

Planning Committee Meeting

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

Thursday, 13 July 2017 at 18:00

The Planning Committee deals with planning applications, planning enforcement, public rights of way and certain highway matters.

If you wish to come to the meeting please arrive in good time. Attendance between 5.30pm and 5.45pm will greatly assist in noting the names of persons intending to speak to enable the meeting to start promptly.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published five working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services. Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Have Your Say!

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

Audio Recording, Mobile phones and other devices

The Council audio records all its public meetings and makes the recordings available on the Council's website. Audio recording, photography and filming of meetings by members of the public is also permitted. The discreet use of phones, tablets, laptops, cameras and other such devices is permitted at all meetings of the Council. It is not permitted to use voice or camera flash functionality and devices must be kept on silent mode. Councillors are permitted to use devices to receive messages and to access papers and information via the internet and viewing or participation in social media is at the discretion of the Chairman / Mayor presiding at the meeting 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, 21 Trinity Square, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets with lift access, if required, are located 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

www.colchester.gov.uk

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.

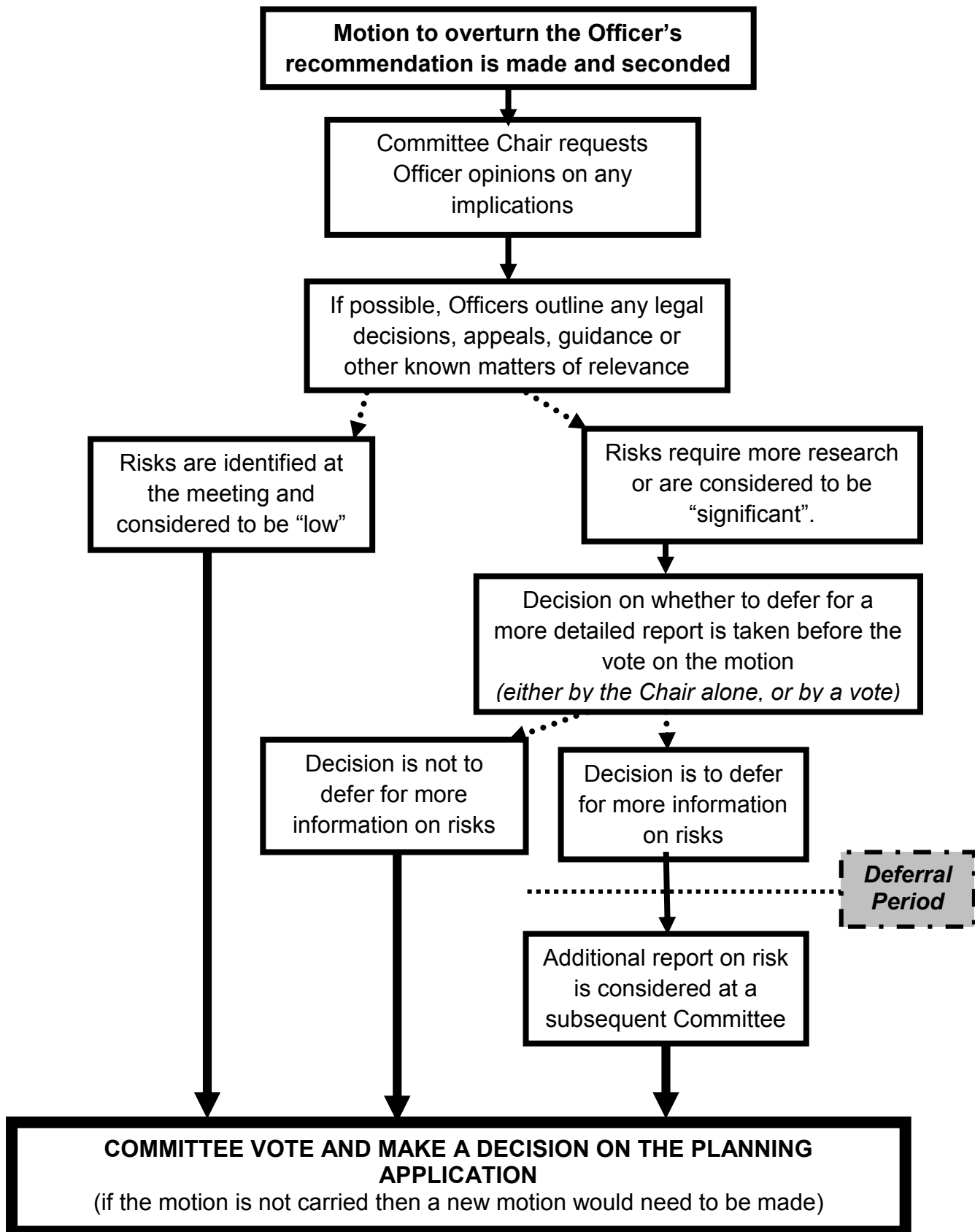
Interpretation of Class C4

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

Deferral and Recommendation Overturn Procedure (DROP) Flowchart

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

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



COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 13 July 2017 at 18:00

Member:

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

Chairman
Deputy Chairman

Substitutes:

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

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

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

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

An Amendment Sheet is available on the Council's website by 4:30pm on the day before the meeting (see Planning and Building, Planning Committee, Planning Committee Latest News). Members of the public should check that there are no amendments which affect the application in which they are interested. Members of the public please note that any further information which they wish the Committee to consider must be received by 5pm two days before the meeting in order for it to be included on the Amendment Sheet. With the exception of a petition, no written or photographic material can be presented to the Committee during the meeting.

1 Welcome and Announcements

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

- location of toilets;
- introduction of members of the meeting.

2 Have Your Say! (Planning)

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

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

3 Substitutions

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

4 Urgent Items

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

5 Declarations of Interest

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

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

interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.

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

6 Minutes

There are no minutes for approval at this meeting.

7 Planning Applications

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

7.1 **160825 Colchester Northern Gateway, Land at Cuckoo Farm West, off United Way and Via Urbis Romanae, Colchester** 17 - 78

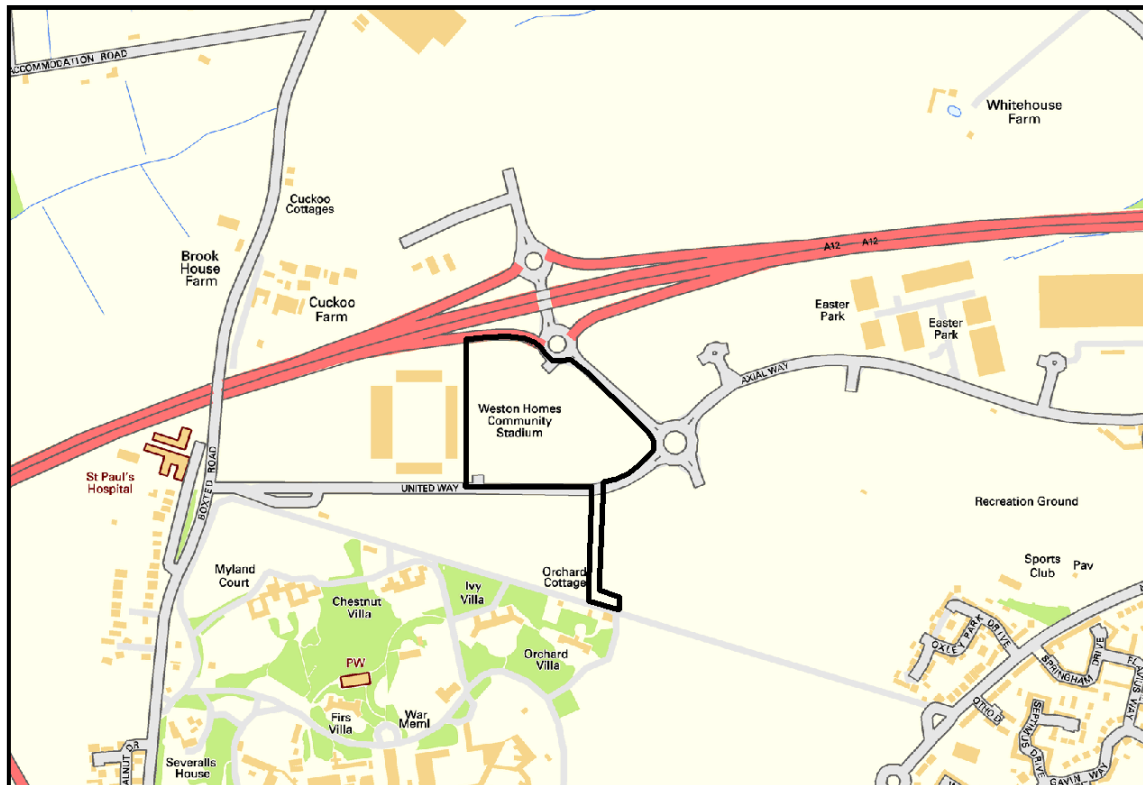
Erection of use class A3/A5 restaurant/hot food takeaway units (in the alternative), erection of use class C1 hotel, erection of use class D2 multiplex cinema, erection of use class D2 leisure units, erection of a use class A3/D2 restaurant/leisure uses (in the alternative), provision of a landscaped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

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)



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: 160825

Applicant: Mr Chris Goldsmith, Turnstone Colchester Ltd

Agent: Mr Paul Belton, Cartas Jonas

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

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

Ward: Mile End

Officer: Bradly Heffer

Recommendation: Approve Subject to Legal Agreement

1.0 Reason for Referral to the Planning Committee

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

2.0 Synopsis

- 2.1 The issues explored below are the planning context of the application site established through its land use allocation and the previous planning history, together with material considerations pertaining to the planning application submission. In recognising that elements of the proposed development are a departure from the adopted Local Plan it is considered that, a recommendation of approval of the planning application subject to a s.106 agreement and conditions is appropriate. If Members agree with the Officer recommendation, it will also be necessary for the proposal to be referred to the Secretary of State under the current call-in procedure.

3.0 Site Description and Context

- 3.1 The site for this proposal (approximately 4.97 hectares in size) is an area of land that forms part of the town identified as the Colchester Northern Gateway (previously known as Cuckoo Farm). Specifically the bulk of the site is located adjacent to the Weston Homes Community Stadium. Immediately to the north the site is bounded by junction 28 serving the A.12 trunk road, while to the east is the third stage of the Northern Approach Road identified as Via Urbis Romanae (VUR). The application site is divided by United Way (which links VUR with Boxted Road). The majority of the site is located to the north of this road, with a linear strip of land forming the southern portion of the site that extends from United Way to Tower Lane, which has public right of way and bridleway status. To the south of Tower Lane is the former Severalls Hospital site that is undergoing residential conversion of some existing buildings, together with new residential development within the grounds.
- 3.2 Generally the site is level, but there are significant differences in height where it meets VUR; the road being elevated above the site. United Way is also set at a higher level than the application site – but not as significantly as those roads that bound the north and east.

- 3.3 Currently the majority of the site is given over to rough grass, it having been used in the past for agricultural purposes. There are also an established hedge with standard trees on the land – reflecting the historic field boundaries associated with the former agricultural use.
- 3.4 To the north of the application site, beyond the trunk road, is the County Council park and ride development, together with a petrol filling station and a fast food restaurant with ancillary ‘drive-thru’ takeaway facility. To the east, on the opposite side of VUR and to the south, on the opposite side of United Way is vacant land. Also located to the south of United Way, and facing the application site is the recently completed David Lloyd tennis leisure centre.

4.0 Description of the Proposal

- 4.1 This full planning application seeks permission for the following:

- Erection of Use Class A3/A5 restaurant/hot food takeaway units (in the alternative) totalling 3 808 sq. m (of which no more than 400 sq. m shall be used as A5 floorspace within a single unit)
- Erection of a Use Class C1 hotel (80 beds)
- Erection of a Use Class D2 Cinema (12 screens)
- Erection of Use Class D2 leisure units (3 286 sq. m)
- Erection of Use Class A3/D2 restaurant/leisure uses (in the alternative) (688 sq. m)

- 4.2 Members are advised that since the initial submission of the planning application the mix of uses has been revised slightly – specifically with regard to the amount of ‘flexible’ floorspace’. This is explained in supporting information as follows:

‘...The only change that has been made in respect of the mix of uses hereby applied for is in relation to the amount of ‘flexible floorspace’. The original submission sought permission for 779 sq. m of floorspace within part of the Leisure Curve building and part of the In-line unit building to be flexible A3 or D2 floorspace in the alternative. As a result of the reconfiguration of the leisure curve building, this quantum of flexible floorspace has reduced from 779 sq. m to 688 sq. m. As a result, a slightly higher proportion of the floorspace being proposed is effectively being fixed for either D2 use or A3 use, rather than being flexible space...’

- 4.3 The proposed development would take the form of blocks of built form (comprising an hotel, Leisure Curve, Cinema and restaurants/leisure that would be located on the larger, northern section of the application site. Of these, the eastern-most building would contain the proposed hotel accommodation, located adjacent to VUR and positioned to address this road and its junction with United Way. Immediately to the east of the hotel (between this building and the highway boundary) the space is defined by a reflecting pond that would augment the setting of the hotel building. Located adjacent to the hotel building, to the west, would be a larger building, identified as the Leisure Curve, which would contain D2 leisure floorspace.

A service road would be located between the hotel and the Leisure Curve – leading off United Way.

- 4.4 The space between the Leisure Curve and the proposed cinema and A3 restaurant units would be defined by an extensive area that would contain both hard and soft landscaped environments.
- 4.5 The westernmost element of the proposed development would comprise the cinema building, a row of A3 restaurant premises (identified in the submission as the 'In-line units') a D2 leisure unit and car parking facilities to serve the proposed overall development. The cinema building would be the prominent central element within this particular group. The car park facility (containing 751 spaces) would be set at three levels and the In-line units would be single storey facilities. To the south of the main area for the proposed development, south of United Way, a linear area of land would contain a shared footpath and cycleway facility that would link United Way with Tower Lane.
- 4.6 The following descriptions of the proposed buildings (included as part of the application submissions) are included in this report for Members' information:

Hotel

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

Leisure Curve

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

Cinema

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

Inline Units

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

Car Park

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

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

Central Piazza

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

Footpath/Cycleway Link

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

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

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

- 4.9 Due to the nature and extent of the development proposal it is accompanied by an Environmental Statement. The Statement has been submitted to meet the requirements of the Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015. Members are advised that details of the application submission and the Environmental Statement are available to view on the Council’s website.

- 4.10 Members are also advised that since the initial submission of the application the scheme has been amended to achieve minor design and layout improvements, namely revision to the roof of the hotel building, alteration of southern end of the leisure curve building and the position of this building in relation to trees to be retained. An independent assessment of submitted information, in relation to the impact of the proposals on the town centre and sequential issues, has also taken place. The findings of the assessment will be summarised further on in this report.
- 4.11 Members will be aware that a reserved matters proposal (160623) that relates to the same application site was considered by the Committee on 17 November 2016. At this committee it was resolved to grant planning permission. The Secretary of State subsequently determined to not call-in this application, and reserved matters planning permission has been granted. The main differences between the reserved matters application proposal and this full application are the inclusion of the cinema element in this application, together with the alterations to the proposed organisation of floor space allocated between A3 and D2 uses.

5.0 Land Use Allocation

- 5.1 Within the adopted Local Development Framework the site for this proposal is located within the North Colchester Strategic Employment Zone which itself forms part of the North Colchester Growth Area.

6.0 Relevant Planning History

- 6.1 The site to which this planning application relates forms part of a larger site that has been subject to several planning applications as follows:
- O/COL/01/1622
Outline application for community stadium, health and fitness centre, hotel, pub/restaurant, A3 units, two storey business unit, employment use, associated parking, transport interchange facilities and landscaping.
 - O/COL/01/1623
Outline application for employment uses.
 - O/COL/01/1624
Residential development (approximately 1500 dwellings including conversion of some retained hospital buildings) mixed uses, including community facilities, employment and retail, public open space, landscaping, new highways, transport improvements, reserved route of the Northern Approach Road Phase 3 (NAR3), and associated development.

- O/COL/01/1625
Outline application for replacement roadside services to include petrol filling station comprising associated Class A1 retail shop, re-fuelling facilities, car wash and Class A3 roadside restaurant and lorry park.
- F/COL/01/1626
Detailed application for the construction of the Northern Approaches Road Phase 3 (NAR3) including a new grade separated junction with the A12 and east/west link road to Severalls Lane plus all ancillary highway works (including segregated bus corridor)

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

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

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

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

- F/COL/06/1727
'Section 73 application to vary Conditions 9 and 10 of application O/COL/01/1622 which relates to the need for the implementation of a new junction with the A12 trunk road and Northern Approach Road Phase 3 in advance of commencement or occupation of any of the development elements granted by that consent (i.e. the football stadium in this instance).
- F/COL/07/0294
Variation of condition 47 of application no. O/COL/01/1622
- 071539
New 10 000 seat capacity community stadium with associated facilities and 2no. 5-a-side football pitches, plus associated landscaping, roadworks and car parking.
- 081644
Variation of condition 37 attached to O/COL/01/1622 to allow use of the stadium's internal concourses for the holding of a monthly farmers' market on the first Thursday and an annual Christmas fayre and the variation of condition.
- 151216

Application for approval of reserved matters following outline approval (O/COL/01/1622) (layout, scale, appearance, landscaping, access) for the construction of a racquets, health and fitness complex with associated parking, access and ancillary facilities.

- 152370
Application for removal or variation of condition 27 following grant of planning permission (O/COL/01/1622). Resubmission of 151682.
- 160623
Reserved matters application pursuant to outline planning permission O/COL/01/1622 for the erection of Use Class A3 restaurant units (10,400 sq. m), erection of Use Class C1 hotel (80 beds), provision of a landscaped piazza and associated landscaped areas, erection of an ancillary multi-storey car park and the provision of separate drop off/parking areas. This application was considered by Committee on 17 November 2016 when it was resolved to grant permission. The Secretary of State DCLG determined to not call-in the application for determination and planning permission has now been granted.

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

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

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

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

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

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

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

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

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

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

Air Quality Management Guidance Note
Community Facilities
Vehicle Parking Standards
Sustainable Construction
Open Space, Sport and Recreation
External Materials in New Developments
Cycling Delivery Strategy
Sustainable Urban Drainage Systems Design Guide
North Colchester Growth Area Supplementary Planning Document

Myland Design Statement

- 7.6 Members are advised that the Myland and Braiswick Neighbourhood Plan has been 'made' and is adopted by Colchester Borough Council as part of the Local Plan.

8.0 Consultations

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

8.2 'Policy Background

The site lies within an area designated in the adopted Local Plan as the North Colchester Strategic Employment Zone. The following policies are of particular relevance to the planning policy considerations of changing the balance of uses within a Strategic Employment Zone:

Core Strategy Policy CE1 (plus Table CE1b) (Centres and Employment Classification and Hierarchy) which sets out the business uses that will be supported in Employment Zones. This includes D2 Assembly and Leisure uses as a secondary land use. A3 uses are not included in the list, although they are considered appropriate for Mixed Use Centres.

Core Strategy Policy CE3 (Employment Zones) which identifies Strategic Employment Zones, including North Colchester to accommodate projected requirements for employment floorspace.

Development Policies Policy DP5 (Appropriate Employment Uses and protection of Employment Land and Existing Businesses) which identifies appropriate employment uses within designated employment zones. In addition to B1, B2 and B8 (DP5 (a)), these include indoor sports uses, exhibition centres and conference centres (DP5 (c)) and other employment-generating uses, such as those related to recreation and tourism which meet local needs (DP5 (f)) unless the Site Allocations DPD sets out site specific issues.

Site Allocations Policy SA NGA 3 (Employment uses in the North Growth Area) this policy identifies the types of employment use considered appropriate within the Strategic Employment Zone. This includes (c) Indoor sport, exhibition and conferencing centres and wide range of other employment uses within the 'B' Use Classes. The existing permission at Cuckoo Farm (the application site) is noted under (g) and reference is made

to the permitted uses including a hotel (C1), a public house/restaurant (A3/4), a health and fitness centre (D2) and business units (B1).

- 8.3 Given that elements of the Council's Centres and Employment policies have been superseded by the NPPF, for the avoidance of doubt, consideration of the Town Centre impact and sequential test aspects of the proposal are considered to be covered by the NPPF para 24 for sequential testing and para 26 for impact testing. While the proposal does not include any retail elements, the cinema, leisure and restaurant uses proposed fall within the NPPF definition of 'Main town centre uses'. Additional guidance is set out in Planning Practice Guidance which includes the proviso that 'Use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations', subject to robust justification. Para 27 provides that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused. Planning law, however, requires that 'applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise', which is referenced in para 11 of the NPPF. Accordingly, it is considered that if significant and compelling, other material considerations can outweigh the sequential test guidance within the NPPF.
- 8.4 The Council is currently consulting on a new Local Plan covering the period 2017-2033. The plan is at the Draft Publication stage but is yet to be submitted and accordingly can be given limited weight. The plan, however, does provide the current thinking on the role the site and its Northern Gateway surroundings play in the overall Colchester spatial strategy. It also reflects the most up-to-date evidence. The importance of the Northern Gateway as a sports and leisure hub for the wider Borough is therefore a material consideration to be given weight in considering the benefits of the proposal. The Council as landowner has produced masterplanning work to inform development of the site and this work has informed and been informed by relevant policy requirements. Policy NC1: North Colchester and Severalls Strategic Economic Area Zone 2 includes the application site. *Policy for Zone 2: The area defined on the policies map as zone 2 (adjacent to the Stadium) is being developed by the Council as a leisure/community hub and will be safeguarded for a mix of uses including sport, leisure and recreation. Uses will be permitted where they clearly demonstrate the potential for job creation and provided that they do not undermine or constrain the main purpose of the economic function of the wider area. Uses may include an appropriate scale of leisure and commercial space, open space and green infrastructure to enhance connectivity. No retail use will be permitted unless it is ancillary to another use and meets the requirements of the sequential test and impact test if required.* This policy reflects the contribution that the Northern Gateway site could make as a sustainable and comprehensively planned location to deliver on Local Plan objectives for the delivery of employment land; new sports and leisure facilities; and associated infrastructure improvements. The Northern Gateway is well-located at a key growth area for urban Colchester and benefits from good transport access, including public transport/road access

to the Town Centre via the Northern Approaches road and bus corridor as well as adjoining junction 28 of the A12.

- 8.5 The Myland Neighbourhood Plan forms part of the adopted Development Plan for Colchester. As it was recently adopted in December 2016 it provides an up to date Development Plan position on the Northern Gateway leisure proposal. The Neighbourhood Plan supports the general principle of sports and leisure facilities at Northern Gateway, as Myland Community Council and Braiswick Residents Association 'identify the emerging Northern Gateway proposals as having the potential to deliver an array of sport and leisure facilities which will provide much needed opportunities for sport and recreation and which will make an important contribution to the sustainability of the Neighbourhood Plan Area.' It is considered that the current proposal would deliver on this Neighbourhood Plan objective.

8.6 Implications of Strategic Employment Zone location

- 8.7 Policy CE1 of the adopted Core Strategy defines the purpose of the Council's Centre and Employment Classification as being to 'coordinate the use and scale of developments with the accessibility and role of the various mixed use Centres and Employment Zones in Colchester'. While Employment Zones have delivery of B Use premises as their primary goal, the list of appropriate land uses in Table CE1b establishes that there is also a role for further categories of job-creating floorspace within Employment Zones. D2 Assembly and Leisure, the use class covering the current proposal, is listed as an acceptable secondary land use. Policy NGA3(g) clarifies that in the North Growth Area SEZ, the uses initially approved for the Community Stadium site in 2006 have established a willingness to include leisure uses on that part of the site to contribute to the overall mix and viability of commercial uses in the SEZ. The mix of uses was permitted to enable funding of the stadium and local road infrastructure.
- 8.8 The emerging Local Plan applies a more tailored approach to preferred uses in the three Colchester Strategic Employment Zones, with sub-areas within each SEZ designed for particular uses. In the Northern Gateway, the area has been sub-divided into 3 areas with the following primary uses – Zone 1, employment, Zone 2 leisure and community (including the application site) and Zone 3, sport and recreation. In Zone 1, a limited range of non-B class uses will be supported in accordance with the policy only where they do not undermine or constrain the main purpose of the economic function of the area to deliver significant job growth.

- 8.9 The extent of the B use allocation in the Northern Gateway SEZ reflects the Council's latest employment land supply and demand evidence, which is contained in the January 2015 Employment Land Needs Assessment and May 2017 Employment Land Trajectory. The 2015 study found that overall, Colchester had a sufficient quantitative supply of employment land to meet future demand to 2033. This finding was echoed in the Inspector's conclusion on the Stane Park application, which found no justification for safeguarding employment land on a 6.8 ha site in the Stanway SEZ due to lack of demand and sufficiency of supply elsewhere.
- 8.10 The 2015 study recommended that the Council should consider rationalising the existing and future supply of industrial space by seeking to concentrate this space in the Borough's key locations and areas of strongest market demand. The study identified Northern Gateway as the highest ranking location in its evaluation of Colchester employment sites. Development of allocations for the Northern Gateway area has accordingly reflected this potential. The Council has been proactive in further enhancing the market desirability of the area by improvements to digital connectivity to attract inward investment. On that basis, higher density office development is considered deliverable, so land requirements for business use land reflect the lower need created by tall office buildings rather than land-hungry warehouse/logistics developments. The May 2017 Employment Land Trajectory shows two sites adjacent to the application site providing approximately 48,000 sq.m of office floorspace on 8.2 ha. This is considered to be an appropriate proportion of the 39.4 ha of employment land to be delivered in Colchester in the plan period (outside of Garden Communities).

8.11 Consultant Evidence and Legal Advice

- 8.12 In addition to the employment land evidence noted above, the Council has sought guidance and interpretation on the town centre national and local policy from specialist planning consultants and legal advisors to ensure it has considered all relevant considerations for an application which has raised complex issues. Previous Planning Policy responses reflected advice given at the time, and this current response bases revised views on the latest advice. Advice received to date includes:
- Leisure and Town Centre Report – Carter Jonas, April 2016 prepared for applicant
 - Critique of the above report – NLP (now Lichfields) October 2016 prepared for the Council
 - Supplementary Leisure Assessment – Carter Jonas, March 2017 and May 2017 addendum prepared by the applicant to address representations submitted on behalf of Tollgate Partnership Ltd.
 - Critique of the above by Lichfields, June 2017

8.13 Planning Policy Recommendations

In light of the above advice, the Planning Policy response made in October 2016 has been updated on the following points:

- 8.14 Sequential test** – The October 2016 Planning Policy response reflected the view put forward by NLP (Lichfields) that the outline consent for mixed use at Northern Gateway represented an implementable fall-back position which could be given some weight as a material consideration. The Council now accepts, however, in light of legal opinions, that in the absence of a realistic prospect that the approved outline scheme would be implemented, no material weight can be given to that consent as justifying a departure from the development plan. In light of this point, Lichfields has updated its advice on the sequential test. Their October 2016 advice suggested that Tollgate Village could be discounted as unsuitable in impact terms because the scale and nature of development proposed at Northern Gateway would not be suitable at Tollgate Village, in terms of the harm to Colchester town centre and the Council's adopted centres hierarchy. The current Lichfields position is that the Tollgate Village site is sequentially preferable in the sense that it is available for development (although a different scheme is currently proposed, which if allowed would make the site unavailable); in a sequentially superior location when compared with the out of centre site at Northern Gateway; and is physically capable of accommodating the development proposed at Northern Gateway (if the current proposal at Tollgate is not allowed and implemented).

- 8.15 Lichfields consider, however, that while the proposal meets the above elements, ultimately Tollgate Village does not emerge as a sequentially preferable site because it does not meet the market and locational requirements of the sequential test:

The proposed development is highly specific to a named operator with limited potential for other operators to occupy the scheme, we are satisfied the TV site can be discounted as unsuitable for the proposed development because it does not meet Cineworld's business needs and would be unviable for the mix of uses proposed. In our view, collectively, the evidence presented provides a robust justification that market and locational requirements mean the proposed development cannot be located at TV and the sequential test has been satisfied. (Para 5.12)

Lichfields point out that Cineworld's requirements in this particular case are important because there are no obvious other cinema operators who would occupy a multiplex cinema of the size proposed.

8.16 Impact

- 8.17 Since previous advice was issued in 2016, further work on cinema impact assessment has been carried out by both Carter Jonas and Lichfields. This work has led Lichfields to conclude that while a new cinema would have an impact on the Curzon and Odeon cinemas in the Town Centre, this impact would not be expected to be significant in the context of the vitality and viability of the town centre as a whole. Additional work on food and beverage uses and on D2 leisure uses has also been completed, with the conclusion that the impact on the town centre of these uses was not a sustainable reason for refusal. Accordingly, the Northern Gateway proposal is considered to pass the town centre impact test.

8.18 Other Material Considerations

- 8.19 While as noted above the Northern gateway proposal is considered to satisfy the sequential test, if for any reason it is determined that it does not, it is considered that permission could be granted on the basis of significant benefits of the proposal weighing in favour of the application. While the extant planning permission can no longer be considered one of the relevant material considerations, as noted above, a number of benefits remain to be considered as material considerations including:
- Delivery of Local Plan objectives -Northern Gateway Masterplan and corporate commitment to delivery of a comprehensively planned package of new employment and leisure facilities and supporting infrastructure.
 - Financial benefits - The financial receipts to the public purse may be a material consideration, although at this stage it is not possible to fully assess financial benefits. The scheme will help with repayment of funding for the earlier stadium scheme and associated infrastructure. It will also serve as an anchor to attract further development and inward investment to the wider area.
 - Job creation benefits – The proposed development would deliver 550 FTE jobs along with further direct and indirect economic benefits.
 - Linked trips – The evidence on the extent to which visits to Northern Gateway will generate linked trips to the Town Centre is considered to be tentative.

8.20 Conclusion

- 8.21 The proposal for leisure uses within the Northern Gateway is considered to be supported by national and local policy. The proposal is considered to meet the sequential test as no suitable alternative site can be demonstrated. The cinema and food/drink elements of the proposal have been analysed, with a finding of no significant impact on Colchester Town Centre. The proposal accords with adopted and proposed Local Plan and Myland and Braiswick Neighbourhood Plan policy on the overall commercial/employment hierarchy for Colchester; employment uses; and allocations/policy for Northern Gateway.'

8.22 The **Highway Authority** originally queried elements of the Traffic Assessment that accompanied the planning application submission. Following liaison with the Applicant additional information has been provided. Members are advised that the final comments of the Highway Authority are as follows:

8.23 **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 commencement of the development shall take place until details of the following have been submitted to and approved in writing by the Local Planning Authority:

- a) a bus service or services or a contribution towards a public transport strategy for the site and surrounding area
- b) on site bus stop locations and specification
- c) any required new off site and/or improved existing off site bus stops
- d) any required on site bus turn round and/or layover facilities (temporary and/or permanent) and;
- e) a crossing facility or facilities in United Way

No occupation of the development shall take place until the agreed details have been provided.

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 and DM9 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

3. Prior to occupation of that part of the development which utilises it, the access off United Way at its centre line shall be provided with a minimum 2.4 x 70 metre visibility splay to the right, as measured from and along the nearside edge of the carriageway. There shall be no obstructions within the splay more than 600 mms in height

Reason: To provide adequate inter-visibility between vehicles using the access and those in existing highway in the interest of highway safety in accordance with policy DM1 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

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

- a) The vehicle access arrangements, including lay-by in United Way, as shown in principle on the planning application drawings (with the exception of the matter referred to under item 3 above)
- b) Lane re-designation road markings and signs on the Via Urbis Romanae north and south approach to the United Way/Axial Way roundabout as shown in principle on the planning application drawings
- c) The cycle and pedestrian arrangements as shown in principle on the planning application drawings
- d) A travel plan to include but shall not be limited to a Travel Plan Co-ordinator and £3,000 contribution to cover the Highway Authority's costs to approve, review and monitor the Travel Plan

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

Notes:

- ☐ The above requirements should be imposed by way of negative planning conditions or planning obligation agreements as appropriate
- ☐ Prior to any works taking place in the highway the developer should enter into an agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works
- ☐ All or some of the above requirements may attract the need for a commuted sum towards their future maintenance (details should be agreed with the Highway Authority as soon as possible)
- ☐ All highway related details should be agreed with the Highway Authority
- ☐ The proposal should be in accordance with the Parking Standards Design and Good Practice Supplementary Planning Document dated September 2.

- 8.24 **Highways England** has confirmed that it has no objection to the proposal.
- 8.25 The **Environmental Control** Officer and the Contaminated Land Officer would require the imposition of conditions on a grant of planning permission.
- 8.26 **Natural England** has confirmed that it has no objection to the proposal on the basis of potential impacts on statutory nature conservation sites. The Council's attention is also drawn to standing advice with regard to protected species and also the opportunity to provide green infrastructure and biodiversity and landscape enhancements to improve the potential ecological value of the site.
- 8.27 ECC as **SUDS authority** has confirmed it has no objection to the proposal subject to the imposition of conditions on a grant of planning permission.
- 8.28 The **Environment Agency** has confirmed no objection to the application and has offered advice on drainage and sustainability. A copy of the letter was also forwarded to the applicant's agent by the Agency. Anglian Water

DC0901MW eV4

Authority did not comment on the proposal but did provide suggested conditions on the reserved matters application 160623. These have also been included in the list of recommended conditions for this application. If any further comments are received these will be reported at the Committee meeting

- 8.29 **Historic England** has advised that it does not wish to comment on the application.
- 8.30 When the Council's **Landscape Officer** was originally consulted on the proposals, additional information regarding landscape impacts was requested. This has since been supplied and the Officer has advised that no objection is raised subject to the imposition of conditions on a grant of planning permission.
- 8.31 Following on from archaeological investigation work being carried out on site and the absence of any finds of significance, the Council's **Archaeological Adviser** has no comment to make or conditional requirements relating to the proposals.
- 8.32 The Council's **Arboriculturalist** has confirmed that the proposals as amended i.e. incorporating the minor revision to the position of the Leisure Curve building, would not jeopardise the health of trees that are identified to be retained on the application site.

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

9.0 Parish Council Response

- 9.1 Myland Community Council made the following comment:

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

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

10.0 Representations

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

Barton Willmore on behalf of Tollgate Partnership

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

Metropolis on behalf of Odeon

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

GL Hearn on behalf of M&G Real Estate

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

CBRE on behalf of the owners of the Odeon cinema building

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

Colchester Bus Users Group

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

Colchester Cycling Campaign

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

- 10.2 As Members will recall, it was originally intended to report this application to the Committee meeting scheduled for 1st December 2016. However, prior to this meeting a further representation was received from Barton Willmore (on behalf of Tollgate Partnership Ltd) that included a QC's opinion that identified errors in the original report to Committee. The application was withdrawn from the Committee agenda as a result.
- 10.3 A third letter was received by Barton Willmore (on behalf of Tollgate Partnership Ltd) following the publication of the Supplementary Leisure Assessment received in support of the application by Carter Jonas. The following points (summarised) were made:
- The applicant continues to mis-apply the sequential test and the application should be refused
 - The Tollgate Village site is clearly available, suitable and viable for the proposed development.
 - The Council needs to ensure that the application is assessed on the same basis it approached the Tollgate Village scheme. This would include consideration of the impact effects of the cinema on the Town Centre sites and investment within the Town Centre.
 - The failure to undertake an impact assessment in relation to the other Class D2 leisure uses warrants refusal of the application.

Officer comment: the points summarised above are discussed in the relevant section of the report below.

- 10.4 A further representation of objection has been received from a local resident in which concern is expressed regarding light pollution problems experienced in south Boxted currently and the likelihood that the proposals would make this situation worse, and potential traffic problems. Development was supposed to be contained south of the A12 and this is encroachment further north.

Officer comment: the comments made are fully acknowledged and appreciated. The recommended conditions that would be attached to a grant of planning permission would include several that sought to control the type and level of lighting, together with the times when lights on buildings could be illuminated (to coincide with opening hours). With regard to the traffic impacts these have been assessed as part of the application process and Highways England and the Highway Authority do not object to the proposals – subject to conditions. Lastly, the application site is located to the south of the A12 trunk road.

- 10.5 The representations of support are summarised as follows:
- Colchester has grown and residents deserve new leisure facilities. This proposal will also increase Colchester's regional draw.
 - The development will be easier to access than those in the town centre and will provide employment opportunities.

- 10.6 The following comment has been received from Ward Councillor Goss:

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

11.0 Parking Provision

- 11.1 The proposed development would be served by 750 car parking spaces (including 38 spaces for disabled motorists) and 114 cycle parking spaces. Members are advised that if the *maximum* applicable standards were applied to each of the identified uses, based on the proposed floor spaces, the following would be the maximum number of spaces that would result:

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

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

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

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

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

‘...The proposed multi-storey car park will be managed by a car park operator company. It is proposed that the car park will be operated using automatic number plate recognition (ANPR) technology. ANPR cameras would be situated on each entry and exit lane. Payment equipment will be conveniently located in the pedestrian entrance lobbies of the car park. Tariffs will be payable for parking to minimise any potential abuse, however, bona fide customers will benefit from free parking by way of a validation scheme; customers will be able to obtain validation for their stay from one or more of the tenants’ outlets that they visit, be it restaurant, cinema or hotel, for example. A car park charging regime will be established that discourages on-site parking by non-site users. For non-customers (including those that do not validate), standard charges will apply for parking. This will ensure that use of the car park by home and away football fans visiting Colchester United’s adjoining ground is suitably controlled. A Car Park Management Plan (CPMP) will be prepared and implemented prior to occupation of the site. An initial CPMP is submitted in support of this application...’

12.0 Open Space Provisions

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

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

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

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

- 14.2 Members are also advised that following liaison between the applicant company, ECC and officers another element of the s106 agreement would seek to achieve the following Bus Service Level criteria (or variation that is agreed by ECC and CBC):

- Duration of service: 9:30hrs to 23:30hrs, Sunday – Thursday including Public Bank Holidays and to 00:30hrs Fridays and Saturdays. For clarity, the first buses should arrive at the site no later than 0930hrs and the last departures should be at or after 2330hrs or 0030hrs respectively.
- Frequency of service: at least every 30 minutes throughout the day 7 days per week
- Buses to call at stops within 400m actual walking distance (equivalent to a walk about 5 minutes) to the centre of the site
- Bus service to provide connection with Colchester town centre, Colchester railway station, and residential areas near the site
- Ability for integrated bus ticketing to allow for onward travel on other bus services in Colchester
- Real time information on bus services to be displayed at prominent locations within Colchester Northern Gateway development site.

- 14.3 Lastly the s106 agreement would include a clause whereby the developer would agree to sign a ‘no poaching’ agreement that would prevent relocations of Class A3 uses from the town centre to the application site.

15.0 Report

Land Use

- 15.1 As mentioned previously in this report, the application site for this proposal is located within the North Colchester Growth Area (formerly Cuckoo Farm) and forms part of an identified Regeneration Area. Additionally, the site is part of the North Colchester Strategic Employment Zone (SEZ). Previous analysis undertaken on behalf of the Council has established that this SEZ is the highest rated employment site (CBC Employment Land Needs Assessment 2015). In the case of the North Colchester SEZ the relevant adopted policy in the adopted Site Allocations document of the Local Development Framework is SA NGA3 – Employment Uses in the North Growth Area identifies the range of uses that would be acceptable in the SEZ as follows:
- (a) Research and Development, Studios, Laboratories, High-Tech (B1b), Light Industrial (B1c), General Industrial (B2), Storage and Warehousing (B8). Any such development will be restricted by way of condition to prevent change of use to B1a.
 - (b) Display, repair and sale of vehicles and vehicle parts, including cars, boats and caravans.
 - (c) Indoor sport, exhibition and conference centres.
 - (d) A limited amount of retailing only where this is ancillary to another main use in Class B1b, B1c, B2 or B8.
 - (e) Services and facilities to meet the needs of employees in the Employment Zone.
 - (f) Business Uses (B1, B1a) only where already consented
 - (g) *At Cuckoo Farm planning permission exists for a range of uses including an hotel (C1), a public house/restaurant (A3/4) a health and fitness centre (D2) and business units (B1). (Officer emphasis).*
- 15.2 Members will note that criterion (g) specifically reflects the range of uses that were approved as part of the outline application approval granted under O/COL/01/1622. This outline planning permission has now lapsed following the approval of reserved matters and part implementation (Stadium and David Lloyd Tennis) but the criterion in the policy remains and is therefore considered pertinent to the current application proposal. Additionally, the previous approval of the reserved matters application by the Council under planning application reference 160625 did establish the acceptability of the hotel facility and A3 uses on the current application site, together with the ancillary parking provision. Both these elements remain unchanged from the approved reserved matters submission, albeit that the amount of A3 floorspace proposed has reduced.

- 15.3 As main elements of the submitted application do not accord with the Local Plan land use allocation in the currently adopted local plan e.g. the proposed cinema and the food and beverage uses, the planning application has been advertised as a departure from the Plan. To reiterate, in the event that the recommendation to Members is agreed, the resolution on the proposal will have to be referred to the Secretary of State as a departure in order that a decision can be made as to whether the proposal is to be called-in for determination.
- 15.4 Given the SEZ allocation for the application site, a key issue to be addressed in the consideration of this planning application is the principle of the use of this land for the non- B class purposes as proposed. It is noted that the application submission does not seek to extend the area of the proposed leisure uses beyond that area established at the previous outline application stage. Additionally, the outline planning permission that incorporated the site for this proposal did allow a range of uses that were by their nature leisure-based, namely the Community Stadium, health and fitness centre, hotel, pub/restaurant and A3 units. In principle at least, it is fair to say that this *particular part* of the overall SEZ has been identified previously as being the focus of leisure-based activities within the adopted Local Plan. The Spatial Policy comment identifies the previously-established leisure 'focus' to this part of the SEZ as follows:
'...Policy NGA3 (g) clarifies that in the North Growth Area SEZ, the uses initially approved for the Community Stadium site in 2006 have established a willingness to include leisure uses on that part of the site to contribute to the overall mix and viability of commercial uses in the SEZ...'
- 15.5 With regard to employment land availability, subsequent to the adoption of the current Local Plan, and as part of the evidence base for the emerging replacement plan, further analysis of employment land availability in the Borough has taken place. The Spatial Policy comment identifies this issue as follows:
'...The extent of the B use allocation in the Northern Gateway SEZ reflects the Council's latest employment land supply and demand evidence, which is contained in the January 2015 Employment Land Needs Assessment and May 2017 Employment Land Trajectory. The 2015 study found that overall, Colchester had a sufficient quantitative supply of employment land to meet future demand to 2033...'

- 15.6 In relation to employment land availability generally, it is relevant that at a recent appeal decision relating to another non-conforming land use in a defined SEZ – at Stane Park in Stanway – the Inspector, in allowing the appeal to provide a non-industrial use on the site, made the following comments in relation to the provision of employment land in the Borough: ‘...The site forms part of an SEZ allocation in the development plan... The Colchester Employment Land Needs Assessment (Nathaniel Lichfield and Partners 2015) is the basis of the emerging local plan to 2032. This identifies a requirement in the range of 22 to 29.8 ha and a supply of almost 77 ha...the current position, as agreed at the Inquiry...is that there are about 65 ha of vacant employment land including SEZ and Local Employment Sites...It was further agreed at the Inquiry that the take up of employment land, based on the last 10 years economic cycle, is in the region of 1 ha per year. The agreed position, therefore, is that there is 65 years’ supply which the Council agreed constituted very substantially more than sufficient land. Based upon the agreed figures, that seems a fair conclusion...’
- 15.7 This position has recently been updated by the 2017 Employment Land Trajectory which sought to identify the employment land that was actually available and the best sites to meet demand for traditional uses over the plan period. The conclusion in that document is that there is 39.7 hectares of employment land that should be retained by allocation in the emerging Local Plan.
- 15.8 Members will also be aware that at the present time the Local Plan is undergoing a review in order to ensure that a new plan is in place to serve Colchester until 2033 and beyond. The emerging plan is at Publication Stage and can be afforded limited weight as a material consideration at this stage. It is useful for information, however, as it does demonstrate a ‘direction of travel’ with regard to the future development of the overall North Colchester area and the identified application site – one which recognises the inclusion of leisure uses.
- 15.9 In this regard the emerging Local Plan proposes the creation of sub-areas within the Borough’s SEZs. In the case of Colchester Northern Gateway the overall area is divided into three zones. The current application site is located within Zone 2 and this zone retains a leisure and community focus. The following text is included in the emerging plan: ‘...The area defined on the policies map as zone 2 (adjacent to the Stadium) is being developed by the Council as a leisure / community hub and will be safeguarded for a mix of uses including sport, leisure and recreation. Uses will be permitted where they clearly demonstrate the potential for job creation and provided that they do not undermine or constrain the main purpose of the economic function of the wider area. Uses may include an appropriate scale of leisure and commercial space, open space and green infrastructure to enhance connectivity. No retail use will be permitted unless it is ancillary to another use and meets the requirements of the sequential test and impact test if required...’
- 15.10 Notwithstanding the leisure-based focus of the development proposal it is the case that a significant amount of jobs would be provided as part of the

development proposals. Information submitted in support of the application estimates that approximately 550 FTE jobs would be created.

- 15.11 It is also of relevance that large parts of the SEZ have been taken up for employment uses e.g. Flakt Woods and that there would remain significant areas of the SEZ available for employment uses (to the east of the Via Urbis Romanae and to the south of Axial Way). Members will note the comments of the Spatial Policy team with regard to the principle of locating the proposed development on this site.
- 15.12 The emerging Local Plan also makes the following comments in relation to the Myland and Braiswick Neighbourhood Plan:
'...The Myland and Braiswick Neighbourhood Plan identifies the Northern Gateway proposals as having the potential to deliver an array of sport and leisure facilities which will provide much needed opportunities for sport and recreation and which will make an important contribution to the sustainability of the Myland area. The Plan indicates that Myland Community Council will work with Colchester Borough Council to ensure the proposed sport and leisure development area will help to satisfy resident aspirations...'
- 15.13 Members will be aware that the Myland and Braiswick Neighbourhood Plan has now been made and is formally adopted by the Council as a part of the development plan with statutory weight. It is therefore pertinent to highlight relevant statements in relation to the Northern Gateway area in order that the proposed future direction of development can be understood in this policy context. The plan includes the following comment:
- 15.14 *'...MCC and BRA identify the emerging Northern Gateway proposals as having the potential to deliver an array of sport and leisure facilities which will provide much needed opportunities for sport and recreation and which will make an important contribution to the sustainability of the Neighbourhood Plan Area...There is also a high demand for cultural aspects of leisure on a more local basis, for example performing arts, arts and crafts, further education, cinema and clubs of various types for all ages. These may be catered for in the promised community centres or may need to be found other dedicated venues...'*
- 15.15 The following policy statement is also included:
SPL1 – In harmony with active lifestyles afforded by greenspace provision MCC and BRA will encourage developers and CBC to enable the provision of sport and leisure facilities, as far as possible on the Chesterwell, Severalls Phase 2 and Northern Gateway developments.

Sequential and Impact Tests

- 15.16 The scheme submitted for Members determination clearly contains elements, i.e. the cinema, food and beverage and leisure/recreation uses that are defined as Main Town Centre uses in the NPPF. At paragraph 24 the NPPF states:
‘...Local Planning Authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale...’
- 15.17 The NPPF goes on to state:
‘...When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment...This should include assessment of...the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from when the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made...’
- 15.18 The original application submission to the Council included an Environmental Statement which incorporated a Leisure and Town Centre Policy Report (LTCPR). This original report assessed the impact of the proposed cinema only – it being deemed not necessary at that time to assess the impact of all the proposed uses as a larger quantum of these uses, in terms of floorspace, had previously been approved in principle under the outline application approval ref. O/COL/01/1622. However, in the light of legal opinion obtained by both officers and third parties, it was deemed necessary to widen the scope of the LTCPR assessment to consider the impact of all of the proposed town centre uses - not least since the application is a new full application proposal which has to be considered on its own merits. The applicant therefore provided a Supplementary Leisure Assessment (SLA) to accord with this requirement. This reassessment also incorporates an updated evidence base. Members are advised that the findings of the LTCPR and the subsequent SLA have been independently analysed and critiqued by Lichfields - having been appointed by the Council as Local Planning Authority to carry out this work.

- 15.19 The LTCPR identified locations where the amount of development proposed under the submitted scheme could take place. Bearing in mind the hierarchical nature of the sequential test, the preferred location for this type of development (incorporating as it does main town centre uses) would clearly be the town centre itself. Within the town centre the identified site that could physically accommodate the proposed development was that known as Vineyard Gate – located immediately to the south town centre core - a significant area of which is currently occupied by the Vineyard Street car park. This site is estimated to be able to accommodate approximately 55 000 sq. m gross floorspace. The forward planning intention is that this site ‘...makes a substantial contribution towards the regeneration of town centre retailing and help to ensure the pre-eminence of the Town Centre at the top of the Borough’s retail hierarchy...’ (*Source: Colchester Retail and Town Centre Study (RTCS) published in December 2016.*)
- 15.20 Although the future development of Vineyard Gate is intended to be retail-led there would be an ancillary provision of leisure-type uses to supplement the overall redevelopment offer. Nevertheless, the Vineyard Gate site was discounted as a realistic site to locate the proposed development, which is clearly a leisure-led scheme. This was on the basis that the area that would be taken up by the cinema, leisure and associated food and drink uses would in effect remove a significant amount of the available site area and undermine the Council’s aim to secure a retail-dominated scheme to complement the retail offer provided by Lion Walk to the north. No other sites were identified as being suitable and or available for the proposed development within the Town Centre or Town Centre fringe areas.
- 15.21 Leading on from this, the sequential, hierarchical approach then turns to edge of centre locations. In this regard the site identified as Tollgate Village has a centre/edge of centre position within the established locational hierarchy that includes District Centres. Members will be aware that a refusal of outline planning permission for a mixed-use retail-led scheme (that included a cinema) on the Tollgate Village site led to a public inquiry appeal earlier this year – the outcome of which is not known at the time this report was written. The decision of the Secretary of State is expected by the 7 August 2017.
- 15.22 The applicant’s analysis of the Tollgate Village site determined its *unsuitability* for the proposed development. This determination was based in part on the locational and operational needs of the proposed occupier of the cinema element of the development, namely Cineworld. In this regard the SLA states that Cineworld’s Property Director has commented as follows:
 ‘...The Northern Gateway scheme lends itself to one of these new generation regional destination cinemas. Put simply, the site is large enough to handle the specification required and with immediate access to the A12 and highly visible, it will be perfectly positioned to draw on the regional catchment required to support the investment...To position our new regional multiplex amongst complementary D2 offers...provides customers from the regional catchment within a combined destination leisure offer, second to none...’

15.23 Specifically, in relation to Tollgate Village the following comment is made by Cineworld:

‘...The Tollgate Village site is not of interest to us. It does not provide the easy access and visibility we require. Nor do we have any interest in opening a half height medium sized standard multiplex in a market already served by Odeon. The mixed use nature of Tollgate would also be a concern for us. We need to locate our best in class cinemas in specific leisure destination hubs. Tollgate is clearly a one stop trip for multiple uses and this would diffuse the best in class leisure message to our customers. The location also appears to compete more directly with the Town Centre. We would rather locate in schemes that complement the Town Centre.’ (Source: paras’ 4.8 and 4.9 – Addendum to Supplementary Leisure Assessment – Carter Jonas May 2017)

15.24 Bearing the above in mind, it is considered the *suitability* of a site for a proposed use is a primary consideration in terms of the sequential test – and that suitability includes the ‘real world’ considerations that inform the commercial decision-making process. This interpretation is based on *Tesco Stores Ltd v. Dundee CC* [2012] UKSC 13. As identified by the Spatial Policy Team, Planning Policy Guidance issued subsequent to the NPPF also comments specifically on this issue as follows:

‘...Use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations...’

15.25 With regard to the issue of suitability, *Tesco Stores* has established, subsequent to the publication of the NPPF, that if a site is not suitable for the commercial requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach. Secondly, the availability of alternative sites is to be considered on the basis of suitability of the use *as proposed*, not an altered or reduced development that could be ‘made to fit’ an alternative site.

15.26 The Critique undertaken on behalf of the Council by Lichfield’s has commented on the issue of suitability as follows:

‘The application site is out-of-centre and it is necessary to access town centre and edge of centre sites. The TV site is the only sequential site that can physically accommodate the proposed NG development. The TV site is available at least until the content of the reserved matters scheme becomes clear...’

15.27 This statement in refers to the fact that the proposed development at Tollgate Village is an outline planning proposal (currently pending a final determination by the Secretary of State) and in the event that the application is approved, it would be necessary for reserved matters application or applications to be submitted. The exact balance of the proposed uses would emerge through the submission of reserved matters.

- 15.28 With regard to the issue of the suitability of a site, and bearing in mind the clarification provided by case law, the Lichfield's Critique goes on to advise that:

'...In terms of suitability, in our view Cineworld's requirements in this particular case are important because there are no other cinema operators who would occupy a multiplex cinema of the size proposed. This is an important and robust market justification. Cineworld's legal commitment to the NG is not in itself a reason to discount the TV site, but supports Cineworld's statement regarding the suitability of the two sites. The NG site has more direct and less congested access from the A12 than the TV site and is more prominent and visible. Cineworld has unequivocally stated the TV site is not of interest.

A critical mass of Class A3-A5 uses will be needed to underpin the viability of the cinema and leisure uses. In our view it is doubtful the TV location can support around 9,000 sq.m of F&B floorspace, and on this basis the TV site could be considered to be unviable for the scale of development proposed at NG...The proposed [cinema] development is highly specific to a named operator with limited potential for other operators to occupy the scheme, we are satisfied the TV site can be discounted as unsuitable for the proposed development because it does not meet Cineworld's business needs and would be unviable for the mix of uses proposed. In our view, collectively, the evidence presented provides a robust justification that market and locational requirements mean the proposed development cannot be located at TV, and the sequential test has been satisfied..'

- 15.29 The sequentially preferable site at Tollgate Village is able to accommodate the proposed development, and is available. Nevertheless the Tollgate Village site does not meet the important test of *suitability* in that the retained operator of the cinema, i.e. Cineworld does not consider the Tollgate Village site to be *suitable* for its operational needs. In terms of the sequential test requirements in the NPPF it is consequently considered that these are met. Additionally it is noted that the Lichfields Critique comments on the issue of the viability limb of the sequential test as follows:

'...A critical mass of Class A3 – A5 uses will be needed to underpin the viability of the cinema and leisure uses. In our view it is doubtful the TV [Tollgate Village] location can support around 9 000 sq. m of F&B floorspace, and on this basis the TV could be considered to be unviable for the scale of development proposed at NG [Northern Gateway]...'

Your officers accept the Lichfields assessment in this regard.

- 15.30 Turning to the issue of impact of the proposed development on the Town Centre the Lichfield's Critique observes that *'...The implications of the NG [Northern Gateway] proposals cannot be considered beneficial to the town centre, but the benefits of linked trips may help to reduce the level of impact on the vitality and viability of the town centre. The net impact is likely to be negative but not significant...'*

- 15.31 Analysis of the potential cumulative impacts of the proposals was included in the applicant's SLA following legal opinion that this work must be carried out as part of the overall planning application submission. The further analysis involved updating of the evidence base. Lichfield's have considered the findings of the SLA and have also considered the impacts in line with its own evidence base.
- 15.32 Dealing first with the impact of the proposed development on the existing and proposed cinemas in the town centre, clearly the provision of a further cinema at the application site will have an impact. Members will note that the development proposal has given rise to objections on behalf of Odeon, on the basis that the proposed development would have a detrimental impact on that particular business. This facility is an established leisure element within the town. In consideration of this point the Lichfields Critique comments as follows:
'...In terms of the loss of cinema trips in the town centre...based on Lichfields figures, the residual number of trips attracted to the Odeon Cinema is still higher than the benchmark national average and we would not expect the Odeon cinema to close...'
- 15.33 Furthermore the Critique finds that the new Curzon cinema granted permission (with work having commenced to implement the permission) would not be jeopardised – the target market for this type of 'boutique' cinema being different to the target market for a multiplex facility. The Critique does acknowledge that the level of linked trips would reduce as a consequence (e.g. visits to the cinema combined with visits to food and beverage outlets) these trips would take usually place during evenings. However, *'...it is unlikely that the development will harm the retail function of the town centre during normal trading hours...'*
- 15.34 As regards the impact of the proposed food and beverage uses the Critique has considered this proposed scheme together with the scheme at Stane Park (allowed at appeal) which is a solely food and beverage-based development. The following comment is made:
'...Based on Lichfields' sensitivity analysis, the cumulative impact of Stane Park and NG [the current application site] would be offset by expenditure growth between 2016 and 2023 and the town centre should absorb the predicted levels of trade diversion. No significant harm to the vitality and viability of the town centre is anticipated...'
- 15.35 Importantly, the Critique also considers the likely cumulative impacts on the town centre were this proposed scheme, the Stane Park approval and the retail-led scheme at Tollgate Village (currently pending an appeal decision) to go ahead:
'...If F&B [food and beverage] schemes are implemented at Stane Park, NG and TV (maximum floorspace) then the cumulative impact on F&B facilities in the town centre could be -15.8%. In combination with the loss of cinema trips, this level of cumulative impact would be of concern, but it is unlikely the TV scheme will provide the maximum amount of F&B floorspace if the Stane Park and NG schemes are implemented. The TV scheme has not yet been approved and the precise mix of uses proposed is not known. TV is

expected to be a retail-led rather than a leisure-led scheme. If the Stane Park F&B scheme is implemented then the F&B content of the TV development is likely to be much lower and as a result the cumulative impact figure will be lower...'

- 15.36 To summarise, in the case of the current national and local policy base against which the application proposal must be judged, the provision of Town Centre uses per se on this application site within a defined SEZ is a departure from the Local Plan and the application has been advertised as such. In finding the proposals to be an acceptable departure from the current Local Plan, officers have been mindful of the relevant policy that identifies a range of leisure-based uses that have previously been allowed on land of which the current application site forms part. Additionally, although of limited weight as a material consideration, it is clear that the direction of the Local Plan with regard to the overall Colchester Northern Gateway suggests its identification as a sub-regional leisure destination. This is recognised in the Myland and Braiswick Neighbourhood Plan, which does form part of the adopted Local Plan. Recent analysis (forming part of the evidence base for the emerging plan) has found that the Borough does benefit from significant industrial/commercial land provision.
- 15.37 Leading on from this it is considered that the provision of the cinema element accords with the requirements of the NPPF Sequential Test as sites that are sequentially preferable are not suitable – and this suitability issue properly includes the commercial requirements of an applicant – and are not viable for the mix of uses that are proposed under this planning application that are required for the cinema use. Specifically, in relation to this point the Lichfield's Critique concludes that *'...In our view, collectively, the evidence presented provides a robust justification that market and locational requirements mean the proposed development cannot be located at TV (Tollgate Village), and the sequential test has been satisfied...'*
- 15.38 Additionally whilst there will be an impact on the town centre resulting from the development, the independent consultant's opinion in relation to the existing cinema provision in the town is that this would not result in closure of the Odeon or postponement of the Curzon facility. In combination with the proposed food and beverage uses, the main impact would be during the evening as opposed to daytime periods when the main retail function of the town would not be adversely impacted. The following comment is included within the Lichfields Critique:
'...Lichfields' impact sensitivity analysis...indicates that the solus and cumulative impacts of the NG application proposal with commitments will not have a significant adverse impact on Colchester town centre or other centres...'

Design, layout and scale

15.39 As set out in the adopted Core Strategy, North Colchester is expected to be the focus of significant new development within the Local Plan period. As identified elsewhere in this report specific policies for this planning application site are contained within the adopted Local Development Framework Site Allocations (adopted October 2010). Policy SA NGA1 – Appropriate Uses within the North Growth Area requires that ‘...All new development should seek to draw on the character of the existing landscape, within and adjacent to individual sites. Proposals should seek a comprehensive integration of identified existing and new green links and desire lines which link both public and private open spaces. All new development will be expected to provide on-site infrastructure as well as provide or contribute towards off site infrastructure improvements to ensure the North Growth Area objectives are achieved.’

15.40 The future development of the Colchester Northern Gateway site previously led to the creation of a ‘Vision’ document for the location – produced on behalf of the Council by Allies and Morrison. The vision document was approved by Cabinet in September 2012 and included the following key aspirations:

- A new gateway for Colchester
- A cutting edge destination for sport and leisure
- A distinctive place defined by memorable buildings and spaces
- An exemplary approach to sustainability

15.41 The location of this site at a ‘gateway’ to the town, requires a development of appropriate presence and quality in order to enhance the overall character of the area and ensure its attractiveness as a destination, both locally and regionally. This is reflected in the relevant Core Strategy policy UR2 – Built Design and Character which states the Council’s aim to secure high quality and inclusive design in all developments. Specifically the following statement is made in the policy ‘...High-quality design should also create well-integrated places that are usable, accessible, durable and adaptable. Creative design will be encouraged to inject fresh visual interest into the public realm and to showcase innovative sustainable construction methods...’

The architectural approach taken with the submitted scheme follows a contemporary character. In the context of the surroundings it is considered that this approach is appropriate. Firstly because the surrounding form of development follows, generally, a contemporary approach (for example the Community Stadium, David Lloyd Health and Fitness Centre, commercial development along Axial Way to the east and the restaurant facility to the north of the A.12 trunk road). Secondly, because the use of this type of architecture, within an extensive green ‘parkland’ setting has sufficient drama and presence. Elements such as curved forms and roofs give the buildings an ‘organic’ appearance. Furthermore the provision of a high-quality public realm, as part of a bespoke landscaping approach, would further augment the overall visual value of the scheme as a development proposal in this location.

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

gateway location in the town, and acting as a leisure destination. Clearly the established stadium building is of relatively significant scale; other building that has taken place thus far is admittedly smaller scale in comparison but in this setting still has considerable visual impact. In this context it is considered that the proposed group of buildings would not appear overly large or incongruous. Additionally the location of the buildings is such that they would not appear as an adjunct to existing development (save for the Stadium and the David Lloyd site), but rather as new built form within an essentially 'parkland' setting. It is considered that the scale and massing of the development is an appropriate design response within this type of setting. Of course, a key consideration is also the appearance and subsequent impact of the development when viewed from farther afield – in particular the nearby trunk road and the route of the Northern Approach Road.

- 15.47 In the case of views from the A12 it is case that the Stadium currently dominates views to the south around junction 28. Bearing in mind that the development would in all likelihood act as a sub-regional attractor, it is important that the scale of development is appropriate to the location to underpin its crucial role in the creation of a 'gateway' development, whilst at the same time not being visually overwhelmed by the Stadium. Additionally the proposed development would address the VUR, primarily through the hotel building. Any building in this location is required to have sufficient presence and impact and it is considered the scale of this building, together with its design, would satisfactorily ensure these objectives are achieved.

Impact on surroundings and neighbouring properties

- 15.48 In terms of the impacts of the proposed development on the surroundings and the amenity of neighbouring properties it is concluded that the proposal would not be unacceptably harmful. As advised above, it is considered that the visual impact of the proposal would be appropriate, given the location and function of the development. In terms of amenity impact (generated mainly, if not solely, by noise from traffic generated by and visitors to the development), it is considered that the proposal would be acceptable. It is the case that the environmental impacts of the development have been quantified through the Environmental Statement that accompanied the application submission. Therefore issues such as noise and air pollution were considered in detail.

15.49 The nearest existing development to the application site is the Stadium which is immediately to the west and the David Lloyd development that is to the south of the main part of the site, adjacent to the proposed footpath and cycleway link between United Way and Tower Lane. As a planning judgement it is considered that the proposed development would not have a deleterious impact on the amenity of these existing developments – not least due to their shared commercial nature. In terms of the nearest residential development, this is located along Bosted Road to the west, with an enclave located further north on this road, to the north of the trunk road. Significant newer residential development is located to the south east of the site – the nearest of which is the dwellings located at Oxley Parker Drive. In both cases it is considered that the relative remoteness of the development would mean that the amenity of the occupiers of these dwellings would not be unacceptably impaired by the proposed development. The future development of the Severalls hospital site to the south of the site will bring residential development nearer to the application site. Nevertheless it is not anticipated that the proposed development would have a detrimental impact on the amenity of the future occupiers of these dwellings. Again, the site is relatively remote and the Severalls site benefits from significant tree planting that would assist in filtering views, and hence the overall visual impact of the development.

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

Amenity Provision

15.51 Due to the nature of the development there is no policy requirement for the provision of private amenity as such. The key public element that would be secured as part of the proposal would be the extensive area of open space located at the centre of the proposed development, between the two groups of built form, which will have a significant role in establishing the overall character of the development as experienced by members of the public. The treatment of this space is therefore of fundamental importance as it has to have attractiveness as a facility, in which visitors would want to spend time.

15.52 The proposed open space consists of a variety of soft and hard landscape treatments that would include waterbodies, sculptures and street furniture that would also make an aesthetic contribution. The following extracts are

taken from the Landscape Strategy that forms part of the application submission:

‘...Soft landscaping will dominate the space, consisting of grassed landscape mounds and hollows, forming informal play areas and serving as a water storage area at times of heavy rainfall. Structure planting will provide a sense of scale to the space and form a microclimate. Seasonal variation in the planting will provide year round interest...The tree planting strategy is divided into five categories: avenue trees, street trees, waterside trees, buffer trees and ornamental trees...The aim is to plant 169 new trees that will complement the retained tree structure, proposed development, hierarchy of spaces and individual character...the furniture strategy seeks to reinforce the unique image of Colchester Northern Gateway and be robust, monolithic and fun in character. The furniture will articulate the brick, timber, metal palette of the buildings and hard landscape and create a contemporary look for the scheme...Public art strategy will form a large part of the public realm, providing a series of interactive pieces that encourage the public to linger, sharing the space with others and increasing a sense of community. Other pieces will provide links through the site to aid pedestrian legibility and orientation. The emerging art strategy aims to include opportunities for an open call to all artists to create artworks inspired by Colchester’s past, present and future for the site. Elements will include interactive art pieces and water fountains, playful benches enabling small children to play on. The landscape will also accommodate some of the internal activities externally, for example adventure golf or bouldering could spill outside...’

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

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

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

Highway Matters

- 15.55 As part of the application submission an assessment of the traffic impacts arising from the proposed development was included. This document inter alia also considered the issue of parking provision to serve the development. Members are advised that following on from analysis of the initial Traffic Assessment by consultants working for ECC Highways, further work has been carried out to address queries that had been raised by that Authority.
- 15.56 This has culminated in the Highway Authority advising that ‘...from a highway and transportation perspective the impact of the proposal is acceptable...subject to the following requirements...’ The Authority’s consultation response recommends the imposition of conditions that amongst other things deal with the provision of a bus service or services to serve the development. Clearly this is an important element of the overall proposals as the development site would need to be served by a substantive and integrated public transport service. Additionally the provision of a regular service link with the town centre would encourage linked trips that would be of benefit to the town centre economy. In this regard, Members will note the parameters of the required service that have been established through discussion with ECC and liaison with the applicant company. To summarise this would include a service or services that achieved the following:
- 15.57 a) Duration of service: 9:30hrs to 23:30hrs, Sunday – Thursday including Public Bank Holidays and to 00:30hrs Fridays and Saturdays. For clarity, the first buses should arrive at the site no later than 0930hrs and the last departures should be at or after 2330hrs or 0030hrs respectively.
b) Frequency of service: at least every 30 minutes throughout the day 7 days per week
c) Buses to call at stops within 400m actual walking distance (equivalent to a walk about 5 minutes) to the centre of the site
d) Bus service to provide connection with Colchester town centre, Colchester railway station, and residential areas near the site
e) Ability for integrated bus ticketing to allow for onward travel on other bus services in Colchester
f) Real time information on bus services to be displayed at prominent locations within Colchester Northern Gateway development site.
- 15.58 It is considered that the level of service that is proposed would represent an appropriate response to ensure that the application site is properly accessible by a mode of transport other than the car. Members will also appreciate that as further development proposals emerge in the overall Northern Gateway area the provision of a bus service will no doubt have to be adapted as part of a holistic approach. This level of service represents the initial stage in this ongoing process.

Other Matters

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

16.0 Conclusion

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

DC0901MW eV4

Lichfields and legal opinion on the scope of the original report) that consider the sequential issues pertaining to the proposals, as well as a qualitative impact analysis. The reports conclude that there is no other sequentially preferable suitable site that the development proposed under this application could locate to.

- 16.5 The reports have been independently assessed by Lichfields and their assessment has found that the sequential tests in the NPPF are met.
- 16.6 Leading on from this the Council's policy aspirations for development at the Northern Gateway are to create a place of appropriate status, reflecting its emerging role as a sport and leisure destination. The facilities proposed on the application site will be a key element within the overall concept, and the quality of development must attain an appropriate standard. It is considered that the submitted scheme achieves this aim. The buildings themselves are of a scale and design appropriate to the setting and would as a whole create the desired gateway leisure destination to be established here i.e. visually dramatic structures within a landscaped setting. Furthermore the open spaces serving the development should encourage interaction and involvement in their own right and, again, it is considered that the submitted proposals demonstrate that this will be successfully achieved. Additionally, the proposal does represent an opportunity to deliver economic growth with employment opportunities.
- 16.7 A s.106 package has been identified that would mitigate the impacts of the development. This includes a significantly improved bus service provision to ensure that the site can be accessed via a non-car mode by both customers and employees. Additionally the scheme proposes to create a link with the wider existing Public Right of Way network which would encourage visits to the site by foot and cycle. Given the pending growth of residential development in the vicinity of the application site, in particular at the former Severalls hospital site, it is felt that this improvement will prove increasingly important in the future.
- 16.8 On the basis of the above the officer recommendation to Members is to approve the planning application, subject to the s106 agreement being secured, and also subject to the list of conditions that have been included at the end of this report.

17.0 Recommendation

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

1. APPROVE subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not

signed within 6 months, to delegate authority to the Head of Environmental and Protective Services to refuse the application, or otherwise to be authorised to complete the agreement to provide the following:

A Bus Service Level criteria (or variation that is agreed by ECC and CBC) that achieves:

- Duration of service: 9:30hrs to 23:30hrs, Sunday – Thursday including Public Bank Holidays and to 00:30hrs Fridays and Saturdays. For clarity, the first buses should arrive at the site no later than 0930hrs and the last departures should be at or after 2330hrs or 0030hrs respectively.
 - Frequency of service: at least every 30 minutes throughout the day 7 days per week
 - Buses to call at stops within 400m actual walking distance (equivalent to a walk about 5 minutes) to the centre of the site
 - Bus service to provide connection with Colchester town centre, Colchester railway station, and residential areas near the site
 - Ability for integrated bus ticketing to allow for onward travel on other bus services in Colchester
 - Real time information on bus services to be displayed at prominent locations within Colchester Northern Gateway development site.
- Agreement with regard to target a training and recruitment strategy including a number of job opportunities in leisure and hospitality aimed at jobseekers/returners/college leavers in the Borough
 - Funding to provide three wireless CCTV cameras to cover the site. If the Applicant is to provide cameras agreement would be sought to agree real time monitoring
 - Contribution to ensure litter from site does not impact upon amenity outside of the site.
 - Inclusion of a 'no poaching' agreement that will prevent relocations of food and beverage uses from the town centre to the application development.

17.2 On completion of the legal agreement, the Head of Service be authorised to grant planning permission subject to the following conditions, with delegated authority to revise as may be necessary:

18.0 Conditions

1 - Time Limit for Full Permissions

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

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

2 – Non-Standard Condition/Reason - Development to Accord With Approved Plans and submitted documents.

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

- C108/P101 - Location Plan (Planning Boundary)
- C108/P102 - Existing North Site Plan
- C108/P103 - Existing South Site Plan
- C108/P104 pl1 - Site Plan
- C108 P105 pl1 - Detailed Site Plan
- C108/P106 - Proposed Car Park Plans
- C108/P107 - Cinema and Inline Restaurants Ground Floor Plan
- C108/P108 - Cinema and Inline Restaurants Auditorium and First Floor Plan
- C108/P109 - Cinema and Inline Restaurants Lower Projection Level Plan
- C108/P110 - Cinema and Inline Restaurants Upper Projection Level Plan
- C108/P111 - Cinema and Inline Restaurants Plant Well Level Plan
- C108/P112 - Cinema and Inline Restaurants Roof Plan
- C108/P113 - Cinema and Inline Restaurants Roof Plan
- C108/P114 - Cinema and Inline Restaurants Section CC
- C108/P115 - Cinema and Inline Restaurants East and South Elevations
- C108/P116 - Cinema and Inline Restaurants West and North Elevations
- C108/P117 pl1 - Leisure Curve Ground Floor Plan
- C108/P118 pl1 - Leisure Curve First Floor Plan
- C108/P119 pl1 - Leisure Curve Sections AA and BB
- C108/P120 pl1 - Leisure Curve West and South Elevations
- C108/P121 pl1 - Leisure Curve East and North Elevations
- C108/P122 pl1 - Hotel Ground Floor Plan
- C108/P123 pl1 - Hotel First and Second Floor Plan
- C108/P124 pl1 - Hotel Third Floor Plan
- C108/P125 pl1 - Hotel Fourth Floor Plan
- C108/P126 pl1 - Hotel East and South Elevations
- C108/P127 pl1 - Hotel West and North Elevations
- C108/P128 pl1 - Leisure Curve and Hotel Roof Plan
- C108/P129 pl1 - Site Sections - Sections 1 and 2
- C108/P130 pl1 - Site Sections - Sections 3 and 4
- C108/P131 - Bin Enclosure
- C108/P132 - Substation Enclosure

- C108/P133 - Inline Units Detailed Part East Elevation
- C108/P134 - Inline Units Detailed Part South Elevation
- C108/P135 pl1 - Detailed Part Leisure Curve Elevation - Two Storey Elevation
- C108/P136 pl1 - Detailed Part Leisure Curve Elevation - Double Height Elevation #
- C108/P137 pl1 - Detailed Part Elevation - Hotel Entrance
- C108/P138 pl1 - Detailed Part Elevation - Hotel South and East Elevation
- C108/P139 - Car Park Facade Conditions Elevation and Section Details
- C108/P144 - Leisure Curve North and South Elevation (roof overhang cutback)
- 595_PL_006 P02 - GA Plan
- 595_PL_007 P02 - Rendered Landscape Plan
- 595_PL_008 P02 - Site Wide Rendered Plan
- 595_PL_009 P02 - Cycle Expansion Plan
- MMD-360079-E-DR-00-XX-2701 - External Lighting Layout

Furthermore the development shall be carried out in accordance with all documentation and reports submitted in support of the application (including amended versions where applicable).

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

3 - *Access for Disabled Persons

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

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

4 - Materials to be Agreed

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

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

5 - Surfacing Material to be Agreed

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

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

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

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

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

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

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

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

8 - Refuse and Recycling As Shown

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

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

9 - Communal Storage Areas

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

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

10 - Litter

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

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

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

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

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

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

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

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

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

No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall subsequently be implemented as approved in accordance with a timescale previously agreed in writing with the Local Planning Authority. Reason: The National Planning Policy Framework paragraph 103 states that Local Planning Authorities should ensure flood risk is not increased elsewhere by development.

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

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

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

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

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

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

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

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

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

17 - *Full Landscape Proposals TBA

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

- PROPOSED FINISHED LEVELS OR CONTOURS;
- MEANS OF ENCLOSURE;
- CAR PARKING LAYOUTS;
- OTHER VEHICLE AND PEDESTRIAN ACCESS AND CIRCULATION AREAS;
- HARD SURFACING MATERIALS;
- MINOR ARTEFACTS AND STRUCTURES (E.G. FURNITURE, PLAY EQUIPMENT, REFUSE OR OTHER STORAGE UNITS, SIGNS, LIGHTING ETC.);
- PROPOSED AND EXISTING FUNCTIONAL SERVICES ABOVE AND BELOW GROUND (E.G. DRAINAGE POWER, COMMUNICATIONS CABLES, PIPELINES ETC. INDICATING LINES, MANHOLES, SUPPORTS ETC.);
- RETAINED HISTORIC LANDSCAPE FEATURES;
- PROPOSALS FOR RESTORATION;
- PLANTING PLANS;
- WRITTEN SPECIFICATIONS (INCLUDING CULTIVATION AND OTHER OPERATIONS ASSOCIATED WITH PLANT AND GRASS ESTABLISHMENT);
- SCHEDULES OF PLANTS, NOTING SPECIES, PLANT SIZES AND PROPOSED NUMBERS/DENSITIES WHERE APPROPRIATE; AND
- IMPLEMENTATION TIMETABLES AND MONITORING PROGRAMS.

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

18 - Landscape Management Plan

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

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

19 - Earthworks

No works shall take place until details of all earthworks have been submitted to and agreed, in writing, by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. The development shall thereafter be carried out in accordance with the approved details.

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

20 - Tree and Natural Feature Protection: Protected Areas

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

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

21 - Tree and Natural Feature Protection: Entire Site

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

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

22 - Tree Canopy Hand Excavation

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

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

23 - Public Art

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

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

24 - Construction Method Statement

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

the parking of vehicles of site operatives and visitors;

hours of deliveries and hours of work;

loading and unloading of plant and materials;

storage of plant and materials used in constructing the development;

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

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

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

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

25 - Limits to Hours of Work

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

Weekdays: 8am - 6pm

Saturdays: 8am - 1pm

Sundays and Public/Bank Holidays: Not at all

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

26 - *Restriction of Hours of Operation

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

Weekdays: 6:30am - 2:00am

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

The hotel will be a 24 hour use.

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

including from people entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

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

27 - *Restricted Hours of Delivery

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

Saturdays: 0800 - 1900

Sundays and Public Holidays: Not at All

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

28 - Food Premises (Control of Fumes and Odours)

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

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

29 - Grease Traps Required

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

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

30 - Site Boundary Noise Levels

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

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

31 - Restriction of Amplified Music

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

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

32 - Self-Closing Doors

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

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

33 - Sound Insulation on Any Building

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

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

34 - *Light Pollution for Major Development

Prior to the first use of the development hereby permitted, a validation report undertaken by competent persons that demonstrates that all lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) fully complies with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ3 SMALL TOWN CENTRES OR URBAN LOCATIONS shall be submitted to, and agreed in writing by, the Local Planning Authority. Any installation shall thereafter be retained and maintained as agreed therein.

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

35 - Details of Floodlighting

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

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

36 - Illuminated Signs

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

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

37 - External Light Fixtures TBA

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

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

38 - Non-Standard Condition/Reason – External Lighting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 39, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 40, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 41.

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

43 - *Validation Certificate

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

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

44 - Oil Interceptor Required

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

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

45 - Ecological Survey

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

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

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

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

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

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

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

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

48 – Non-Standard Condition/Reason – Construction Management Plan

Prior to commencement of the development a construction traffic management plan, to include but 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.

49 – Non-Standard Condition/Reason – Public Transport Improvements

No commencement of the development shall take place until details of the following have been submitted to and approved in writing by the Local Planning Authority:

- a) a bus service or services or a contribution towards a public transport strategy for the site and surrounding area
- b) on site bus stop locations and specification
- c) any required new off site and/or improved existing off site bus stops
- d) any required on site bus turn round and/or layover facilities (temporary and/or permanent) and;
- e) a crossing facility or facilities in United Way

No occupation of the development shall take place until the agreed details have been provided.

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.

50 – Non-Standard Condition/Reason – Visibility Splay requirement

Prior to occupation of that part of the development which utilises it, the access off United Way at its centre line shall be provided with a minimum 2.4 x 70 metre visibility splay to the right, as measured from and along the nearside edge of the carriageway. There shall be no obstructions within the splay more than 600 mms in height.

Reason: To provide adequate inter-visibility between vehicles using the access and those in existing highway in the interest of highway safety.

51 – Non-Standard Condition/Reason – Highway Improvements and Sustainable Travel Modes

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

- a) The vehicle access arrangements, including lay-by in United Way, as shown in principle on the planning application drawings (with the exception of the matter referred to under item 3 above)
- b) Lane re-designation road markings and signs on the Via Urbis Romanae north and south approach to the United Way/Axial Way roundabout as shown in principle on the planning application drawings
- c) The cycle and pedestrian arrangements as shown in principle on the planning application drawings

- d) A travel plan to include but shall not be limited to a Travel Plan Co-ordinator and £3,000 contribution to cover the Highway Authority's costs to approve, review and monitor the Travel Plan

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.

19.0 Informatives

(1) ZT0 – Advisory Note on Construction & Demolition

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

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

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

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

(4) – Informative on any application with a site notice

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

(5) Informative on Noise and sound Insulation Competent Persons

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

(6) – Informative on Section 106 agreements

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

(7) – Informative on works affecting Highway land

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

(8) Informative on Public Rights of Way

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

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

(9) – Informative on Bats

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

(10) Non Standard Informative

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

(11) - Non Standard Informative

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

(12) - Non Standard Informative

An application to discharge trade effluent must be made to Anglian Water and must have been obtained before any discharge of trade effluent can be made to the public

sewer. Anglian Water recommends that petrol / oil interceptors be fitted in all car parking/washing/repair facilities. Failure to enforce the effective use of such facilities could result in pollution of the local watercourse and may constitute an offence. Anglian Water also recommends the installation of a properly maintained fat traps on all catering establishments. Failure to do so may result in this and other properties suffering blocked drains, sewage flooding and consequential environmental and amenity impact and may also constitute an offence under section 111 of the Water Industry Act 1991.

(13) – Non Standard Informative

The proposal should be in accordance with the Parking Standards Design and Good Practice Supplementary Planning Document dated September 2009.

