

# Planning Committee Meeting

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

**Thursday, 30 September 2021 at 18:00**

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

# Information for Members of the Public

## Access to information and meetings

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

Dates of the meetings are available here:

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

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

## Have Your Say!

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

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

## Audio Recording, Streaming, Mobile phones and other devices

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

## Access

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

## Facilities

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

## Evacuation Procedures

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

Library and Community Hub, Colchester Central Library, 21 Trinity Square,  
Colchester, CO1 1JB

telephone (01206) 282222 or textphone 18001 followed by the full number you wish to call

e-mail: [democratic.services@colchester.gov.uk](mailto:democratic.services@colchester.gov.uk)

[www.colchester.gov.uk](http://www.colchester.gov.uk)

## **Covid 19**

Please could attendees note the following:-

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

**COLCHESTER BOROUGH COUNCIL**  
**Planning Committee**  
**Thursday, 30 September 2021 at 18:00**

**The Planning Committee Members are:**

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

**The Planning Committee Substitute Members are:**

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

**Councillors:**

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

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

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

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

**Live Broadcast**

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

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

**1 Welcome and Announcements (Virtual Meetings)**

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

microphones when not talking. The Chairman will invite all Councillors and Officers participating in the meeting to introduce themselves. The Chairman will, at regular intervals, ask Councillors to indicate if they wish to speak or ask a question and Councillors will be invited to speak in turn by the Chairman. A vote on each item of business will be taken by roll call of each Councillor and the outcome of each vote will be confirmed by the Democratic Services Officer.

## **2 Substitutions**

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

## **3 Urgent Items**

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

## **4 Declarations of Interest**

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

## **5 Have Your Say(Hybrid Planning Meetings)**

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

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

## **6 Minutes of Previous Meeting**

The Committee will be invited to confirm that the minutes of the meeting held on 29 July 2021 are a correct record.

**Planning Committee Minutes 290721**

7 - 18

## **7 Planning Applications**

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

- |     |  |          |
|-----|--|----------|
| 7.1 | <b>202025 Land South of Berechurch Road, Colchester</b>  | 19 - 70  |
|     | Development of 153 dwellings with associated parking, landscaping, open space, drainage and infrastructure and formation of new access and alterations to existing access onto Berechurch Hall Road.                           |          |
| 7.2 | <b>190605 Colchester Mercury Theatre Ltd, Mercury Theatre, Balkerne Passage, Colchester. CO1 1PT</b>   | 71 - 86  |
|     | Application to vary or remove conditions 2 - 22 of planning permission 171964. Application for proposed landscaping as well as to regularise works already undertaken for the extension and alteration of the Mercury Theatre. |          |
| 7.3 | <b>212055 2&amp;3 Portal Precinct Sir Isaacs Walk, Colchester CO1 1JJ,</b>   | 87 - 94  |
|     | Secure Cycle Storage   |          |
|     | <b>Planning Committee Information Pages v2</b>   | 95 - 106 |

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

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

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

**PLANNING COMMITTEE**  
**29 JULY 2021**

|                            |   |
|----------------------------|---|
| <i>Present: -</i>          | Councillors Hazell (Chairman), Chuah, Davidson, Maclean and Mannion   |
| <i>Substitutes: -</i>      | Councillor G. Oxford for Cllr B. Oxford<br>Councillor Harris for Councillor Lilley<br>Councillor McCarthy for Councillor Barton<br>Councillor Pearson for Councillor Warnes |
| <i>Also in attendance:</i> | Councillors Crow, Goacher, Scordis<br><br>*Attended remotely  |

**861. 190665 Between Via Urbis Romanae and Mill Road, Land South of Axial Way, Colchester**

The Committee considered an outline application for a healthcare campus (5ha) of up to 300 older people's homes (C3), 4,300sqm private acute surgical hospital (C2), (1,200sqm) medical centre (D1), 3,600sqm, 75-bed care home (C2), up to 45100 sqm offices (B1a); up to 350 homes (C3), with ancillary retail and food and drink of up to 1000m2 of retail (A1), up to 500m2 of food and drink (A3), digital network of ultra fast broadband; 2 points of vehicular access from public highway, pedestrian boulevard and community green (4.5ha). All matters apart from access to be reserved in relation to outline elements of proposals. The detailed consent for a 1st phase of infrastructure was to include the creation of a pedestrian boulevard and associated landscaping, and a renewable energy centre and heat distribution network.

The application was referred to the Planning Committee because it was a major full planning application, elements of which were a departure from the current adopted Local Plan owing to the introduction of an element of housing onto a site that has been allocated for employment purposes. The site was an area of land that was currently owned by Colchester Borough Council. Objections had also been received and the application was conditionally recommended for approval. Furthermore, in the event that the officer recommendation was agreed by the Committee it would also be necessary to secure a section 106 agreement to secure contributions to mitigate impacts of the development and Committee approval was required for such an agreement.

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

**RESOLVED** that the application be approved subject to:-

(i) Referral to the Secretary of State as a departure and should Sport England maintain an objection;

(ii) Prior completion of a section 106 agreement to include contributions to mitigate impacts upon infrastructure, in accordance with final conclusions on viability by consultants BPS/DVS on behalf of the local planning authority and the applicant's ex-gratia offer of £2.3m as per the suggested spend break-down set out at paragraph 15.0 of the report. In addition, the agreement to include appropriate viability reviews with suggested cascade spend mechanism;

(iii) Conditions as set out in the report for full and outline elements of the hybrid application with delegation on detailed wording of conditions should revision be required.

## **862. 210088 Former Museum Resource Centre, 14 Ryegate Road, Colchester**

The Committee considered an application for the conversion of the building from Class D1 (Museum) to Residential Use (Class C3). The development would consist of 29 units comprising 23 HMO rooms and 6 self-contained flats, with cycle provision and bin storage. The application was referred to the Committee as a major item and as there had been objections to the scheme.

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

Chris Harden, Planning Officer, presented the report and assisted the Committee in its deliberations.

Rowena MacAuley addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in respect of the application. There was still some public confusion on the details of the west elevation, which was causing some concern to residents. The developer had apparently given an explanation that the elevation had not been included as part of the application and was not being changed. It was hoped that this meant that the window was safe and that all parties agreed with its importance. However, there was still a lack of specific plans for the façade and clarity was needed on the following points:-

- Would the crill windows be renovated or replaced with like for like materials;
- The plans showed that there would be rooms on the ground and first floor which would directly overlook Maidenburgh Street via this window. How would the design be managed so that the interior walls did not impact on the appearance of the window from the outside;
- What design solutions were proposed to address privacy issues, both for inhabitants of this building and of neighbouring buildings.

This window gave the building its iconic status and helped define the character of the immediate area. The information provided was too vague to provide reassurance to residents, and the Planning Committee needed to satisfy itself on these issues and air them publicly.



The Planning Officer confirmed that the aim was to retain the window given its importance to the street scene, and the proposed conditions and informatives would secure this. The need to retain the window had also been discussed with the applicant. Under the terms of the proposed condition, all but 2 of the existing windows would be retained. A condition could be included that would ensure that any internal walls, partitions or junctions were aligned to avoid any impact on external views of the windows, and that any glazing be painted black at any intersection between masonry and windows to prevent them being visible from external views.

In discussion, members of the Committee supported the principle of ensuring the retention of the windows to ensure the protection of the street scene and welcomed the additional conditions proposed. It was also suggested that the developer be encouraged to provide information about the history and previous uses of the building, through a plaque or similar mechanism. The Planning Officer explained that this could not be required by condition but would be raised with the developer.

*RESOLVED (UNANIMOUSLY)* that the application be approved subject to completion of a legal agreement relating to contributions and receipt of a RAMS payment and consideration of any additional comments received as part of the reconsultation, including from Private Sector Housing, and subject to the conditions and informatives set out in the report and additional conditions requiring the approval of the detailed design of the windows to be replaced, and prior approval of the junction of any internal walling with glazing.

#### **863. 210983 172 Mill Road, Colchester**

The Committee considered an application for the erection of 2 detached single storey dwellings with attached garages, the demolition of the existing dwelling and garage and alterations to existing vehicular access. The application had been referred to the Committee as it had been called in by Councillor Goss.

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

*RESOLVED* that the application be approved subject to the receipt of a RAMS wildlife mitigation payment and the conditions and informatives set out in the report.

#### **864. 211654 Riverside Office Centre, North Station Road, Colchester**

The Committee considered an application to determine if prior approval was required for a proposed change of use from offices (B1) to dwelling houses (C3). The application was referred to the Committee because it had been called in by Councillors Scordis, Goacher and Crow.

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

Nadine Calder, Senior Planning Officer, presented the report, and together with Simon Cairns, Development Manager, assisted the Committee.

In presenting the report the Senior Planning Officer highlighted that the application was to determine if prior approval was required for a proposed change of use. Under national legislation, subject to the development meeting certain criteria, the application was approved under permitted development rights. The development would result in changes to the parking layout, and cycle storage and amenity space would also be provided. The proposed floor plans were presented; the development would comprise 6 studio flats, 42 one bedroom flats, 26 two bedroom flats and nineteen three bedroom flats. All room sizes complied with national space standards.

The criteria that needed to be met for the change of use to be permitted development had all been assessed and it was considered that they were all met. The issue that had raised the most concern was the transport and highways impact. It needed to be considered that although the site was currently vacant it had a lawful use as office development. The Highway Authority did not consider the proposed use would be too dissimilar to the lawful use in terms of traffic flow. There would be parking onsite and whilst this did not quite meet the parking standards, this was a highly sustainable location. Electric charging points would be provided. Parking spaces would also be provided for the commercial units. The development would be subject to a condition requiring a car park management plan. The development should not lead to parking outside the site as this was controlled by double yellow lines and a parking permit scheme. It was considered that the application met all the criteria in the General Permitted Development Order and prior notification should be granted subject to conditions.

Anna Bolton addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She represented 28 residents in attendance at the meeting and other residents living near the site. They were a diverse community who were proud of their area. From experience they understood what the area needed and what it could accommodate. The principle of the redevelopment of site was not opposed nor was the provision of well-planned affordable housing. However, residents were concerned by this development from out of town developers which would have a generational impact. The Council needed to intervene to mitigate the impact of the development. The access to the site was off a narrow residential road and the area was not primarily commercial as the report suggested. The buildings were unappealing as residential development. The site was adjacent to listed buildings on two sides. Under class O of the GDPO criteria this should be enough to halt the application. The local road network had struggled when the offices were in use and the existing highways issues arising from the site had been well documented in correspondence with the Council. These issues needed to be addressed before the application proceeded. The CO1 area around the site had suffered a worrying increase in anti-social behaviour recently with no response from the site owners. The Police had expressed a view that adding 93 social housing units would only exacerbate the situation. They had been informed by the Minister that where residents had concerns about the impact of permitted development on the amenity or wellbeing of an area the Council could consult the community on removing permitted development rights by making an Article 4 direction. The application should be refused until questions about the development had been satisfactorily resolved for the community and the Committee and that assurances were given that this was the best application for the site.

Councillor Scordis attended and with the consent of the Chair addressed the Committee in opposition to the application. There were concerns that the identity of the provider of the social housing was not known and the possibility of social housing tenants from other areas being moved into Colchester. There were concerns about the standard of accommodation that would be provided and whilst he supported the provision of social housing, this particular application could not be supported. The proposal by the Civic Society that the existing buildings be demolished and the site be rebuilt with decent housing blocks would be a better outcome. If the development was to proceed, there was insufficient parking being provided which would lead to residents parking on Causton Road. This was a town centre development with excellent links and a development with fewer cars should be pursued, with more community space and secure cycle parking in its place. A much more radical approach to the site should be taken.

Councillor Crow attended and with the consent of the Chair addressed the Committee. It was important to note that the site was within the North Station Conservation Area. The buildings should be replaced with a small scale low rise housing development. Of the criteria that could be considered in respect of permitted development, the area already suffered from congestion, illegal parking and dangerous driving. The increased traffic and resulting pollution conflicted with the Council's declaration of a Climate Emergency. North Primary was already at capacity so there was no educational provision in the area for children who were housed in the development. There was already considerable anti-social behaviour in the area and the police considered that adding in high density housing would increase these problems. The Committee should do all it could to stop the development including consideration of an Article 4 direction.

Councillor Goacher attended and with the consent of the Chair addressed the Committee to encourage the Council to look at protecting the area by removing permitted development rights through an Article 4 direction. Social housing should be of a high quality. The density of dwellings was too high which would lead to a poor quality of life for residents. There were already severe traffic and parking issues in the area and this would be exacerbated by a car based development such as this. It would have an impact over a wide area, which was the part of the criteria for an Article 4 direction. The Committee needed to address issues such as the numbers of children who would live in the development and where they would go to school, given that North Primary was at capacity. Other issues that needed to be addressed were how many of the units would be for people with disabilities and what provision was being made for access for those with disabilities? Had a health and safety audit been carried out for children living on the site, especially given volume and type of traffic? Was the building carbon neutral? How would the site be managed, in view of the anti-social behaviour issues in the area? Would the Council have any control over who was placed in the building? These were serious issues that needed to be addressed.

The Planning Officer was invited to respond to the comments made by speakers and emphasised that the Committee needed to determine the application as submitted. If the application was not determined within 56 days of receipt, and no extension was granted, it would be determined by default and prior approval granted. The 56 days

expired on the date of the Committee, although the applicant had granted an extension to 30 July. The car parking spaces would be allocated to specific flats and parking would be monitored by the building's management company, who would develop a car park management plan. Private amenity space was not a relevant consideration, although a children's play area would be provided. The fact that the site was in a conservation area was also not a relevant factor for a prior approval notification. In terms of traffic the site had a lawful office use, which would generate considerable traffic volumes at peak times and the change to residential use would not increase traffic from the lawful use.

If an Article 4 direction for the site was made, this would remove permitted development rights. This would not prevent the development of itself, but would require a full planning application to be made which would allow consideration of factors such as design and amenity space. However, this would not change the position of the Highways Authority about the impact of the development. The Council did not consider it was expedient to apply for an Article 4 direction for the site as it had not identified any material harm. The Article 4 process would also take longer than the 56 days the Council had to determine the prior approval. Issues such as health and safety and carbon impact were outside the scope of the application. The Committee could not consider matters relating to the identity of the housing company and tenants, although it was understood that the applicants had discussed with a housing officer issues around what sort of units were needed locally. Whilst there were listed buildings in the vicinity of the site, the site was not within their curtilage.

In discussion, members of the Committee noted the timescales and queried whether the report could have been reported to Committee earlier or whether there was any possibility of extending the timescale to try and seek improvements to the scheme. The Planning Officer explained that there would have been insufficient information to report to Committee at the previous meeting on 8 July, as not all consultees had responded. The Committee also sought clarification on issues around permitted development and Article 4 and the issues raised about the Class O objection. In terms of highways, the need to listen to the views of local residents was emphasised and concern were expressed about the impact of the forthcoming changes to access to North Station Road. It was suggested that it would have been helpful for a Highways Officer to attend the meeting. Concerns about the suitability of the buildings for social housing and the resulting quality of the accommodation were raised. Issues were also raised about health and safety aspects of the development, such as fire exits, and the support and access issues for residents with disabilities. The difficulty of making a building built in the 1960s into a carbon neutral development was highlighted.

In response the Planning Officer explained that a local authority could apply for an Article 4 direction to remove Permitted Development Rights from a certain area or building. This was sometimes done in conservation areas to ensure that the character of an area was maintained. This did not prevent development but meant that a full planning application was necessary. The process for the approval of an Article 4 direction could take up to a year as it required local consultation. Whilst there was a method of introducing an Article 4 direction immediately, the Council would need to justify why it was needed so urgently, and it was the Council's view that this could not be justified in this instance, as the issue of most concern, which

was traffic impact, could be considered under this application. Class O was the relevant part of the Permitted Development regulations that the application was being assessed under. Class O dealt with changes from office to dwellings house. All the flats met or exceeded with national minimum standards. The Council could not require that the development be car free, although if the Committee was minded it could add an informative to say it would prefer a car free development and request that the space allocated for car parking be used as amenity space. Issues around access and support for disabled residents were outside the scope of the application and issues around fire exits would be dealt with under Building Regulations. In terms of the social housing use, social housing was a wide definition and included key workers (amongst others). The applicant did not necessarily have to specify that the use was for social housing and could have made an application for generic C3 use. If prior approval was not granted the applicant would have the right of appeal and if the Council was found to have acted unreasonably there was a risk of costs being awarded.

In further discussion by the Committee, members expressed frustration about the limited control planning authorities were able to exercise in these circumstances. The planning history of the site was highlighted. There had been previous applications for the conversion of the building into residential units, one of which had been granted prior approval but not implemented, which could make an appeal against a refusal for prior approval more difficult to defend and increase the likelihood of costs being awarded against the Council.

The Planning Officer further clarified that in terms of permitted development, if the development met the following criteria the principle of the change of use was accepted.

- The building was last used an office;
- The site did not form part of a safety hazard area;
- It was not a listed building or in the curtilage of a listed building;
- The site did not contain a scheduled ancient monument.

All of these criteria were met so the principle of the change of use had to be accepted. Therefore issues about whether there was a need for offices or whether this was a suitable location for housing were not relevant. There were further issues of detail that needed to be met but it was the officer's view that these issues had all been satisfactorily addressed. The issue on which there was the most concern was traffic impact but it was the view of the Highways Authority that this use would not generate a more significant impact than the exiting legal use.

The Committee noted the limited criteria that it could consider in respect of prior approval and that these issues had been addressed in the officer's report and did not provide sustainable grounds for a refusal of prior approval, despite concerns about other elements of the scheme. In particular it noted that there was no objection from Essex Highways and therefore a refusal on highways grounds could not be sustained. It was suggested that if prior approval was to be granted conditions should be added requiring the installation of a sprinkler system and ensuring that sustainable heating and lighting systems were used. The Planning Officer advised that these issues would need to be addressed through an informative rather than a condition.

The Committee also considered whether it should also look to reduce the car parking and increase the amenity space, given the sustainable location of the site and increased lockable cycle storage options. However, it was considered that this could lead to more off site parking to the detriment of existing local residents. The site was adjacent to the Castle Park and therefore additional amenity space was not necessary.

*RESOLVED* (FIVE voted FOR, ONE voted AGAINST and THREE ABSTAINED from voting) that prior notification was required and was granted, subject to the conditions set out in the report and an informative encouraging the installation of a sprinkler system and the use of a sustainable heating and lighting system.

#### **865. 211079 73 All Saints Avenue CO3 4PA**

The Committee considered an application for the variation of condition 2 following the grant of planning permission for application 182603. The application was referred to the Committee as it had been called in by Councillor Buston for the reasons as set out in the report.

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

Annabel Cooper, Planning Officer, presented the report and together with Simon Cairns, Development Manager, assisted the Committee in its deliberations.

Robin Wroe-Brown addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. The proposed plans did go some way to meeting concerns of neighbouring residents with a reduction in width of the extension. However, it was disputed that the extension was a dormer. It was more of a partial third storey. Whilst the report argued that dormers were accepted features in the urban environment, this extension was not acceptable in this vicinity. Many of residents' concerns still applied. The most important was the height and increased fenestration and the resulting intrusion of privacy. The Juliet balcony and increased fenestration would cause a significant intrusion into the privacy of surrounding properties. Light and fresh air could be provided by the windows approved in the original scheme. Another dormer elsewhere in Prettygate had been built with frosted glass to prevent overlooking, which could be a suitable compromise. The report stated the development was not overbearing and there were no concerns in respect of loss of light. The Committee should visit the affected properties to assess this before reaching a decision. Both the built structure and the new scheme were beyond the original consent, to which no objections were made. The principle and spirit of the regulations should be upheld.

Daniel Nezhad addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. Every decision had been based on the advice of their agent who acted as both architect and structural engineer. They had recently learned that the agent had been fraudulently claiming to be architect, had been fined by the courts and the company dissolved. He was now working with a new agent and the Planning Officer to find a solution that met the Council requirements and reduced the size of the dormer. The new proposals took

on board the objections . It was smaller in scale than the one previously approved and was in line with other recently approved dormers in All Saints Avenue. It fitted with permitted development and would have a reduced impact on public areas compared to the approved plans. The privacy concerns would be alleviated with the removal of the window closest to neighbouring gardens. The balustrade could be made obscured glass if that would alleviate concerns. Almost every aspect of every objectors' gardens was obscured by trees and or outbuildings.

This had been a very stressful period and it was unlikely he would be able to reclaim costs for the work undertaken based on the previous advice. There was insufficient finance available to revert the dormer back to the previously approved plans, although the plans before the Committee now could be implemented

Councillor Buston attended and with the consent of the Chair addressed the Committee. The objector was representing the views of approximately 12 residents. The development was contrary to policies UR2 and DP1. Residents did not consider that the permitted development was acceptable and were concerned that the failure to comply with the original permission had not been enforced. They also did not understand why the harm from the development as built was not being considered. Dormer structures were out of character for the area and where they were permitted they needed to be of acceptable design, which was not the case here. The main concern was that it was possible from the dormer to overlook all the surrounding gardens. It was also visible from residents' gardens.

In response, the Planning Officer explained that as built the development was not acceptable. The Committee were being asked to consider a revised scheme that qualified as permitted development. The Juliet balcony was also permitted development. It was not considered that any additional harm would be generated when considered against the originally approved application.

In discussion, the Committee raised concerns about the impact of the development and the impact of the Juliet balcony on the privacy of neighbours, and the likelihood of the revised permission being implemented, should permission be granted, given the financial position of the applicant. It was queried as to what enforcement action would be taken if the application was refused.

The Planning Officer explained that planning enforcement had been involved, resulting in this application coming forward. The application for the development as built had been refused. The current application would result in a dormer that was smaller than that approved under the original application. It would be a lot less prominent in the public realm. The Development Manager stressed that the revised application fell within the parameters of permitted development and that therefore it must be considered acceptable.

The Committee considered that if the application were to be granted, then further permitted development rights should be withdrawn and the balcony balustrade should be obscure glazed.

*RESOLVED* (EIGHT voted FOR, ONE ABSTAINED from voting) that the application be approved subject to the conditions in the report and additional conditions

requiring the removal of further permitted development rights and the obscure glazing of the balcony balustrade.

**866. 210121 Outside 32 and 33-34 High Street, Colchester**

The Committee considered an application for the erection of a statue of the Taylor sisters - Dedicated to the children of the world. The application was referred to the Committee for reasons of transparency as the applicant was an Alderman and High Steward of the Borough.

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

James Ryan, Principal Planning Officer, attended to present the report and assist the Committee in its deliberations.

Sir Bob Russell addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. Colchester had not really celebrated the Taylor sisters, who had written Twinkle, Twinkle Little Star when living on West Stockwell Street. It would be a great tourist attraction. The statue would be dedicated to the children of the world. The profits from sales of merchandise arising from the statue would be directed to the Mayor of the day to be spent for the benefit of children in Colchester. The sculptor would be Mandy Pratt, who had produced the statue of Peter Wright on the old Layer Road site. If permission was given he would proceed with fundraising for its construction and installation. Consideration would be given to an inscription or plaque explaining the statue and its context.

The Committee expressed its support for the application and thanked Sir Bob for bringing the application forward.

*RESOLVED (UNANIMOUSLY)* that the application be approved subject to the conditions in the report.

**Councillor Davidson (as the owner of the site) declared a disclosable pecuniary interest in the application pursuant to the provisions of Meetings General Procedure Rule 7(5) and left the meeting during its consideration and determination**

**867. 211411 Newpots, Newpots Lane, Peldon**

The Committee considered an application for the change of use of an agricultural storage building to general storage and distribution (B8) and modular office block ancillary to store. The application was referred to the Committee as the owner of the site was a borough councillor.

The Committee had a report before it in which all information was set out together with further information on the Amendment Sheet.

James Ryan, Principal Planning Officer, attended to present the report and assist the Committee in its deliberations.



*RESOLVED (UNANIMOUSLY)* that the application be approved subject to the conditions set out in the report.

**868. 211519 Hythe House, 142 Hythe Hill, Colchester**

The Committee considered an application to replace the existing timber and render cladding with cedar panels, replace windows with identical UPVC units in black, replace existing aluminium front doors with similar doors finished in black. The application was referred to the Committee as the applicant was the spouse of a senior manager within the Planning Department. The application had initially been considered at the meeting of the Committee on 8 July 2021 but had been deferred.

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

*RESOLVED* that the application be approved subject to the conditions set out in the report.





The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use. This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2017

**Item No: 7.1**

**Application:** 202025

**Applicant:** Ms Paige Harris, Persimmon Homes Essex

**Proposal:** Development of 153 dwellings with associated parking, landscaping, open space, drainage and infrastructure and formation of new access and alterations to existing access onto Berechurch Hall Road.

**Location:** Land south of Berechurch Hall Road, Colchester

**Ward:** Shrub End

**Officer:** Eleanor Moss

**Recommendation:** Approval subject to recommended conditions and S.106 agreement

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

- 1.1 This application is referred to the Planning Committee because it is a major application which is a departure from the Adopted Local Plan, although not a departure from the Emerging Local Plan 2017-2033, and a number of objections have been raised.

## **2.0 Synopsis**

- 2.1 The key issues for consideration are the weight that can be afforded to the Emerging Local Plan site allocation and the specifics of the proposal in terms of design, layout and highway safety. Members may recall the consideration afforded previously to this application at the meeting of 9 September 2021 (Item 7.1) when it was resolved to defer until attendance of ECC Highways to answer queries around access, traffic calming, footways, possible mini roundabout, bus stop laybys etc. This item is now returned for consideration and the Strategic Highway Engineer representing ECC Highways has confirmed their attendance at 30<sup>th</sup> September 2021 committee.
- 2.2 The application is subsequently recommended for approval.

## **3.0 Site Description and Context**

- 3.1 The allocation site measures 5.36 hectares and fronts onto Berechurch Hall Road.
- 3.2 The site is broadly rectangular in shape and measures up to 390 metres wide (east/west) and 130 metres deep (north/south). The site is currently in agricultural use and lacks topography. A farm track runs along the western boundary. There are no public footpaths in or around the site. The site is bounded on all sides by hedging consisting of shrubs and mature trees, some of which is on-site and some on adjacent land.
- 3.3 Immediately to the west of the site is an area which was the subject of an application by Harding Homes for 32 dwellings and approved in 2020. Separating the two respective sites is a belt of shrubs and trees.
- 3.4 To the south of the site is a large agricultural field, beyond which is the Birch Grove Golf Club which lies some 280 metres south of the site. There are no listed buildings on or around the site.
- 3.5 The Eastern Parcel benefits from an existing vehicular access from Berechurch Hall Road at the most westerly point along the site's northern boundary.
- 3.6 A proposal for 32 dwellings on 1.55 hectares land to the west of the application site has previously been granted planning permission (application ref: 191093).

## **4.0 Description of the Proposal**

- 4.1 Full planning permission for 153 dwellings with associated parking, landscaping, open space, drainage and infrastructure and formation of new access and alterations to existing access onto Berechurch Hall Road.

## **5.0 Land Use Allocation**

- 5.1 The site is unallocated land in the adopted Local Plan but is an allocation in the Emerging Local Plan. This matter will be detail within the Principle of Development Section of the report.

## **6.0 Relevant Planning History**

- 6.1 None directly relevant to this application site however as mentioned in paragraph 3.6, 32 dwellings have recently been granted directly to the west of this site forming part of the same emerging site allocation.

## **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) (2021) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.
- 7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations  
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

- 7.3 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  
DP4 Community Facilities  
DP12 Dwelling Standards  
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

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

SA H1 Housing Allocations

- 7.5 Submission Colchester Borough Local Plan 2017-2033:

The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector was appointed and the formal examination commenced in January 2018. The examination is ongoing for Section 2 of the plan. Section 1 of the plan was adopted in February 2021. The examination of section 2 has yet to be completed with the examiner’s suggested modifications having been received. These will now be subject to further public consultation.

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.

Section 2 of the Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to complete a full and final examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

## **Overview**

The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan remains to complete examination, with hearing sessions having taken place during April 2021. Section 2 policies must be assessed on a case by case basis in accordance with NPPF paragraph 48 to determine the weight which can be attributed to each policy.

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

The Council can demonstrate a five year housing land supply.

## **Adopted Section 1 Local Plan**

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

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

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

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

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

## **Emerging Section 2 Local Plan**

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

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

The Emerging Local Plan submitted in October 2017 is at an advanced stage, with Section 1 now adopted and Section 2 has now been examined with Hearing sessions held in April 2021. Section 1 of the plan is therefore considered to carry full weight.

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

## **5 Year Housing Land Supply**

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

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

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

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

This position has been further improved now the Council has an adopted housing requirement of 920. When the 5% buffer is added the annual target is 966. In accordance with paragraph 73 of the NPPF, the adoption of the strategic housing policy in Section 1 of the Local Plan, means that the



adopted housing requirement is the basis for determining the 5YHLS, rather than the application of the standard methodology.

The Council has recently updated its Annual Position Statement in relation to 5-year supply. This shows the Council has a supply of 5564 dwellings against a target of 4830 which equates to a 5.75 year supply over the period 2021/22 – 2025/26.

Given the above, it is therefore considered that the Council can demonstrate a five year housing land supply, and that the tilted balance at paragraph 11 of the NPPF does not apply.

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

### **General Local Plan Status**

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

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

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

### **Policy SD2 – Fully superseded**

SD2 is replaced by policy SP6.

Policy SD2 is thus no longer relevant.

### **Policy SD1 – Superseded in Part**

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

~~When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean~~

~~that applications can be approved wherever possible and to secure development that improves the economic, social and environmental conditions in the area.~~  
~~Planning applications that accord with the policies in this Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay unless material considerations indicate otherwise.~~

Struck through text section above is replaced by policy SP1. All other parts of SD1 remain relevant.

## Policy H1 – In Part

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

Is replaced by SP3 and SP4.

All other parts of H1 remain relevant.

## Policy CE1- In part

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

Is replaced by SP5. All other parts of CE1 remain relevant.

| Section 1 Adopted Policy   | Context of Section 1 Policy | Relevant Core Strategy Policy status  |
|--|-----------------------------|---|
| <b>Policy SP 1</b><br>Presumption in Favour of Sustainable Development | Restates national Policy    | Replaces SD1 - in part.<br><br>Following text of SD1 is replaced by SP1.<br><br><i>Colchester Borough Council will promote sustainable development and regeneration to deliver at least 14,200 jobs between 2001 and 2021 and at least 19,000 homes between 2001 and 2023.</i><br><br><i>When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy</i> |

DC0901MWeV9.3

|  |  |   |
|--|--|---|
|  |  | <p><i>Framework. It will always work proactively with applicants jointly to find solutions which mean that applications can be approved wherever possible and to secure development that improves the economic, social and environmental conditions in the area.</i></p> <p><i>Planning applications that accord with the policies in this Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay unless material considerations indicate otherwise.</i></p> |
| <b>Policy SP 2</b> Recreational disturbance Avoidance and Mitigation Strategy (RAMS) | Statutory requirement under the Habitats Regs- Policy provides a new authorisation for contributions                                 | <p>New policy relevant to confirm approach implementing the Habitats Regulations.</p> <p>Full status for decisions post 1.02.2021</p>   |
| <b>Policy SP 3</b> Spatial Strategy for North Essex                                  | Strategic – relies on Section 2 eLP for Spatial hierarchy and Colchester strategy  | <p>High level</p> <p>N/A</p>  |
| <b>Policy SP 4</b> Meeting Housing Needs   | Sets the housing supply figure for the Plan period at 920 per year. Section to allocate sites and determine the spatial distribution | <p>Replaces H1 - in part.</p> <p>Following text of H1 replaced by SP4.</p> <p><i>The Borough Council will plan, monitor and manage the delivery of at least 19,000 new homes in Colchester Borough between 2001 and 2023.</i></p> <p>All other parts of H1 remain relevant</p>  |
| <b>Policy SP 5</b> Employment  | Strategic target – relies on Section 2 eLP to allocated sites  | <p>Replaces CE1 – in part.</p> <p>Following text from CE1 replaced by SP5.</p>  |

|  |  |   |
|--|--|---|
|  |  | <p><i>The Borough Council will encourage economic development and will plan for the delivery of at least 14,200 jobs in Colchester between 2001 and 2021.</i></p> <p>All other parts of CE1 remain relevant.</p>  |
| <b>Policy SP 6</b> Infrastructure & Connectivity                                   | <p>Strategic and restates national policy</p> <p>Section 2 covers matters specifically</p>       | <p>High level/Garden Community – Section A</p> <p>Sections B, C, D and E of policy apply to all allocations and development proposals in the North Essex Authorities area.</p> <p>These sections replace SD2.</p> |
| <b>Policy SP 7</b> Place Shaping Principles  | <p>Strategic / restates national policy and eLP</p> <p>Section 2 covers matters specifically</p> | <p>High level</p> <p>N/A</p>  |
| <b>Policy SP 8</b> Development & Delivery of a New Garden Community in North Essex | <p>New- specific to the Garden Community</p>   | <p>Garden Community</p> <p>N/A</p>  |
| <b>Policy SP 9</b> Tendring/Colchester Borders Garden Community                    | <p>New- specific to the Garden Community</p>   | <p>Garden Community</p> <p>N/A</p>  |

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

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

The Essex Design Guide  
 External Materials in New Developments  
 EPOA Vehicle Parking Standards  
 Affordable Housing  
 Community Facilities  
 Open Space, Sport and Recreation  
 Sustainable Construction  
 Cycling Delivery Strategy

## 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 Urban Designer

*The proposed layout is broadly in alignment with the spatial strategy previously set out by the LPA and the scheme includes favourable design features such as; the use of elements of interconnected blue infrastructure, high levels of pedestrian permeability, a strong defensible pedestrian route through the centre of the site and good levels of tree planting. Additionally, adequate parking provision is provided for the number of units proposed and the scheme provides an adequate amount of public open space...*

*The use of traditional vernacular forms is considered appropriate, as are the proposed materials. The variances to plan form and the subsequent varied proportions of units, achieves a good degree of articulation and visual interest within the street scenes...*

*The consistent use of traditional vernacular forms and a relatively modest materials palette allow the proposal to establish a degree of site wide character, by virtue of the relative homogeneity of built form.*

4/8/21 Update:

*Modest amendments to materials and surfacing plans considered appropriate*

### 8.3 Landscape Advisor

*The landscape content/aspect of the strategic landscape proposals submitted principally under the Landscape & Visual Impact Assessment dated Jan 2020 lodged on 18/09/20; and drawings JBA19/158-SK01.F, PH-154-008.A (boundary treatments) and PH-154-010.A (hard surfacing) lodged 21/06/21 would appear satisfactory.*

### 8.4 Highway Authority

*Provided the development is carried out in accordance with planning application drawing number PH-154-003 Rev. D, from a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to the following requirements:*

- 1) 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 in accordance with policy DM1 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011*

- 2) *No occupation of the development shall take place until the following have been provided or completed:*
  - a) *One priority junction off Berechurch Hall Road to provide access to the proposal site as shown in principle on the planning application drawings*
  - b) *Two new bus stops in Berechurch Hall Road at and/or in the vicinity of the proposal site OR 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) *A toucan crossing in Berechurch Hall Road as shown in principle on planning application drawing number 19199.OS.115.01 Rev. C*
  - d) *A footway/cycleway between the toucan crossing in Berechurch Hall Road and existing footway/cycleway in Camulodunum Way at St. Michael's Primary School & Nursery (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, 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*

- 3) *Within 28 days of completion of the development, the easternmost priority junction off Berechurch Hall Road shall be removed in its entirety and replaced with a size 3 turning head as shown in principle on planning application drawing number PH-154-003 Rev. D.*

**Reason:** *To protect highway efficiency of movement and safety in accordance with policy DM1 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011*

## 8.5 Arboricultural Advisor

*Condition the most up to date plans as part of the approved documents*

## 8.6 Environmental Protection

#### *ZPA – Construction Method Statement*

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

*the parking of vehicles of site operatives and visitors;*

*hours of deliveries and hours of work;*

*loading and unloading of plant and materials;*

*storage of plant and materials used in constructing the development;*

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

*wheel washing facilities;*

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

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

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

#### *ZPD - Limits to Hours of Work*

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

*Weekdays: 08:00-18:00*

*Saturdays: 08:00-13:00*

*Sundays and Bank Holidays: No working*

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

#### *ZPE - Limits to Hours of Construction Deliveries/Worker Traffic*

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

*Weekdays: 08:00-18:00*

*Saturdays: 08:00-13:00*

*Sundays and Bank Holidays: No deliveries*

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

#### *Full applications*

*Where the internal noise levels exceed those stated in the current version of BS8233 with windows open, enhanced passive ventilation with appropriate sound insulating properties shall be provided to ensure compliance with the current version of BS8233 with windows closed and that maximum internal noise levels at night do not exceed 45dBA on more than 10 occasions a night. Where exposure exceeds the noise levels of 60dBLAeq 16 hours (daytime, 07:00-23:00, outside), 55dBLAeq 8 hours (night, 23:00-07:00, outside) significantly enhanced ventilation will be required. In addition, noise levels in external amenity spaces shall not exceed 55dBLAeq 16 hours, daytime and the mitigation measures detailed in the report shall be implemented. The development shall thereafter be carried out in accordance with any details approved, and shall be retained in accordance with these details thereafter.*

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

#### **ZCG - Communal refuse Areas**

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

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

#### **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)*

### **8.7 SuDs**

*As the Lead Local Flood Authority (LLFA) this Council provides advice on SuDS schemes for major developments. We have been statutory consultee on surface water since the 15th April 2015. In providing advice this Council looks to ensure sustainable drainage proposals comply with the required standards as set out in the following documents:*

*Non-statutory technical standards for sustainable drainage systems*

*Essex C adopted Sustainable Drainage Systems Design Guide*

*The CIRIA SuDS Manual (C753)*

*BS8582 Code of practice for surface water management for development sites.*

#### **Lead Local Flood Authority position**

*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 based on recommended conditions.*

### **8.8 Anglian Water**

*No objections received, an informative is recommended.*

### **8.9 Essex Wildlife Trust**

*None received at the time of writing*



#### 8.10 Environment Agency

None received at the time of writing

#### 8.11 Natural England

*We welcome the additional assessment of impacts on Roman River SSSI which is located 0.6km from the site, and agree the mitigation measures outlined should be sufficient to mitigate indirect recreational disturbance. With regards the submitted Information to Inform an Appropriate Assessment (AA), please note that your Authority is required to produce the AA.*

#### 8.12 Contaminated Land

*I note that the above have assessed plausible contamination risks to the proposed development, no potentially contaminative uses of the site have been identified (including risks from any agricultural uses of the site) and that it has been concluded that for the proposed residential development, contamination will not pose a significant risk to human health, environmental, historical and ecological receptors. It has been recommended that, should any evidence of contamination be subsequently identified, further action would be required. Based on all of the information provided, this conclusion would seem reasonable.*

*Consequently, should this application be approved, Environmental Protection would recommend inclusion of the following precautionary Condition:*

##### *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 DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.*

*Reason – The site lies on or in the vicinity of agricultural land where there is the possibility of contamination and Environmental Protection wish to ensure that development only proceeds if it is safe to do so. The Local Planning Authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination. The applicant is responsible for the safe development and safe occupancy of the site.*

#### 8.13 Archaeological Advisor

The applicant submitted an archaeological desk-based assessment and geophysical survey to support their application. While a moderate level of archaeological potential was identified, the results of the geophysics and recent nearby archaeological work indicated that the site is strongly unlikely to contain any remains of national significance (requiring preservation in situ). A trial trenched evaluation of the proposed development site should take place prior to development commencing, secured by planning condition. A Written Scheme of Investigation for this has been agreed with the applicant's archaeological agents and should be submitted formally to partially meet the requirements of the recommended condition.

#### 8.14 Fire Services

*Access for Fire Service purposes has been considered in accordance with the Essex Act 1987 - Section 13. From drawings available it appears satisfactory, but confirmation of the following should be confirmed with developer.*

*For the provision of Fire Service Access Approved Document B Vol 1 B5 compliance is required. Also please refer to note 1. Referring to not all fire appliances are standardised. When referring to Table 20, Essex Fire Service Appliance details: Min turning circle between kerbs 17.8 m and Minimum carrying capacity 18 tonnes More detailed observations on access and facilities for the Fire Service will be considered at Building Regulation consultation stage.*

*It is the responsibility of anyone carrying out building work to comply with the relevant requirements of the Building Regulations. Applicants can decide whether to apply to the Local Authority for Building Control or to appoint an Approved Inspector.*

*Local Authority Building Control will consult with the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority (hereafter called "the Authority") in accordance with "Building Regulations and Fire Safety - Procedural Guidance". Approved Inspectors will consult with the Authority in accordance with Regulation 12 of the Building (Approved Inspectors etc.) Regulations 2010 (as amended).*

*The architect or applicant is reminded that additional water supplies for fire fighting may be necessary for this development. The architect or applicant is urged to contact the Water Technical Officer at Service Headquarters, telephone 01376-576344.*

*"There is clear evidence that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. Essex County Fire & Rescue Service (ECFRS) therefore uses every occasion to urge building owners and developers to consider the installation of AWSS. ECFRS are ideally placed to promote a better understanding of how fire protection measures can reduce the risk to life, business continuity and limit the impact of fire on the environment and to the local economy. Even where not required under Building Regulations guidance, ECFRS would strongly recommend a risk based approach to the inclusion of AWSS, which can substantially reduce the risk to life and of property loss. We also encourage developers to use them to*

*allow design freedoms, where it can be demonstrated that there is an equivalent level of safety and that the functional requirements of the Regulations are met.”*

#### 8.15 Essex Badger Group

*It is with dismay that we note wildlife is being pushed aside in favour of development. There are active badger setts on this land - all in the surrounding hedgerows but it is planned to close two of them. Why? The field in between Catkin Mews and this planned location is already being developed so why cannot the hedgeline plus additional metres either side be left to accommodate the animals as a wildlife corridor? Similar applies to the long back hedgerow. Why close the active badger sett - it backs onto open farmland (at the moment) and if the hedgerow is being retained then a few more metres and judicious planting will allow this sett to remain. Development should work with nature and not take the easy option and go for destruction. However, should this Application be approved then the mitigation as detailed in the Ecological Survey should be strictly adhered to not only in regard to badgers but all the other wildlife that currently occupies this field.*

#### 8.16 NHS

*The development would give rise to a need for improvements to capacity, in line with emerging STP Estates Strategy; by way of refurbishment, reconfiguration, extension, or potential relocation for the benefit of the patients of Shrub End Surgery (and/or including the other practices that form Colchester Medical Practice) or through other solutions that address capacity and increased demand as outlined in 5.3 - Health & Wellbeing Statement. For this a proportion of the cost would need to be met by the developer.*

*A developer contribution will be required to mitigate the impacts of this proposal. North East Essex CCG calculates the level of contribution required, in this instance to be £93,470.08. Payment should be made before the development commences.*

*North East Essex CCG therefore requests that this sum be secured through a planning obligation linked to any grant of planning permission, in the form of a Section 106 planning obligation.*

#### 8.17 Essex Education

*Request for Early Years and Child Care contributions only*

#### 8.18 Colchester Cycling Campaign

*The Campaign would like to see the design brought up to the standards set out in LTN 1/20 [2], otherwise the development should not be approved (S14.3.12 [2]).*

#### 8.19 Air Quality Officer

*This AQ impact assessment is acceptable. The air quality (nitrogen dioxide) impact in the operational phase has been determined as an increase of 0.1µg/m3, negligible in terms of significance set out by the IAQM Planning guidance but still an increase upon the existing pollution within the AQMA. The EV charging condition should be implemented across the development.*

## 8.20 Police

*Thank you for the opportunity to comment on the revision of planning submission 202025. The applicant did not seek pre-application consultation as referenced in NPPF. Essex Police considers that it is important that, if approved, this specific development is designed incorporating the maximum achievable benefit of Crime Prevention Through Environmental Design (CPTED) for which Secured by Design (SBD) is the preferred enabler. This reflects sections 91 and 127 of the NPPF which support the need for safe and secure developments. Good design should aim to achieve healthy, inclusive and safe places, which are accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion.*

*As such, it is strongly recommended that the developer seeks to achieve Secured by Design-Homes 2019 accreditation for this development. SBD accreditation is only achieved by compliance with the requirements of the relevant Design Guide ensuring the security built into each property and a development as a whole is risk commensurate to that location.*

*Essex police would like the following points clarified: -*

- It is unclear from the masterplan if there is to be a public pathway between plots 108-109 and plots 110-111. Please clarify this.*
- There appears to be limited surveillance of the rear parking court for plots 90-93, what is proposed to resolve this?*
- The entrance between plot 114 & 115 and accompanying alley has the potential to become a crime generator due to poor surveillance and lack of capable guardianship, what is proposed to resolve this?*

*Essex Police provide a no cost, impartial advice service to applicants who require advice on Crime Prevention Through Environmental Design and Secured by Design and we would welcome and encourage discussion with the applicant relating to this development. We invite them to contact Essex Police via [designingoutcrime@essex.police.uk](mailto:designingoutcrime@essex.police.uk) to discuss this further.*

*Officer comment: There are public pathways between plots 108-109 and 110-111. Lighting will be installed to ensure plots 90-93 are well lit at night and there is surveillance from the rear of properties 90-93, 97 and 98. In the latest revision of the detailed layout plan (rev D) a gated entrance is shown to this walkway which can only be accessed with a key by plots 115 and 116.*

## **9.0 Parish Council Response**

### 9.1 Non-Parished

## **10.0 Representations from Notified Parties**

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

10.2 Following the consultation exercise, 20 representations of concern were received. These are summarised as follows:

- Lack of infrastructure
- Increase in traffic
- Increase in pollution
- Loss of view
- Loss of property value
- Impact upon wildlife
- Lack of footpaths
- Additional housing not required in the area
- Lack of zebra crossings
- Unsustainable location
- Harmful impact upon human rights
- Harmful impact upon character of the area
- Impact upon light

## 11.0 Parking Provision

11.1 The application scheme proposes 153 no. one and two bedroom apartments and two, three and four bedroom dwelling houses including 334 parking spaces (including those for visitors). The parking provision is set out in the table below:

|                       | Units proposed | Parking per unit | Total      |
|-----------------------|----------------|------------------|------------|
| One Bedroom Apartment | 10             | 1                | 10         |
| Two Bedroom Apartment | 12             | 2                | 24         |
| Two Bedroom FOG       | 10             | 2                | 20         |
| Two Bedroom House     | 42             | 2                | 84         |
| Three Bedroom House   | 60             | 2                | 120        |
| Four Bedroom House    | 19             | 2                | 38         |
| Visitor Parking       |                |                  | 38         |
| <b>TOTAL</b>          |                |                  | <b>334</b> |

11.2 Disabled parking is provided for the wheelchair units at plots 120 and 130 as shown on the detailed layout plan. Further to this, cycle parking is provided.

## 12.0 Accessibility

12.1 It is noted the affordable housing element meets 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). This is to be welcomed.

### 13.0 Open Space Provisions

13.1 As can be seen from the submitted Public Open Space plan, this scheme proposes a central area of public open space and then a number of small sections of incidental open space. Together they total over 10% of the site area. It must also be noted that the scheme is affording additional pedestrian access points to the proposed 'Outer Colchester Orbital' which is located to the south of the site. This will be discussed in the report but is held to have significant public benefit.

### 14.0 Air Quality

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

### 15.0 Planning Obligations

15.1 As a "Major" application, there was a requirement for this proposal to be considered by the Development Team. It was considered that Planning Obligations should be sought. The obligations and projects are still being processed under the S106 process. It is proposed that agreement of the detailed projects to mitigate the impact of the development be delegated to officers. The Obligations that have been requested are as follows:

#### **Affordable Housing:**

The proposed scheme will deliver 46 dwellings (36AR&10SO)

Accommodation Schedule with affordable housing requested as follows: -

| Dwelling Type | No | AR | SO |
|---------------|----|----|----|
| 1 Bed Flat    | 11 | 8  | 3  |
| 1 Bed FOG     | 1  | 1  | 0  |
| 2 Bed Flat    | 8  | 4  | 4  |
| 2 Bed FOG     | 4  | 4  | 0  |
| 2 Bed House   | 7  | 7  | 0  |
| 3 Bed House   | 11 | 8  | 3  |
| 4 Bed House   | 4  | 4  | 0  |
|               | 46 | 36 | 10 |

Currently, the council would support the current mix. As per policy 30% of the development needs to be provided which is met. The tenure mix should be no less than 80% affordable rent and no more than 20% shared ownership which has also be met.

We would request that the affordable housing should meet the enhanced accessibility standard of Part M4 cat 2 (Building Regulations 2015) in lieu of

lifetime homes, in accordance with the requirements in DP12 (Development Policies 2014).

To note the council preference would be for the two 1B2P(AR) to be designed to meet Part M4 Cat (3) (2) (a) or Part M4 Cat 3 (2) (b).

**NHS - £93,470.08**

**Education –**

Request for Early Years and Child Care contribution only in accordance with SPD formula.

**Archaeology – £17,553**

**Highways –** Two new bus stops in Berechurch Hall Road at and/or in the vicinity of the proposal site OR upgrade to Essex County Council specification the two bus stops which would best serve the proposal site (details shall be agreed with the Local Planning Authority prior to commencement of the development)

b) A toucan crossing in Berechurch Hall Road as shown in principle on planning application drawing number 19199.OS.115.01 Rev. C

c) A footway/cycleway between the toucan crossing in Berechurch Hall Road and existing footway/cycleway in Camulodunum Way at St. Michael's Primary School & Nursery (details shall be agreed with the Local Planning Authority prior to commencement of the development)

d) A Travel Plan and Residential Travel Information Packs both in accordance with Essex County Council guidance.

Works conditioned and delivered either as part of the site or by a s278 agreement

**Communities – £363,561.53** as per SPD.

**Parks & Recreation - £478,790.91** as per SPD.

**Transportation –**

Projects -

1. development must be connected to the existing and planned cycle network therefore a contribution, or by way of a S278, will be required to extend the segregated routes from the eastern end of the site to link with the Garrison route at Berechurch Road and from the western end of the site to join Layer Road (and LCWIP route) This is in accordance of ECC's CCAP, and CBC's CCDS adopted SPD.

2. 2x cycle and pedestrian crossings are provided across Berechurch Hall Road and one crossing of Berechurch Road to link the Garrison cycle route

3. the speed limit on Berechurch Hall Road is reduced to 30 mph

Note - The emerging local plan states '*New bus stop provision to service the site and improve sustainable transport links to Colchester town centre*'. The site is not on or near a regular bus route, therefore should a new service be provided? Bus route which has a frequent service are more than 400m away. ECC to advise.

*Officer response: It is not considered the applicant can deliver item 1 within highway and/or land under their control. It is also considered this would fail the CIL tests in terms of being reasonable in scale etc. - as confirmed by ECC. In relation to item 2, the ECC recommendation includes a Toucan crossing in Berechurch Hall Road and connecting footway/cycleways on both sides of it. ECC confirm the main desire line for pedestrians and cyclists would be north-south towards the town centre and other services and facilities within the built-up area of Colchester. In relation to item 3, the speed limit in the vicinity of the proposal site is already 30 mph. ECC recommendation deals with bus stops. Given the proposed number of dwellings, in terms of CIL, it is considered a new bus service would be unreasonable in scale.*

## **16.0 Report**

### The Principle of Development

#### **Introduction**

- 16.1 The proposal for 153 dwellings on land at Berechurch Hall Road is on land which is outside of the currently adopted settlement boundary in the adopted local plan. The proposed site forms part of an allocation in the Emerging Local Plan (Policy SC1 - South of Berechurch Hall Road).
- 16.2 The planning policy approach to the proposal reflects the Council's current position in the plan-making process where both an adopted and an emerging local plan are relevant. The relationship of the proposal to each of those Plans and the compliance of relevant adopted and emerging policies with the 2021 NPPF are accordingly key variables in assessing the 'planning balance'.
- 16.3 It is considered that the fundamental principles of both the Adopted and Emerging Local Plans are compliant with the NPPF 2021. The analysis below will consider whether there are any relevant non-compliant elements of CBC policy with the NPPF that justify a reduction in the weight to be given to the policy in assessing the planning balance in this case. For the Emerging Local Plan, the following analysis reflects the NPPF criteria on the weight to be given to policies, which depends on the stage of preparation of the plan; the extent to which there are unresolved objections to relevant policies; and the degree of consistency of the relevant policies to the Framework (see paragraph 48).

#### **Adopted Local Plan**

- 16.4 The NPPF continues to support the Policy approach in the Adopted Local Plan in principle, in respect of the key policies on settlement hierarchy relevant to this proposal, SD1 and ENV1. As the Council is able to demonstrate a 5-year housing land supply these policies are relevant to the decision making on this proposal. Policy SD1 accords with Paragraphs 10-12 of the 2021 NPPF which provide for a presumption in favour of sustainable development. Policy SD1 is consistent with the NPPF's approach to decision-taking which entails approving proposals that accord with the Local Plan unless material considerations indicate otherwise, and which involves the LPA working proactively with applicants. It is noted, however, that the housing and jobs target

DC0901MWeV9.3



provided in the policy no longer remain current. Whilst the supply figure itself may be out of date the principle of the overarching spatial strategy and the settlement hierarchy are not and as such weight should still be afforded. The requirements of policy ENV1 for the conservation and enhancement of Colchester's natural and historic environment is in accordance with paragraph 174 which clearly recognises the intrinsic character and beauty of the countryside and demonstrates that planning policies should contribute to and enhance the natural local environment via protection, maintenance, and preventing unacceptable risk.

- 16.5 Based on the protection afforded to land outside Settlement Boundaries (SBs) and outside of the most sustainable locations in SD1 and ENV1, the proposal is not considered to be compliant with these adopted policies.

### **Emerging Local Plan (ELP)**

- 16.6 The Council is now well advanced in preparing a new Local Plan. The Emerging Local Plan was submitted to the Planning Inspectorate in October 2017. The Emerging Local Plan includes a Shared Strategic Section 1 (with Braintree and Tendring District Councils) and a Section 2 which includes Colchester specific policies and allocations. The Local Plan has been subject to two separate examinations, as noted above, Section 1 was adopted in February 2021.
- 16.7 Section 1 of the eLP was adopted in February 2021 and carries full weight. Consequently Policies SD1, H1 and CE1 of the CS are now partially superseded by Policies SP3, SP4 and SP5 of the Section 1 Local Plan in relation to the overall housing and employment requirement figures but the hierarchy elements remain valid. The remaining elements of Policies SD1, H1 and CE1 are not superseded and remain relevant for decision-making purposes. Core Strategy Policy SD2 is now fully superseded by Policy SP6 Infrastructure and Connectivity of the Section 1 Local Plan.
- 16.8 The Section 2 Local Plan is currently subject to examination with hearing sessions held for a two-week period in April 2021. The Council has now received further correspondence from the Inspector regarding proposed modifications to the plan to enable a six-week public consultation to begin in Autumn 2021. Adoption of Section 2 is anticipated in Winter 2021.
- 16.9 Plan preparation is therefore at a very advanced stage and the Council will reference relevant consultation responses and conformity with the NPPF to explain its conclusions concerning the weight to be attached to specific policies in the Section 2 Emerging Local Plan in accordance with NPPF paragraph 48.
- 16.10 The site subject to this application, forms part of an allocation in the Emerging Local Plan as outlined in Policy SC1. This is set out below:

#### *Policy SC1: South Colchester Allocations*

*Allocations as shown on the policies map will be safeguarded for residential uses. In addition to the requirements of Policy PP1, proposals will be required*

*to satisfy the Local Planning Authority with regard to the site specific requirements as identified below.*

#### *South of Berechurch Hall Road*

*Development of this site will be supported where it provides:*

- 1. Up to 150 new dwellings of a mix and type of housing to be compatible with the surrounding development;*
- 2. Contributions to/delivery of improvements to the local road network;*
- 3. New bus stop provision to service the site and improve sustainable transport links to Colchester town centre; and*
- 4. A comprehensive approach to development of the three separate parcels of land which together make up the allocation.*

- 16.11 The key policies in the ELP relevant to this scheme are considered to be highly consistent with the NPPF and should therefore be afforded considerable weight. The final issue to be taken into account when considering the weight to be afforded to the ELP is the level of unresolved objection to the relevant policies.
- 16.12 Accordingly, further consideration of the issues raised in representations to Policy SC1 is necessary to guide the judgement of the weight which should be given to the emerging policies in this case.
- 16.13 Two representations were received relating to the Berechurch Hall Road allocation specifically, and two broader representations which relate to SC1 as a whole. There were seven representations in total to SC1, but the remaining three relate to the now approved Gosbecks Phase 2 scheme and are not relevant to this proposal. These representations are summarised below:

#### *Policy SC1 South Colchester Allocations (South of Berechurch Hall Road)*

- Area of land to north of Earlswood Wood and area of land south of Berechurch Hall Road and west of Selby Close are incorrectly shown as public open space. These are areas within the Merville Barracks;*
- No measures shown to alleviate increased volume of traffic generated in Shrub End and connections to A134 and A12, also notably at Layer Road junction;*
- Partnership formed to promote and bring forward Berechurch Hall Road allocation, with a number of studies being commissioned and discussions begun to progress towards submission of a planning application. A draft housing layout has begun, with intention of continuing to develop layout informed by ongoing technical assessments. Suggestion that allocation may be able to accommodate additional units. Delivery of entire development will be possible within the next 5 years;*
- Further technical assessments undertaken which demonstrate there are no insurmountable problems in delivering the site. Scope to extend*

*allocation to the south to address 200 unit shortfall in trajectory following appeal decision on former Sainsbury's site at Tollgate Village. Additional land could be brought forward in the event of delays in delivery at Middlewick Ranges.*

- 16.14 As will be set out in detail below, following negotiation the provision of 46 affordable dwellings to meet the 30% affordable housing contribution as outlined in Policy DM8 is highly welcomed. The proposal funding towards the Colchester Orbital (via s106), which was previously considered a missed opportunity is also welcomed. Further to this, an informal footpath is proposed which provides pedestrian links to the south of the site and it to be made available for public use.
- 16.15 The proposal includes an access link to the adjacent part of the allocation (approved). As outlined in Policy SC1 clause ii) and iii), there is a requirement for a contribution to improvements to the local road network and the provision of a new bus stop respectively. As statutory consultee to this application, no objection has been received from the Highway Authority and they have requested:
1. one priority junction off Berechurch Hall Road to provide access to the proposal site,
  2. two new bus stops in Berechurch Hall Road at and/or in the vicinity of the proposal site or 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),
  3. a Toucan crossing in Berechurch Hall Road, and
  4. a footway/cycleway between the toucan crossing in Berechurch Hall Road and existing footway/cycleway in Camulodunum Way at St. Michael's Primary School & Nursery.
- 16.16 In the case of this site, the allocation itself as indicated in Policy SC1 is not in itself subject to Modification, so very significant (almost) full weight applies to this policy and any other relevant unmodified policies relevant in the eLP. There is no further opportunity for this policy to change prior to Adoption of the Section 2 Plan. The weight that the Emerging Plan and policy SC1 can be afforded is one for the decision maker to weigh in the planning balance. In this instance the objections to the policy are held to be surmountable and therefore officers consider that very significant weight can be given to policy SC1. On balance, the proposal is considered to be acceptable in principle for the reasons outlined above.

#### Design and Impact on the Character of the Area

- 16.17 In considering the wider design impacts of the proposal, Core Strategy policy UR2 and Development Plan policy DP1 are relevant. These policies seek to secure high quality and inclusive design in all developments, respecting and enhancing the characteristics of the site, its context and surroundings. Core Strategy policies H2 and H3, relating to housing density and housing diversity are also relevant.
- 16.18 This site has been the subject of a number of detailed designed meeting with the Council's in-house Urban Design officer.

- 16.19 The house types proposed have a strong traditional design language, utilising Essex Design Guide principles. External materials are from the local vernacular palette, including facing brickwork and weatherboarding, along with grey plain tiles.
- 16.20 In terms of wider impact, the character of the site is semi-urban given the built form to the north and west of the application site. There remain open fields to the south of the application site. The proposal is not considered to disrupt this character as there would still be a feeling of spaciousness to the south of the application site. The proposal is, therefore, considered to be compatible with its surroundings in terms of housing density.
- 16.21 In terms of layout, this proposal has been the subject of extensive discussions over a number of years with Council officers (and in particular the Council's in-house Urban Designer). The layout has evolved considerably since the first iteration and is now a scheme that is held to successfully respond to the site's broadly linear shape. The proposal includes character areas and the areas of open space are located to the eastern, southern and western parameters of the site. The layout has also taken the rest of the allocation into account and this will eventually be served via an access through the smaller land parcel to the west (as detailed within the submitted drawings. To be secured via the s106). The existing access serving the smaller allocation to the west will eventually be closed off and the whole allocation will be served by the access route provided in this application.
- 16.22 This scheme has funding allocated towards the proposed 'outer orbital route' which is a wider strategic aspiration for the Council, via the s106 agreement. Public pedestrian access to the informal footpath on site has been secured. The futureproofing and access of the route has been secured via the s106.
- 16.23 In terms of amenity provision, generally gardens are well in excess of adopted standards. The scheme has been amended since submission in order to increase the amenity provision. On balance, all units have good quality, usable areas.

### Amenity

- 16.24 Development Plan policy DP1 requires 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. These principles are emphasised in Development Plan policy DP12 which relates to dwelling standards and focuses on the avoidance of adverse overshadowing, ensuring acceptable levels of daylight to all habitable rooms (with no single-aspect north-facing homes), acceptable levels of privacy, continued maintenance of buildings and external spaces, the adaptability of internal layouts, parking standards, and accessible bin and recycling storage areas.
- 16.25 The proposal is not in close proximity to existing residential properties so there are no concerns regarding its impact on the private amenity of existing residents. The closest are located to the north or to the west of the site, however these are

considered to be sufficiently distanced. There may be some instances of overlooking within the development itself. That being said, instances where overlooking could occur between properties is limited and is not considered to be a significant issue to justify refusal of planning permission.

- 16.26 In terms of the remaining requirements of Development Policy DP12, it is considered that the proposed dwellings would be afforded adequate levels of daylight and sunlight. Maintenance of the buildings and external space can be secured via condition. Parking standards are discussed in the subsequent section 'Highway safety and parking provisions'.

#### Amenity Space and Public Open Space

- 16.27 Development Plan policy DP16 requires all new residential development to provide private amenity space to a high standard which has a sufficient level of privacy and is secure and usable. Standard garden sizes are set out in the policy, with two- and three-bedroom houses requiring garden sizes of at least 50sqm 60sqm respectively, and flats requiring a minimum of 25sqm per flat to be provided communally. In terms of public open space, policy DP16 requires all new development to provide at least 10% of the gross site area as usable open space.
- 16.28 The proposal includes amenity provision which is considered to be compliant with the aforementioned policy. Communal space is considered to be policy compliant, such as the formal gardens and walled gardens, as is the more 'public' open space (parkland and woodland to the west) which equates to 10% of the site area.
- 16.29 When read as a whole, the proposal is considered to provide sufficient amenity space.

#### Highway Safety and Parking Provisions (including cycling)

- 16.30 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.
- 16.31 The Highway Authority has confirmed that they have no objections to the proposal on highway safety grounds subject to conditions that secure the provision of two priority junctions, a toucan crossing and bus stops.
- 16.32 It is important to note that this scheme has an access point on Berechurch Hall Road that sits directly adjacent to the smaller allocation to the west. This means that the access for the smaller allocation can eventually be closed off by bollards and the development will be served by the access from the application site (pedestrians and cyclists will still be able to use this access). The Highway

Authority have assessed the scheme and, as amended, it has now reached a point where it is an adoptable layout.

- 16.33 The scheme provides parking as set out in the relevant section of the report above. It is considered that the scheme has sufficient parking to serve the development and will not cause materially harmful on-street parking, either within this site or elsewhere.

#### Off-site Highway Works

- 16.34 The Highway Authority have requested a number of off-site works to mitigate the impact of this proposal. They require the applicant to deliver a priority junction, two new bus stops in Berechurch Hall Road at and/or in the vicinity of the proposal site or upgrade to Essex County Council specification the two bus stops which would best serve the proposal site (to be agreed with the LPA), a Toucan crossing, a footway/cycleway between the toucan crossing in Berechurch Hall Road and existing footway/cycleway in Camulodunum Way at St. Michael's Primary School & Nursery. The applicants are happy to provide these works to mitigate the impact of this development (as required by the CIL Regulations).

#### Flood risk and drainage

- 16.35 Development Plan policy DP20 states that development will only be supported where it minimised the risk of increased flooding both within the development boundary and off site in Flood Zones 2 and 3. Sustainable Drainage Systems (SuDS) are identified as being important to manage surface water runoff rates.
- 16.36 The site is located within Flood Zone 1 which has a very low risk of flooding from rivers or the sea (less than 0.1%) according to Environment Agency Long Term Flood Risk Information. The site is also outside any areas at risk of flooding from reservoirs. The site is not, therefore, considered to be susceptible to flooding.
- 16.37 In terms of surface water flooding, the scheme would result in an overall increase in structures and hard surfacing (the new build and associated pathways/driveways). Essex County Council, as Lead Local Flood Authority, have confirmed that they have no objections to the proposal in terms of surface water flood risk subject to recommended conditions. These recommended conditions are suggested to be imposed on any planning consent.
- 16.38 In terms of foul drainage, Anglian Water have confirmed Colchester Water Recycling Centre has capacity for the foul drainage flows and that the sewerage system has capacity to accommodate the proposal.

#### Ecology

- 16.39 Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity and a core principle of the Framework is that planning should contribute to conserving and enhancing the natural environment. Development Plan policy DP21 seeks

DC0901MWeV9.3

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.

- 16.40 This site has been subject to onsite assessment from a qualified ecologist and a Phase 1 Ecology report has been provided. The site was subject to Phase 2 surveys during 2017 and 2018 by Robson Ecology Ltd (Robson Ecology, 2018) and included:
- Badger;
  - Bats – roosting (ground level tree assessment) and activity;
  - Birds – breeding and wintering;
  - Dormice;
  - Reptiles presence / likely absence; and
  - Small and medium-sized mammals.
- 16.41 An updated preliminary ecological assessment (PEA) was undertaken by SES on the 7 January 2020 to evaluate the habitats on site and determine if there have been any significant changes in the status of protected species. A Habitats Regulations Assessment (HRA) report was also completed (SES, 2020).
- 16.42 The badger survey confirmed the presence of one main sett and two subsidiary setts on site. The sett monitoring survey confirmed that the main sett and both subsidiary setts were considered active. Allegations have been made that there has been recent interference with the setts and forced closure. The Police have investigated these claims as a potential wildlife crime. The outcome of their investigations was unknown at the time of writing. Any information received will be verbally reported to members.
- 16.43 Bat activity was considered low across the site, with most activity being limited to the field boundary, particularly the southern boundary by common and soprano pipistrelles. A total of five species were recorded during the activity surveys, common pipistrelle, soprano pipistrelle, noctule, brown long-eared and serotine *Eptesicus serotinus*. Common pipistrelles were the most common species observed. July recorded the highest number of passes. The majority of the observations were in direct association with foraging activity along the hedgerows. the bat assemblage is considered to be of importance at the Local level for bat species.
- 16.44 A number of mature oak trees along the southern boundary could support roosting bats. These trees are to be retained as part of the development. The roost potential, given the presence of Barbastelle in spring and autumn, is considered of Local value.
- 16.45 The breeding bird surveys recorded a total of 25 species. Breeding species included four species of conservation concern (Eaton *et al.*, 2015) (BoCC). There were four red-listed species recorded: song thrush *Turdus philomelos*: was recorded on all survey visits and is likely to breed within the site; starlings *Sturnus vulgaris* were recorded in small numbers foraging on the shorter grassland and small flocks were recorded within residential gardens to the north of the site boundary; house sparrow *Passer domesticus* was recorded adjacent

to the northern site boundary; and skylark *Alauda arvensis* was recorded within the arable area to the south of the site boundary, but not within the site itself.

- 16.46 A total of 30 species were recorded using the site; all species were common and widespread in Essex and elsewhere in the UK. Although some were listed as BoCC they were all typical of lowland farmland, woodland and urban fringe habitats and the assemblage is considered to be unexceptional and of low conservation value. The majority of the bird assemblage was associated with the hedgerows within and around the site. This assemblage included seven species listed as red birds BoCC and four amber BoCC. The populations of all of these species are small and were considered to be of site importance. The wintering bird community is hence regarded as being of Site value.
- 16.47 No reptiles were recorded within the site. However, within the adjoining western boundary three species of reptiles were recorded: common lizard, slow worm and grass snake. Peak daily counts of reptiles were: two common lizards (adults); three grass snakes (two adults); and four slow worms (three adults). This resulted in a 'low' population of grass snakes (peak count of one adult); 'low' population of slow worms (three adults); and a 'low' population of common lizards (maximum of 3 adults) recorded within the immediate wider area. The offsite habitat was considerably more suitable for reptiles in the form of scrub thickets and grassland. Although no reptiles were recorded on site, the reptiles within the western boundary habitats may colonise the site in small numbers. Hence, reptiles within the site are considered possibly present at the boundaries of site and being of Site value.
- 16.48 The hedgerows and semi-improved grassland habitats are considered to provide suitable foraging habitat for the European hedgehog. The hedgerows on site are also considered to provide sheltering habitat. Although no evidence or sightings of hedgehog were observed while on site during the surveys, it is still considered possible for hedgehogs to utilise the site.
- 16.49 An active main sett was recorded along the eastern boundary of the site and will be retained as part of the development. The two outlier/subsidiary setts are proposed to be closed and a Natural England license has been obtained for these. As badgers are prolific sett-builders, it is recommended that an update badger survey is undertaken no less than three months before construction takes place to ensure all potential setts have been considered. Provision of the following suitable mitigation measures during construction will further mitigate adverse impacts upon badgers during the construction phase, these provisions include:
- The securing of the site perimeter to restrict access to contractors beyond the site boundary;
  - The covering of trenches at night, with scaffold planks left as a means of escape if trenches can't be covered;
  - The storing of chemicals in sealed compounds;
  - Suitable ecological briefing to all contractors and site staff identifying all ecological constraints; and
  - Regular monitoring of any setts and site by an ecologist.



- 16.50 During the operational stage, there will be large expanses of optimal sett-building habitat available to badgers on site in the form of the retained hedgerows. The proposed development will include the improvement of the hedgerows which could include more fruiting trees, thus providing additional food sources for badgers.
- 16.51 Through implementing the recommended mitigation and enhancement within the submitted ecological report, it is considered that all significant adverse impacts from the proposed development upon designated sites, habitats and protected species will be adequately mitigated and result in a positive outcome for biodiversity. On balance, the proposal is considered to be acceptable in this regard.
- 16.52 The scheme proposes up to 153 dwellings on a site within an identified Zone of Influence (Zoi) of a number of European / internationally designated sites. The nearest European designated site is Abberton Reservoir SPA and Ramsar site which is located approximately 2km south of site. Abberton Reservoir SPA and Ramsar site is designated for its waterfowl assemblage with 13 species occurring in internationally important numbers. The three remaining European designations are situated greater than 5km from the site boundary and are Essex Estuaries (SAC), Colne Estuary (Mid Essex Coast Phase 2) (SPA, Ramsar) and Blackwater Estuary (Mid Essex Coast Phase 4).
- 16.53 The proposed development will provide 153 residential units. At the local average of 2.3 persons /household (UK Census Data, 2011) this is 352 persons. Natural England (NE) advice (NE 2008) on the extent of Suitable Alternative Greenspace (SANGS) in relation to the Thames Basin Heaths SPA is that there should be a provision of 8ha per 1,000 of new population. This equates to a greenspace provision of  $352 \times 8/1000 = 2.82\text{ha}$ . This is more than that required as mitigation for effects on coastal designated sites which are used by wintering waterbirds where access is often limited to public rights of way along, for example, sea walls, as the SANGS provision for the Thames Basin Heaths SPA is to mitigate effects on ground-nesting birds that are highly sensitive to human disturbance and especially to dogs off lead.
- 16.54 The area of open space/greenspace is estimated to be approximately 0.59ha as shown on the masterplan. Proposed footpaths permit a circular route around the site of approximately 1km. The site is located close to accessible green space on nearby Army land. These resources together will provide sufficient SANGS to offset the estimated increase in dog walking and associated disturbance from the development at the site in relation to coastal designated sites.
- 16.55 Given the scale of development, its location on the southern fringe of Colchester adjacent to large areas of existing residential, the SANGS provision within the site and the immediate local access to greenspace, the effects of the development alone are therefore considered fully mitigated.
- 16.56 Mitigation in the form of a contribution to the Essex Coast RAMS is agreed to be provided as off-site mitigation to ensure there are no increased recreational pressures on the coastal protected areas in combination with other plans and

projects. The s106 agreement secures the payment of the contributions which are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, and in accordance with Regulation 122 of the CIL Regulations.

### Landscaping

- 16.57 Core Strategy Policy ENV1 seeks to conserve and enhance Colchester's natural and historic environment, countryside and coastline, with Development Plan Policy DP1 requiring development proposals to demonstrate that they, and any ancillary activities associated with them, will respect and enhance the character of the site, context and surroundings in terms of (inter alia) its landscape setting.
- 16.58 In this instance, the proposals have been revised since submission in order to address concerns raised by the Landscape Planning Advisor. Following discussions, the landscape content/aspect of the strategic landscape proposals submitted principally under the Landscape & Visual Impact Assessment are considered to be acceptable. The Landscape Advisor does not object to the proposal and landscape conditions are considered to be suitable to mitigate the impact of the proposal.

### Environmental and Carbon Implications

- 16.59 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.
- 16.60 This report has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. The site is located in a sustainable location that the Council has allocated for future residential development in the Emerging Local Plan. There are good connections to bus to the town centre. There are also off-road cycle links close to the site that run through/adjacent to the Garrison also towards the town.
- 16.61 In addition, Environmental Protection have suggested EV charging points to be secured via condition and the applicants have agreed to a condition requiring approval of a scheme for EV charging. This will help facilitate the uptake of ultra-low emission vehicles. It is therefore considered that on balance the application is considered to represent sustainable development.

### Contamination:

- 16.62 Development Plan policy DP1 requires new development to undertake appropriate remediation of contaminated land. The Framework (paragraph 174) requires the planning system to contribute to and enhance the natural and

local environment by (inter alia) preventing both new and existing development from contributing to or being put at an unacceptable risk from or being adversely affected by unacceptable levels of soil pollution. Planning decisions should ensure that new development is appropriate for its location and the potential sensitivity of the area or proposed development to adverse effects from pollution should be taken into account.

- 16.63 The proposal is for residential development, which would be classed as a 'sensitive receptor' should the site be contaminated. Under the previous application the Phase 1 Desk Study and Preliminary Risk Assessment identified some potential contamination risks and recommended an intrusive investigation, including ground gas and groundwater monitoring, in order to better assess the risk. These investigations have now been undertaken and further information was submitted under the conditions of the previous permission. As a result, the Council's Contaminated Land Officer is satisfied that the development can be undertaken safely in terms of contamination risk. A condition to cover the procedure should any unexpected contamination be encountered during the development is considered to be necessary.

## **17.0 Conclusion and Planning Balance**

- 17.1 National policy requires planning to be genuinely plan-led. The proposal is considered to accord with the advanced emerging local plan but is contrary to the adopted Local Plan as the site is outside the current settlement boundary of Colchester. The National Planning Policy Framework (the Framework) makes it plain that the purpose of the planning system is to contribute to the achievement of sustainable development and identifies three dimensions to sustainable development: economic, social and environmental. In respect of the first of these, the current proposal would provide economic benefits, for example in respect of employment during the construction phase, as well as support for existing and future businesses, services, and facilities by introducing additional residents that would make use of them and provide future spend in the local economy.

- 17.2 The social role of sustainable development is described as supporting strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations and by creating a high-quality built environment with accessible local services that reflect the community's needs and support its health, social and cultural well-being.
- 17.3 The proposal is considered to meet these objectives as it would contribute towards the number of dwellings required to support growth in the south of Colchester, including balanced communities through the delivery of 30% affordable housing, and is located within walking distance of a number of key local services and facilities required for day-to-day living.
- 17.4 In respect of the third dimension (environmental), the proposal will provide housing in a sustainable location so that future residents would not be wholly reliant on private car, being able to walk, cycle or use public transport to access necessary services and facilities, thereby minimising environmental impacts; ecological enhancements can also be secured as part of the development through enhanced habitats.
- 17.5 There is also sufficient evidence to be confident that overall, the development would not cause significant harm to the amenity of nearby residents or have a severe impact upon the highway network. The scheme as amended is held to constitute acceptable design. Whilst the proposed development would have an impact on the existing character of the site (i.e., by introducing built development where there is none currently) through a general suburbanising effect on the wider setting, which carries some weight against the proposal, the positive economic and social effects, as well as the sustainability of the proposal would weigh in favour of this scheme as does the significant weight afforded to the supply of new homes in the Framework.
- 17.6 In conclusion, it is considered that the benefits of the scheme convincingly outweigh any adverse impacts identified and the planning balance tips in favour of an approval.

## **18.0 Recommendation to the Committee**

- 18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990, within 6 months from the date of the Committee meeting in accordance with para.15.1 above. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Service to refuse the application, or otherwise to be authorised to complete the agreement. The Permission will also be subject to the following conditions:

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

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

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

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

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

Detailed Layout PH-154-003 revision D

Masterplan PH-154-002 revision D

Flat Block A Floor Plans PH-154-050 revision C

Hard Surfacing Plan PH-154-010 revision B

Arboricultural Impact Assessment AIA Rev B /Berechurch Rd/23-07-21 revision B

Materials Plan PH-154-004 revision C

Detailed Air Quality Assessment 15120-SRL-RP-YQ-02-P1 dated 16 July 2021

Landscape Concept Masterplan JBA 19/158-SK01 revision F

Street Scenes A-A and B-B PH-154-070 revision A

Street Scenes C-C and D-D PH-154-071 revision A

External Railing Details PH-154-066

External Wall Details PH-154-065

Car Ports PH-154-064

Flat Block C Elevations PH-154-055 revision C

Flat Block C Floor Plans PH-154-054 revision B

Flat Block B Elevations PH-154-053 revision C

Flat Block B Floor Plans PH-154-052 revision C

Flat Block A Elevations PH-154-051 revision B

House Type S Plot 118 PH-154-041 revision A

House Type R PH-154-040 revision A

House Type Q PH-154-039 revision B

House Type P PH-154-038 revision B

House Type N PH-154-037 revision C

House Type L PH-154-035 revision B

House Type K3 PH-154-031 revision B

House Type K2 PH-154-030 revision B

House Type J PH-154-028 revision B

House Type H PH-154-027 revision C

House Type G PH-154-026 revision B

House Type F PH-154-025 revision B

House Type E PH-154-024 revision B

House Type D PH-154-023 revision B

House Type C PH-154-022 revision B

House Type B PH-154-021 revision B

House Type A PH-154-020 revision B

Character Area Plan PH-154-009 revision A

Boundary Treatment Plan PH-154-008 revision A

Refuse and Recycling Plan PH-154-007 revision C

Tenure Plan PH-154-006 revision B  
 Storey Heights Plan PH-154-005 revision B  
 Drainage Strategy Sheet 1 28755 / SK6001 version 8  
 Drainage Strategy Sheet 2 28755 / SK6002 version 8  
 Potential new toucan crossing and footway/cycleway widening  
 19199.OS.115.01 revision C  
 Potential new toucan crossing and footway/cycleway widening  
 19199.OS.115.02  
 Potential new toucan crossing and footway/cycleway widening  
 19199.OS.115.03  
 Substation PH-154-062  
 Bin and Cycle Stores PH-154-061 revision A  
 Garages Plot 1 PH-154-060  
 Ecological Impact Assessment Issue 2 dated 19 March 2020  
 Cycle Stores PH-154-063  
 Flood risk assessment 28755 revision 2  
 Tree survey and constraints plan TCP/Berechurch Hall Road/17-01-20  
 Noise assessment (15120-SRL-RP-YA-001-S2-P3)  
 Site location plan PH-154-001  
 Open Space and Phasing Plan PH-154-011  
 Proposed temporary access for residents during construction  
 191199.OS.11301 revision A.

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

### **3. Non Standard condition - 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

DC0901MWeV9.3

associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance with Policy SD1 and ENV1 of Colchester Borough Council's Core Strategy (2008).

#### **4. Non Standard condition - \*SUDS**

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

- Limiting discharge rates to 1l/s with an outfall orifice diameter of no smaller than 50mm, for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change. All relevant permissions to discharge from the site into any outfall should be demonstrated.
- Provide further details on the receiving ditch network that there is a clear continuous connection to the Roman River and that the flows added will not increase surface water flood risk.
- 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.
- Provide details of what happens and what contingencies are in place for times of pump failure.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy

The scheme shall subsequently be implemented prior to occupation. It should be noted that the full application should be subject to the most up to date design criteria held by the LLFA.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site. To ensure the effective operation of SuDS features over the lifetime of the development. To provide mitigation of any

environmental harm which may be caused to the local water environment. Failure to provide the above required information before commencement of works may result in a system being installed that is not sufficient to deal with surface water occurring during rainfall events and may lead to increased flood risk and pollution hazard from the site.

#### **5. Non Standard condition - SUDS**

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 states 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.

#### **6. Non Standard Condition - SUDS**

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

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 before commencement of works may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.

#### **7. Non standard condition - SUDS**

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.

#### **8. Non Standard Condition - SUDS**

The development hereby permitted shall not be commenced until the existing pipes and watercourses within the extent of the site, which will be



used to convey surface water, are cleared of any blockage and are restored to a fully working condition.

Reason: To ensure that drainage system implemented at the site will adequately function and dispose of surface water from the site. Failure to carry out the required maintenance before commencement of works may result in a system being installed that is not sufficient to deal with surface water occurring during rainfall events and may lead to increased flood risk and pollution hazard from the site.

#### **9. ZDC - 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.

#### **10. ZDE - 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.

#### **11. ZDI - \*Removal of PD for Windows Above Ground Floor Level\***

Notwithstanding the provisions of Classes A, B and C 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 windows, rooflights or other openings shall be installed above ground floor level within the WALL(S) or roof FACE(S) of the DWELLINGS unless otherwise approved, in writing, by the Local Planning Authority.

Reason: To protect the privacy of adjacent dwellings.

#### **12. Non Standard condition - Detailing**

Notwithstanding the details submitted, no works shall commence (above ground floor slab level) until additional drawings (at scales between 1:20 and 1:1) 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 detailing (including details of the depth of reveal and any dormer features); rooflights to be used; chimneys; recessed/projecting/decorative brickwork and cladding; blank and faux windows; Juliet balconies; and any eaves, verge, ridge, and

guttering details. The development shall then be implemented in accordance with the approved drawings.

Reason: Insufficient detail has been submitted to ensure that the proposed works are of high quality design in the interests of visual amenity.

### **13. Non Standard Condition - Extracts**

No works shall commence (above ground floor slab level) until details of all new 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.

### **14. Non Standard condition - 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), as shown in the submitted AIA (AIA Rev B /Berechurch Rd/23-07-21 revision B). 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.

### **15. Non Standard condition - Tree and Hedgerow Protection: General**

No works or development shall be carried out until an Arboricultural Method Statement in accordance with BS 5837 as shown in the submitted AIA (AIA Rev B /Berechurch Rd/23-07-21 revision B), has been submitted to and approved, in writing, by the Local Planning Authority (LPA). Unless otherwise agreed, the details shall include the retention of an Arboricultural Consultant to monitor and periodically report to the LPA, the status of all tree works, tree protection measures, and any other arboricultural issues arising during the course of development. The development shall then be carried out strictly in accordance with the approved method statement.

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

### **16. Non Standard Condition - Car Electric Charging Points**

The development hereby approved shall be provided with at least 1 No. electric vehicle (EV) charging point per dwelling with dedicated parking and at a rate of at least 10% provision for unallocated parking spaces. The EV charging points shall be installed prior to the first occupation of their respective dwellings.

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

### **17. Non Standard Condition - Boundary walls**

All boundary walls that front onto a public or semi-public space shall be enclosed by a brick wall unless otherwise agreed in writing by the Local

Planning Authority. Brick walls shall be finished with a brick on edge coping and terminated at each end by either a pier or return. Where changes in the height of walls occur, the higher wall shall be raked smoothly downwards to the level of the lower wall.

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

#### **18. Non Standard Condition - EMMP**

Prior to the commencement of development an Ecological Mitigation and Management Plan (EMMP) including an Implementation Timetable shall be submitted to and approved in writing by the local planning authority. The EMMP shall include, but not be limited to, the proposed mitigation detailed in the submitted Ecological Assessment including the additional survey work identified in the document, an Ecological Mitigation Hierarchy and 10% Biodiversity Net Gain. The development shall then be carried out and maintained in accordance with the approved EMMP.

Reason: In order to mitigate the impact of the development upon ecology and biodiversity and in the interest of ecological enhancement.

#### **19. Non Standard Condition - Digital**

Prior to occupation, appropriate digital connectivity to serve each dwelling shall be provided. The digital connectivity shall then be implemented prior to occupation of the development.

Reason: In the interest of providing high quality digital infrastructure as part of social wellbeing.

#### **20. Non Standard Condition – Landscape**

No works shall take place above ground floor slab level, in each phase (as per phasing plan PH-154-011), 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 each phase of the development unless an alternative implementation programme is subsequently agreed, in writing, by the Local Planning Authority. The submitted landscape details shall include:

- Finished levels or contours, where notable changes are proposed.
- Means of enclosure.
- Car parking layouts and 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.).
- Planting plans.
- Written specifications.
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
- Implementation timetables and monitoring programs.
- 10% Increase in tree canopy cover

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

#### **21. ZFE - Landscape Management Plan**

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

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

#### **22. ZPA – Construction Method Statement**

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

the parking of vehicles of site operatives and visitors;

hours of deliveries and hours of work;

loading and unloading of plant and materials;

storage of plant and materials used in constructing the development;

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

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.

#### **23. ZPD - Limits to Hours of Work**

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

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working

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

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

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

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No deliveries

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

**25. Non Standard Condition - Noise**

Where the internal noise levels exceed those stated in the current version of BS8233 with windows open, enhanced passive ventilation with appropriate sound insulating properties shall be provided to ensure compliance with the current version of BS8233 with windows closed and that maximum internal noise levels at night do not exceed 45dBA on more than 10 occasions a night. Where exposure exceeds the noise levels of 60dBLAeq 16 hours (daytime, 07:00-23:00, outside), 55dBLAeq 8 hours (night, 23:00-07:00, outside) significantly enhanced ventilation will be required. In addition, noise levels in external amenity spaces shall not exceed 55dBLAeq 16 hours, daytime and the mitigation measures detailed in the report shall be implemented. The development shall thereafter be carried out in accordance with any details approved, and shall be retained in accordance with these details thereafter.

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

**26. ZCG - Communal refuse Areas**

Prior to the first occupation of the dwellings and units benefitting from communal storage areas, details of the management company responsible for the maintenance of communal storage areas and for their maintenance of such areas, shall be submitted to, and agreed in writing by, the Local Planning Authority. Such detail as shall have been agreed shall thereafter continue unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

**27. Non Standard Condition - 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

DC0901MWeV9.3

approved remediation scheme, and the submission to and approval in writing of a verification report. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason: The site lies on or in the vicinity of agricultural land where there is the possibility of contamination and Environmental Protection wish to ensure that development only proceeds if it is safe to do so. The Local Planning Authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination. The applicant is responsible for the safe development and safe occupancy of the site.

### **28.Z1A – 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.

### **29.Non Standard Condition - 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

### **30.Non Standard Condition - Highways**

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

- a) One priority junction and one temporary construction access off Berechurch Hall Road as shown in principle on the planning application drawings
- b) Two new bus stops in Berechurch Hall Road at and/or in the vicinity of the proposal site OR 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) A toucan crossing in Berechurch Hall Road as shown in principle on planning application drawing number 19199.OS.115.01 Rev. C
- d) A footway/cycleway between the toucan crossing in Berechurch Hall Road and existing footway/cycleway in Camulodunum Way at St. Michael's Primary School & Nursery (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.

### **31. Non standard Condition - Highways**

Within 28 days of completion of the development, the easternmost priority junction off Berechurch Hall Road shall be removed in its entirety and replaced with a size 3 turning head as shown in principle on planning application drawing number PH-154-003 Rev. D

Reason: To protect highway efficiency of movement and safety.

### **32. Non Standard condition - Parking**

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

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

### **33. Non Standard Condition - Retaining Garage for Parking**

The garage accommodation forming part of the development shall be retained for parking motor vehicles at all times and shall not be adapted to be used for any other purpose, including other uses ancillary to the residential use, unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: To retain adequate on-site parking provision in the interest of highway safety.

### **34. Non Standard Condition – Informal footpath**

The informal footpath as shown on drawing JBA 19/158-SK01 Revision F (Landscape Concept Masterplan) and provided within the blue line of the Site location plan (PH-154-001), shall be provided prior to first occupation and shall thereafter be retained.

Reason: To ensure that the informal footpath at the site is provided for the enjoyment of future users as part of social and environmental wellbeing.

## **19.1 Informatives**

19.1 The following informatives are also recommended:

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

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

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

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via [www.colchester.gov.uk/planning](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.

4. The above requirements should be imposed by way of negative planning conditions or planning obligation agreements as appropriate

- All residential developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to the Advance Payments Code, Highways Act 1980. The developer will be served with an appropriate notice within 6 weeks of building regulations approval being granted and prior to commencement of the development must provide guaranteed deposits, which will ensure the new street is constructed in accordance with a specification sufficient to ensure future maintenance as highway by the Highway Authority
- 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)



# Appendix 1 HRA record

## Habitat Regulation Assessment (HRA) Record

- >100 dwellings

### Colchester Borough Council

#### Application details

|                         |   |
|-------------------------|---|
| Case officer            | Eleanor Moss                            |
| Application reference   | 202025                                  |
| Application description | Residential Development (153 dwellings) |
| Application address     | Berechurch Hall Road, Colchester        |

#### HRA Stage 1: screening assessment

**Test 1 – the significance test:** Based on the development type and proximity to European designated sites, a judgement should be made as to whether the development constitutes a 'likely significant effect' (LSE) to a European site in terms of increased recreational disturbance<sup>1</sup>

The whole of Colchester Borough is within the zone of influence (Zol) for the Essex Coast RAMS.

The proposal is for 100+ dwellings and it is anticipated that such development is likely to have a significant effect upon the interest features of Habitat sites [Colne Estuary SPA and Ramsar site, Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, Stour and Orwell Estuaries SPA and Ramsar site (south shore) and Essex Estuaries SAC] through increased recreational pressure, when considered either alone or in-combination with other plans and projects. Therefore, an appropriate assessment is needed to assess recreational disturbance impacts. The qualifying features of these sites are set out at the end of this report.

#### HRA Stage 2: Appropriate Assessment

**Test 2 – the integrity test:** The applicant must provide sufficient evidence to allow the Appropriate Assessment to be made, which is the stage at which avoidance and/or mitigation measures can be considered

The appropriate assessment will need to consider both alone and in-combination effects and incorporate bespoke mitigation measures into the proposal. The following are examples of bespoke mitigation measures that may be necessary, in addition to a contribution to the Essex Coast RAMS:

- High-quality, informal, semi-natural areas
- Circular 1km dog walking routes within the site and/or with links to surrounding sites
- Dedicated 'dogs-off-lead' areas
- Signage/information leaflets to householders to promote these areas for recreation
- Dog waste bins
- A commitment to the long term maintenance and management of these provisions

A contribution in line with the Essex Coast RAMS should be secured to address likely significant effects in-combination.

## Summary of the Appropriate Assessment

### Summary of recreational disturbance mitigation package:

The applicants have provided a shadow HRA which the LPA is broadly in agreement with.

The RAMS tariff for 2021/22, which will apply from 1 April 2021, is £127.30 per dwelling

A contribution to the Essex Coast RAMS at the following amount will be secured via the Legal Agreement:

153 dwellings x £127.30 = £19,476.90

The shadow HRA report provided by the applicants also suggests the following provisions will be provided in addition to the contribution:

Given the distance of all European designated sites from the site, potential direct effects from the construction and operation of the site upon the nature conservation features of the European protected sites are considered negligible.

There are a range of indirect effects including increased air and water pollution, water abstraction, noise and recreational disturbance. All issues except the raised levels of human disturbance caused by the increase in numbers of dog walkers and other recreational activities are considered negligible effects and are screened out because of the distance of the site from the coast and the infrastructure measures in place within Colchester.

There has been widespread concern about the effects of increased recreational pressure on European sites especially heathland SPAs because of the reduced breeding success and reduction in territory occupancy by ground nesting species such as woodlark *Lullula arborea* and nightjar *Caprimulgus europaeus*. A number of studies have looked at visitor recreational use of designated sites of nature conservation interest. Horse riders, cyclists/mountain bikers and joggers use protected European Sites. Increased levels of these activities could cause erosion and dog-fouling nutrient deposition.

A general study of recreational use of the natural environment commissioned by Natural England (Johnson *et al.* 2009), which found that most visitors use designated sites for walking or dog walking. All studies corroborate the general findings that most local users access designated sites on foot within 1km and by vehicle within 8km, and previously these distance buffers were used as the Zol in HRA analyses.

The data in Table 1 from NE provide an updated assessment of the Zol for the coastal European protected sites, noting that Abberton Reservoir SPA and Ramsar site is not considered likely to be disturbed because of the strictly controlled arrangements for visitor access around the entire site. The Zol data confirm that the site is within the Zol of coastal European protected sites and hence that mitigation for these indirect effects is required.

In accordance with the Essex Coast RAMS, in-combination effects may therefore not be screened out as the site is within the Zol, and consequently mitigation is required.

Creating Suitable Alternative Natural Green Space (SANGS) to draw potential recreational users, particularly dog-walkers, away from designated sites is the principal on-site measure to mitigate indirect recreational effects alone. The Guidelines for the creation of SANGS by Natural England (NE, 2008) are well defined, and in the context of this proposal (on-site/adjacent provision) are required to be suitable publicly accessible areas of semi-natural character with suitable circular walks and within 400m of the site.

The proposed development will provide 153 residential units. At the local average of 2.3 persons/household (UK Census Data, 2011) this is 352 persons. Natural England (NE) advice (NE 2008) on the extent of Suitable Alternative Greenspace (SANGS) in relation to the Thames Basin Heaths SPA is that there should be a provision of 8ha per 1,000 of new population. This equates to a greenspace provision of  $352 \times 8/1000 = 2.82\text{ha}$ . This is more than that required as mitigation for effects on coastal designated sites which are used by wintering waterbirds where access is often limited to public rights of way along, for example, sea walls, as the SANGS provision for the Thames Basin Heaths SPA is to mitigate effects on ground-nesting birds that are highly sensitive to human disturbance and especially to dogs off lead.

The area of open space/greenspace is estimated to be approximately 0.59ha as shown on the masterplan (Appendix 2). Proposed footpaths permit a circular route around the site of approximately 1km. The site is located close to accessible green space on nearby Army land (Appendix 3). These resources together will provide sufficient SANGS to offset the estimated increase in dog walking and associated disturbance from the development at the site in relation to coastal designated sites.

The greenspace areas should be established during the construction phase. The greenspace area should be managed as a SANGS through the provision of a range of measures that will include cutting and maintaining a network of paths, with provision of dog-waste bins and signage to inform residents of the SANGS area and reason for it (i.e. recreational diversion from nearby designated sites).

Given the scale of development, its location on the southern fringe of Colchester adjacent to large areas of existing residential, the SANGS provision within the site and the immediate local access to greenspace, the effects of the development alone are therefore considered fully mitigated.

On-site semi-natural open space will include:

- High-quality, informal, semi-natural areas of grassland and scrub
- Circular dog walking routes of 1km
- An area where dogs can be exercised safely 'off-lead'
- Dog waste bins

A visual information board on site and information leaflets to new householders will promote these areas and non-estuarine walking routes for recreation. It is stated that the developer will commit to the long-term maintenance and management of these provisions via agreement.

## **Conclusion**

Having considered the proposed avoidance and mitigation measures above, Colchester Borough Council concludes that with mitigation the project is not predicted to have an Adverse Effect on the Integrity of the European sites included within the Essex Coast RAMS.

Having made this appropriate assessment of the implications of the plan or project for the site(s) in view of that (those) site(s)'s conservation objectives, and having consulted Natural England and fully considered any representation received, the authority may now agree to the plan or project under regulation 63 of the Conservation of Habitats and Species Regulations 2017.

### Local Planning Authority Case Officer comments, signed and dated:

It considered the financial payment towards the Essex RAMS and the on site measure suggested above (along with other financial contributions secured via the DT process towards the improvement of local alternative sites) is sufficient to mitigate against the off-site harm on the Integrity of the European sites included within the Essex Coast RAMS.

Eleanor Moss  
24 08 2021

### Qualifying features

#### Colne Estuary SPA (Mid Essex Coast Phase 2) and Ramsar site

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and
- The distribution of the qualifying features within the site.

Qualifying features of the Colne Estuary SPA:

Dark-bellied brent goose (non-breeding) (*Branta bernicla bernicla*)

Common pochard (breeding) (*Aythya farina*)

Hen harrier (non-breeding) (*Circus cyaneus*)

Ringed plover (breeding) (*Charadrius hiaticula*)

Common redshank (non-breeding) (*Tringa totanus*)

Little tern (breeding) (*Sterna albifrons*)

Waterbird assemblage

#### Blackwater Estuary SPA (Mid Essex Coast Phase 4) and Ramsar site

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and
- The distribution of the qualifying features within the site.

Qualifying features of Blackwater Estuary SPA:

Dark-bellied brent goose (non-breeding) (*Branta bernicla bernicla*)

Common pochard (breeding) (*Aythya farina*)

Hen harrier (non-breeding) (*Circus cyaneus*)

Ringed plover (breeding) (*Charadrius hiaticula*)

Grey plover (non-breeding) (*Pluvialis squatarola*)

Dunlin (non-breeding) (*Calidris alpina alpina*)

Black-tailed godwit (non-breeding) (*Limosa limosa islandica*)

Little tern (breeding) (*Sterna albifrons*)

Waterbird assemblage

## Dengie SPA (Mid Essex Coast Phase 1) and Ramsar site

Ensure that, subject to natural change, the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- the extent and distribution of the habitats of the qualifying features
- the structure and function of the habitats of the qualifying features
- the supporting processes on which the habitats of the qualifying features rely
- the populations of qualifying features
- the distribution of qualifying features within the site

Qualifying features of the Dengie Estuary SPA:

Dark-bellied brent goose (non-breeding) (*Branta bernicla bernicla*)

Grey plover (non-breeding) (*Pluvialis squatarola*)

Hen harrier (non-breeding) (*Circus cyaneus*)

Knot (non-breeding) (*Calidris canutus*)

Waterbird assemblage

## Stour and Orwell Estuaries SPA and Ramsar site

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features;
- The structure and function of the habitats of the qualifying features;
- The supporting processes on which the habitats of the qualifying features rely;
- The population of each of the qualifying features; and
- The distribution of the qualifying features within the site.

Qualifying features of the Stour and Orwell Estuaries SPA:

Dark-bellied brent goose (non-breeding) (*Branta bernicla bernicla*)

Northern pintail (non-breeding) (*Anas acuta*)

Pied avocet (breeding) (*Recurvirostra avosetta*)

Grey plover (non-breeding) (*Pluvialis squatarola*)

Red knot (non-breeding) (*Calidris canutus*)

Dunlin (non-breeding) (*Calidris alpina alpina*)

Black-tailed godwit (non-breeding) (*Limosa limosa islandica*)

Common redshank (non-breeding) (*Tringa tetanus*)

Waterbird assemblage

## Essex Estuaries SAC

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Condition Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of qualifying natural habitats
- The structure and function (including typical species) of qualifying natural habitats, and
- The supporting processes on which qualifying natural habitats rely.

Qualifying features of the Essex Estuaries SAC:

Sandbanks which are slightly covered by sea water all the time; Subtidal sandbanks  
Estuaries

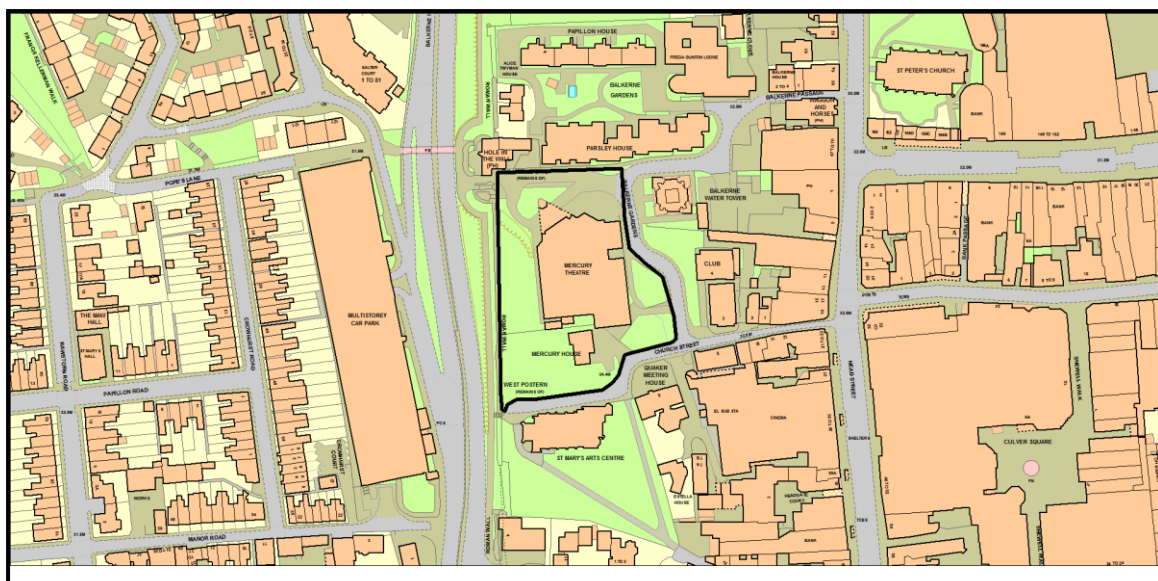
Mudflats and sandflats not covered by seawater at low tide; Intertidal mudflats and  
sandflats

*Salicornia* and other annuals colonising mud and sand; Glasswort and other  
annuals colonising mud and sand

*Spartina* swards (*Spartinion maritimae*); Cord-grass swards

Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)

Mediterranean and thermos-Atlantic halophilous scrubs  
(*Sarcocornetea fruticose*); Mediterranean saltmarsh scrub



The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use. This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2017

## Item No: 7.2

**Application:** 190685

**Applicant:** Mr Steve Mannix

**Agent:** Mr David Shipley

**Proposal:** Application to vary or remove conditions 2 - 22 of planning permission 171964. Application for proposed landscaping as well as to regularise works already undertaken for the extension and alteration of the Mercury Theatre.

**Location:** Colchester Mercury Theatre Ltd, Mercury Theatre, Balderne Passage, Colchester, CO1 1PT

**Ward:** Castle

**Officer:** Annabel Cooper

**Recommendation:** Approval



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

- 1.1 This application is referred to the Planning Committee for complete transparency and probity; because the Mercury Theatre site is land owned by Colchester Borough Council, and Colchester Borough Council are heavily involved, as the project lead, in the “Mercury Rising” Project to extend the Mercury Theatre.

## **2.0 Synopsis**

- 2.1 The current application is to regularise the previously approved scheme ref: 171964 which granted approval for extensions and alterations to the theatre as well as landscape/public realm improvements. Several conditions were not formally discharged on the original consent and there have been some minor amendments to the approved scheme.
- 2.2 The minor amendments include the widening of the service access gate to the south of the site, the inclusion of barriers for the parking, the addition of public realm lighting, external awnings and the inclusion of external furniture as part of the landscaping scheme together with the felling of trees to the north and their replacement with tree planters.
- 2.3 The proposed minor amendments to the scheme are considered to be acceptable. The proposed loss of the trees and replacement by planters is considered to be justified and therefore acceptable. The overall improvement to the public realm has significant benefits that would outweigh the adverse impact of the removal of the trees.
- 2.4 The development secures the future of one of the foremost cultural assets of the Borough and the wider region. The building has been designed and built to a high standard which enhances the area and this carries significant weight in the planning balance. Whilst the public realm works currently underway will also significantly uplift the environmental quality of the area.
- 2.5 The current application will regularise the development and will result in the granting of a new planning permission with the old planning permission falling away. The new planning permission will omit now redundant conditions, alter existing conditions and impose new conditions where necessary.
- 2.6 The application is subsequently recommended for approval, subject to conditions. The scheme has significant benefits especially in relation to social and economic considerations with significant gains for the arts, tourism, public realm and the wider community of Colchester.

## **3.0 Site Description and Context**

- 3.1 The Mercury Theatre opened in 1972, the theatre is an important cultural asset for Colchester. The theatre is located between the Arts Centre, Roman wall, Balcerne Gate and ‘Jumbo’ water tower all of which are significant visual and heritage assets of the town centre, the Mercury Theatre itself is locally listed.



## **4.0 Description of the Proposal**

### **4.1 Planning permission 171964 granted approval for:**

- Demolishing both the single-storey flat roof restaurant to the north-east corner, and “Mercury House” which is a detached property to the south of the main theatre building that was used as the wardrobe department.
- Infilling the porte-cochere (the porch area under the existing first floor bar), to extend the lobby at ground floor and create a new restaurant space in the north-west corner.
- Creating a new box office, entrance lobby, creative learning centre, and new lift to the north east corner.
- New rehearsal spaces for the theatre, drama companies, opera groups and other community spaces to the south.
- Purpose built office and wardrobe spaces, improved changing area, green room, and “back of house” facilities.
- Improving delivery and access arrangement for stage sets.
- Enhancing the public realm to the north, in front of the main entrance.

### **4.2 The current application is to regularise deviations from the previously approved scheme. Several conditions were not formally discharged and there have been some minor amendments to the scheme.**

## **5.0 Land Use**

### **5.1 Culture, Leisure and Tourism. Within the Central Area and Conservation Area.**

## **6.0 Relevant Planning History**

### **6.1 171964 – Extension and alterations**

120321 - updates to the northern Crittal windows.

95/1359 - Proposed extensions and alterations (workshop extension in the that followed a fire to the original workshop)

The theatre was constructed from 1970 opening in 1972.

## **7.0 Principal Policies**

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

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

SD1 - Sustainable Development Locations

SD3 - Community Facilities  
CE1 - Centres and Employment Classification and Hierarchy  
CE2a - Town Centre  
UR2 - Built Design and Character  
PR2 - People-friendly Streets

- 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  
DP4 Community Facilities  
DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses  
DP6 Colchester Town Centre Uses  
DP10 Tourism, Leisure and Culture  
DP14 Historic Environment Assets  
DP17 Accessibility and Access  
DP19 Parking Standards

- 7.4 There are no relevant policies within the adopted Borough Site Allocations Policies (adopted 2010, amended 2014).

- 7.5 There are no relevant Neighbourhood Plans.

**7.6 Adopted Local Plan and Emerging Local Plan Status – March 2021**

The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan remains to complete examination, following hearing sessions in April 2021. Section 2 policies must be assessed on a case by case basis in accordance with NPPF paragraph 48 to determine the weight which can be attributed to each policy. Given the advanced state of the plan and recent modifications requested by the Examiner, significant weight can now be generally be afforded to the Section 2 policies.

**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 progressed to examination hearing sessions in April. Section 1 of the plan is therefore considered to carry full weight.

Section 2 will be afforded some weight due to its advanced stage. Modifications from the Planning Inspector have been issued however it has yet to complete the consultation period. The exact level of weight to be afforded will be considered on a site-by-site basis reflecting the considerations set out in paragraph 48 of the NPPF. Proposals will also be considered in relation to the adopted Local Plan and the NPPF as a whole.

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

The Essex Design Guide  
External Materials in New Developments  
EPOA Vehicle Parking Standards  
Community Facilities  
Sustainable Construction  
Managing Archaeology in Development.  
Town Centre Public Realm Strategy

## 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 *Archaeology:*

The letter submitted by the applicant provides an update on the production of the report required by the archaeological condition. I cannot advise any further on the discharge of the condition until this report is produced, and then only if it meets the requirements of the agreed Written Scheme of Investigation.

8.3 *Built Heritage:*

No comments on the proposed revisions on heritage grounds. If any specific concerns, please let me know.

8.4 *Colchester Civic Society:*

Members of the Civic Society and certainly residents as a whole have been greatly concerned by the lack of progress to replace the trees that were sadly removed to facilitate the building works.

Now that we have seen the proposed planters for the replacement trees, our worst fears have been realised. The triangulated planters are just brutally wrong and wholly unsatisfactory in their proposed function. They lend nothing to the setting in all aspects except considerable mass and unnatural angles.

It is our opinion that the scheme would be better served by sunken containers even with a grating if felt necessary.

Trees are best seen in their natural place: the ground or pavement itself and as they were before. There is already enough furniture in the Theatre public realm without the need for these considerable additions. We are aware this may involve further archaeological investigation, but it would be of a greater long term value. As a secondary alternative, containers in the round would be almost acceptable even if the trees still appear like lonely prisoners rather than the free growing specimens we all admired and loved.

*Officer comment: the main reasons for replacing the trees in planters were as follows:*

- 1) The tree pits originally specified to be installed as part of the scheme had to be dug at least 1.6 metres deep which immediately created concerns with regards to archaeology.*
- 2) There is a substantial mains electrical cable running directly below the proposed position of the new trees that eventually ruled out any excavation in the immediate area.*
- 3) The trees couldn't be planted in the same position as the original trees as this position would now obstruct the main fire exit route from the remodelled Theatre building that Building Control and the Fire Officer insists is kept clear.*
- 4) There was also a preference from both ECC and the Theatre that the replacement trees be installed in planters to avoid the potential for lifting of the surrounding slabs over time as had happened with the original trees, leading to a high number of documented trips and falls in this area outside of the Theatre.*

*Our Archaeologist has also confirmed "Clearly it's a better result for the archaeology for the trees to be in planters."*

#### **8.5 Contaminated Land:**

Based on the information provided to date, it would appear that Conditions 15 and 17 have been complied with and that Conditions 16 and 18 would fall away in planning terms.

#### **8.6 Environmental Protection:**

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

The CMS appears satisfactory but needs to confirm hours of working (08:00-18:00, Monday to Friday, 08:00-13:00 Saturday).

***Planning Officer Comments: Work has been completed therefore the need for the CMS falls away.***

We note that there is some limited external lighting and therefore recommend the following condition:

ZGR - \*Light Pollution for Minor Development\*

Any lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) shall fully comply with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ3 SMALL TOWN CENTRES OR URBAN LOCATIONS.

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

#### 8.7 *Highways Authority:*

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) or by post to:  
SMO1 – Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester  
CO4 9YQ

#### 8.8 *Historic England:*

Thank you for your letter of 7 May 2021 regarding further information on the above application for planning permission. On the basis of this information, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

#### 8.9 *Landscape:*

The landscape proposals submitted under drawing(s) 240055-PUR-00-XX-DR-A-2005 and 300202-CBH-PB-XX-SH-A-0004-C01 & 0006-C01, and the Landscape Appraisal doc Ver 1.1 and Schedule of materials doc lodged on 18/03/19 and revised drawings 300202-CBH-LD-00-DR-A-0001-P04 & 0003-P02 lodged on 10/08/2021 would appear satisfactory for the most part.

There would therefore be no objection to the variation of condition(s) 8 on landscape grounds with the following proviso(s).

The Arboricultural Officer is satisfied with the proposed tree cover, including tree species, tree planting specifications (including tree planters) and the relationship of tree positions to existing and proposed services (including lighting columns).

#### 8.10 Trees:

No comments received.

#### 8.11 Sustainability and Transport:

No comments received.

#### 8.12 Urban Designer:

The proposed changes have a neutral impact in terms of design and as such I have no substantive comments to make.

### 9.0 Parish Council Response

#### 9.1 Non parished

### 10.0 Representations from Notified Parties

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

10.2 Two general comments received:

One comment appears to refer to the temporary Mercury Theatre that was on Abbey fields and is not related to the current application.

A comment has been received stating concern that the trees on the site have been felled.

***Planning Officer comments: This application in part is to regularise the felling of the trees and the proposed provision of trees in planters as part of the public realm/landscaping scheme.***

### 11.0 Parking Provision

11.1 Five parking spaces are provided including disabled parking pay facilities. All parking is booked and managed through the theatre, replacing the ad hoc arrangement at the front of the building originally. The parking is situated behind collapsible bollards.

## **12.0 Open Space Provisions**

12.1 The proposals include better access to the public to the Roman wall which is a Scheduled Ancient Monument, and a sitting out area where the Balcerne Gate can be enjoyed. The proposed landscaping scheme will integrate into the wider public realm improvements that are currently underway in the area.

## **13.0 Air Quality**

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

## **14.0 Planning Obligations**

14.1 As a “Major” application, there was a requirement for this proposal to be considered by the Development Team. It was considered that no Planning Obligations should not be sought.

## **15.0 Report**

15.1 The main issues in this case are:

- Minor changes to the scheme
- Landscaping and Trees
- Materials and Design Details
- Archaeology
- Contaminated Land
- Ecology
- Travel Plan and Parking
- Impact on the Surrounding Area

### Minor changes to the scheme

15.2 For the most part the scheme is as per the previous approval ref:171964, there have been some minor amendments including the widening of the service access gate to the south of the site, the inclusion of barriers for the parking, the addition of public realm lighting, external awnings and the inclusion of external furniture as part of the landscaping scheme.

15.3 The changes to the scheme have been assessed by the Planning Officer, Built Heritage Officer, Archaeology Officer and Urban Designer and are considered to be acceptable in terms of design, impact on the public realm and impact on heritage assets.

15.4 Therefore, the minor amendments to the originally approved scheme are considered to be comply with adopted Local Plan Development Plan policies DP1 and DP14, Core Strategy Policies ENV1 and UR2 as well as emerging Local Plan Policy SP7 which seek to ensure that development is designed to a high standard, respects and enhances the character of the site, whilst not adversely affect listed buildings, conservation areas, scheduled ancient monuments or archaeology.

### Landscaping and Trees

- 15.5 Four birch trees that were on the northern side of the site have been removed. The original consent required these trees to be retained. Whilst it is unfortunate that the trees have been removed without formal consent the applicants have since worked with the Council to provide a suitable solution to mitigate their loss.
- 15.6 The proposal is to replace the trees with four triangular shaped planters with Silver Birch trees.
- 15.7 The applicants have explained that the trees had to be removed as they had caused significant trip hazards as a result of the roots uplifting the paving. This created a significant hazard especially for the elderly, wheelchair users and visually impaired. Replanting the trees in the ground has been carefully considered but there are concerns about long term impact upon important and sensitive below ground archaeology.
- 15.8 The proposed planters are considered to be acceptable and will integrate into the landscaping scheme. It is considered that the overall improvement to the public realm has significant benefits that would outweigh the adverse impact of the removal of the trees.
- 15.9 The proposed landscaping scheme is considered to be acceptable and is a significant improvement to the public realm. The wider public realm being improved though this is outside to scope of this application.
- 15.10 The proposed external furniture is considered to be of a suitable design that compliments the landscaping scheme.
- 15.11 Therefore, the proposed is considered to comply with Local Plan Development Plan policies DP1 and DP14, Core Strategy Policies ENV1 and UR2 as well as emerging Local Plan Policy SP7 which seek to ensure that development is designed to a high standard, respects and enhances the character of the site and respects or enhances the landscape and the surrounding area.

### Materials and design details

- 15.12 The sites context is sensitive being within the town centre, conservation area, overlooking the town wall and Balkearne Gate Scheduled Ancient Monuments and a number of listed buildings including Jumbo and Colchester Arts Centre. As such the minor detailing and materials has a significant impact on the quality and success of the scheme.



- 15.13 The brick types, mortar and finishes used are successful in the overall composition. The extensive use of Siberian larch timber cladding helps reflect the immediate area that surrounds the building and also provides an appropriate material that benefits from sustainable characteristics. The weathering of the material will also be attractive and suitable for the context and site. The use of Zinc cladding is also visually successful. The materials used within the public realm are also successful and elevates the scheme. Consequently, the materials used are considered to be acceptable.
- 15.14 The building exhibits a high level of detailing and finish. The slim profile, grey coloured windows results in the extensive glazing of the building appearing as a lightweight architectural feature of the overall composition. The glazing is not visually dominated by the window frames, as area where large schemes are often let down. In this instance the approach taken is very successful.
- 15.15 It is considered that the overall detailing, materials and finish of the building is successful and accords with the NPPF which requires that creation of high quality, beautiful and sustainable buildings (paragraph 126). Whilst also according with Local Plan Development Plan policies DP1 and DP14 as well as emerging Local Plan Policy SP7.

#### Archaeology

- 15.16 The development is located within an area of high archaeological interest recorded in the Colchester Historic Environment Record, within the historic settlement core.
- 15.17 An archaeological investigation included a watching brief was undertaken during the construction period. However, post-excavation work is still on-going, materials are currently being sent to external specialists and laboratories for examination as well as the cleaning of a significant amount of material recovered from the site.
- 15.18 The *NPPF* (Paragraph 205) states that planning conditions are required to ensure the significance of any heritage asset is recorded and understood. Therefore, a condition will be required for an archaeological report to be submitted for final assessment by the Council once the post-excavation work is completed.

#### Contaminated Land

- 15.19 The original planning application included a number of conditions that related to contaminated land. The conditions were sufficiently complied with during the construction period, as building work has now completed the conditions will fall away.

## Ecology

- 15.20 Likewise, the original planning application included a condition that related to protected species. The condition was sufficiently complied with during the construction period, as building work has now completed the condition will fall away.

## Travel Plan and parking

- 15.21 Five parking spaces are provided including disabled parking facilities. All parking will be booked and managed through the theatre, replacing the ad hoc arrangement at the front of the building originally. The parking is situated behind collapsible bollards. As with the original approval no other parking is provided proposed as the site is in a highly sustainable location. For those who do need to drive, St Mary's car park is situated very close by over the footbridge.
- 15.22 A Travel Plan has been submitted as part of the application. This has not been fully assessed and therefore a condition requiring the agreement of a Travel Plan will be required.

## Impact on the Amenity

- 15.23 In comparison to the previously approved scheme, the only element that could have an additional impact on the public and residential amenity is the introduction of lighting. A lighting scheme is proposed and there will also be fairy lights in some of the trees. The introduction of the lighting has been assessed from the Environmental Protection team. It was concluded that the proposed is acceptable, a planning condition has been recommended. Furthermore, no objections have been received from any of the residential neighbours on this matter.
- 15.24 It is considered that the introduction of lighting is acceptable in terms of impact on the surrounding area and residential amenity and is in accordance with Local Plan Development Plan policies DP1 and emerging Local Plan Policy SP7 which required development to protect existing public and residential amenity.

## **16.0 Conclusion**

- 16.1 To summarise, the development secures the future of one of the foremost cultural assets of the Borough and the wider region. The building has been designed and built to a high standard which enhances the area. The public realm works underway will also significantly uplift the environmental quality of the area.
- 16.2 The current application will regularise the development as executed and will result in the grant of a new planning permission with the old planning permission falling away. The new planning permission will omit now redundant conditions, alter existing conditions and impose new conditions where necessary.

16.3 The scheme has significant public benefits especially in relation to social and economic considerations with significant gains for the arts, tourism, and the community of Colchester. The Planning Balance tips strongly in favour of an approval.

## **17.0 Recommendation to the Committee**

17.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

## **18.0 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:

00202-CBH-EB-00-DR-A-0001-P01 'SITE & LOCATION PLANS (AS EXISTING)' dated 30.12.2021;  
00202-CBH-PB-00-DR-A-0001-P01 'SITE & LOCATION PLANS (AS PROPOSED)' dated 30.12.2020;  
00202-CBH-CD-ZZ-DR-A-0001-P01 'SOUTH ELEVATION' dated 17.4.2021;  
300202-CBH-PB-ZZ-DR-A-0002-P01 'EAST/NORTH ELEVATIONS' dated 21.11.2020;  
300202-CBH-PB-ZZ-DR-A-0001-P01 'WEST/SOUTH ELEVATIONS' dated 21.11.2020;  
300202-CBH-PB-ZZ-DR-A-0003-P01 'HIGH-LEVEL ELEVATIONS' dated 21.11.2020;  
300202-CBH-EB-ZZ-DR-A-0003-P01 'MERCURY HOUSE A1 (TO BE DEMOLISHED) (AS EXISTING)' dated 28.11.2020;  
300202-CBH-PB-01-DR-A-0001-P01 'FIRST FLOOR PLAN AS PROPOSED' dated 28.11.2020;  
300202-CBH-PB-02-DR-A-0001-P01 'SECOND FLOOR PLAN AS PROPOSED' dated 28.11.2020;  
300202-CBH-PB-03-DR-A-0001-P01 'ROOF PLAN AS PROPOSED' dated 28.11.2020;  
300202-CBH-PB-B1-DR-A-0001-P01 'BASEMENT FLOOR PLAN AS PROPOSED' dated 28.11.2020;  
300202-CBH-PB-GF-DR-A-0001-P01 'GROUND FLOOR PLAN AS PROPOSED' dated 28.11.2020;  
00202-CBH-LD-00-DR-A-0001-P04 'LANDSCAPE DESIGN SITE PLAN & FINISHES' dated 6.8.2021;  
00202-CBH-LD-00-DR-A-0003-P02 'LANDSCAPE DESIGN EXTERNAL FURNITURE LAYOUT' dated 6.8.2021;  
240055-PUR-00-XX-DR-A-2005 'Planter Design Drawing' dated 17.2.2021;  
00202-CBH-CD-ZZ-DR-A-0060-C05 'CONSTRUCTION DETAILS PARKING SETTING OUT' dated 25.6.2021;  
300202-CBH-CD-ZZ-DR-A-0063-C02 'PARKING SETTING OUT (2)' 6.4.2021;  
300202-CBH-PB-XX-SH-A-0006-C01 'Schedule of Bollards for Vehicular Management';  
300202-CBH-CD-ZZ-DR-A-0054-C03 'BoH WORKSHOP PLATFORM' 17.02.2021;  
300202-CBH-PB-XX-SH-A-0003-C01 'Schedule of External Construction Details';  
300202-CBH-PB-XX-SH-A-0001-P01 'Schedule of types and colours of external materials';  
300202-CBH-PB-XX-SH-A-0002-P01 'Mortar type and sample panels';  
300202-CBH-CD-ZZ-DR-A-0040-C02 'BRICKWORK TO BOX OFFICE & CLS EXTENSION (2)' dated 11.01.2020;  
300202-CBH-PB-XX-SH-A-0004-C01 'Schedule of External Furniture & Fittings';

300202-CBH-PB-XX-SH-A-0005-C01 ' Location of Fairy Lights to East Side of Building';  
FLY TOWER LIGHTING REV1 &  
Written Scheme of Investigation (WSI) for an archaeological excavation at the Mercury  
Theatre, Balcerne Gate, Colchester, Essex, CO1 1PT dated 26.7.2018.

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

## **2. Non Standard condition - Archaeology**

Within 6 months from the grant of permission the post investigation assessment shall  
be completed in accordance with the programme set out in the Written Scheme of  
Investigation previously 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  
Colchester Borough Council's Core Strategy (2008) and Colchester's Adopted  
Guidance, Managing Archaeology in Development (2015).

## **3. Non Standard Condition - Landscape Management Plan**

Within 3 months from the grant of permission 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.

## **4. Non Standard Condition - Light Pollution for Minor Development**

Any lighting of the development (including resultant sky glow, light trespass, source  
intensity and building luminance) shall fully comply with the figures and advice specified  
in the CBC External Artificial Lighting Planning Guidance Note for zone EZ3 SMALL  
TOWN CENTRES OR URBAN LOCATIONS.

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

## **5. Non Standard Condition - Travel Plan**

Within 3 months from the grant of permission a satisfactory Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall then be implemented immediately after approval is granted.

Reason: To ensure that the scheme makes adequate and co-ordinated provision to help encourage sustainable travel.

### **19.0 Informatives**

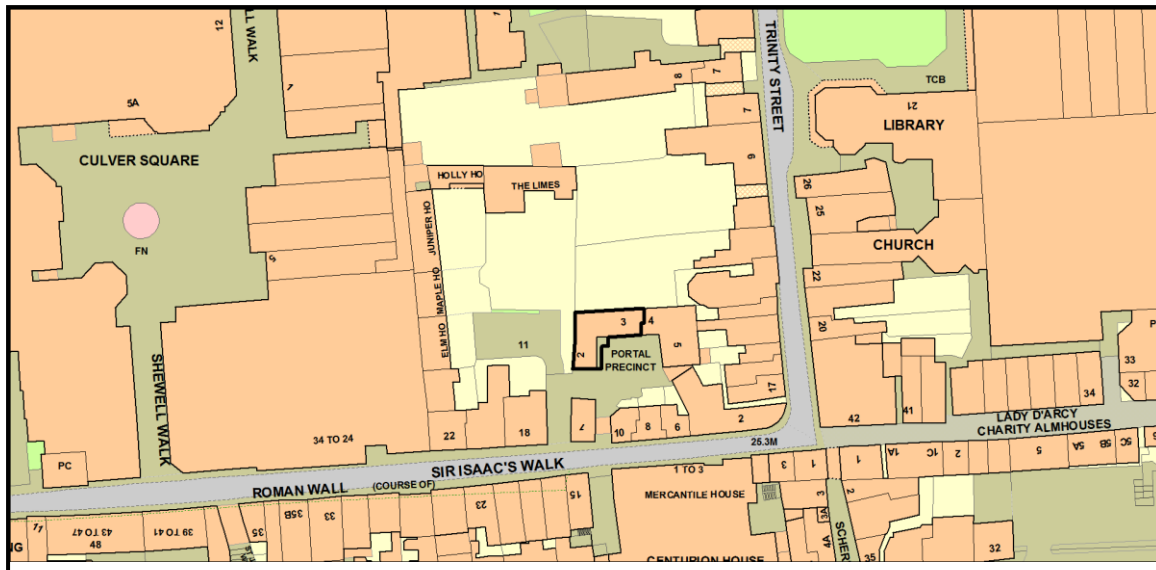
1. Highways Informative: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

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

SMO1 – Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester  
CO4 9YQ

2. 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.
3. PLEASE NOTE: This site is the subject of a Tree Preservation Order.
4. PLEASE NOTE: A separate consent may be required under the Town and Country Planning (Control of Advertisement) Regulations 2007 in respect of the display of advertisements on these premises. Advice may be sought from the Local Planning Authority.





The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use. This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2017

|                        |  |
|------------------------|--|
| <b>Item No:</b>        | <b>7.3</b>   |
| <b>Application:</b>    | 212055   |
| <b>Applicant:</b>      | CBC Sustainability Team  |
| <b>Agent:</b>          |  |
| <b>Proposal:</b>       | Secure Cycle Park  |
| <b>Location:</b>       | 2 & 3 Portal Precinct, Sir Isaacs Walk, Colchester, CO1<br>1JJ |
| <b>Ward:</b>           | Castle   |
| <b>Officer:</b>        | Annabel Cooper   |
| <b>Recommendation:</b> | Approval   |

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

- 1.1 This application is referred to the Planning Committee for transparency and probity because the application has been submitted by Colchester Borough Council.

## **2.0 Synopsis**

- 2.1 The proposal is for secure cycle parking which would have a capacity of approximately 45 bikes, including e-cargo bikes, as well as a community bike maintenance facility will be carried out by Colchester Bike Kitchen.
- 2.2 The proposed development is considered to be sustainable development, would not have an adverse impact on the conservation area and would not have an adverse impact on residential amenity.
- 2.2 The application is subsequently recommended for approval.

## **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 and is within the Inner Core of the Town Centre.
- 3.2 Nos.2 & 3 Portal Precinct have been vacant for a number of years.

## **4.0 Description of the Proposal**

- 4.1 Change the use of the units to secure cycle parking and community bike **maintenance. The change of use would not result in any changes to the external appearance of the units.**
- 4.2 The secure cycle parking will have capacity for approximately 45 bikes including e-cargo bikes. The facility will not be staffed but users will sign up to the scheme and be managed by a booking and payment system.
- 4.3 The community bike maintenance facility will be carried out by Colchester Bike Kitchen (CBK). They will operate by providing a workshop space, tools and a small stock of spare parts which the general public may use to repair their own bikes either on their own or under the supervision of volunteer mechanics. In return, users are asked for a small donation to cover running costs and must pay for any spare parts they use.
- 4.4 The unit will be covered by CCTV and be overseen by staff at the community bike facility.



## **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 There is an extensive planning history though none is pertinent to the current application.

## **7.0 Principal Policies**

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

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

SD1 - Sustainable Development Locations

CE2a - Town Centre

UR2 - Built Design and Character

TA1 - Accessibility and Changing Travel Behaviour

TA2 - Walking and Cycling

ENV1 - Environment

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

DP1 Design and Amenity

DP6 Colchester Town Centre Uses

DP17 Accessibility and Access

- 7.4 There are no relevant policies within the adopted Borough Site Allocations Policies (adopted 2010, amended 2014).

- 7.5 There are no relevant Neighbourhood Plans.

## **7.6 Adopted Local Plan and Emerging Local Plan Status – March 2021**

The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan remains to complete examination following hearing sessions in April 2021. Section 2 policies must be assessed

on a case by case basis in accordance with NPPF paragraph 48 to determine the weight which can be attributed to each policy.

## **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. Section 1 of the plan is therefore considered to carry full weight.

Section 2 was examined at hearing sessions in April. Modifications from the Planning Inspector have been issued however they have yet to undergo consultation.

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

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

The Essex Design Guide  
EPOA Vehicle Parking Standards  
Cycling Delivery Strategy  
Town Centre Public Realm Strategy

## **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 *Built Heritage and Conservation***

No objections to the proposal on heritage grounds. The proposed change of use does not require any external alterations to the premises that could affect the character of the Conservation Area. The proposed use can have a positive impact on the Conservation Area by encouraging and facilitating environmental-friendly travel to the historic town centre.

### 8.3 *Archaeology*

No archaeological issues.

### 8.4 *Colchester Cycling Campaign*

We support the provision of a secure cycle park in Colchester.

## 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 neighbouring properties. No representations have been received.

## 11.0 **Planning Obligations**

11.1 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.

## 12.0 **Report**

12.1 The main issues in this case are:

- The Principle of Development
- Built Heritage and Conservation
- Impact on Amenity

### Principle

12.2 Development Policy DP6 is very prescriptive seeking to ensure that the Inner Core of the town centre maintains a high level of retail use. This is now a slightly dated approach given the recent changes in retailing and the increasingly diverse and complex uses permitted under Use Class E. Whilst the change of use would result in the loss of two units that could be used as retail units, they have been vacant for some time. The units are situated off the main shopping street Sir Isaacs Walk and therefore there is limited visibility from the main public realm. Therefore, whilst the application does not fully comply with policy DP6 is it not considered sufficient reason to preclude the proposed development which is considered to accord with the NPPF.

12.3 Changing the use of the units to secure cycle parking and community bike maintenance will encourage people into the town centre, helping to make the town centre core more vibrant, encourage visitors and helping the town centre economy.

- 12.4 It is considered that the change of use would be sustainable development. There would be an environmental benefit in encouraging sustainable means of transport to and within the town centre, an economic benefit in returning two vacant units back into use and encouraging more people to travel and spend in the town centre, and a social benefit in encouraging a community use as a bike maintenance space.
- 12.5 Therefore, the proposed complies with Local Plan Policy SD1 and emerging Local Plan Policy SP1 which state that decisions will reflect the presumption in favor of sustainable development contained in the National Planning Policy Framework to secure development that improves the economic, social and environmental conditions in the area.
- 12.6 The proposed also accords with Development Policies DP17, TA1 & TA2 in that the proposed will enhance accessibility for sustainable modes of transport giving priority to cycling access.

#### Built Heritage and Conservation

- 12.7 The proposed change of use does not require any external alterations to the premises that could affect the character of the Conservation Area. The proposed use can have a positive impact on the Conservation Area by encouraging and facilitating environmentally-friendly travel to the historic town centre. Therefore, the proposed complies with Local Plan Policies ENV1 and DP14 which seek to conserve and enhance Colchester's historic environment.

#### Impact on Amenity

- 12.8 The proposed activity would cause minimal noise and disturbance to nearby residential properties and would not be used after 10pm. The Colchester Bike Kitchen (CKB) will operate by providing a workshop space, tools and a small stock of spare parts which the general public may use to repair their own bikes either on their own or under the supervision of volunteer mechanics.
- 12.9 Comment from Planning Statement: *CBK has been in operation for 6 years at two previous locations with no issues with noise or disturbance for neighbours as any noise is either low level talking, a kettle boiling, gears ticking and maybe quiet chatting.*
- 12.10 It is not considered that the change of use would have an adverse impact on residential amenity. The proposed is therefore considered to comply with Local Development Plan policy DP1 and emerging Local Development Plan SP7 which requires development to protect existing public and residential amenity.

### **13.0 Conclusion**

- 13.1 To summarise, The proposed development is considered to be sustainable development, that would not have an adverse impact on either the conservation area nor residential amenity.

### **14.0 Recommendation to the Committee**

- 14.1 The Officer recommendation to the Committee is for APPROVAL of planning permission subject to the following conditions:

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

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

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

#### **2. ZAM - Approved Documents**

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

Location Plan 100023706 dated 29.6.2021 & Existing Ground Flood Plan & Elevations 16472-22 dated 16.4.2021.

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

#### **3. Non Standard Condition - Premises Only for a Specific Use**

The premises shall be used for secure cycle parking and community bike maintenance.

Reason: For the avoidance of doubt as to the scope of the permission as this is the basis on which the application has been considered and any other use would need to be given further consideration at such a time as it were to be proposed.

#### **4. Non Standard Condition - Operating Hours**

The use hereby permitted bike maintenance shall not OPERATE outside of the following times:

7.00 to 22.00 on any day.

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, and for the avoidance of doubt as to the scope of this permission.

#### **5. Non Standard Condition - No Outside Storage**

No materials of any kind shall be deposited, stacked or stored externally.

Reason: To ensure that there is no external storage to avoid harm to the amenities of the adjoining neighbours and conservation area.

## **15.0        Informatives**

15.1        The following informatives are also recommended:

### **1. Informative on Any Application With a Site Notice**

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

### **2. Informative Adverts**

Planning (Control of Advertisement) Regulations 2007 in respect of the display of advertisements on these premises. Advice may be sought from the Local Planning Authority.

## 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.*

