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Item No: 7.1

Application: 230031
Applicant: Mr John Beton
Agent: Mr Robert Pomery
Proposal: Application for variation of condition 2 following grant of planning permission of application 212888 (DAYLIGHT AND SUNLIGHT REPORT RECEIVED)
Location: Land between, 7 & 15 Marlowe Way, Colchester, CO3 4JP
Ward: Prettygate
Officer: Chris Harden

Recommendation: Authority to Approve subject to consideration of any further consultation responses received and completion of a new Unilateral Undertaking.

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it has been called in by Councillor Buston who raises the following concerns:

1. Over development

2. Ignoring the Planning Conditions imposed in 21 2888 approved 21 Apr 21

3. Development over a former publicly accessible Open Green Space

4. The previous Application for development on this site (21 0304) was dismissed on 10 Sep 21 , citing , as reason for dismissal (inter alia) :

" 1. The proposed three dwellings, by reason of their detailed design, form and scale (including being higher than the adjacent properties) would be out of keeping with and harmful to the character of the established street scene and surroundings."

Thus that the current buildings have been erected on the site without reference to the plans Approved in 21 2888 , in particular the height of these buildings .

Policies UR 2 and DP1 , and the (Borough) Council's adopted "Backland & Infill Development" SPD, are in particular infringed.

2.0 Synopsis

2.1 The key issue for consideration is the relationship of the new elevations as built with the previously approved dwellings in relation to neighbouring properties, particularly in respect of the comparative height which has been corrected on the street scene drawings to show the neighbouring properties at the correct, lower height (condition 2 of 212888) compared to the previous approval.

2.2 The application is subsequently recommended for authority to approve subject to finalisation of a new Unilateral Undertaking to secure relevant contributions. In summary, the site is within the settlement limits and is in a sustainable location so remains in accordance with latest adopted Local Plan settlement Policy. On the previously approved scheme, the neighbouring properties were drawn taller than they exist and the street scene drawings showed the three new dwellings with roof ridge heights no higher than the neighbouring dwellings. This application corrects the street scene plan to show the neighbouring dwellings at their correct height and the relationship as constructed on site.

2.3 It is considered that the newly constructed dwellings are now shown correctly and modestly higher than the neighbouring dwellings does not undermine the character of the street scene in a significant or material way. They are not considered to be overly dominant in the street scene and remain relatively modest in height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings. Consequently, it is not considered that a refusal can be justified or sustained on the grounds that the new dwellings as built are between 0.587 and 0.715 metres higher than the neighbouring properties.

- 2.4 Other issues relating to the application including impact upon neighbouring residential amenity, layout, design, impact upon vegetation, provision of amenity space and highway issues remain acceptable.

3.0 Site Description and Context

- 3.1 The site lies within the settlement limits and was partly a gap site comprising an open grassed area with two TPO'd trees. It lies within an established housing estate that dates from the late 60's early 70's. Adjacent to the site are two storey dwellings on either side and to the rear is the property known as Lexden Manor which has received permission for extension works and conversion. Residential development on the site for three dwellings approved under 212888 is advanced, including up to roof ridges for each dwelling. The TPO trees have been retained.

4.0 Description of the Proposal

- 4.1 The current application is for variation of condition 2 following grant of planning permission of application 212888. Application 212888, which was approved at the Planning Committee was for the construction of three No. 4-bedroom detached houses, each with an integral garage, plus individual private driveways connecting to Marlowe Way. It included the demolition of a modern brick boundary wall to Lexden Manor, which had already been partly removed. This element was permitted development. The two protected (TPO) trees at the front of the site would be retained. Street scene elevation drawings were submitted that showed the new dwellings were no proposed to be no taller than the existing neighbouring properties on either side of the site, as displayed at the Planning Committee.
- 4.2 During construction of the approved scheme 212888 it has become apparent that the roof ridge heights of the newly constructed dwellings are higher than the ridge height of the neighbouring. Instead of being in line with the roof ridge height of the neighbouring properties the new dwellings appeared higher. This is as a result of the neighbouring property heights not shown correctly on the approved street view drawings.
- 4.3 The agent has submitted front elevation street scene drawings showing the following:
- Plot 1 built to 7.790 m to roof ridge, +0.715m higher than the adjacent No. 7
 - Plot 2 built to 7.790 m to roof ridge
 - Plot 3 built to 7.671 m to roof ridge, +0.587m higher than the adjacent No. 15
- 4.4 As condition 2 of the planning approval states that the development must be built in accordance with the approved drawings this application is now for

variation of condition 2 (approved drawings) in order to reflect what has currently been built on site in relation to neighbouring properties and thusly the accurate height of the existing neighbouring properties.

4.5 In the submitted planning statement the agent states:

“The drawing of relevance to this matter is 6817 / 1606 Rev E, which shows an illustrative streetscene. The drawing illustrates the proposed houses with a height or ridgeline, which is marginally lower than the two dwellings that flank the site, nos. 7 and 15 Marlowe Way. As built, the ridgeline of each house is now slightly taller than was illustrated on the streetscene drawing 6817 / 1606 Rev E, and taller than the two neighbouring dwellings nos. 7 and 15. As the houses have taller ridge lines than those shown in the approved drawing 6817 / 1606 Rev E, it can be said that the dwellings have not been carried out in accordance with the details shown on the submitted drawings. Therefore, this change from the approved plan needs to be regularised via an application to vary condition 02, to substitute approved plan 6817 / 1606 Rev E with the proposed plan 6817 / 1612, which illustrates the houses as built.”

4.6 In additional information submitted the agent also states: “the dimensions from the ridge to the DPC on each of the as built properties is broadly the same as the approved elevation drawings for each plot. That said, there is some minor variation, but it is inconsequential. Plots 1 & 2 are 116mm (4.5 inches) taller, so the height of one brick and Plot 3 is 3.0mm lower than was approved, so de minimis in planning terms.”

4.7 It should also be noted that in addition, through consultation on this application, a resident has highlighted a further inconsistency with the approved drawings in relation to the gap between no. 7 Marlowe Way and Plot 1 of the development. This relates to approved drawing 6817/1105 Revision A, which was a drawing submitted showing the proposed layout of the development, including spaces between neighbouring dwellings.

4.8 In response to this issue the agent states “This drawing was based on a digital Ordinance Survey map (OS map), purchased from a licensed seller of Ordinance Survey data. Since raising this concern, the applicants have looked into the point made by the resident and have discovered that the Ordinance Survey information is inaccurate, this is not unusual, as Officers will know; the OS map data is not a topographical survey. The resident is correct to point out that the gap between properties shown on drawing 6817/1105 Revision A, was 4.888m. The actual as built gap recently measured is actually 4.382m. It has been discovered that no. 7 is not shown on the OS Map in its correct position, it is in fact 506mm closer to the common boundary than is shown on the OS Map. This accounts for the discrepancy identified by the resident, however, what is important, is that Plot 1, is positioned no closer to the common boundary with no. 7, than was approved and that the gap remains consistent with the spaces between dwellings in the location.”

4.9 A Daylight/Sunlight report has also been submitted.

5.0 Land Use Allocation

5.1 Settlement Limits

6.0 Relevant Planning History

6.1 212888 Construction of three 4-bedroom detached houses, each with an integral garage, plus individual private driveways connecting to Marlowe Way. Retention of two TPO trees. - Approved

6.2 210304 Demolition of brick boundary wall to Lexden Manor. Construction of three 4-bedroom detached houses, each with integral garage, plus individual private driveways connecting to Marlowe Way. Retention of two TPO trees.

Refused: *"The proposed three dwellings, by reason of their detailed design, form and scale (including being higher than the adjacent properties) would be out of keeping with and harmful to the character of the established streetscene and surroundings."*

6.3 210331 land adj Lexden Manor – Erection of 1 No.5 bed house. Approved & implemented.

6.4 192337 Conversion of Lexden Manor to create 5 flatted units. Approved

6.5 COL/89/1308, Conversion of the main dwelling into flats and additional cottages and apartments in the grounds. Refused. Appeal dismissed

7.0 Principal Policies

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

7.2 Local Plan 2017-2033 Section 1

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

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP4 Meeting Housing Needs
- SP6 Infrastructure & Connectivity
- SP7 Place Shaping Principles

7.3 Local Plan 2017-2033 Section 2

Section 2 of the Colchester Local Plan was adopted in July 2022. The following policies are of relevance to the determination of the current application:

SG1 Colchester's Spatial Strategy
SG2 Housing Delivery
SG5 Centre Hierarchy
SG6a Local Centres
SG7 Infrastructure Delivery and Impact Mitigation
SG8 Neighbourhood Plan
ENV1 Environment
ENV3 Green Infrastructure
ENV5 Pollution and Contaminated Land
CC1 Climate Change
PP1 Generic Infrastructure and Mitigation Requirements
DM1 Health and Wellbeing
DM2 Community Facilities
DM3 Education Provision
DM4 Sports Provision
DM9 Development Density
DM10 Housing Diversity
DM12 Housing Standards
DM15 Design and Amenity
DM16 Historic Environment
DM17 Retention of Open Space
DM18 Provision of Open Space and Recreation Facilities
DM19 Private Amenity Space
DM20 Promoting Sustainable Transport and Changing Travel Behaviour
DM21 Sustainable Access to development
DM22 Parking
DM23 Flood Risk and Water Management
DM24 Sustainable Urban Drainage Systems
DM25 Renewable Energy, Water Waste and Recycling

7.4 Some "allocated sites" also have specific policies applicable to them but this is not applicable to this site.

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

The Essex Design Guide
External Materials in New Developments
EPOA Vehicle Parking Standards
Backland and Infill
Affordable Housing
Community Facilities
Open Space, Sport and Recreation
Sustainable Construction
Cycling Delivery Strategy
Urban Place Supplement
Sustainable Drainage Systems Design Guide
Street Services Delivery Strategy

7.6 5 Year Housing Land Supply

Section 1 of the Colchester Local Plan 2017-2033 was adopted by the Council on the 1 February 2021, with Section 2 being adopted in July 2022. The complete Local Plan carries full statutory weight as the development plan.

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

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

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

The Council's latest published Housing Land Supply Annual Position Statement (July 2022) demonstrates a housing supply of 5,074 dwellings which equates to 5.25 years based on an annual target of 920 dwellings (966 dwellings with 5% buffer applied) which was calculated using the Standard Methodology. This relates to the monitoring period covering 2022/2023 through to 2026/27.

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

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

8.0 Consultations

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

8.2 Highway Authority states:

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

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

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org.

8.3 Environmental Protection has “No comments.”

8.4 Tree Officer has raised no concerns.

8.5 Archaeologist has raised no concerns.

9.0 Parish Council Response

9.1 Not parished.

10.0 Representations from Notified Parties

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

10.2 **11 letters of objection** have been received which make the following points:

- Architectural drawings do not fully represent close proximity of plot 3 to 15 Marlowe Way and don’t clearly state what the measurement differential is for the higher ridge line compared to neighbouring properties.
- Application claims that neighbouring properties are marginally impacted by the revised height but no evidence to support that claim.
- Planners, committee and neighbouring properties need to see the BRE sunlight report before we can comment or decide on this application.
- House on plot 3 is 1 metre from the boundary of the existing neighbouring property (at the front of the build) and is a good 2-3 metres advanced of the living areas of 15 Marlowe Way. The higher ridge line on the gable end building on plot 3 may impact the amount of daylight in the living areas of that house.
- Bricks and design are totally out of keeping with the estate.
- clear when entering the estate that the roofs of the new houses are clearly not in align to the existing houses;
- Not aware that windows were going to be on the side of the first house; again not in keeping with the estate.
- Regulations need to be upheld by the project managers rather than allow new houses to be built which are clearly higher than stated in the plans. They must have known the height before they put the roofs on as now difficult to remove and we are left with their mistake.
- Development on a plot that is far too small.

- House will overlook others
- The plot has been used to hold communal events, since to my knowledge the 1970s this open space would be a great loss to local people.
- Gross, over development. Open spaces are at a premium due to the rising population Should be preserved for future generations.
- Speculative proposal.
- Ruins the open aspect which we now have and promoting more on.
- Street parking
- Houses are currently taller than permitted. Taller than all the other houses in the street.
- Extremely dominating and harmful to the character of the established street scene and surroundings.
- Original plans submitted by the developer featured houses that were taller than all the existing houses. This was refused.
- Enforcement action should now be taken so that these buildings reflect the drawings presented by the developer on which permission was granted.
- Deliberate flouting of the regulations. What are the penalties? Has this company done this before?
- Planning statement completely ignores the Planning Committees rationale for refusal of their original application for this site under reference 210304.
- Height of the three dwellings is closer to original application reference 210304.
- "Daylight and Sunlight Report" does not specifically address the increase in height.
- Report that is commissioned by a developer will favour their position.
- No doubt neighbouring properties had a lot of sunlight throughout the year but have probably now lost 100% of sunlight into back gardens during the winter equinox.
- Why has the report totally ignored the other neighbouring property apart from the overshadowing to garden (ie Garden 5 of Lexden Manor)?
- Single story area at the rear of the properties, which again looks higher than the drawing approved by the Committee.
- Hope the committee stand up and make an example of developer and their professional advisors for blatant reach of planning permissions.
- Drawings are now known to be misleading, evident from the houses ridge heights being considerably higher than those either side.
- Built position of no. 9 is not in accordance with approved documents. The drawing, entitled Proposed site plan dated Sept/2021 revision A 6817/1105, of the planning permission shows a measurement between the houses which promised a distance of 4.888 meters at the closest point. A very specific dimension shown in red. This measurement has now been checked by me and the new house found to be some 0.548 metres (1.8 feet) closer.
- Not known if the daylight calculations were based on actual as built dimensions or those shown on the drawing.

10.3 **One letter of observation** states:

- Question if additional height significantly affects the appearance of the buildings.

- Appreciate that those living immediately adjacent to the site may feel differently, but new ridge line is not excessively above the adjacent roof lines, certainly nothing like the original plans that were refused.
- To make alterations at this stage will both delay period of construction and are likely to affect the simple lines that currently exist. Rather than carry out major alterations could Developer be asked to offer local community an upgrade in landscaping in and around site?

11.0 Parking Provision

11.1 2 car parking spaces per dwelling.

12.0 Accessibility

12.1 With regards to the Equalities Act, the proposal has the potential to comply with the provisions of Policy DM21 (Sustainable Access) which seeks to enhance accessibility for sustainable modes of transport and access for pedestrians (including the disabled), cyclists, public transport and network linkages.

13.0 Open Space Provisions

13.1 N/A

14.0 Air Quality

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

15.0 Planning Obligations

15.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team. A Unilateral Undertaking is required to secure the appropriate contributions.

16.0 Report

Principle

16.1 The principle of three dwellings on this site has previously been approved under application 212888. Since the time of the previous approval, the new Local Plan has been fully adopted and the former Local Plan fully superseded. However, settlement policies remain essentially the same in respect of this application. Thus the site remains within the settlement limits and Policy SP1 of the Local Plan aims to direct such development to the most sustainable locations such as this site. Accordingly the proposal should be judged on its planning merits, having regard to the difference between the current application and the previously approved plans. The differences relate to the neighbouring dwellings not being shown at the correct relative height on the approved street scene drawing and the neighbouring dwelling of No.15 not being correctly plotted, as detailed in the introduction section of this report. The layout, scale and design section of this report below will assess these differences and the planning implications.

16.2 It should be noted that the NPPF indicates a presumption in favour of sustainable development (which includes this site). The Council is able to demonstrate a five year housing land supply and as such paragraph 11(d) of the NPPF is not engaged.

16.3 For information, Appendix 1 contains an extract of the Committee report for the previously approved 212888 which explains why it was considered acceptable to develop on this partly open site with the three dwellings.

Layout, Scale and Design in respect of differences between the approved street scene and layout drawings.

16.4 The heights of the three dwellings is essentially deemed to be virtually the same as previously approved. Just to reiterate, Plots 1 & 2 are 116mm taller, and Plot 3 is 3.0mm lower than was approved. These minor differences are normally considered as de-minimis in planning terms, and generally an allowance of up to 300 mm is considered to be de-minimis and not requiring any enforcement action in respect of compliance with approved plans. Accordingly, the height of the dwellings as constructed is deemed to accord with the approved plans.

16.5 The key issue is therefore consideration of the incorrect height plotting of the neighbouring dwellings shown on the previously approved streetscene drawings. The originally approved drawings showed that the ridge height of the three new dwellings would be no higher and very slightly lower than the ridge height of the neighbouring dwellings either side (numbers 7 and 15 Marlowe Way). To reiterate, the dwellings have now been built as follows:

- Plot 1 built to 7.790 m to roof ridge, **+0.715m** higher than the adjacent No. 7
- Plot 2 built to 7.790 m to roof ridge
- Plot 3 built to 7.671 m to roof ridge, **+0.587m** higher than the adjacent No. 15

16.6 The fact that the new dwellings are higher than the neighbouring dwellings is unfortunate as at the time of the previous approval it was considered that having the dwellings no taller in height than neighbouring properties would help them to relate satisfactorily to the character of the street scene and surroundings and help ensure they were not overly dominant in the street scene.

16.7 However, the extent the newly constructed dwellings are higher than the neighbouring properties is comparatively small and it is considered the dwellings would still visually relate satisfactorily to the character of the area without being visually dominant in the street scene. The dwelling on Plot 1 being +0.715m higher than would still relate well to the scale and height of that neighbouring property and would certainly not tower over it or be overly dominant. Street scenes often contain dwellings that vary in height so there is nothing unusual in a dwelling being slightly higher than an adjacent dwelling. Similarly the dwelling on plot 3 is only +0.587m higher than the ridge of number 15 and this too looks visually acceptable in terms of its height and relationship to the neighbouring dwelling.

- 16.8 The new dwellings are still comparatively modest in height for two storey dwellings, being 7.79 metres to the roof ridge. Often, two story dwellings are approved at around the 8.4-8.5 metres height. Nevertheless, the neighbouring dwellings are lower than this so the context of the site clearly needs to be carefully assessed. The constructed dwellings have been viewed on site and it is considered all three dwellings relate satisfactorily to the character of the street scene and that the different height relationship to the neighbouring property does not materially harm the character of the area. It should be noted that if the ridge height of the new dwellings is lowered, this could result in shallower pitched roofs which would be a retrograde step in aesthetic visual design terms.
- 16.9 Overall it is considered the fact that the newly constructed dwellings are modestly higher than the neighbouring dwellings does not undermine the character of the street scene in a significant way. They would not be overly dominant in the street scene and would still be of relatively modest height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings and is not considered that a refusal can be justified on the grounds that the new dwellings are between +0.587m and +0.715m metres higher to their ridge than the neighbouring properties.
- 16.10 Other issues remain acceptable as outlined in the original committee report précised in Appendix 1. In particular, there will still be visible separation gaps between the dwellings and between the side boundaries notwithstanding the fact that the dwelling (number 15 Marlowe Way) was plotted slightly further away from plot 1 owing to an ordnance survey error. There is no consequential terracing effect. The difference is +0.548m which does not undermine in a significant way the visual separation between the properties. Accordingly, the proposal will still not appear cramped or represent an overdevelopment.
- 16.11 The positioning and layout of the three dwellings remains very similar to the density of other development in the vicinity and garden sizes comply with and indeed exceed the standards outlined in Policy DM19. Glimpses of Lexden Manor beyond will still also be possible. It should be noted that Lexden Manor is neither Listed nor Locally Listed and, as before it is not considered that the proposal could be refused on the grounds of the proposal's impact upon its setting, particularly having regard to the presumption in favour of sustainable development embodied in the NPPF.
- 16.12 As before, two TPO trees at the front will also be retained and protected. A condition to ensure the front areas are not fenced off will once again be applied and so the site would retain a significant element of open, green spaciousness. It was concluded previously that the existing open space is not of such significance in the street scene in terms of its amenity value or contribution to the character of the area that would warrant its retention in its entirety and this view is maintained having regard to the latest adopted Local Plan. The loss of this open space did not form part of the original refusal reason (210304) as the Planning Committee overall did not object in principle to its development.
- 16.13 Overall, in terms of layout, design and impact on surroundings it is still considered the proposal would therefore comply with adopted Local Plan Policies SP7,

DM15 and DM17 which provide that the Borough Council will secure high quality and inclusive design in all developments to make better places for both residents and visitors.

- 16.14 The proposal remains compliant with the provisions of the Backland and Infill SPD and is in general accordance with the Essex Design Guide. It is also considered to comply with the revised NPPF section 12 which promotes well-designed places.

Garden space:

- 16.15 As before, adequate amenity space for the new dwellings has been shown to be provided in accordance with Policy DM19, unchanged from the original approval. Indeed, garden space compares favourably with neighbouring properties. Policy DM19 provides that for dwellings with four or more bedrooms, a minimum of 100m² should be provided and in this case the dwellings are provided with over 100m² each (ranging from 136-150m²) which further emphasises that this is not an overdevelopment of the site.

Impact on Neighbour Amenities:

- 16.16 As previously concluded, it is not considered there is a significant adverse impact upon neighbouring residential amenity from the proposal as built. The dwellings are positioned in the approved location, which is far enough from the side boundaries of neighbouring properties to avoid an overbearing impact. The Council policy sets out that a 45-degree angle of outlook from the mid-point of the nearest neighbouring windows should be preserved and it is considered that this proposal satisfies this requirement. This includes an assessment of the corrected position of number 7 Marlowe Way which is +0.548 closer than as shown on the originally approved plans.
- 16.17 There are also no concerns with regard to loss of light to neighbouring properties. The new dwellings have essentially been constructed as previously approved with only minor differences as previously clarified that are deemed de minimis. The combined plan and elevation tests are not breached, and the proposal therefore satisfies the Council's standards for assessing this issue as set out in the Essex Design Guide.
- 16.18 A Daylight/Sunlight report has been submitted which has been undertaken by a chartered surveying company "following the guidelines of the RICS." The report states that "The assessment is limited to assessing daylight, sunlight and overshadowing to neighbouring windows, gardens and open spaces as set out in section 2.2, 3.2 and 3.3 of the Building Research Establishment (BRE) Guide" further to a site visit undertaken on 9 January 2023.
- 16.19 The report concludes the following: "All neighbouring windows (that have a requirement for daylight or sunlight) pass the relevant BRE diffuse daylight and direct sunlight tests. The development also passes the BRE overshadowing to gardens and open spaces test. In summary, the numerical results in this assessment demonstrate that the proposed development will have a low impact on the light receivable by its neighbouring properties. In our opinion, the

proposed development sufficiently safeguards the daylight and sunlight amenity of the neighbouring properties.”

- 16.20 Given the conclusions of this Daylight/Sunlight report that has been undertaken by Chartered Surveyors in accordance with BRE guidelines, it is not considered that an objection can be raised in terms of the impact from the development upon the amenity provided by daylight and sunlight to the existing neighbouring properties.
- 16.21 As concluded previously, the development does not include any new windows at first floor level that would offer an unsatisfactory angle of overlooking that harmed the privacy of the neighbouring properties, including their protected sitting out areas as identified in the above SPD. There is no change in this respect compared to the previous approval. The first floor windows on the side elevation of plot 3 would face onto the blank gable of the neighbouring property rather than look into private amenity space or habitable rooms. With regard to first floor openings on the side elevation of plot 1, a condition imposed as before can be applied to ensure that openings are obscure glazed and non-opening where they are not above 1.7 m above floor level. These serve a landing and bathroom. The same condition can be applied to the rear first floor openings on Plot 1-3 plot 3 (which have been minimised in any case) in order to avoid overlooking the amenity space of Lexden Manor and its rear windows. The residential amenity of the occupants of the new dwellings would still be acceptable with the application of the obscure glazing condition at 1.7 m.
- 16.22 The comment made by a neighbour about the rear single storey flat roofed kitchens being built taller than approved is being investigated by the enforcement team and the conclusions reached will be reported to the Committee. However, even if the kitchens have been built slightly higher, they would still not breach the 45-degree angle of outlook from the mid-point of the nearest neighbouring windows as they are still single storey and are some way off the neighbouring boundary. The relevant test for impact upon neighbouring properties would consequently be satisfied.
- 16.23 Overall, in term of impact upon neighbouring residential amenity, the development thus complies with Policy UR2 (better places for residents and visitors expected) and DP1 which provides that all development should avoid unacceptable impacts upon amenity, including the protection of residential amenity with regard to noise and disturbance and overlooking. Policy DM15 of the emerging Local Plan has similar provisions.

Highway Matters:

- 16.24 As before, the Highway Authority have raised no objection to the scheme which is unchanged in respect of layout so the previous conditions will be applied. The proposal thus still complies with Policy DM22, with space for 2 car parking spaces for each dwelling.

Impact Upon Vegetation:

- 16.25 As previously concluded, the proposal is considered acceptable in terms of its relationship to the two TPO trees at the front of the site and the scheme is unchanged in this respect. Once again a condition can be applied to secure a schedule of arboricultural monitoring and site supervision.

Wildlife issues:

- 16.26 The application does not have any additional implications for wildlife so does not conflict with Local Plan Policy ENV1 which aims to protect and enhance biodiversity.
- 16.27 A RAMs wildlife payment can be referenced in a new Unilateral Undertaking as new dwellings would be created in a Zone of Influence for coastal sites subject to national designations as required by the Habitat Regulations to mitigate any adverse impacts. This payment will need to be made prior to commencement of development. An appropriate Habitat Regulation assessment has been undertaken.

Unilateral Undertaking:

- 16.28 A new Unilateral Undertaking is required to be completed in order to secure the required SPD compliant developer contributions for community facilities and sport & recreation facilities and any permission should not be issued until this is completed.

Environmental and Carbon Implications

- 16.29 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives. The consideration of this application has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that, on balance, the application can contribute to achieving sustainable development. The site is considered to be in a sustainable location and would minimise carbon emissions from trips generated to access services.

Other

- 16.30 Finally, in terms of other material planning considerations, the proposed development does not raise any concerns.
- 16.31. It should be noted that there has been a reconsultation undertaken on additional plans that have been submitted recently showing the correct footprint plotting of the neighbouring number 7 Marlowe Way and newly annotated heights of the street scene drawings and any further consultation responses received will be reported to the Committee.

17.0 Conclusion

17.1 In conclusion the proposal is considered acceptable for the following reasons:

- The site is within the settlement limits and is in a sustainable location so remains in accordance with latest adopted Local Plan settlement Policy.
- On the previously approved scheme, the neighbouring properties were drawn taller than they exist and the street scene drawings showed the three new dwellings with roof ridge heights no higher than the neighbouring dwellings. This application corrects these inaccuracies in the approved street scene plan. It is considered the fact that the newly constructed dwellings are now shown correctly as modestly higher than the neighbouring dwellings. This does not undermine the character of the street scene in a material or significant way. The dwellings are not overly dominant in the street scene and would still be of relatively modest height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings and is not considered that a refusal can be justified on the grounds that the new dwellings are between +0.587 and +0.715 metres higher than the neighbouring properties.
- Other issues relating to the application including impact upon neighbouring residential amenity, layout, design, impact upon vegetation, provision of amenity space and highway issues remain acceptable.

18.0 Recommendation to the Committee

18.1 The Officer recommendation to the Committee is for:

Authority to Approve subject to consideration of any further consultation responses received and completion of a new Unilateral Undertaking and subject to the following conditions (restated from the previous approval and adapted where necessary to reflect subsequently cleared details.)

1. ZAM – Development In accordance with Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers: 6817/1103B, 1105A, 1108A, 1109A, 1203B, 1204, 1605, 1607, 1608, 1609 Rec'd 17.2.22, Arboricultural Impact Assessment (which shall be complied with throughout the lifetime of the development works) Rec'd 29.10.21 submitted under application 212888 as amended by drawings 6817-1606 Rec'd 12.1.23 and 6817-1109 Rev B & 6817-1611 Rev A Rec'd 11.4.23. Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

2. ZBC- Materials

Only materials approved under condition 3 of 212888 shall be used in the development.

Reason: In order to ensure that suitable materials are used on the development.

3. Non Standard Condition- Vehicular Access

Prior to first occupation of the proposed development, each of the proposed vehicular accesses shall be constructed at right angles to the highway boundary and to a width of 5.5 metres and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

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

4.Non Standard Condition - Visibility Splays

Any new or proposed boundary hedge shall be planted a minimum of 1m back from the highway boundary and 1m behind any visibility splays which shall be maintained clear of the limits of the highway or visibility splays thereafter.

Reason: To ensure that the future outward growth of the hedge does not encroach upon the highway or interfere with the passage of users of the highway and to preserve the integrity of the highway, in the interests of highway safety.

5.Non Standard Condition - Parking/Turning Area

The development shall not be occupied until such time as the car parking areas for each dwelling, indicated on the revised drawings on application 221288 has been hard surfaced and sealed. The car parking area shall be retained in this form at all times and shall not be used for any purpose other than the parking of vehicles related to the use of the development thereafter.

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

6.Non Standard condition - Cycle storage.

The approved bicycle storage facility agreed under clearance of condition application 221184 shall be provided prior to the first occupation of the proposed development hereby permitted within the site and shall be maintained free from obstruction and retained thereafter.

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

7. Non Standard Condition- Travel Information Packs.

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

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

8.Non Standard condition- No Unbound Materials

No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.

Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety.

9. ZPA Construction Method Statement

The approved Construction Method Statement agreed under clearance of condition application 221184 shall be adhered to throughout the construction period.

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 and in the interest of highway safety.

10. Non Standard Condition - Construction and Demolition

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

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

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

11. Non Standard Condition - Refuse and Recycling

Prior to the first occupation of the development hereby permitted, refuse and recycling storage facilities shall be provided in accordance with the submitted details agreed under clearance of condition application 221184. 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.

12. ZFI- Tree or shrub planting

The tree and/or shrub planting and an implementation timetable agreed under clearance of condition application 221184 shall be complied with and planting shall be maintained for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

Reason: To ensure an appropriate visual amenity in the local area.

13. Z00 – Electric Charging Points

Prior to first occupation of the dwellings, one electric vehicle charging point shall be provided for each dwelling and thereafter retained as such.

Reason: To encourage the use of sustainable transport.

14. ZDF- Removal of PD- Obscure Glazing.

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the 1st floor windows in the West side elevation of plot 1, the rearmost first floor window in the East elevation of plot 3 and the rear first floor windows of plots 1-3 shall be non-opening and glazed in obscure glass to a minimum of level 4 obscurity both to a level a minimum of 1.7 m above floor level before the development hereby permitted is first occupied and all shall thereafter be permanently retained in this approved form.

Reason: To avoid the overlooking of neighbouring properties in the interests of the amenities of the occupants of those properties.

15.ZCL- Surface Water Drainage

No part of the development shall be first occupied or brought into use until the agreed method of surface water drainage as approved under clearance of condition application 221184 has been fully installed and is available for use.

Reason: To minimise the risk of flooding.

16. ZDD- Removal of RD Rights-

Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no additions, roof alterations, outbuildings or enclosures or other structures (the latter that are forward of the houses hereby approved) shall be erected except in accordance with drawings showing the design and siting of such structures/alterations res which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: In the interests of avoiding an overdevelopment of the site preserving the open character of the front of the site.

17. Arboricultural Monitoring

Prior to commencement of development, precise details of a shall be submitted to and agreed in writing by the Local Planning Authority. The approved schedule of arboricultural monitoring and site supervision details agreed under clearance of condition application 221184 shall thereafter be complied with in their entirety.

Reason: In the interests of protecting the amenity value provided by the trees on the site.

18.0 Informatives

18.1 The following informatives are also recommended:

1. 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 work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to: SMO1 – Development Management
Essex Highways Ardleigh Depot,
Harwich Road,
Ardleigh,
Colchester,
Essex
CO7 7LT

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

4. ZTB - Informative on Any Application With a Site Notice
PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.

5. **The applicant is advised to ensure that existing verges and grassed areas in the vicinity of the site should not be damaged by vehicles associated with the construction works hereby approved.**

WA1 Positivity Statement

Appendix 1 Extract from previous Committee Report of 212888:

Layout, Loss of open space, Design and Impact on the Surrounding Area

- 16.4 With regard to the planning merits of the proposal, it should be noted that the Planning Committee at the time of the previous refusal (210304) decided to refuse the proposal on the design, scale and form of the dwellings being harmful to the character of the street scene. It did not refuse the scheme on the grounds of the loss of the open space itself or the principle of residential development on the site. It is considered that this revised proposal now represents an acceptable layout that is in keeping with the character of the area and does not represent an overdevelopment of the site. Again, the positioning and layout of the three dwellings is similar to the density of other

development in the vicinity and garden sizes comply with and indeed exceed the standards outlined in Policy DP16 (eLP DM19). The dwellings have been designed and positioned so that there will be visible gaps between the dwellings and between the side boundaries so the proposal will not appear cramped or represent an overdevelopment. Glimpses of Lexden Manor beyond will also be possible. It should be noted that Lexden Manor is not Listed nor Locally Listed and it is not considered that the proposal could be refused on the grounds of the proposal's impact upon its setting, particularly having regard to the presumption in favour of sustainable development embodied in the NPPF.

- 16.5 As with the previously refused scheme, there will clearly be some loss of open space although there will still be significant grassed areas retained at the front of the site, punctuated by the driveways. The two TPO trees at the front will also be retained and protected. A condition to ensure the front areas are not fenced off will also be applied and so the site would retain a significant element of open, green spaciousness. It is not considered that the existing open space is of such significance in the street scene in terms of its amenity value or contribution to the character of the area that would warrant its retention in its entirety. The loss of this open space did not form part of the previous refusal reason as the Planning Committee overall did not object in principle to its development. The proposal would therefore not conflict with Policies DP1 and DP15 (eLP Policies SP7 and DM15) in this respect..
- 16.6 Consideration of the design, scale and form of the dwellings needs particular care given that they are somewhat visually different from the designs of the surrounding properties. Overall, the dwellings are considered acceptable in this respect. The height of the dwellings has been reduced compared to the previous scheme so that the new dwellings would be the same height as the existing dwellings either side of the plot. One of the dwellings has a gable facing the road and the other too have front facades and this is considered to give the dwellings an appropriate level of variety. Gable widths have also been narrowed during this submission so that they are similar to gable widths of existing dwellings in the vicinity.
- 16.7 The dwellings are considered to have their own contemporary detailing and styling whilst still relating well to the overall character and scale of existing dwellings on this part of the estate. With the use of high quality materials, it is considered that these dwellings would represent good design that would not detract from the character of the street scene and surroundings. The precise details of materials can be conditioned and there is the potential to introduce a little variety.
- 16.8 Overall, in terms of layout, design and impact on surroundings the proposal it is considered the proposal would therefore comply with Policy UR2 (eLP SP7) of the Local Plan Core Strategy which provides that the Borough Council will secure high quality and inclusive design in all developments to make better places for both residents and visitors.
- 16.9 The proposal is considered to comply with Policy DP1 of the Local Plan Development Policies document adopted 2010 (with selected Policies revised

July 2014) which provides that all development must be designed to a high standard and respect the character of the site, its context and surroundings including in terms of layout. Policy DM15 of the emerging Local Plan has similar provisions.

- 16.10 The proposal is considered to comply with the provisions of the Backland and Infill SPD and is in general accordance with the Essex Design Guide. It is also considered to comply with the revised NPPF section 12 which promotes well-designed places.
- 16.11 It should be noted that if the scheme is implemented, the previously approved scheme for the conversion of Lexden Manor to flats (192337) could not be implemented as the sites overlap and the required communal garden could not be provided for the flats. However, it is understood that it is the approved dwelling within the grounds (210331) that is being implemented..

