the applicant, a footway/cycleway along Elmstead Road between the Broad Lane Sports Ground and the existing built-up part of Wivenhoe
- d) Improvements to Footpath 14 Wivenhoe between the proposal site and Colchester Road (details shall be agreed with the Local Planning Authority prior to commencement of the development)
- e) A Travel Plan and Residential Travel Information Packs both in accordance with Essex County Council guidance

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

## 6.Ecology

### ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

“All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Impact Assessment (SES, March 2021), Biodiversity Net Gain Calculation (SES, n.d.) and the Information to Support Habitats Regulations Assessment (SES, March 2021) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

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

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

## 7.Ecology

### PRIOR TO COMMENCEMENT: CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN FOR BIODIVERSITY

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

The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of “biodiversity protection zones”.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.

- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.
- i) Containment, control and removal of any Invasive non-native species present on site

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

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

## 8.Ecology

**PRIOR TO COMMENCEMENT: FARMLAND BIRD MITIGATION STRATEGY** A Farmland Bird Mitigation Strategy shall be submitted to and approved by the local planning authority to compensate the loss or displacement of any Farmland Bird territories identified as lost or displaced. This shall include provision of offsite compensation measures to be secured by legal agreement or a condition of any consent, in nearby agricultural land, prior to commencement.

The content of the Farmland Bird Mitigation Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed compensation measure e.g. Skylark nest plots;
- b) detailed methodology for the compensation measures e.g. Skylark nest plots must follow Agri-Environment Scheme option: ‘AB4 Skylark Plots’;
- c) locations of the compensation measures by appropriate maps and/or plans;
- d) persons responsible for implementing the compensation measure.

The Farmland Bird Mitigation Strategy shall be implemented in accordance with the approved details and all features shall be retained for a minimum period of 10 years.”

Reason: To allow the LPA to discharge its duties under the NERC Act 2006 (Priority habitats & species)

## 9..Ecology

**PRIOR TO SLAB LEVEL: BIODIVERSITY MITGATION AND ENHANCEMENT STRATEGY**

A Biodiversity Mitigation and Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Mitigation and Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).

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

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

## 10.Ecology

### PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

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

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

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

## 11.Ecology

### PRIOR TO OCCUPATION: LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN

A Landscape and Ecological Management Plan (LEMP) for the Wivenhoe Cross Pits LoWS shall be submitted to, and be approved in writing by, the local planning authority prior occupation of the development.

The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).

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

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

### 12.Site Waste Management Plan

No material shall be transported off site until a Site Waste Management Plan has been submitted to and approved in writing by the Local Planning Authority. The development then be carried out in complete accordance with the approved plan.

Reason: To ensure the sustainable management of construction waste. The SWMP would be expected to present a site wide approach to address the key issues associated with sustainable management of waste, throughout the stages of site clearance, design, construction and operation, establish strategic forecasts in relation to expected waste arisings for construction, include waste reduction/recycling/diversion targets, and monitor against these, advise on how materials are to be managed efficiently and disposed of legally during the construction phase of development, including their segregation and the identification of available capacity across an appropriate study area.

### 13.SuDS Condition

No works shall take place except demolition until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and certified as technically acceptable in writing by the SuDS approval body or other suitably qualified person(s). The certificate shall thereafter be submitted by the developer to the Local Planning Authority as part of the developer's application to discharge the condition. No development shall commence until the detailed scheme has been approved in writing by the Local Planning Authority. The approved scheme shall subsequently be implemented prior to occupation and should include but not be limited to:

- Limit discharge rates to 1:1 Greenfield runoff rates for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change
  - Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event. In case the drain down time is more

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than 24 hours then demonstrate that features are able to accommodate a 1 in 10 year storm events within 24 hours of a 1 in 30 year event plus climate change.

- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- An updated drainage strategy incorporating all of the above bullet points including matters already approved and highlighting any changes to the previously approved strategy. The scheme shall subsequently be implemented prior to occupation.

Reason: To prevent surface water flooding and to mitigate any environmental harm that may be caused to the local water environment.

#### 14.SuDS Condition

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

Reason: The National Planning Policy Framework paragraph 167 and paragraph 174 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution. Construction may lead to excess water being discharged from the site. If dewatering takes place to allow for construction to take place below groundwater level, this will cause additional water to be discharged. Furthermore the removal of topsoils during construction may limit the ability of the site to intercept rainfall and may lead to increased runoff rates. To mitigate increased flood risk to the surrounding area during construction there needs to be satisfactory storage of/disposal of surface water and groundwater which needs to be agreed before commencement of the development. Construction may also lead to polluted water being allowed to leave the site. Methods for preventing or mitigating this should be proposed.

#### 15.SuDS Condition

Prior to occupation 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.

Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.

Reason To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk. Failure to provide the above required information prior to occupation may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.

### 16.SuDS Condition

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

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

### 17.Solar PV's

Prior to occupation of any of the dwellings, a scheme showing the position and type of solar PV panels shall be submitted to and approved in writing by the local planning authority. No dwellings may be occupied until the PV's are installed and are in full working order.

Reason: To facilitate the move to lower carbon homes which is encouraged by the Wivenhoe Neighbourhood Plan.

### 18.Landscape Management Plan

Prior to the first occupation of the development, a landscape management plan detailing long term design objectives and management responsibilities 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.Landscaping

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

- Finished levels or contours, where notable changes are proposed.
- Means of enclosure.
- Car parking layouts and other vehicle and pedestrian access and circulation areas.
- Hard surfacing materials.
- Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.).
- Proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. Indicating lines, manholes, supports etc.).

- Earthworks (including the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform)
- Retained historic landscape features and any proposals for restoration, including the reinforcement, reinstatement, renovation and gapping-up of all hedgerow enclosure to the site.
- Planting plans (drainage and building foundation detailing shall take account of the position of the trees as so indicated) to demonstrate at least 10% canopy cover increase.
- Written specifications.
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
- Implementation timetables and monitoring programs.

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

#### 20.Tree and Hedgerow Protection: General

All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site in accordance with the Local Planning Authorities guidance notes and the relevant British Standard. All existing trees and hedgerows shall then be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

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

#### 21.Construction Method Statement

No works shall take place, including any land clearance, 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.

The Construction Method Statement should incorporate the Air Quality and Noise Assessments dated 21 March 2021.

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.Limits to Peak Hours Construction Traffic

Due to traffic congestion on Clingoe Hill, no construction deliveries to or from the site shall take place during the peak traffic hours from 07:30 – 09:00am or from 16:00 – 18:30pm on weekdays.

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the existing levels of traffic already reaching high peak levels during these times.

## 23.Hours of Work

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

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working

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

## 24.No Bonfires

No bonfires are permitted during the site clearance or construction phase.

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.EV Charging points

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

Reason: To allow for the charging of low carbon electric vehicles.

## 26.Archaeology

No works shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of



Investigation that has been submitted to and approved, in writing, by the Local Planning Authority.

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

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

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

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

## 27.Materials To Be Agreed

No external facing or roofing materials shall be used in the construction of the development hereby permitted until precise details of the manufacturer, types and colours of these 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.

## 28.Architectural Detailing

Notwithstanding the details submitted, no works shall commence (above ground floor slab level) until additional drawings that show details of the architectural detailing of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. Details shall include window details (including details of the depth of reveal and any dormer features); details of mortar and mortar joint; rooflights to be used; doors, cills, arches, rustication / quoins, eaves, verges, ridge, brickwork /stone work detailing, chimneys; recessed/projecting/decorative brickwork and cladding; blank and faux windows;

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and any rainwater goods to be used, by section and elevation, at scales between 1:20 and 1:1, as appropriate, are 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: Insufficient detail has been submitted to ensure the architectural detailing is of a high quality and where such details are considered important to establishing a benchmark for the character of the buildings in this strategically important and prominent site.

### 29.Utilities

No works shall commence (above ground floor slab level) until details (including position) of all new plant, extract ducts, vents, grilles and meter housings have been submitted to and approved, in writing, by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

Reason: In the interests of good design and visual amenity.

### 30.Boundary Treatments

Prior to their installation precise details of all boundary treatments shall have been submitted to and approved, in writing, by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory form of development and in the interests of visual amenity.

### 31.Details of Cycle Storage

No occupation shall take place in each phase of the development hereby permitted until cycle parking for at least 1 no. bicycle per dwelling has been laid out within the site in accordance with details that shall have previously been submitted to and agreed, in writing, by the Local Planning Authority. The agreed cycle parking provisions shall thereafter be maintained and made available for this use at all times.

Reason: There is insufficient detail shown to ensure that there is satisfactory cycle parking available at the site at the time that it becomes occupied.

### 32.Reporting of Unexpected Contamination

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

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

Reason – The site lies on or in the vicinity of where there is the possibility of contamination.

### 33.Street Name Signs

Prior to the first occupation of any of the dwellings hereby approved street name signs shall have been installed at the junction of the new highway with the existing road network.

Reason: To ensure that visitors to the development can orientate themselves in the interests of highway safety

### 34.Removal of PD for All Residential Extensions & Outbuildings

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

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

### 35.Removal of PD - Residential Outbuildings, Enclosures and Pools

Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A, B and E 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 provision of buildings, enclosures, swimming or other pool shall be erected except in accordance with drawings showing the design and siting of such building(s) which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: The site is already heavily constrained and developed and any further development on the site would need to be considered at such a time as it were to be proposed.

### 36.Removal of PD for Open Plan Fences/Walls

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 in advance of any wall of the dwelling to which it relates (including a side or rear wall) which faces a highway (including a footpath or

bridleway) unless otherwise subsequently approved, in writing, by the Local Planning Authority.

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

## 19.0      **Informatives**

19.1      The following informatives are also recommended:

### **1. ZT0 – Advisory Note on Construction & Demolition**

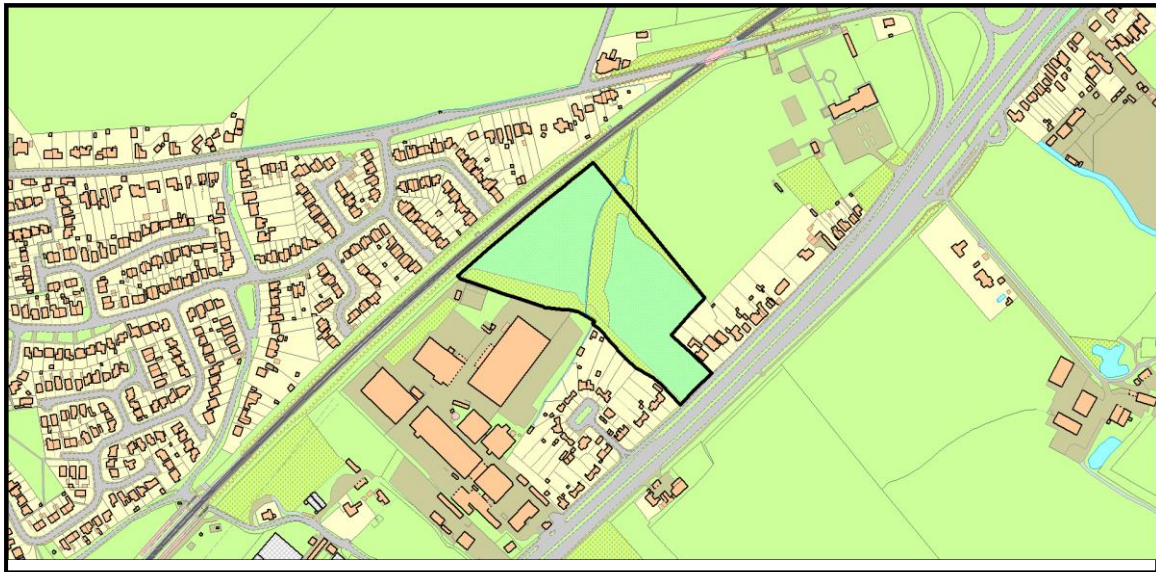
The developer is referred to the attached advisory note *Advisory Notes for the Control of Pollution during Construction & Demolition Works* for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental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

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

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

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

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



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## Item No: 7.2

**Application:** 211788

**Applicant:** Marks Tey Ltd.

**Agent:** Savills – Mr John Bowles

**Proposal:** Development of the site for commercial, business and service (Class E c and g<sup>1</sup>), general industrial (Class B2) and storage and distribution (Class B8) purposes with associated access, parking including provision for lost residents on-street parking and landscaping, including diversion of a public right of way, and off-site highway improvement to the Old Landon Road and its junction with the A120.

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

**Ward:** Marks Tey & Layer

**Officer:** Simon Cairns

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

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<sup>1</sup> Note: Class E

c) the following kinds of services principally to visiting members of the public  
i. financial services; ii. professional services (other than medical services); iii. any other services which it is appropriate to provide in a commercial, business or service locality.

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

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

- 1.1 This application is referred to the Planning Committee because the application is classified as a major, a s.106 agreement is required and objections have been received.
- 1.2 This application was deferred at the Planning Committee meeting on 20 January 2022 (item 7.2) for officers to seek revisions as follows:
- Address highway access issues and compliance with NP Policy MT15 involving members, MP and National Highways in light of planned A12 improvements and imminent DCO;
  - Reduce quantum of built form on site to avoid over development of site and allow for increased tree retention and potential landscape buffers to boundaries especially those adjacent to dwellings
  - Improve streetscene to Old London Road with better contextual design for Unit 1100
  - Resolve on street parking for residents and delete suggested TRO to remove the parking bays for residents
  - More effective mitigation for residents amenity
  - Review proposed mix of uses to seek to reduce HGV movements e.g. by reducing B8 and increasing E c) uses.
- 1.3 Further negotiations have since taken place with the agents and amended plans have been received. These changes do not alter the built form or the proposed uses but have sought to significantly increase the amount of planting on site and in particular, buffer planting along boundaries with neighbouring dwellings and across the frontage to Old London Road. These matters are considered in the updated report below.
- 1.4 The previous report to members is set out below but updated to include any changes in circumstance that have occurred since the proposal was last considered by the Planning Committee in January 2022. The recommendation is approval subject to a s.106 agreement to secure the developer obligations/contributions set out in the report.

## **2.0 Synopsis**

- 2.1 The application is for full planning permission for the erection of four blocks to create 9 individual commercial units comprising industrial (Class E(c and g), B2 and B8) and provision for associated estate access, car parking, HGV parking, cycle shelter, refuse storage, residents parking, diversion of the existing PROW, landscaping, ecology mitigation, suds and off-site highway works under section 278 of the Highway Act.
- 2.2 The principle of the planning application, in delivering new commercial units in a sustainable location with predominantly industrial and employment-related uses is supported. The site is allocated in the adopted plan within

the Site Allocations DPD (2010) as an existing employment site with a proposed allocation for extension to the east. Appropriate uses being set out in Development Policy DP5. Whilst the proposal involves a modest amount of office floor space, this is not considered to have a detrimental impact on the site's primary economic function in accordance with Core Strategy Policy CE1 (Centres and Employment Classification and Hierarchy) promotes economic development through the regeneration and intensification of previously developed land. Policy CE3 states that Employment Zones will accommodate business developments that are not suited to Mixed-Use Centres, including industry and warehousing. The site is also an allocation in the Section 2 CBLP by policy SS11 Marks Tey following modifications requested by the Inspector. This policy allocation now carries great weight given the very advanced stage in the plan making process.

- 2.3 The site is also allocated for employment uses by the Adopted Marks Tey NP at Policy MT15 which seeks to defer delivery of trip generating development until the planned A12 road improvements are delivered to avoid adverse highway impacts (also MT01) and to provide direct site access (negating the need to use Old London Road). In the absence of a highway objection or evidence of harm on the grounds of network capacity nor safety, there is not considered to be substantive grounds to justify delayed delivery of the scheme especially given its associated public benefits (economic growth and jobs).
- 2.4 The proposal is considered to introduce a well-designed and contextual building that would relate and enhance the adjoining existing commercial site (Anderson site) and contribute to local employment opportunities, vitality, and wider Colchester economy in accordance with Development policies DP1 and DP5 of the adopted local plan.
- 2.5 The proposed development is considered to have been designed to minimise the impact on neighbouring amenities and would not affect daylight, sunlight and privacy or outlook of neighbouring properties to an unacceptable extent. As such, the application is considered acceptable and in accordance with Development Policy DP1 (Design and Amenity) of the adopted local Plan.
- 2.6 The proposal is considered to be in a sustainable location and measures have been designed and incorporated into the scheme to address sustainable urban drainage, ecology, landscaping and noise issues in accordance with planning policies. The proposal would involve off-site highway improvements which would require a separate highways agreement under section 278 of the Highway Act with the Highway Authority, in this case, National Highways (Highway England).
- 2.7 Finally, the application includes a section 106 agreement with suitable planning obligations and financial contributions to mitigate the impacts of the development, thus the planning application is considered to be

acceptable and in accordance with adopted planning policy, subject to the planning conditions and planning obligations/contributions listed.

The revised drawings submitted following the deferral of the application in January have sought to address members concerns. In summary these revised drawings show: The amended drawings show:

- A reduction from 7 no. to 5 no. resident (visitor) spaces at the entrance adjacent to Unit 1110 (therefore reducing the replacement of the 4 no. on-street resident parking spaces to 5 no. off-street spaces rather than 7 no. spaces as offered previously in the s.106 Agreement), relocation of the cycle store and movement of the staff parking area away from the boundary to no.194 Old London Road to allow for increased landscape buffer planting along this boundary
- Reduction of the yard area to Unit 1000 to increase the landscape planting strip along Recreation Ground boundary
- Introduction of climbing planting on a basic frame to the North East building elevations of both Unit 1000 and Unit 1110 ('green-walling')
- Reduction of hardstanding and path areas to the South West of Unit 1000, including revised routing of pedestrian route through the development, and reduction of other hardstanding areas and addition of planting to soften the scheme
- Addition of photovoltaics (PVs) to building roofs

- 2.8 Furthermore, the developer's agents have submitted a supporting statement (dated 20 May 2022) which responds to the specific concerns raised by committee. In particular:

#### Highway safety

"No objection has been raised by National Highways or ECC Highways on access or highways impact grounds. At a recent meeting arranged by Mark Norman of National Highways (attended by representatives of the applicant, ECC Highways and CBC officers), the wider highways infrastructure proposals being delivered along the A12 and the A120 and a potential alternative access option across the parish council's adjacent recreation ground were discussed in response to the request by Planning Committee. The impracticability of such an alternative access arrangement is obvious and such an option was never mooted or considered as part of the allocation of the site. Given this, the absence of technical objections to the proposed access and the recognised need for and allocation of the site for employment of the form proposed, the applicant requests that the application is determined on the basis of the access arrangements as proposed. On this same basis, there is no justification for the development to be delayed until the A12 improvement works are completed or to accept a phased approach allowing only some development/occupation before the A12 Improvements are completed, not least given that the timing and delivery of those improvements is uncertain. As and when delivered, the A12 improvements will downgrade Old London Road and remove the connection to the A120 resolving current concerns regarding conflicts



between vulnerable road users and cars/HGVs along Old London Road, but until then the proposed access has been demonstrated to operate safely (see Mode Transport Note, dated 8 December 2021). The applicant is aware of the recent making of the Marks Tey Neighbourhood Plan. The specific wording of NP Policy MT15 (which relates to the adjacent land and does not reflect the application site's Local Plan allocation) does not support a delay to development, particularly in the absence of evidence to counter the agreed position that the proposed access would not result in unacceptable highways impacts. Other highways matters, specifically our response in relation to the proposed displacement of on-street resident parking on Old London Road through a TRO, is set out in our response to '4) Retention of on-street parking' below."

In essence, the developers advise that in the absence of any evidence of any adverse impact on highway safety or the network, there are no grounds for refusal and this is a material consideration.

### Quantum of Development

"The scheme has been carefully designed, through prolonged consultation and discussion with council officers, to deliver much needed economic development which is supported by the site's Local Plan allocation and meets institutional and occupier expectations whilst being sympathetic to neighbouring residential amenity. Reduction in the quantum of the proposed development would reduce its economic benefit and is not necessary or justified by officer comments. The Landscape Officer's formal response recorded in the Officer's Report (paragraph 8.10) only refers to the need for 'landscaping' detail to be approved (not a revised layout) and merely requires a landscape management plan through a recommended planning condition. No objection has been raised to the loss of the existing hedgerow or any structural issues raised regarding the layout by this officer, by the arboricultural officer (paragraph 8.11) or by the Council's ecology consultant (paragraph 8.9). Notwithstanding the above, and in order to soften the appearance of the proposed development, additional soft landscaping has been introduced to the site. The changes to the proposed scheme are summarised as follows:

- Reduction in the number of number of off-street resident (visitor) spaces from 7 to 5 spaces at the site entrance adjacent to Unit 1110 and increase in landscaping area.
- Relocation of the cycle store for Unit 1110 and movement of the staff parking area away from the boundary to no.194 Old London Road to allow for increased landscape buffer planting along this boundary.
- Reduction of the yard area to Unit 1000 to increase the landscape planting strip along the Recreation Ground boundary.
- Introduction of climbing planting on a basic frame to the North East building elevations of both Unit 1000 and Unit 1110 ('green-walling').
- Reduction of hardstanding and path areas to the South West of Unit 1000, including revised pedestrian routing through the development,

and reduction of other hardstanding areas and addition of planting to soften the scheme.

- General reduction in the areas of hardstanding across the scheme and replacement with soft landscaping resulting in an additional 820 sq.m of soft landscaping area to assist with the softening of the development, as shown in the revised Illustrative Landscape Strategy (dwg ref: 20-5482 Rev V6). Approval of the detailed landscaping scheme and associated management plan for these areas is secured via appropriately worded conditions (proposed Conditions 15 and 16), with detailed planting to be agreed with the Council.
- Additional installation of solar panels (PVs) on roofs to generate renewable electricity on site.”

The developer’s opinion is that there is no evidence to support a conclusion that the scheme constitutes over development. They have introduced additional planting across the site with a reduction in hardstandings including the provision of green walling to prominent elevations facing dwellings and buffer planting to boundaries with neighbouring dwellings. In addition, PV panels have now been incorporated into the roofing.

Design of Unit 1110 (frontage on Old London Road)

“As shown in the revised drawings and summarised under ‘2) Quantum of Development’ above, design changes have been made to allow for increased landscape buffer planting along the boundary to 194 Old London Road. Green walling has also been introduced to the north east elevation, to soften the appearance of that elevation of the building and better integrate it with the landscaping to improve the relationship to the residential property at no.194 Old London Road. The scale and massing of Unit 1110 is lower than the other proposed units to respect its relationship with the neighbouring residential property. In addition, proposed Conditions 28 and 29 restrict the use and operating hours of Unit 1110 to ensure that neighbouring amenity is satisfactorily safeguarded.”

The developer’s submit that this unit has been scaled with due consideration for its setting and relationship with the adjacent bungalow. Furthermore, the proposed conditions restrict the hours of operation to ensure that the residential amenities of the neighbouring dwelling are protected. The revised drawings indicate green walling on the flank elevation to soften the appearance of the unit and in addition, the removal of two of the proposed parking spaces from the site frontage has facilitated further hedgerow planting to soften the appearance of the development in the streetscene.

Retention of on-street parking for resident’s use

“The proposed off-street residents/visitor parking provided in the scheme (originally 7 no. spaces, now 5 no. spaces) are intended to replace 4 no. existing parking bays along Old London Road which National Highways requested be removed to provide an additional area for HGVs to wait in the event of an incoming vehicle in the opposite direction. Removal of these

existing on-street spaces would need to be secured through the implementation of a Traffic Regulation Order (TRO), and the availability for use by residents of the replacement spaces secured by an undertaking in the s.106 Agreement. However, the question has been raised what the impact would be on the scheme in the event that a TRO could not be secured for the removal of the existing on-street (Old London Road) parking bays. This scenario has been considered and addressed by Mode Transport Planning. Assessment undertaken by Mode Transport and provided to National Highways (see Mode Transport Note, dated 8 December 2021) demonstrates that the residual impacts on the road network would not be considered severe in terms of traffic volumes or safety if the TRO were not approved.

Acceptance of this position was the basis on which National Highways removed their holding objection to the application – see ‘National Highways Planning Response (NHPR 21-09) September 2021’: ‘Further to our previous holding response, further information has been submitted by the applicant and discussion held with the Borough and County Councils. We have reconsidered the likely highway impact of this development and have concluded that it is unlikely the proposal would lead to a road safety problem or a severe impact in capacity terms’. Operation of the proposed access and accommodation of the traffic generated by the development would, therefore, not lead to a road safety problem either with the removal of the 4 no. on-street spaces or, in the event that removal could not be secured, in the event that they remain. In the latter scenario, the 5 no. additional off-street spaces would still be available (as secured through the s.106 Agreement) for residents use.”

The applicants reiterate that no objection on highway grounds has been raised by National Highways and even in circumstances where no TRO were to be agreed, the scheme is safe in highway terms and delivers improvements to Old London Road and the site access to ensure that the scheme has no potential material impact on highway safety. It must also be acknowledged that when the A12 upgrading works are delivered associated movements will no longer use Old London Road and as such any uplift in trips is temporary only.

#### Impact on residential amenity

“As shown in the revised drawings, and as set out in the bullet point list in our response to ‘2) Quantum of Development’, additional areas of soft landscaping have been introduced around the site, which will better ensure that residential amenity is adequately protected.”

The additional planting proposed in the revised landscape strategy seeks to enhance the environment for neighbouring dwellings. In addition, the restrictions proposed in planning conditions should ensure that residential amenity is effectively protected.

## Trip generation and the mixture of uses

“The highways impacts have been assessed as being acceptable (Committee Report paragraphs 8.2 – 8.5, 17.49 and 17.55). The basis for the request to fundamentally change the scheme given the prolonged consultation that has already taken place to this point (Committee Report paragraphs 17.12 – 17.22) is lacking and would unreasonably further delay needed economic development which is supported by the site’s Local Plan allocation.”

The developer’s position is that any change in the detailed uses proposed is not justified as the trip generation associated with the existing scheme does not give rise to highway safety/capacity or amenity concerns given the low daily increase in HGV’s (96 daily) and in the absence of any history of accidents on Old London Road.

The applicants believe they have addressed the concerns raised at the committee meeting of 20.01.22. for the reasons set out above.

- 2.9 The application is subsequently recommended for approval subject to a s.106 agreement and conditions.

### **3.0 Site Description and context**

- 3.1 The application site is situated outside the defined settlement boundary of Marks Tey on the north side of Old London Road, between Nos.194 to 202 Old London Road from the south and bounded by the main railway line to the north. It also extends beyond the rear garden boundary of properties 192 and 190 Old London Road. The land comprises an irregular shaped vacant field that measures about 3.13 hectares and is relatively flat.
- 3.2 The Old London Road runs parallel with A12 and thus only the northern section of Old London Road is developed and consist of primarily a mix of established commercial and residential properties. The residential dwellings comprise bungalows and two-storey residential properties and the Anderson’s commercial estate. Intermittently there are undeveloped gaps between properties along the northern section of Old London Road including the application site.
- 3.3 The application site shares the boundary along its northwest corner with the Anderson’s Commercial Estate and is separated by a low-level gate, but no estate road currently continues into the application site.
- 3.4 The site currently has no vehicular access onto Old London Road and only Public Right of Way 144-15 runs along its western boundary. This PROW terminates at the site northern boundary due to the removal of the former footbridge over the main railway line.

- 3.5 To the east of the site are the playing fields associated with the Marks Tey Village Hall and beyond the railway track to the north is the heart of the residential settlement.
- 3.6 The application site is located within the countryside albeit sandwiched between Old London Road and the railway line. However, the site is not located in an isolated position, public transport and railway station are within a short walking distance.

#### 4.0 Description of the proposal

- 4.1 The application seeks planning permission for the following:

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

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

- Provision for a new vehicular and pedestrian access from Old London Road, with the estate road to continue up to the site northwest boundary with the adjoining Anderson site.
- The blocks are designed to meet expected occupier requirements and maximise the flexibility of the space.
- Provision of 115 car and 8 HGV parking spaces (loading, unloading bays and turning) including 11 disabled spaces and provision for 10 motorbike parking and 28 under cover bicycle shelter spaces close to individual blocks. EV charging will be made available at 10% of the total car parking spaces across the site, equal to 12 EV charging stations.
- The units include ancillary office elements and block 1000 includes loading docks and other ancillary space.
- With the proposed internal floor area, using recognised employment densities (Employment Density Guide 2015, HCA) for employment buildings, the proposed blocks have the potential to generate between 270 and 339 full-time equivalent jobs.

- Provision for diversion of the existing dead-end PROW from the western side of the site to the eastern boundary and creation of new pedestrian and cycle path to connect the application site via parish Council's land to provide the opportunity for new footpath and cycleway link to A120.
- Landscaping planting, hard landscape enhancements and suds drainage
- Provision for 5 on-site residents car parking spaces to offset the loss of on-street car parking on Old London Road (amended by recent revised drawings received 20 May 22).
- Erection of 3.5m close boarded acoustic fence along the south-eastern, southern and south-western boundary of the site.
- Off-site highway improvements to facilitate better HGV movements along the Old London Road and its junction with A120.

## **5.0 Land use allocation**

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

Further development of the site will require:

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

## **6.0 Relevant Planning History**

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

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

211878 – Former Andersons Site, 228 Old London Road – Clearance of site and erection of building for builder's merchants/B8 Storage: approved see committee report of 31.03.22.

## **7.0 Principal Policies**

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

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

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

SD1 - Sustainable Development Locations

CE3 - Employment Zones

TA1 - Accessibility and Changing Travel Behaviour

TA2 - Walking and Cycling

TA3 - Public Transport

TA4 - Roads and Traffic

TA5 - Parking

ENV1 - Environment

ENV2 – Rural Community

ER1 - Energy, Resources, Waste, Water and Recycling

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

DP1 Design and Amenity

DP2 Health Assessments

DP3 Planning Obligations and the Community Infrastructure Levy

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

DP17 Accessibility and Access

DP18 Transport Infrastructure Proposals

DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

DP25 Renewable Energy

- 7.4 Adopted Local Plan and Emerging Local Plan

Emerging Colchester Borough Local Plan 2017-2033:

### **Overview**

The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan was examined in 2021 and the Inspector's report has been recently received confirming the plan to be

sound. Section 2 of the Plan may now proceed to be formally adopted. Section 2 policies now carry significant weight.

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

#### Adopted Section 1 Local Plan

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

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

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

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

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

#### **Emerging Section 2 Local Plan**

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

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

The Emerging Local Plan submitted in October 2017 is at an advanced stage, with Section 1 now adopted and Section 2 having completed examination. The final Inspector's report on Part 2 of the ELP has now been received and the plan has been judged to be sound. Section 1 of the plan is



therefore considered to carry full statutory weight and section 2 policies also now carry significant weight.

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

Policy SS11: Marks Tey

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

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

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

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

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

SP1 Presumption in Favour of sustainable development

SP4 Providing for Employment and Retail

SP5 Infrastructure and Connectivity

SP6 Place Shaping Principles

SG1 Colchester’s Spatial Strategy

SG3 Economic Growth Provision

DM6 Economic Development in Rural Areas and Countryside

DM15 Design and Amenity

DM23 Flood Risk and Water Management

- 7.7 The Marks Tey Neighbourhood Plan was adopted in April 2022. It is now part of the statutory development plan and must be afforded full weight.

A core objective of the plan states:

**Business and Employment.** Regenerating the main sites in the parish, particularly through environmental improvements including the London Road parade of retail businesses. **Also helping to turn the now closed**

**Andersons timber merchants and surrounding area into a modern industrial area. (bold emphasis added).**

The NP contains a site specific policy as follows:

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

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

The following site-specific requirements apply:

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

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

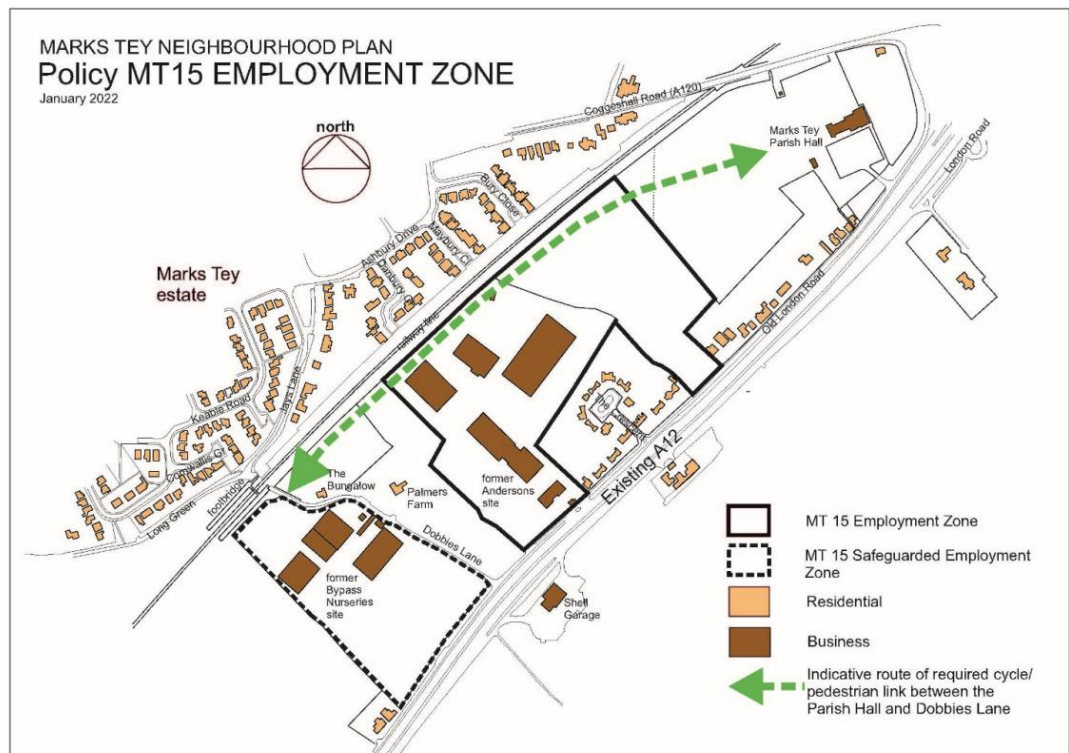
The adjacent former By-Pass Nurseries site shown on Map 6.10 is safeguarded for employment use subject to those uses being consistent with the existing edge of settlement rural location. All schemes must maintain or enhance residential amenity and landscape character.”

**(bold my emphasis)**

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

The principal unresolved issue (see bold above) relates to the NP policy requirement that the site should be accessed via an improved direct access on to the A12 and although the wording is slightly ambiguous it is assumed the intention is that it should not be brought forward until the planned A12 highway improvements have been delivered. This is an important issue that is discussed further in the report.

The plan below is an extract from the Marks Tey NP policy.



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

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

- The Essex Design Guide
- External Materials in New Developments
- EPOA Vehicle Parking Standards
- Sustainable Construction
- Cycling Delivery
- Sustainable Drainage Systems Design Guide
- Managing Archaeology in Development
- Developing a Landscape for the Future
- ECC's Development & Public Rights of Way
- Planning Out Crime

- Air Quality Management Guidance Note, Areas & Order

## 8.0 Consultation responses

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

### Highway Authority (National Highways – formerly Highway England)

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

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

Scheme details shall include drawings and Documents showing:

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

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

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

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

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

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

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

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

### **Highways Act Section 175B**

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

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

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

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

### **Essex County Highway Officer**

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

b) A travel plan in accordance with Essex County Council guidance

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

Notes:

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

#### Archaeology Officer

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

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

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

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

The following archaeological condition is recommended:

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

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

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

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

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

Informative:

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

### SuDs

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



We also have the following advisory comments:

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

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

#### Natural England

- 8.8 No comments to make

#### Ecology Consultant

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

#### Summary

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

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

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

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

We are satisfied that mitigation measures to reduce impacts on habitats and protected species have been outlined and support the recommendation of securing these through the implementation of a Construction Environmental Management Plan (CEMP) for biodiversity. This would need to include the appropriate timing of vegetation clearance works to avoid impacts on nesting birds and the implementation of root protection zones around trees to be retained.

#### Bats:

We note that the trees on the site are considered to have negligible potential to support roosting bats and that the bat activity surveys have informed the mitigation measures. However, the lux contours on the submitted External

Lighting layout Rev P002 (Johns Slater and Haward, June 2021) indicate that there will be light spillage onto the boundary vegetation. This is in conflict with the EclA which states that a wildlife-sensitive lighting strategy will be designed in consultation with a bat ecologist to ensure the site remains suitable for use by foraging and commuting bats. This strategy would control lighting on site so as to avoid unnecessary illumination of bat foraging and commuting habitat. Specifically, this strategy should mandate that the illumination of boundary features should be minimised so as to conserve their integrity for use by bats.

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

Reptiles:

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

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

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

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

Biodiversity Net Gain:

We welcome the provision and retention of bird and bat boxes and the use of native plant species or species with a known value to wildlife as biodiversity enhancements. However, we would also expect to have a Biodiversity Net Gain (BNG) design stage report to demonstrate how the development will deliver net gain for biodiversity as required by NPPF (2021). We advise that it is not possible to require any specific % until secondary legislation is enacted to deliver mandatory BNG as described in

the Environment Act 2021. As there is no detail on whether habitats on-site would be adequately compensated or not to support net gain,

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

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

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

Recommended conditions

**1. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS**

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

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

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

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

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

The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of “biodiversity protection zones”.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).

- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on-site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

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

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

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

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

The content of the method statement shall include the following:

- a) purpose and objectives for the proposed works;
- b) detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);
- c) extent and location of proposed works shown on appropriate scale maps and plans;
- d) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
- e) persons responsible for implementing the works;
- f) initial aftercare and long-term maintenance (where relevant);

g) disposal of any wastes arising from works.

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

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

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

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

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

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

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

#### **5. PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME**

“A lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall be based on identifying those features on-site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings

and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.”

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

## **6. PRIOR TO OCCUPATION: LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN**

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

The content of the LEMP shall include the following:

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

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

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

#### Landscape Officer

- 8.10 Regarding the landscape content/aspect of the strategic proposals submitted principally under drawings 18204\_P0104.D & P0105.D and the Landscape & Visual Appraisal (ZVA) doc 20-5310.1, all lodged on 29/10/20, and drawings 18204\_P1003.E & P1103.D, drawing 20-5483.V6 and the letter from Savills dated 20/05/2022, all lodged on 23/05/2022:

Notwithstanding the previous recommendations made in the Landscape Consultation Response lodged 26/07/2021, the revised proposals satisfy the landscape elements of the specific items highlighted by the Planning Committee of 20/01/2022 as requiring resolution, as itemised in Savills letter dated 20/05/2022.

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

Landscape management plan Bespoke:

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

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

- Implementation timetables and monitoring programs.

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

Arboricultural Officer

- 8.11 No objection subject to conditions.

Urban Design Officer

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

Environmental Agency

- 8.13 No comments to make

Anglian Water

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

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

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

Contaminated Land Officer

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

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

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

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

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

ZG3 - \*Validation Certificate\*

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



controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors and as insufficient information has been supplied by the applicant and Environmental Protection wish to ensure that development only proceeds if it is safe to do so.

#### Environmental Protection Officer

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

#### **Construction Method Statement**

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

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

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

#### **Limits to Hours of Work**

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

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

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

## **EV Charging points**

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

## **Noise**

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

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

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

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

## **Acoustic barriers**

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

## **Unit 1110**

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

### **Restriction of Hours of Operation**

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

Weekdays: 07:00-21:00

Saturdays: 07:00-21:00

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

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

### **Restricted Hours of Delivery**

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

Weekdays: 07:00-21:00

Saturdays: 07:00-21:00

Sundays and Public Holidays: No deliveries.

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

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

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

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

### **Light Pollution for Major Development**

Prior to the first OCCUPATION/USE of the development hereby permitted, a validation report undertaken by competent persons that demonstrates that all lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) fully complies with the figures and

advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ2 shall be submitted to, and agreed in writing by, the Local Planning Authority. Any installation shall thereafter be retained and maintained as agreed therein.

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

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

### **Surface Water Treatment**

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

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

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

### **Essex County Fire and Rescue Services**

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

## **9.0 Marks Tey Parish Council**

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

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

*(Officer Note: A meeting was held with the PC and National Highways on the 23 May 2022 to explore their sustained objections on highways grounds. The relevant NP policies were discussed and National Highways explained their position and lack of objection. The PC remained of the opinion that the development should not proceed in advance of the A12 improvements).*

## **10.0 Representations from Notified Parties**

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

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

- The proposal will not enhance and increase the local infrastructure and will increase demand on road system, adversely impact on road safety access and egress.
- The Traffic Assessment is misleading and omits vehicular movements current or planned for Anderson Site.
- Loss of on-street parking would mean residents park over ¼ mile away on the applicant's site and not visitor or delivery parking.
- The proposal will aggravate local air quality and impact the health and wellbeing of residents.
- The proposal will impact local wildlife.

### **Colchester Cycle Campaign**

10.2 Colchester Cycling Campaign objects to this plan. If it is considered for approval, mitigation should be carried out and completed at the same time as the development. If any work is outstanding it should be subject to a legal agreement and funded via a 20-year Section 106 or CIL agreement. See the table below for a list of mitigation measures.

Highways England should consider this scheme not as a standalone but as a major part of other recent planning applications in this area, which all add to motor traffic.

This particular application is disappointing in terms of provision for active travel: it is likely to increase dependence on short to medium-distance commuting by a car while further undermining cycling through increased traffic and greater danger, especially in Old London Road.

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

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

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

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

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

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

There is no indication of the type of cycle parking that the developer intends to provide, whether the security is sufficient and whether it is covered. The

applicant seems to have ignored the requirement at 3.6.2 of the Essex Parking Guide that “cycle parking should be conveniently located adjacent to entrances to buildings”.

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

### **Local Member of Parliament Rt Hon Priti Patel MP**

- 10.3 Has written in on behalf of her constituent and the parish council, setting out concerns about the scale of the development and its impact, as well as additional traffic and pollution on Old London Road. Ms Patel considers the road to be inadequate to serve the development and that the application is premature until the planned improvements to the A12 have been delivered.

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

### **Cllr Kevin Bentley Ward Councillor & Leader of Essex County Council**

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

## **11.0 Parking Provision**

- 11.1 The scheme proposes on-site car parking spaces and cycle parking

- Provision of 115 car and 8 HGV parking spaces (loading, unloading bays and turning) including 11 disabled spaces and provision for 10 motorbike parking and 28 bicycle shelters close to individual buildings.
- Electric Charging stations for 10% of the total car parking spaces proposed, equal to 12 electric charging stations.
- Provision for 5 on-site residents car parking spaces to offset the loss of on-street car parking to road widening/highway improvement.

The proposals satisfy the relevant adopted policy standards.

## **12.0 Accessibility**

- 12.1 The development will be laid out to achieve accessibility for disabled occupants. All disabled car-parking bays are located as close to the main entrance as possible, with cycle shelters providing security and protection for bicycles. Safe pedestrian routes from these shelters align with the route between the car park and the building.

- 12.2 All levels within the car parking areas will have a gradient of less than 1:25, enabling wheelchair access and ambulant disabled to access the site without difficulty.
- 12.3 All main entrances into the unit will be 'wheelchair friendly' level entry, with automatic or manual opening doors. The doors will meet all current Building Regulations Part M requirements, with full height tubular steel handles for ease of opening.
- 12.4 The reception area to the main office areas will be suitably sized to accommodate wheelchair users. Internal corridors will be a minimum of 1500mm wide at the pinch point. All doors will have a minimum clear opening of 800mm suitable for wheelchair access.

### **13.0 Open Space Provisions**

- 13.1 N/a

### **14.0 Environmental Protection (Air Quality)**

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

### **15.0 Environmental and Carbon Implications**

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

### **16.0 Planning Obligations**

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

- i- Footpath link to A120: Payment of £45k to Marks Tey Parish Council to deliver diversion of footpath 144-15 involving a 3.5m wide pedestrian and cycle path from the eastern boundary of the application over the Marks Tey Parish Council land towards the northeast to connect with the pavement of A120.



- ii- Archaeology contribution £14,400 toward museum-quality display cases, design and display material.
- iii- Contribution of £753 towards enhancement of the Colchester HER £348 to mitigate the information from the archaeological, if no archaeological remains are affected by the development.
- iv- Obligation to provide 5 on-site car parking spaces in perpetuity for the benefit of the residents of Old London Road and as shown on drawing 18204 PO103 Revision K.
- v- Travel Plan Monitoring contribution: Payment of contribution of £6,132 toward monitoring of the Travel Plan by Sustainable Travel Planning Team.

## 17.0 Report

### Principle of the Development

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

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

Further development of the site will require:

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

- 17.4 Policy SG4 of the emerging Section 2 emerging Colchester Borough Local Plan (CBLP) seeks to safeguard the Local Economic Areas in Colchester primarily for B Class uses to protect and enhance employment provision. Local Economic Areas are listed in Table SG4 and include the former Andersons Timber Yard site.

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

Policy SS11: Marks Tey

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

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

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

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

As a direct consequence of this modification to the CBLP Section 2 Policy SS11, the Marks Tey Neighbourhood Plan examiner suggested that the MTNP policy MT15 should also be modified to include the current application site as part of the policy allocation to achieve conformity with the current adopted site allocation in the adopted LDF Site Allocation as a Local Employment Site and the Section 2 CBLP Local Economic Area allocation in the modified Policy SS11: Marks Tey.

The application site is thus allocated for employment purposes in the current adopted local plan, emerging CBLP and the Marks Tey Neighbourhood Plan and the principle of employment use on the application site is in conformity with all of these documents. The MTNP

was adopted in April 2022 and carries full weight. The site-specific policy MT15 (see para. 7.7 above) contains a requirement that:

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

In the opinion of officers, the revised scheme does seek to ensure that the amenity of residents is protected, includes a mechanism for delivery of the requisite cycleway footway to the A120 through the adjacent parish hall and playing fields to Dobbies Lane beyond the site and a travel plan is required by a suggested planning condition. The scheme does not strictly conform with the penultimate criterion of policy MT15 concerning provision of access directly to the A12 and contingent upon delivery of the planned A12 improvements.

Officers note that the key statutory consultee, National Highways does not raise an objection on highway safety grounds or network capacity. Whilst use of Old London Road is not ideal due to its modest width, even without the loss of on street parking bays (some homes lack on plot parking) the development is considered safe. This is confirmed by National Highways, and the Safety Risk Assessment Report in the absence of any history of highway collisions or injuries on Old London Road.

Furthermore, once the planned A12 trunk road improvements are delivered (DCO application now imminent) then the use of Old London Road for access would no longer be necessary. The absence of a highway objection is a material consideration that could reasonably justify approval in the absence of demonstrable highway harm.

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

- 17.5 In general terms paragraphs 80 to 82 of the NPPF seek to build a strong, competitive economy. This includes creating conditions where businesses can invest, expand and adopt. In addition, planning decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of SMEs and storage and distribution operations at a variety of scales in suitable and sustainable locations.
- 17.6 The Site Allocations DPD identifies the former Anderson Site and the land the subject of this application as a Local Employment Zone. Following modifications suggested by the Inspector as part of the Section 2 CBLP this site allocation is now carried forward to the emerging local plan (Policy SS11) which has completed examination and has been found sound by the Inspector. Furthermore, the application site has now also been allocated in the Adopted Marks Tey Neighbourhood Plan for employment purposes. This allocation can be given full weight and reinforces the policy position of the application site in the adopted and emerging local plan. The apparent conflict with part of this policy is explained at para.7.4 above. Further consideration is afforded to the highways merits/impacts of the scheme at para.17.49-17.50 below.
- 17.7 While the proposal also includes office floor space in individual units, this would represent a small proportion of the overall proposed floorspace and the development would be industrially-led with the majority of floorspace in either B2, B8 or E class (c & g) uses and as such the proposal would be wholly consistent with the above-mentioned policies and would provide investment in terms of delivering high-quality buildings both internally and externally and yield local employment opportunities. The proposed uses accord with emerging policy SG4 of the Section 2 CBLP.
- 17.8 In the light of the above, it is considered that in land use terms, the proposed development to be acceptable in principle for (Class E (c and g), general industrial (Class B2) and storage and distribution (Class B8) uses is compatible with national and local plan policy. The conflict with part of the MTNP Policy MT15 is explained at para. 7.4 above. Furthermore, given the future local economic benefits and employment opportunities, the development will deliver, the application is supported subject to the assessment of design, amenity, ecology, landscape, suds and highway/transport impact. These matters are considered below.

## Design, Appearance and Character

- 17.9 The NPPF confirms that the Government attaches great importance to the design of the built environment and notes that good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people. Core Strategy Policies ENV1, Local plan Policy DP1 and emerging local plan policy DM15 seek to optimise site potential through the design lead approach and are concerned with good quality and contextual design in all developments. These policies require new developments to respect and enhance the characteristics of the site, its context, and surroundings by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance, and shape of the development.
- 17.10 Adopted Development Policy DP1 point (i) states that development proposals must demonstrate that they and any ancillary activities associated with them will:
- i) Respect and enhance the character of the site, its context, and surroundings in terms of its architectural approach, height, size, scale, massing, density and proportions, materials....
  - ii) Provide a design and layout that takes into account the potential users of the site including giving priority to pedestrian, cycling and public transport access and the provision of satisfactory access provision for disabled people and those with restricted mobility.
  - iii) Protect the existing public and residential amenities, particularly with regard to privacy, overlooking, security, noise and disturbance, pollution (including light and odour pollution), daylight and sunlight.
  - iv) Create a safe and secure environment.
- 17.11 Essex design guide which has been adopted by the Council as an SPD also provides guidance for Commercial, Industrial and Large Footprint Buildings also provides guidelines and principles for good design, e.g., how buildings look and fit into their setting, the layout and arrangement public spaces and appearance of the development.
- 17.12 The proposed development has been refined through the pre-application process and discussion with officers and consultation as part of application 202373 (see planning history above). Specifically, the relocation of block 1000 further away from the southern boundary, reduction in its ridge height from 16.3m to 13.8m and replacement of units 1110, 1112 and 1113 with a total floor area of over 950sqm with a single block 1100 with a total floor area of 421sqm. Also, to offset the loss of on-street residents parking spaces, 5 parking spaces are proposed on the application site for use by local residents. These spaces would be secured in perpetuity by an obligation in the proposed s.106 agreement.

- 17.13 The blocks are designed as a propped portal to allow maximum flexibility in design based around the likely operational practicalities required by the future occupiers.
- 17.14 Each building is accessed from the spine road servicing all units from the Old London Road. Where possible ancillary offices have been orientated to address internal estate road creating a sense of arrival and opportunity for natural surveillances through secure by design.
- 17.15 As the table in section 4.1 above shows the development will provide a range of units to suit a range of market demands. The units range from a 690 sqm warehouse area with an ancillary 144sqm office floor area to the largest unit with a warehouse floor area of 3263sqm and ancillary office floor area of 453sqm.
- 17.16 The scale, height, massing, and location of the blocks in the context of their sitting and viewpoints receptors have been carefully considered to ensure minimum impact on the surrounding occupiers and wider landscape.
- 17.17 The closest proposed building blocks to the residential properties to the south are blocks 1000 and 1100. The height of block 1100 which is closest to the adjoining dwelling is very similar to the height of other two-storey houses along Old London Road and as such would relate well with its surroundings and it will be occupied for Class “E(c and g)” uses.
- 17.18 As regard block 1000, this building would be sited over 50m away from the curtilage of the closest houses and a minimum distance of 70m back-to-back. This building is to have a ridge height of 13.8m and an elevation of over 91m wide facing the houses. It is considered that although blocks 1000 and 1100 will be visible from the rear aspect of the houses to the south and east, given the overall height and distance, it is not considered their impact will be significant. In addition, new landscaping, and tree planting along the shared boundary with the houses would further assist and soften their visual impact in the long run.
- 17.19 All blocks in this development are coordinated to include the same cladding finishes and colours, such that the units read together as one cohesive development. Each block has been designed to create a contemporary simplistic aesthetic with high-quality material. The units will be broken up vertically with various elements and broken up horizontally with changes in cladding colours. Large curtain walls are proposed near the entrances and on frontages.
- 17.20 The overall impression of the scale of the building is much reduced through the definition of each block component. The careful articulation of the use of external finish materials helps to draw the eye away from the overall height and reduces the perception of scale. The planning committee raised concerns (see para. 1.2 above) regarding the scale and form of the buildings proposed and their relationship to neighbouring dwellings. In response to these concerns the developer has submitted revised elevations

incorporating “green walls” to the exposed flank elevations and increased planting including buffer planting along the site boundaries and especially those adjoining dwellings. This planting should serve to screen and filter views and the Landscape Officer concludes that these revisions should address the concerns identified by the Planning Committee in their deliberations (revised drawings comprise the Illustrative Landscape Strategy ref:20-5482Rev.V6 and Site Plan Ref: P0103 Rev.K and revised elevations P1103 Rev.D & P1003 Rev.E)

- 17.21 In conclusion it is considered that the development to be a well-considered proposal that, while developing the site to its maximum capacity, is considered to sit comfortably within its context and provide for good quality contemporary industrial and commercial buildings and employment units.
- 17.22 The scheme design and architecture is considered consistent with relevant adopted local plan policies, Essex Design Guide and the NPPF as a result, the application is supported on design grounds.

#### Residential Amenity

- 17.23 The Development Plan contains policies which seek to appropriately safeguard the amenities of residential occupiers when considering new development. LDF Policy DP1 states that all development must be designed to a high standard and avoid unacceptable impacts on amenity. The emerging CBLP Section 2 policy DM15(v) requires all development including new buildings to be designed to a high standard, positively respond to its context..., protect and promote public and residential amenities, particularly with regards to privacy, overlooking, security, noise, and disturbance, pollution, (including light and odour pollution), day light and sunlight. In addition, the adopted Essex Design Guide (as SPD) also provides guidance on the protection of residential private amenities. Paragraph 130(d) and (f) of the NPPF says that Planning policies and decisions should ensure that developments:
- d) Establish or maintain a strong sense of place, using the arrangement of street spaces, building types and materials to create attractive, welcoming, and distinctive places to live, work and visit.
  - f) Create places that are safe, inclusive, and accessible and which promote health and well-being, with a high standard of amenity for existing and future users ....
- 17.24 In this instance representations have been received from the local residents and the Parish Council regarding the potential adverse impact of the development on the amenities currently enjoyed. It is acknowledged that there are residential properties along the application site boundaries to the south, east and west. However, it must be noted that only block 1000 with its B8 use and associated individual service yards and loading bays which is the closest to residential properties would be at least 50m away from the curtilage boundary of the adjoining residential properties with an intervening

area of landscape green buffer and fencing providing relief. This distance is considered sufficient to prevent the proposal from overlooking or causing any detrimental level of overshadowing. It is not considered that the proposed block 1000 would have an overbearing impact given the intervening distance between it and the nearest properties and the fact that there is an area of green space inbetween.

It is acknowledged that block 1000 will have a considerable height and would therefore have more of a potential impact than a residential property, for example, but this has been taken into account and the impact is not considered to be detrimental. As regards block 1100, it is considered that this building would have an overall height similar to a two-storey house and will be used for Class E (c&g) which are uses acceptable in residential areas. In response to committee's concerns, revised elevations have been submitted incorporating green-walls (climbing plants) on elevations facing dwellings and the site plan has been revised to incorporate more boundary hedging and tree planting and buffer areas to screen and filter views into the site from neighbouring dwellings.

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

- 17.25 In addition, as stated in paragraphs 17.17 and 17.18 above, the orientation, height and distance of blocks 1000 and 1100 to the adjoining residential properties would be such that the proposal will not cause overlooking or significant impact on the outlook, sunlight and daylight of these properties.
- 17.26 On balance therefore it is considered the impact of the development upon the amenities of the local residents will be in compliance with the above-mentioned plan policies and the impacts acceptable in compliance with the policies identified.

#### Air Quality and Noise Impact

- 17.27 Concerns have been raised that the development will result in the generation of noise and harm local air quality. The application has been accompanied by noise and air quality reports which have been considered by the Environmental Protection team and no concerns have been raised subject to the recommended conditions.
- 17.28 With regard to air quality no concern has been raised subject to conditions regarding the provision of electric charging points (EVC), implementation of a travel plan and submission of a Construction Management Plan for approval by the Local Planning Authority prior to the commencement of development to ensure that dust and pollution during the construction phase are controlled.



- 17.29 With respect to the noise issue, the submitted noise assessment report considered that the key issue for the site is the access and HGV movements to and from the site. The report recommended the erection of a 3.5m high acoustic barrier along the site's southern boundary to address potential noise from the site. It is considered subject to the implementation of the acoustic barrier and restriction on the operating and delivery hours the noise impact would not be significant, as the adjoining residential properties affected are also more exposed to general background traffic noise from A12.
- 17.30 Overall, the Environmental Protection does not raise any significant concerns and therefore it is considered that the proposed development would result in any detrimental harm to local residents as a result of noise or air quality subject to implementation of the conditions suggested.

#### Ecology and Biodiversity

- 17.31 Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. DPD Policy DP21 and Core Strategy Policy EV1 (vi) seek to conserve and enhance biodiversity. This is also reflected in paragraph 170 of the NPPF which at bullet point (B) suggests that recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services... and (d) minimising impact on and providing net gains for biodiversity,....
- 17.32 The applicant submitted a phase 1 Environmental assessment report and an ecological impact assessment report which has been assessed by the County ecologist. No formal objection is raised and recommended planning conditions relating to action required in accordance with ecological appraisal recommendations contained in the Ecological Impact Assessment (EclA) for this site (Ramboll, June 2021), Construction Environmental Management Plan for Biodiversity, Final Reptile Mitigation Strategy and Method Statement, Biodiversity Enhancement Strategy.
- 17.33 The applicant's proposed lighting scheme is considered to be inappropriate and detrimental to wildlife. To address this issue, it is recommended the proposed lighting scheme not be approved and a condition is imposed requiring submission of Wildlife Sensitive Lighting Design Scheme and Landscape and Ecological Management Plan (LEMP) for the reptile receptor site.
- 17.34 Subject to the above conditions to secure ecological enhancement measures, it is considered that the proposed development accords with adopted Policies ENV1 of the Core Strategy, DP21 of the local plan and the requirements of the NPPF which seek to minimise impacts on biodiversity and, where possible, to provide net gains for biodiversity. The revised proposals (May 2022), submitted to address the concerns raised by the

committee, now incorporate significantly greater areas for tree and shrub planting with improved habitat creation and increased canopy cover in accordance with the Section 2 CNLP policies CC1 Climate Change and ENV1 Environment.

#### Flooding Risk and Drainage

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

- 17.40 The proposal as submitted is therefore considered acceptable and in compliance with the local plan policies and the NPPF and will not create any enhanced flood risk.

#### Highway and Transportation Matters

- 17.41 Adopted CS Policies TA1 to TA4 seek to improve accessibility and change travel behaviour. CS Policy PR2 requires development proposals to create secure attractive, safe and people-friendly streets. The Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be *severe*.
- 17.42 The application has been accompanied by a Transport Statement and a Stage 1 Highway Safety Audit report. The proposal would involve the creation of a new vehicular and pedestrian access onto the Old London Road. Although it is noted that the Old London Road has limited street lighting and as a result is not well lit; it benefits from a footway along its northern side that joins the A120 (Coggeshall Road) to the northeast of the site. The site, therefore, benefits from pedestrian and cycle connectivity and can access the public transport facilities in Marks Tey. Furthermore, the A12 benefits from a segregated footway/cycleway which runs parallel along the eastbound carriageway.
- 17.43 The closest bus stop is located approximately 600m northeast of the site adjacent to the junction of Old London Road with A120. Marks Tey Railway Station is located approximately 1km northeast of the site.
- 17.44 The proposal would involve the diversion of the existing dead-end PROW footpath 144-15 and the creation of a 3.5m wide pedestrian and cycle path from the eastern boundary of the application over the Marks Tey Parish Council land towards the northeast to connect with A120 to facilitate easier connection to public transport. This is in conformity with the requirements of the MTNP site specific policy and would be secured via a contribution of £45k in the s.106 agreement. The exact route and details of this cycle and footpath diversion have not been finalised, although the applicant has agreed to pay the contribution to the Parish Council towards its construction and upkeep.
- 17.45 To ensure that the proposed site access and its associated sightlines and the industrial estate internal road can accommodate HGV movements the applicant has carried out a satisfactory HGV tracking as shown in drawing MT2-LE-GEN-XX-DR-CE-001 Rev B to ensure that the proposed layout would be satisfactory and would not cause harm to highway safety.
- 17.46 The proposal would involve off-site highway works under section 278 of the Highway Act comprising improvements to the Old London Road and its junction with the A120 to facilitate better HGV movements. These highway works would consist of the following:

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

17.47 The above highway improvements have been discussed at length with National Highways (Highways England) who is the Highway Authority in this location. National Highways in their final response of 15/12/2021 raised no objection, subject to the conditions as set out in paragraph 8.2 above in this report. Given the fact there have been no reported incidents on Old London Road, in the last five years and the development is only adding a comparatively small number of vehicles in the peak hours (360 trip total vehicles with some 96 HGV's spread throughout the day), it is not considered to pose a risk in terms of the network capacity to accommodate these additional trips. The developer has also produced a Safety Risk Assessment report which states the increase in risk is acceptable without the alterations to the on street parking on Old London Road. A TRO is not essential therefore in terms of highway safety.

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

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

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

- 17.50 The adopted MTNP contains 2 policies that are relevant to the site and highway considerations (MT01 and MT15). These policies seek to defer delivery of development that generates 'significant' additional trips, 'the impacts of which would be severe' (Policy MT01) until the A12 road improvements have been delivered, and in the case of MT15, a requirement that direct access is provided to the A12 following implementation of the planned A12 upgrading (see para. 7.7 above for full text of policy). In this instance, the delivery of the development ahead of the road improvements does not give rise to any material harm in highway terms and whilst there is a technical conflict with these policies, the absence of harm (and no objections being raised by National Highways) is a material planning consideration. Planning law requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise (s.38(6) Planning and Compulsory Purchase Act 2004). In this instance, whilst these NP plan policies must be afforded full weight, nevertheless this material consideration can justify approval as there is no material harm in terms of highway safety or capacity. Para. 12 of the NPPF confirms that "*Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.*"

#### Parking

- 17.51 CS Policy TA5 refers to parking and states that development proposals should manage parking to accord with the accessibility of the location and to ensure people-friendly street environments. DPD Policy DP19 states that the Council will refer developers to the Essex Planning Officers Association (EPOA) Vehicle Parking Standards which was adopted by Colchester Borough Council as a Supplementary Planning Document (SPD) in November 2009.
- 17.52 The Vehicle Parking Standards provides guidelines on car parking standards for new developments. This set out the following standards:
- B1 – Offices: 1 space per 30m<sup>2</sup>
  - B2 – General Industry: 1 space per 50m<sup>2</sup>
  - B8 – Warehousing: 1 space per 150m<sup>2</sup>

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

- 17.53 The proposed development has made on-site car parking provision for 115 spaces including 11 disabled spaces, 10 motorcycle parking spaces, 28 covered bicycle spaces and 8 HGV parking bays. In addition, the proposal would provide 7 on-site car parking spaces for the local residents to offset the loss of on-street car parking spaces that will result due to off-site highway improvement.
- 17.54 As part of the sustainability programme the proposal will ensure that 10% of the total car parking spaces will provide Electric charging points (EVC). This will be secured by a planning condition.
- 17.55 Given the above, the proposed parking provision is considered to accord with the requirements of Policy DP19 of the local plan, TA5 of the CS and the adopted parking standards.
- 17.56 A number of concerns have been raised regarding highway safety issues by the local residents and the Parish Council and all these matters have been considered by the Highways England and Essex County Council Highway Authority and covered in this report. In the light of the available evidence and, given the fact that the responsible Highway Authority (the Highways England) has not raised an objection to this application, it is considered that a refusal on the highway cannot be substantiated. In view of the above, the proposal is considered acceptable in terms of transport/ highways subject to appropriate planning conditions and S106 contributions.

#### Contamination

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

#### Archaeology

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

#### Landscaping and visual impact

- 17.61 The site is flat and enclosed by existing boundary hedges and scattered trees across the site. The applicant has submitted a tree report, a landscaping scheme as well as a visual assessment. These have been assessed and although there is no objection to the tree report submitted, the removal of several trees will increase the visibility of the site. There are concerns about the adequacy and benefits of the landscaping scheme submitted.
- 17.62 It is considered that the development of such a major scale and physical extent on what is currently a greenfield site- albeit one where is allocated for employment purposes, will give rise to substantial effects on the local landscape and views across the surrounding areas. It is felt that the submitted landscaping scheme would not deliver the degree of visual mitigation and screening along the site boundaries and it does adequately integrate SuDs mitigation with the on-site ecology issues with the wider site's landscaping. To address these issues and to reduce the impact of the development a more suitable landscaping and appropriate tree planting together with a long term management and maintenance scheme should be submitted. It is therefore recommended that an appropriately worded condition, as stated in paragraph 8.10 above, be imposed.

#### Environmental and Carbon Implications

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

Framework. It is considered that on balance the application represents sustainable development.

#### Other Matters:

##### Environmental Impact Assessment

- 17.66 Consideration has been given to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) given the size of the development and this development falling within the scope of a Schedule 2 development (Section 10(a)). In this instance, in the context of guidance within the National Planning Practice Guidance, it is not considered that the development would result in any impacts of more than local significance. Accordingly, the Local Planning Authority does not consider that an Environmental Impact Assessment needs to be submitted in support of the application.
- 17.67 Development Plan Policy DP2 requires all development to be designed to help promote healthy lifestyles and avoid causing adverse impacts on public health, with Health Impact Assessments (HIA) being required for residential development in excess of 50 units and non-residential development in excess of 1,000sqm. Whilst the scheme meets this criterion an HIA has not been submitted. The relevant individual health impacts (including Noise, Air Quality, and Active Travel) have all been considered individually as part of each relevant themed supporting report. It is considered that these matters have been afforded appropriate consideration.
- 17.68 The application has been the subject of extensive negotiation with officers including environmental protection officers and as a result, the proposals have been substantially amended to address the areas concerning the impact on amenities, provision of access and parking for the disabled and also through the recommended planning conditions which minimise any adverse impact on the health and wellbeing of the local residents. On balance, the proposal is considered to be acceptable in relation to policy DP2 of the local plan.

##### Conditions and Development Obligations

- 17.68 The conditions are set out at the end of the report. Officers have considered the need for all of the conditions in the context of the six tests contained in paragraph 55 of the Framework and the advice contained in the NPPG. The conditions are considered necessary to ensure that the development is of a high standard, creates acceptable living conditions for nearby residents, as well as a high-quality public realm for the benefit of workers and visitors, is safe and sustainable, minimises the impact on the environment and complies with the relevant development plan policies. Additionally, the conditions comply with the requirements of paragraphs 54 and 55 of the Framework and are considered to meet the other statutory tests.



- 17.70 As a procedural matter under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the Planning Agent has confirmed that they agree to the recommended pre-commencement conditions. The developer obligations/contributions requested by the Development Team (see para. 16 above) have been incorporated into the recommended s.106 agreement and are considered to satisfy the statutory tests (Reg.123 of the CIL Regulations).

## **18.0 Conclusion**

- 18.1 The current application will deliver new and enhanced employment opportunities in a sustainable and accessible location. The site is allocated for employment uses in the adopted and emerging local plans and the adopted MTNP. There would be economic benefits as a result of construction activity and the end uses would create significant additional jobs (270-330 FTE). There is sufficient evidence to be confident that the development overall would not have a severe impact upon the highway network in terms of capacity or be detrimental to highway safety once off-road highway improvements have been carried out. The conflict identified with part of Policy MT15 must be set against the absence of any material harm to justify delayed delivery. Furthermore, the amended proposals would not cause significant harm to the amenity of local residents, ecology, nor cause increased flood risk. Therefore, on balance, having considered all material planning considerations and the representations received, the proposals are considered acceptable and recommended for approval.
- 18.2 The concerns raised by the Planning Committee in January have been addressed (see para.1.2) by the submission of revised plans and further dialogue with National Highways and the Parish Council has taken place. This has confirmed that a refusal on highway grounds could not be sustained for the reasons set out in the report.

## **19.0 Recommendation to the Committee**

- 19.1 The Officer recommendation to the Committee is for:

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

- i- Contribution of £45k to Marks Tey Parish Council to delivery diversion of footpath 144-15 involving a 3.5m wide pedestrian and cycle path from the eastern boundary of the application over the Marks Tey Parish Council land towards the northeast to connect with pavement of A120.
- ii- Contribution of £14,400 toward museum quality display cases, design and display material.
- iii- Contribution of £753 towards enhancement of the Colchester HER.

- iv- Contribution of £348 to mitigate the information from the archaeological impacts if no archaeological remains are affected by the development.
- v- Obligation to provide 7 on-site car parking spaces in perpetuity for the benefit of the residents of Old London Road and as shown on drawing 18204 PO103 Revision J
- vi- Contribution of £6,132 towards monitoring costs of the Travel Plan by Sustainable Travel Planning Team.

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

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

### **Statutory Time Period**

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

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

### **Approved Drawings and Documents**

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

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

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Site plan P0102 Rev C

Site layout plan P0103 Rev K  
 External surface plan PO104 Rev D

Unit 1100 Floor Plan P1100 Rev C  
 Unit 1100 Roof Plan P1102 Rev C  
 Unit 1100 Floor and elevations Plans P1103 Rev D

Unit 1000 warehouse area building floor plan P1000 Rev C  
 Unit 1000 office floor plan P1001 Rev C  
 Unit 1000 office roof plan P1002 Rev C  
 Unit 1000 proposed elevations P1003 Rev E

Unit 900 Building Floor Plan P0900 Rev C  
Unit 900 Office Floor Plan P0901 Rev C  
Unit 900 Elevations and floor Plan P0903 Rev C

Unit 800 Building Floor Plan P0800 Rev C  
Unit 800 Roof Plan P0802 Rev C  
Unit 800 Elevation and floor Plan P0803 Rev C

Flood Risk Assessment May 2021 prepared by Link Engineering  
Boundary fencing drawing P0105 Rev E  
Cycle shelter drawing P0106 Rev D  
Illustrative Landscape Strategy 20-5482 Rev.V6

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

## **Highways**

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

Scheme details shall include drawings and Documents showing:

- i- How the improvement interfaces with the existing highway alignment and carriageway markings including lane destinations.
- ii- Full construction details relating to the highway improvement. This should include any modifications to existing structures or proposed structures with supporting analysis.
- iii- Full Signing and lighting details.
- iv- Confirmation of compliance with Departmental standards (DMRB) and policies (or approved relaxations/departures from standards).
- v- Evidence that the scheme is fully deliverable within the land in control of either the applicant or the Highway Authority.
- vi- An independent stage 2 Road Safety Audit (taking account of and stage 1 Road Safety Audit recommendations carried out in accordance with Departmental Standards (DMRB) and Advice Notes.

- vii- A construction Management Plan detailing how construction traffic will be managed.
- viii- An equality impact assessment.

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

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

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

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

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

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

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

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

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

- Mechanisms to secure variation to the Travel Plan following monitoring and reviews

**Reason:**

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

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

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

**Archaeology**

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

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

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

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

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

### **Biodiversity and net gain**

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

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

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

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

The CEMP (Biodiversity) shall include the following:-

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of “biodiversity protection zones”.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).

- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on-site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

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

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

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

The content of the method statement shall include the following:

- a) purpose and objectives for the proposed works;
- b) detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);
- c) extent and location of proposed works shown on appropriate scale maps and plans;
- d) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
- e) persons responsible for implementing the works;
- f) initial aftercare and long-term maintenance (where relevant);
- g) disposal of any wastes arising from works.

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

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

& species) as updated by the Environment Act 2020 and s17 Crime & Disorder Act 1998.

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

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

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

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

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

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

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

The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.



- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organisation responsible for the implementation of the plan.
- h) Ongoing monitoring and remedial measures.

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

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

## **Landscape**

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

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

- Implementation timetables and monitoring programs.

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

#### **16. ZFE - Landscape Management Plan NS**

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

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

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

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

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

#### **Contaminated Land**

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

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos,
- (ii) an assessment of the potential risks to:
  - human health,
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - adjoining land,

- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;

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

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

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

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

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

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

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

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

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

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

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

### **Construction Method Statement**

- 23.** No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:
- the parking of vehicles of site operatives and visitors;
  - hours of deliveries and hours of work;
  - loading and unloading of plant and materials;
  - storage of plant and materials used in constructing the development;
  - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - wheel washing facilities;
  - measures to control noise;
  - measures to control the emission of dust and dirt during construction; and
  - a scheme for recycling/disposing of waste resulting from demolition and construction works.

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

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

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

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

### **Mitigating Air Quality and sustainability**

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

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

### **Noise Control and amenity**

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

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

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

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

### **Residential amenity and control of uses**

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

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

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

Weekdays: 07:00-21:00

Saturdays: 07:00-21:00

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

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

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

Weekdays: 07:00-21:00

Saturdays: 07:00-21:00

Sundays and Public Holidays: No deliveries.

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

### **Pollution Control**

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

Authority. The control measures shall thereafter be retained and maintained to the agreed specification and working order.

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

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

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

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

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

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

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

- 35.** Prior to the first OCCUPATION of any of the commercial units hereby permitted, a validation report shall be undertaken by competent persons that demonstrates that all lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) fully complies with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ2 shall be submitted to, and agreed in writing by, the Local Planning Authority. Any installation shall thereafter be retained and maintained as agreed therein.

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



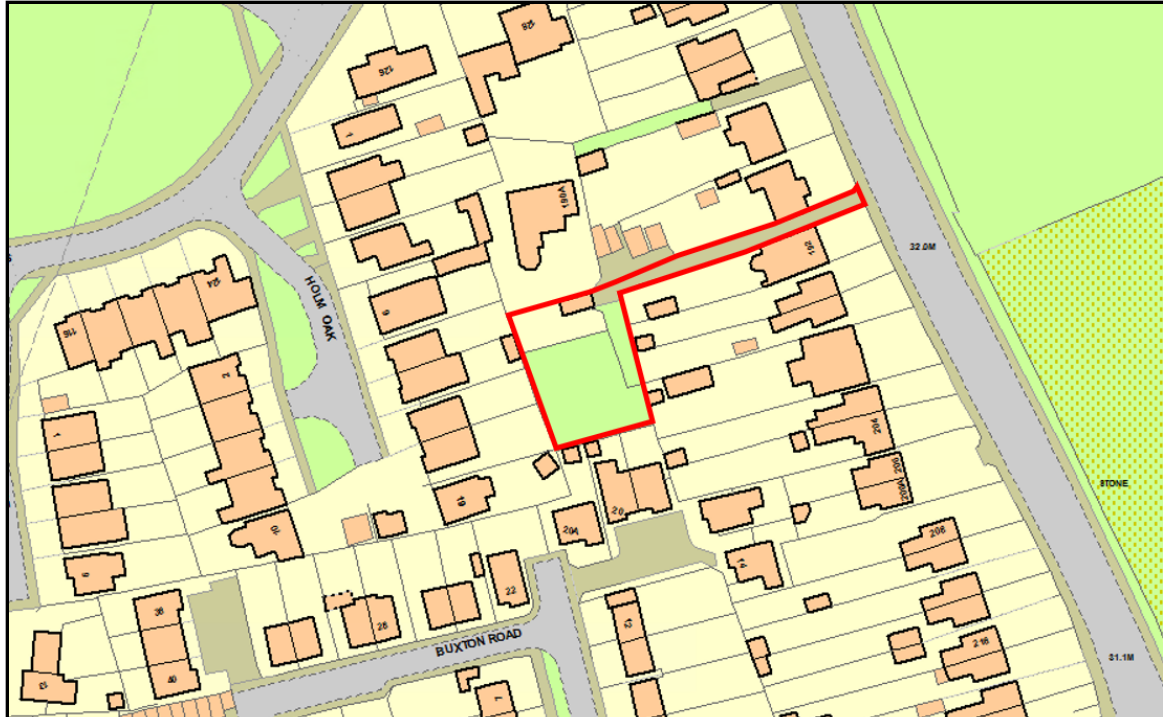
## Promoting Sustainable Transport

36. None of the commercial units hereby permitted shall be occupied until the PROW 144-15 diverted route for pedestrian and cyclist shall have been made available for use and maintained in good usable condition thereafter. Reason: In the interest of sustainability and amenity and in compliance with the Travel plan.

### Informatives

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





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**Item No: 7.3**

**Application:** 220959  
**Applicant:** Mr A Oprea  
**Agent:** Andrew Ransome, ADP Ltd  
**Proposal:** Retrospective planning for the construction of a single dwelling, following approval ref: 182342  
**Location:** Rear Of, 192 -200 Mersea Road, Colchester  
**Ward:** Berechurch  
**Officer:** John Miles

**Recommendation:** Approval subject to recommended conditions

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

- 1.1 This application is referred to the Planning Committee because it has been called in by Councilor Dave Harris for the following reason:  
“The build is too high, the windows are too high and the build is too visible from houses in Holm Oak, a very tall bungalow – not built to original planning design. Looking from patio from Holm Oak the roof line is much too high.”

## **2.0 Synopsis**

- 2.1 This application seeks to regularise the differences between the bungalow as built on site, and that originally approved under application reference 182342.
- 2.2 Given there is an extant permission in place for a similar scheme to that built, the main consideration must be given to any differences in the scheme as proposed, compared to that as originally approved. Given the nature of the differences in the two schemes the main considerations are considered to be impacts on the character and appearance of the area and neighbouring amenity.
- 2.3 To summarise, it is not considered that the differences between the approved scheme and the scheme now proposed will have a materially harmful impact on neighbouring amenity, nor the character and appearance of the area. It is also not considered that any changes in the policy context or wider circumstances since the original approval alter the conclusions drawn under extant permission 182342, with regards to the proposals acceptability in respect of other material planning considerations. The application is therefore recommended for approval.

## **3.0 Site Description and Context**

- 3.1 The site lies within the settlement limits of Colchester and is situated within a predominantly residential area. The site is accessed via a drive off Mersea Road, in between 190 and 192 Mersea Road in a ‘backland’ location..
- 3.2 The majority of the application site is situated behind the rear of properties facing Mersea Road to the east, the rear of properties fronting Holm Oak to the west and the rear of properties fronting Buxton Road to the south. To the north, the site is bounded by the curtilage of 190A Mersea Road. This bungalow has been built on a backland plot of similar size to the application site and was allowed at appeal in 1987. In all, 13 properties share a boundary with the site. The area is of a varied character, with there a range of 1, 1.5 and 2 storey dwellings in the area, of varying styles and ages.

## **4.0 Description of the Proposal**

4.1 As outlined the site benefits from an extant planning permission for a bungalow under application Ref: 182342. As discussed, this application seeks to regularise differences between the approved scheme and the bungalow as built/proposed.

4.2 As built the main differences between the approved scheme, and that as built, can be summarised as follows:

- Internal finished floor level is 300mm higher than as approved.
- External openings are set 375mm higher than as approved.
- There are variations in the position and form of openings.
- The ridge of the roof is between 330mm-520mm higher than as approved. (N.B. The roof as built is level however the variation in the extent of any difference in height between the approved and as built scheme is a result of a varying ridge height on the drawings of the originally approved scheme.)
- The dwelling's width is 165mm wider than approved.

4.3 The application seeks planning permission to retain the bungalow at its current width and height. However the application also proposes a number of interventions to the scheme as built to bring the proposal closer in line with the approved scheme. These comprise:

- Reduction in the finished floor level by 300mm, making the finished floor level in line with the approved scheme.
- Lowering the height of windows and doors by 375mm so they are set no higher than the approved scheme.
- Increase the height of the fence panels along the northern, southern and western boundary by 300mm, from 1.8 metres to 2.1 metres.

## **5.0 Land Use Allocation**

5.1 Residential, within settlement limits.

## **6.0 Relevant Planning History**

6.1 The site has an extensive planning history, however the applications most relevant to this proposal can be summarised below:

210518

Application to discharge conditions 6 (demolished materials) 7 (construction method statement) 9 (materials) of planning permission 182342  
Approved 19<sup>th</sup> April 2021

182342

Demolition of a brick garage and store and the construction of a single, detached, two bedroomed bungalow.  
Approved conditionally 5<sup>th</sup> December 2018

145138

Construction of a single three-bedroom bungalow and garage.  
Approve conditionally 3<sup>rd</sup> October 2014.

## **7.0 Principal Policies**

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

### **7.2 Local Plan 2017-2033 Section 1**

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

- SP1 Presumption in Favour of Sustainable Development
- SP7 Place Shaping Principles

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

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

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

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

SD1 - Sustainable Development Locations  
UR1 - Regeneration Areas  
UR2 - Built Design and Character

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

DP1 - Design and Amenity  
DP12 - Dwelling Standards  
DP16 - Private Amenity Space and Open Space Provision for New Residential Development

- 7.5 Submission Colchester Borough Local Plan 2017-2033:  
The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. Subject to main modifications the Emerging Section 2 Local Plan has been found sound, as outlined in the Inspector's Report dated 19th May 2022. While the Section 2 Local Plan is yet to be formally adopted its policies can be afforded significant weight due to the plan's advanced stage.

The following policies of the Section 2 Local Plan are considered relevant:

DM12 – Housing Standards  
DM15 – Design and Amenity  
DM19 – Private Amenity Space

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

The Essex Design Guide  
External Materials in New Developments  
Backland and Infill SPD

## **8.0 Consultations**

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

- 8.2 *Highways Authority:*

No objection.

- 8.3 *Environmental Protection:*

No objection raised.

## **9.0 Parish Council Response**

- 9.1 Non-Parish

## **10.0 Representations from Notified Parties**

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

10.2 At the time of writing objections have been received from 7 householders, with a total of 9 letters. The main material planning considerations raised are concerning the bungalow's roof height/size, window height and position, potential for overlooking and loss of light and outlook. Concerns have also been raised in representations received regarding the possibility of the roof space being used as further habitable accommodation.

## **11.0 Parking Provision**

11.1 There is no material change in parking provisions compared to application 182342, with policy compliant on-site parking provided.

## **12.0 Accessibility**

12.1 In considering the application due regard has been given to the Local Planning Authority's duties under the Equality Act 2010. Representations received have not identified any specific equality implications potentially arising from the proposed development and requiring additional consideration. The proposal does not give rise to any other concerns from an accessibility or equality perspective more widely.

## **13.0 Environmental and Carbon Implications**

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

## **14.0 Open Space Provisions**

14.1 The proposal does not include, nor is it required by policy to make any open space provisions.

## **15.0 Air Quality**

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



## 16.0 Planning Obligations

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

## 17.0 Report

### The Principle of Development

- 17.1 The site lies within the Colchester settlement boundary in an area that is residential in character where development such as that proposed is acceptable in policy terms subject to the development satisfying all other aspects of the Development Plan. The principal of the development has also already been established through the extant permission 182-342.

### Design and Impact on the Surrounding Area

- 17.2 The NPPF places great importance on the achievement of high quality and inclusive design in all developments. In respect of design, the NPPF states that development should: establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit; optimise the potential of the site to create and sustain an appropriate mix of uses; respond to local character and history, and reflect the identity of local surroundings and materials. Core Strategy Policy UR2 seeks to promote and secure high quality design. Local Plan Policy DP1 sets out design criteria that new development must meet. These require new developments to respect the character of the site and its context in terms of detailed design. Section 1 Local Plan Policy SP7 requires all new development to meet high standards of urban and architectural design. Emerging Section 2 Local Plan Policy DM15 requires, amongst other things, for all development to meet high standards of urban and architectural design and respond positively to local character. The Council's Supplementary Planning Document on Backland and Infill Sites also applies to this site and requires development such as that proposed to respond to the surrounding context.
- 17.3 As discussed, the site has an extant approval for a similar scheme to that as built. The main considerations in design terms are therefore the differences between the approved scheme and that as proposed, as summarised under paragraph 4.2.
- 17.4 With regards to the variations in the form and position of openings between the approved and proposed scheme it is not considered these differences will have a material impact on the design quality of the dwelling, or its impact on the character and appearance of the area.
- 17.5 In terms of the differences in the overall height of the bungalow it is noted that the increase in height does contribute to the dwelling having an increased scale and massing and slightly increases its wider visibility. While the dwelling is

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visible from several neighbouring properties, due to the site's backland nature it is of limited visibility from wider public viewpoints, and it is therefore considered any impact on the character and appearance of the area from the differences in height will be minimal and importantly the differences in height will not have a materially harmful impact on the character and appearance of the dwelling, or the surrounding area.

- 17.6 For the reasons above the design of the proposed development is considered acceptable, with it not considered the differences in height between the approved and proposed scheme are material to the dwelling's appearance such that a refusal could be substantiated on design grounds.

#### Residential Amenity

- 17.7 Development Policy DP1 states that all development must be designed to a high standard and avoid unacceptable impacts on amenity. This includes protecting existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, pollution (including light and odour pollution), daylight and sunlight, with these requirements echoed by Emerging Section 2 Local Plan Policy DM15. The adopted Supplementary Planning Document (SPD) the Essex Design Guide also provides guidance on the safeguarding of residential private amenity.
- 17.8 The impact of the differences between the scheme as approved and as now proposed on residential amenity are considered two-fold. Firstly there is the potential impact of the proposed changes on neighbouring amenity, and secondly there is the potential for impacts on the amenity of future occupiers. The proposed development would be located amongst existing residential development. Consideration needs to be given as to how the proposal would affect the occupants of nearby residential properties in terms of loss of light, privacy and overbearing impacts.
- 17.9 The built detached bungalow sits in the centre of the plot and a reasonable distance from the nearest neighbouring dwellings to the South and West, while the dwellings to the East of the bungalow are separated from the site by generously sized gardens.
- 17.10 The dwelling is proposed to be taller than previously approved. However it is not considered the proposed increase in height will have a material impact on the light afforded to neighbouring dwelling's, taking into account the relatively minor increase in total height proposed. There are also no concerns that any other differences between the approved and proposed scheme will result in materially harmful impacts on neighbouring amenity with regard to loss of light or outlook specifically.
- 17.11 It is considered that as built there is the potential for overlooking of neighbouring properties however it is important to note that design interventions have been proposed to address this issue and ensuring the implementation of such interventions can be controlled by the imposition of suitably worded conditions.

- 17.12 Firstly the proposal details the lowering of the external openings as built by 375mm. This will ensure that the height of external openings does not exceed those previously approved. This would remove any potential for additional overlooking beyond that already approved. Secondly, the internal finished floor level is proposed to be lowered by 300mm so as to be in line with the finished floor level of the approved scheme. Lastly, to further mitigate potential overlooking, the fence to the north, south and west are proposed to be increased in height by 300mm, to 2.1 metres.
- 17.13 Taking into account the mitigatory design interventions proposed, it is not considered that any differences to the scheme as proposed, compared to the scheme as approved, will result in materially harmful overlooking of neighbouring properties taking into account the proposed height of the internal floor and openings, and intervening boundary treatments. There are also no concerns the increase in height of the boundary fence will have an adverse impact on the light or outlook afforded to neighbouring dwelling's, taking into account the distance between the boundary and habitable rooms of neighbouring dwellings.
- 17.14 Taken as a whole, the proposed development will not have a significant adverse effect on the amenity of neighbouring properties, subject to conditions to secure the mitigatory measures proposed. In view of this, the proposed development is considered in conformity with Policy DP1 or the NPPF, insofar as they seek to protect existing public and residential amenity.
- 17.15 The proposed interventions also do not give rise to any concerns from a future occupier perspective, with it considered future occupiers will still benefit from acceptable levels of light and outlook.

#### Other Matters

- 17.16 Matters such as impact on trees, highways matters, parking, ecology, flood risk and archaeology were all considered under extant permission 182342 and the proposal was found to be acceptable in terms of these matters. It is considered the proposed differences in the scheme considered here are not material to the above factors such that the conclusions drawn under 182342 with regards to these issues are unchanged. It is also not considered that any changes in the policy context since the previous approval are material to the acceptability of the proposal in terms of other material planning considerations.
- 17.17 It is recommended that the conditions originally imposed on 182324 covering the surface treatment of the drive, limits to hours of construction and ecological mitigation are reimposed should permission be granted, as the effect of granting permission will be a new standalone permission. It is also recommended an amended version of the previously imposed conditions covering construction methods and materials be applied, taking into account the details already agreed under application 210518.
- 17.18 While concerns have been raised about the potential for the roof space to be used as habitable accommodation this is not what has been applied for, with the bungalow still proposed to be a single storey. With regards to the potential

for future works to accommodate accommodation at a first floor level a condition can be applied removing permitted development rights for residential extensions and alterations including the addition of roof lights and dormers. This will ensure any proposals for such works would require a planning application, under which issues such as potential impacts on neighbouring amenity would be considered further.

## **18.0 Conclusion**

18.1 To summarise, the proposed development is held to accord with relevant Development Plan policies and amenity standards. It is consequently considered that, subject to conditions, neighbouring amenity will be suitably preserved, the amenity of future occupiers will not be unduly impacted and there will not have a materially adverse impact on the character and appearance of the surrounding area as a result of the differences between the scheme as previously approved, and as proposed.

## **19.0 Recommendation to the Committee**

19.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

### **1. ZAM – Development to Accord With Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted drawing numbers 1230E.L.001, 1230E.L.003, 1230E.L.012 and 1230E.L.013.

Reason: For the avoidance of doubt as to the scope of this permission and to ensure the development is carried out as approved.

### **2. Mitigatory Alterations (Building)**

Prior to the first occupation of the dwelling the proposed alterations to the existing fabric of the building, as outlined in the amended Design and Access Statement and as shown on drawing numbers 1230E.L.012 and 1230E.L.013, shall be carried out in full and in accordance with the details submitted.

Reason: For the avoidance of doubt, as this is the basis on which the application has been considered and found to be acceptable, with particular regard to issues of neighbouring amenity.

### **3. Mitigatory Alterations (Fencing)**

Prior to the first occupation of the dwelling the alterations to the site's existing boundary fencing, as outlined in the amended Design and Access Statement and as shown on drawing number 1230E.L.003, shall be completed in full and in accordance with the details submitted. The approved boundary fencing shall thereafter be retained in the approved form in perpetuity.

Reason: For the avoidance of doubt, as this is the basis on which the application has been considered and found to be acceptable, with particular regard to issues of neighbouring amenity.

#### **4. Parking and Turning Facilities**

Prior to the first occupation of the dwelling hereby permitted, the drive shown on drawing entitled drawing 1 'site plan' (submitted and approved under application 182342) shall be laid out and hard-surfaced in precise accordance with that drawing. It shall be constructed so as to be permeable. It shall be retained thereafter in its approved form for the sole purpose of vehicular parking and maneuvering. Reason: To ensure that there is adequate parking available to the development, and to minimise the potential for surface water run-off.

#### **5. ZPD – Limits to Hours of Work**

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

Weekdays: 8am-6pm

Saturdays: 8am-1pm

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

#### **6. Construction Method Statement**

The development process shall be undertaken only in precise accordance with the approved Construction Method Statement (Dated December 2020), submitted and approved under application 210518.

Reason: The access to the site is very narrow and is shared by other residential properties. Consequently there is considerable potential for damage to neighbours' property and obstruction / disruption to the occupiers of those properties. This scheme is therefore essential so as to minimise the chance of such potential harm, in addition to ensuring that on-street parking of these vehicles in the adjoining streets does not occur, in the interests of highway safety and residential amenity.

#### **7. Removal of PD Rights**

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

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

## **8. External Materials**

The external facing and roofing materials to be used shall be those previously approved under discharge of condition application 210518.

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

## **9. Ecology**

No development shall be carried out except in complete accordance with section 3 'Conclusions and Recommendations' of the submitted updated ecology report (Dated 16/11/18), submitted and approved under application 182342.

Reason: In the interests of on site ecology.

### **19.1 Informatives**

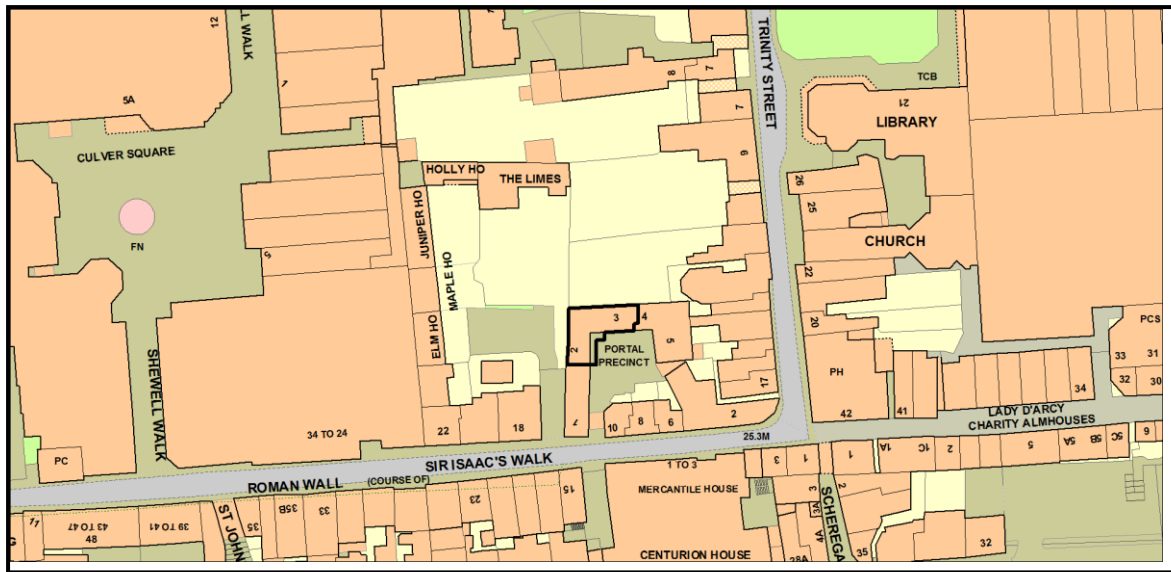
19.1 The following informatives are also recommended:

#### **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.

#### **INS – Highways**

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org).



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**Item No:** 7.4

**Application:** 220994

**Applicant:** Mrs Jane Thompson, CBC

**Proposal:** Shopfront signage for unit 3 Colchester Bike Park and e-Cargo Bike Library, and unit 2 Colchester Bike Kitchen - to be mounted on existing fascia.

**Location:** 2 Colchester Bike Kitchen &, 3 Portal Precinct, Sir Isaacs Walk, Colchester, Essex, CO1 1JJ

**Ward:** Castle

**Officer:** Annabel Cooper

**Recommendation:** Approval

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

- 1.1 The Advertisement Consent application is referred to the Planning Committee because the applicant is Colchester Borough Council.

## **2.0 Synopsis**

- 2.1 The application has been assessed leading to the conclusion that the proposal is acceptable, and that conditional approval is recommended. It is not considered there would be a detriment to visual or residential amenity and there would be no detriment to public safety.

## **3.0 Site Description and Context**

- 3.1 Two ground floor units within Portal Precinct which is a small courtyard located off Sir Isaac's Walk. The site is within the Town Centre Conservation Area.

## **4.0 Description of the Proposal**

- 4.1 Shopfront signage for unit 3 Colchester Bike Park and e-Cargo Bike Library, and unit 2 Colchester Bike Kitchen.

## **5.0 Land Use Allocation**

- 5.1 Inner Core, Conservation area and Central Area. Primarily commercial, business, service and residential.

## **6.0 Relevant Planning History**

- 6.1 Planning permission 212055 granted permission for secure cycle parking as well as a community bike maintenance facility.

## **7.0 Principal Policies**

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

- 7.2 Local Plan 2017-2033 Section 1

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



- SP1 Presumption in Favour of Sustainable Development
- SP7 Place Shaping Principles

Appendix A of the Section 1 Local Plan outlines those policies in the Core Strategy Focused Review 2014 which are superseded.

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

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

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

- SD1 - Sustainable Development Locations
- UR2 - Built Design and Character

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

- DP1 Design and Amenity

7.5 There are no relevant adopted Site Allocations (adopted 2010) policies that should be taken into account in the decision making process.

7.6 There are no relevant Neighbourhood Plans that should be taken into account in the decision making process.

7.7 Submission Colchester Borough Local Plan 2017-2033:

Section 2 Emerging Local Plan is at an advanced stage having been found sound by the Planning Inspectorate. The Plan will now be considered for adoption. Section 2 will be afforded significant weight due to its advanced stage.

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

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

Policies relevant to this application include:

- DM15 Design and Amenity

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

- The Essex Design Guide

## **8.0 Consultations**

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

### *8.2 Environmental Protection:*

No comments

### *8.3 Highways:*

The Highway Authority does not object to the proposals as submitted.

Informative1: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org).

### *8.4 Built Heritage:*

The application site is situated to the north of Sir Isaac's Walk, within the designated Colchester Conservation Area 1. The Portal Precinct comprises a group of two storey commercial units arranged in a small yard with access through a carriage arch from Sir Isaac's Walk. A number of listed buildings are located in the vicinity of site , including no 6 Sir Isaac's Walk and 18-22 Sir Isaacs Walk.

The application seeks advertisement consent for new signage at Units 2 and 3. The applications is reviewed from a heritage perspective for its impact on the character and appearance of the Conservation Area, in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that in the exercise of planning functions, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

The proposed signage would be installed within the existing shopfront and fascia of the commercial units. The design, style, materials and detailing are contextually appropriate for the site and its location. Therefore, the proposal would not have an adverse impact on the Conservation Area and as such, there are no objections to its support on heritage grounds.

## **9.0 Parish Council Response**

### **9.1 Non parish**

## **10.0 Representations from Notified Parties**

10.1 The application resulted in notifications to interested third parties including neighbouring properties. No representations have been received.

## **11.0 Report**

11.1 The main issues are:

- Amenity
- Public Safety

11.2 Paragraph 67 of the NPPF states that “poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.”

11.3 In assessing a signs impact on "amenity", regard should be given to the effect on the appearance of visual amenity in the immediate neighbourhood where it is to be displayed and also consideration of any impact upon residential amenity. It is therefore necessary to consider what impact the advertisement, including its cumulative effect, will have on its surroundings. The relevant considerations for this purpose are the local characteristics of the neighbourhood, including scenic, historic, architectural or cultural features, which contribute to the distinctive character of the locality.

11.4 The Portal Precinct comprises a group of two storey commercial and residential units arranged in a small yard with access through a carriage arch from Sir Isaac's Walk.

11.5 The application seeks advertisement consent for new signage at Units 2 and 3 associated with the recently approved bike storage and bike repairs facilities.

11.6 The proposed adverts include aluminium cut text mounted on the existing facias and signage within the units windows. No illumination is proposed. The design, style, materials and detailing are contextually appropriate for the site and its location. Therefore, the proposal would not have an adverse impact amenity of the area or the Conservation Area.

11.7 Furthermore, the Council's Environmental Protection team have not raised any concerns therefore it is not considered that the signs would result in any harm to residential amenity.

11.8 In assessing the impact on "public safety", regard should be had to the effect upon the safe use and operation of any form of traffic or transport. In assessing the public safety implications of an advertisement display, one can assume that the primary

purpose of an advertisement is to attract people's attention. The vital consideration, in assessing an advertisement's impact, is whether the advertisement itself, or the exact location proposed for its display, is likely to be so distracting, or so confusing, that it creates a hazard to, or endangers, people in the vicinity who are taking reasonable care for their own and others' safety.

- 11.9 The proposed signs are not considered to have an adverse impact on public safety including highway safety; this has been confirmed by the Highway Authority.

## **12.0 Conclusion**

- 12.1 To summarise, the proposed signage is not considered to be harmful to visual and residential amenity or to public safety, including highway safety. The proposed is therefore considered to comply with the guidance set out in the NPPF and development plan policies which are material considerations in so far as they relate to amenity.

## **13.0 Recommendation to the Committee**

- 13.1 The Officer recommendation to the Committee is for:

APPROVAL of advertisement consent subject to the following conditions:

### **1. Standard Advert Condition**

Unless an alternative period is specifically stated in the conditions below, this consent expires five years from the date of this decision and is subject to the following standard conditions:

1. Any advertisements displayed, and any site used for the display of advertisements, shall be maintained in a clean and tidy condition to the reasonable satisfaction of the Local Planning Authority.
2. Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a safe condition.
3. Where an advertisement is required under these Regulations to be removed, the removal shall be carried out to the reasonable satisfaction of the Local Planning Authority.
4. No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
5. No advertisement shall be sited or displayed as to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air or so as otherwise to render hazardous the use of any highway, railway, waterway or aerodrome (civil or military).

Reason: In order to comply with the Town and Country Planning (Control of Advertisements) (England) Regulations 2007

## **2. Approved Documents**

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

Location Plan dated 1.7.2021 &  
Secure Cycle Park Signage Design.

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

## **3. Approved materials**

The external facing materials to be used shall be those specified on the submitted application form and drawings.

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

## **Informatives**

### **Highways Informative**

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org).



9 June 2022

Report of	Assistant Director of Place and Client	Author	Karen Syrett
Title	Changes to Planning Scheme of Delegation		☎ 506477
Wards affected	All		

## 1. Executive Summary

- 1.1 This report seeks to amend the scheme of delegation to allow certain additional application types to be determined by officers rather than considered by the Planning Committee.

## 2. Recommended Decision

- 2.1 The Committee are asked to agree the proposed changes to the scheme of delegation.

## 3. Reason for Recommended Decision

- 3.1 To allow Council decision making to continue in the most efficient manner whilst ensuring those applications where the Committee are not limited in their considerations and which are controversial or contrary to policy are determined in the public domain.

## 4. Alternative Options

- 4.1 The Committee could decide to change the proposed scheme of delegation.

## 5. Background Information

- 5.1 In March 2020 due to the Coronavirus pandemic and in response to Government advice on social distancing etc, the Council cancelled all scheduled formal decision-making meetings for the remainder of the 19/20 Municipal Year. However, it was recognised that it was important to ensure that the Council's ability to determine planning applications which would ordinarily have been considered by members of the Planning Committee could still function during this period. Accordingly, Interim Planning Arrangements were introduced with effect from 18 March 2020 following agreement by the Leader of the Council, Group Leaders and the Chair of the Planning Committee. These interim arrangements operated successfully until such time as meetings in person could be reinstated.
- 5.2 The changes to the scheme of delegation demonstrated that regular reviews should take place to ensure the Planning Committee can focus on applications considered to be controversial or contrary to policy, without being bogged down by applications that are better determined by officers. One way of achieving this is to increase the scheme of delegation.

5.3 The current scheme of delegation from the Planning Committee is as follows;

Delegated to Assistant Director for Place and Client Services;

1. The determination of all planning applications irrespective of scale and size (including changes of use and all applications for Listed Building Consent, Certificates of Lawfulness, applications for the determination as to whether prior approval is required, consent to display advertisements and other notifications) except any application:
  - a) significantly contrary to adopted policies or a departure from the development plan, and which is recommended for approval;
  - b) which any Ward Councillor requests in writing to the Assistant Director for Place and Client Services within 25 days of notification, should be subject of consideration by the Committee;
  - c) which constitutes a major application on which a material planning objection(s) has been received in the stipulated time span and the officer recommendation is to approve;
  - d) which constitutes a major application, that is recommended for approval and where a section 106 Agreement is required (excluding unilateral undertakings);
  - e) submitted by or on behalf of a Colchester Borough Council Councillor, Honorary Aldermen (or their spouse/partner) or by any Council officer (or their spouse/partner);
  - f) submitted by or on behalf of Colchester Borough Council (for clarity, this does not include applications made by other parties on land owned by the Council where the development is not by or on behalf of the Council).

5.4 In the past year there have been a number of applications referred to the Committee, where there is limited opportunity to influence the outcome because of national policies. This has proven to be frustrating for Councillors and the public alike and an example is the conversion of office buildings to residential use, in North Station Road.

5.5 National policies allow certain changes of use and works to take place under permitted development. In some instances, no application is required and in others "Prior Approval" is required. Prior approval means that a developer has to seek approval from the local planning authority that specified elements of the development are acceptable before work can proceed. The matters for prior approval vary depending on the type of development and these are set out in full in the relevant Parts in [Schedule 2 to the General Permitted Development Order](#). A local planning authority cannot consider any other matters when determining a prior approval application.

5.6 In the case of conversions from office to residential use the only determining factors are;

- the impact of development on transport and highways
- contamination risks on the site
- flooding risks on the site.

Issues such as loss of residential amenity cannot be a consideration in the determination of the application. Flood risk and contamination are factual and cannot be changed by discussion. Impact of a development on highways and transport can only justify a refusal where the impact is severe, in accordance with national policy. Essex County Council, as the highway authority, provide advice in relation to this aspect. There is therefore very little



that the Committee can actually influence. It is therefore suggested that applications for Prior Approval are delegated to Officers to make the decision.

- 5.7 Lawful Development Certificates are also currently subject to call in. These are legal applications – either something is permitted/lawful, or it is not – a discussion at committee cannot change the outcome. Unfortunately, if these types of application are called in, they can give objectors unrealistic hope that the decision can be changed. There have been examples where Members were not happy with a proposal but legally it was lawful and therefore their hands were tied. It is therefore recommended that all such applications are delegated to Officers to make the decision.
- 5.8 Permission in Principle is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for proposed development from the technical detail of the development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed.
- 5.9 The scope of permission in principle is limited to location, land use and amount of development. Issues relevant to these 'in principle' matters should be considered at the permission in principle stage. Other matters should be considered at the technical details consent stage. In addition, local authorities cannot list the information they require for applications for permission in principle in the same way they can for applications for planning permission.
- 5.10 A decision on whether to grant permission in principle to a site following a valid application must be made in accordance with relevant policies in the development plan unless there are material considerations, such as those in the National Planning Policy Framework and national guidance, which indicate otherwise. It is therefore recommended that applications for Permission in Principle (first stage), is delegated to officers.
- 5.11 Whilst the interim scheme of delegation was in operation, it became apparent that some applications were being referred to committee despite there being no objections simply because a S106 agreement was required. The interim arrangements introduced a change whereby major applications, that are recommended for approval and where a section 106 Agreement is required would only be referred to Committee if there was a dispute about the detail of the S106 agreement. It is recommended that this approach is reinstated but with the proviso that the S106 heads of terms must be policy compliant. If the application is significantly contrary to adopted policies or a departure from the development plan, it would be referred to the Planning Committee if it was recommended for approval.
- 5.12 As currently written the scheme of delegation requires all major applications to be referred to committee if there is just one objection which raises a material consideration. There is no distinction between those raising an objection which is not relevant or can be overcome. It is therefore proposed that such applications are delegated to officers who will refer to the committee if they think appropriate or where there is a Call-In or a dispute with the S106.

- 5.13 In light of the details above and recent experience it is proposed to revise the scheme of delegation from Planning Committee to the following;

Delegated to Assistant Director for Place and Client Services;

1. The determination of all applications for the determination as to whether prior approval is required.
2. The determination of all Lawful Development Certificates.
3. The determination of all applications for Permission in Principle (first stage)
4. The determination of all planning applications irrespective of scale and size (including changes of use and all applications for Listed Building Consent, Certificates of Lawfulness, consent to display advertisements and other notifications) except any application which is:
  - a) significantly contrary to adopted policies or a departure from the development plan, and which is recommended for approval;
  - b) which any Ward Councillor requests in writing to the Assistant Director for Place and Client Services within 25 days of notification, should be subject of consideration by the Committee;
  - c) which constitutes a major application, that is recommended for approval and where a section 106 Agreement is required (excluding unilateral undertakings) and the terms of that agreement are in dispute;
  - d) submitted by or on behalf of a Colchester Borough Council Councillor, Honorary Aldermen (or their spouse/partner) or by any Council officer (or their spouse/partner);
  - e) submitted by or on behalf of Colchester Borough Council (for clarity, this does not include applications made by other parties on land owned by the Council where the development is not by or on behalf of the Council).

## **6. Standard References**

- 6.1 There are no particular references to the Strategic Plan; consultation or publicity considerations or financial; community safety; equality, diversity and human rights implications, or health and safety implications.

## **7. Risk Management Implications**

- 7.1 The proposed scheme of delegation is intended to improve decision making by ensuring the Planning Committee can concentrate on matters that are of most importance.

## **8. Environmental and Sustainability Implications**

- 8.1 The purpose of the planning system is to contribute to the achievement of sustainable development.





## Material Planning Considerations

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

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

The following approach should be taken in all planning decisions:

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

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

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

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

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

The above list is not exhaustive

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

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

- matters specifically controlled through other legislation

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

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

## **Planning Obligations**

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

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

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

## **Human Rights, Community Safety and Equality and Diversity Implications**

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

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

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

## Using Planning Conditions or Refusing Planning Applications

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

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

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

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

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

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

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

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



## **Colchester Borough Council Development Management**

### **Highway Safety Issues**

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

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

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

### **Parking Standards**

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

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

For residential schemes:

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

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





## **Colchester Borough Council Environmental Control**

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

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

#### **Best Practice for Construction Sites**

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

##### **Noise Control**

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

##### **Emission Control**

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

## **Best Practice for Demolition Sites**

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

### **Noise Control**

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

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

### **Emission Control**

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

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

## **Class A1. Shops**

Use for all or any of the following purposes—

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

## **Class A2. Financial and professional services**

Use for the provision of —

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

## **Class A3. Restaurants and cafes**

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

## **Class A4. Drinking establishments**

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

## **Class A5. Hot food takeaways**

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

## **Class B1. Business**

Use for all or any of the following purposes—

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

## **Class B2. General industrial**

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

## **Class B8. Storage or distribution**

Use for storage or as a distribution centre.

**Class C1. Hotels**

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

**Class C2. Residential institutions**

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

**Class C2A. Secure residential institutions**

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

**Class C3. Dwellinghouses**

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

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

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

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

**Class C4. Houses in multiple occupation**

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

**Class D1. Non-residential institutions**

Any use not including a residential use —

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

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

(c) for the provision of education,

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

(e) as a museum,

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

(g) as a public hall or exhibition hall,

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

**Class D2. Assembly and leisure**

Use as —

(a) a cinema,

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

(d) a dance hall,

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

**Sui Generis Uses**

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

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

***Interpretation of Class C3***

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

***Interpretation of Class C4***

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

## **Supreme Court Decision 16 October 2017**

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

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

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

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

## Deferral and Recommendation Overturn Procedure (DROP) Flowchart

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

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

