

**Application No:** 151401

**Location:** Severalls Hospital, Severalls Hospital, Boxted Road, Colchester, CO4 5HG

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

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**7.2 Case Officer: Vincent Pearce****MAJOR**

**Site:** Severalls Hospital, Boxted Road, Colchester, CO4 5HG

**Application No:** 151401

**Date Received:** 29 June 2015

**Agent:** Mr Oliver Bell, Nexus Planning

**Applicant:** North Essex Mental Health Partnership Trust

**Development:** Removal/variation of conditions 1, 3a, 4, 6, 7, 9, 15, 19, 24, 29, 36, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55 of planning permission.

**Ward:** Mile End

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

- 1.1 This application is referred to the Planning Committee because it includes proposed amendments to a S106 Agreement that fall outside of the scheme of delegation and constitutes a major application where a limited part objection has been received.

**2.0 Synopsis**

- 2.1 The key issue raised by this proposal is - Are the proposed amendments to conditions reasonable in the light of the justification provided and are the changes to the current S106 being proposed reasonable in the light of viability evidence supplied by the applicant?
- 2.2 The issue of viability is a legitimate material consideration for the Council as local planning authority as clearly identified by paragraph 173 of the NPPF. (as described below in the section 'viability references').
- 2.3 As part of the application the applicants (the land owners) have submitted a viability appraisal provided by the prospective purchasers of the site which has been carefully analysed by the Council's own independent external viability specialists BPS over a period of weeks and through a series of updates and iterations. (these appraisals are bound by commercial confidentiality).

- 2.4 Discussion on viability was ongoing right up to the point of writing this report and a common understanding on the question of scheme viability has now been reached. This has resulted in a new package of adjusted s106 that is now being recommended to Members on the basis that the compromise represents a fair and reasonable balance that achieves project viability whilst ensuring that key Council priorities are delivered for the community.
- 2.5 **Members in considering this application and the associated issues are therefore being asked accept that the proposed reduction in the overall cost to the developer of the agreed s106 package is reasonable and justified in the light of a range of factors that will be explored in detail in this report.**
- 2.6 **The conclusion of this report is that the proposed s106 amendments are reasonable and acceptable and as such should be agreed with the caveats set out in the recommendation.**
- 2.7 **The report also recommends that within the host of condition amendments now being proposed the Committee accepts some as reasonable whilst rejects the amendment of others for reasons that are made clear in this very detailed report.**
- 2.8 **This report must by the very nature of the issues raised be detailed and complex because development of Severalls Hospital affects a wide existing Community that has over the years been promised much on the back of the redevelopment. The Community has been on tenterhooks waiting for development to begin (let alone finish) for more than 15 years whilst the future of the site has been in limbo pending its sale following a protracted planning process period between 2001 and 2006.**

#### **TECHNICAL TERMS USED IN THIS REPORT:**

**Extant planning permission:** *This refers to a planning permission that remains live as a result of either (1) having time remaining in which it can be commenced before it formally expires (controlled by planning condition) or (2) has been commenced and is therefore 'live' in perpetuity*

**S73 application:** *This refers to s73 of the Town & Country Planning Act 1990 (as amended) which makes it possible to apply to the local planning authority to vary or remove a condition/s attached to an extant planning permission.*

**Qualifying unit:** *This refers to a residential unit considered by Essex County Council as local education authority as likely to generate pressure for school places. Reference to qualifying units is used when requiring education contributions within S106 Agreements. Ordinarily a one-bedroom unit would not be considered to*

*constitute a qualifying unit for the reason that it is too small to accommodate school age children as the only bedroom would be occupied by an adult/s.*

#### **ABBREVIATIONS USED:**

*CAMHS Unit: Child & Adolescent Mental Health Service Unit*

*HCA- Homes & Communities Agency*

*NEPFT: North Essex Partnership University NHS Foundation Trust*

*NPPF: National Planning Policy Framework*

#### **S106 REFERENCES:**

**NAR:** *means the Northern Approach Road Any number that follows NAR identifies the relevant phase of road delivery. Therefore NAR3 refers to the third phase and is what has been re-named 'via Urbis Romanae'. (NAR1 comprised the works to north station roundabout and bridge associated with the Turner Rise retail development. NAR2 was the section of new road from Phase 1 northwards to Mill Road and Fords Lane associated with then residential development on land to the west of the District General Hospital)*

**Phase 1:** *This is phase 1 of comprehensive site redevelopment This refers to the Crest Nicholson Homes development known as 'Rosewood' being the first and currently only phase of former Severalls Hospital residential development being undertaken. It was the only phase where reserved matters were submitted (and subsequently approved). The site sits to the south-east of what is now via Urbis Romanae*

**Phase 2:** *this refers to the comprehensive redevelopment of the largest part of the former Severalls Hospital site that sits to the north-west of what is now Via Urbis Romanae. It comprises the main complex of redundant hospital buildings and grounds.*

**NAR Phase 5:** *confusingly this refers to Phase 5 of the NAR highway works rather than a phase of comprehensive redevelopment of the former hospital. It is often preceded by the abbreviation NAR Phase 5. It comprises a new footway along the Hospital's Boxted Road frontage and a crossing over NAR2.*

#### **VIABILITY REFERENCES:**

##### **NPPF 'viability' reference:**

*"Paragraph 173:*

*Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. **To ensure viability, the costs of any requirements likely to be applied to development, such as***

***requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal costs of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.***” (emphasis in **bold italic text** is that of this report’s author but the text is a quote from the NPPF).

**Community Infrastructure Levy Regulations 2010 (as amended) - The C.I.L. tests for S106 Agreements.**

**PART 11, Regulation 122**

- (1) This regulation applies where a relevant determination is made which results in planning permission being granted for development**
- (2) (2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:-**
  - (a) Necessary to make the development acceptable in planning terms;**
  - (b) Directly related to the development; and,**
  - (c) Fairly and reasonably related in scale and kind to the development**

### **3.0 Introduction**

- 3.1** This report explores potential adjustments to the latest Severalls Hospital planning permission. (ref: 131221). The need for adjustments has been triggered by changing circumstances in terms of development undertaken to date, the need to consolidate and harmonise previously approved changes of conditions and s106 terms and most recently by the stalled sale of the Severalls Hospital site (Phase 2 land) to an interested consortium of national house builders due to the continued fragility of scheme viability.
- 3.2** Discussion with the Consortium and land owners is at an advanced state and exchange of contracts is expected subject to resolution of all the matters discussed in this report. The Consortium has entered into a comprehensive Planning Performance Agreement (PPA) with the Council to facilitate the ultimate submission of reserved matters for the entirety of Phase 2 before Spring 2016 but first they must secure the purchase of the site.
- 3.3** Members are being asked to make concessions in terms of the originally agreed S106 package in order to facilitate development. This is the reason why this report will make reference to the Government’s position in respect of the need for local planning authorities to facilitate sustainable development and have regard to ensuring they do not make s106 demands that render projects unviable.

- 3.2 These adjustments have four component parts delivered either by a variation of planning condition or by amendment to the current s106 Agreement. They can be summarised as follows:-
- 3.2.1 Variation of conditions to ensure that current unintended mismatches between certain occupation triggers and drawing references on the Severalls Hospital planning permissions (most recently 131221) and the latest S106 Agreement (2013) and agreed Broadway Malyan masterplan (2012) are resolved in what amounts to tidying-up via an act of technical housekeeping; and,
  - 3.2.2 Variation of certain conditions attached to the Severalls Hospital outline planning permission for comprehensive redevelopment to reflect changed circumstances since the matter was last visited - (including completion of NAR 3 phase 3 north of Mill Road – now named “Via Urbis Romanae”); and ,
  - 3.2.3 Consequent amendment to the current S106 Agreement (2013) relating to the Severalls development to ensure that varied conditions from 3.2.2 above and related clauses within the extant s106 Agreement are in harmony; and,
  - 3.2.4 Adjustments to the composition of the overall S106 package of developer obligations to reflect the proposed significant reduction in dwellings expected to be built. (the reduction in numbers being prompted by the fact that NEPF(nhs)T built a new Child and Adolescent Mental Health Service (CAMHS) Unit (St Aubyn Centre) on a large part of the Severalls site – thereby reducing the residual total developable area). At the time of granting the original outline permission (2006) the application site included a large parcel known as “the retained land” where NEPF(nhs)T had yet to determine whether it would develop the site for its own mental health purposes or include it in the sale for residential purposes. That is clearly no longer an unknown.

#### **4.0 The Site**

- 4.1 The site known as Severalls Phase 2 comprises what was the main cluster of buildings and grounds of the former mental hospital. Its boundaries are defined by adjacency to:- Via Urbis Romanae (south-east and east); NAR2 (south-west); Boxted Road & St Aubyn Centre (Child & Adolescent Mental Health Service Unit [CAMHS] (west) and Tower Lane (north).
- 4.2 The site is now largely redundant and parts of the built fabric are decaying and becoming overgrown. The site is still dominated by heavily wooded areas.

## 5.0 Description of the S73 (variation/removal of condition) Proposal

5.1 Application ref: 151401 relates to proposed changes to the following conditions:-

- 1d reserved matters and reference to masterplan
- 3a reserved matters, phasing and reference to masterplan
- 4 reference to masterplan and design code
- 6 restriction on development prior to delivery of new highway infrastructure
- 7 phased restriction on occupancy prior to delivery of specified highway infrastructure
- 9 phased restriction on occupancy prior to delivery of specified highway infrastructure
- 15 footpath and cyclepath delivery and reference to masterplan
- 19 control of potential construction nuisance
- 24 building retention and reference to masterplan
- 29 restriction of prescribed pd on retained buildings and reference to masterplan
- 36 delivery of phased play areas and reference to masterplan
- 46 pd restriction
- 47 pd restriction
- 48 pd restriction
- 49 delivery restriction and reference to masterplan
- 50 use restrictions in mixed use area and reference to masterplan
- 51 use restrictions in mixed use area and reference to masterplan
- 52 floorspace restrictions in mixed use area and reference to masterplan
- 53 advanced signage advising of future school
- 54 requirement for further details on new primary school
- 55 community building and reference to masterplan

5.2 Proposed amendments to the current S106 Agreement will be described and considered in detail in the report.

## 6.0 Land Use Allocation

6.1 The site is allocated in the Adopted Local Plan (July 2014) for residential purposes and benefits from an extant outline planning permission (ref: O/COL/01/1624) granted 21 March 2006 for mixed but predominantly residential development. **That permission effectively expires 20 March 2016 if an application for reserved matters for Phase 2 development has not been submitted before that date.**

## **7.0 Relevant planning history**

- 7.1 **O/COL/01/1624 (approved 21 March 2006)** The original permission Outline planning permission for the comprehensive redevelopment of former Severalls Hospital (largely for residential purposes). This permission is currently extant.
- 7.2 **100502 (approved 4 August 2011)** - Reserved Matters for 248 dwellings (Severalls Hospital Phase 1) (Crest Nicholson)
- 7.3 **100035 (approved 3 March 2011)** – variation of conditions following grant of outline planning permission O/COL/01/1624 (HCA)
- 7.4 **121559 (approved 23 August 2012)** – variation of condition 2 attached to planning permission ref: 100502 (change of elevational treatment) (Crest Nicholson)
- 7.5 **131221 (approved 23 November 2013)** - variation of condition 8a of 100035 to increase from 75 to 125 number of dwellings which can be occupied prior to completion of NAR3. (Crest Nicholson)
- 7.6 **146284** variation of condition 7 & 9 attached to 13221 (in abeyance pending outcome of 151401) (NEPU nhsFT)
- 7.7 **151401** current application

## **8.0 Principal Policies**

- 8.1 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.
- 8.2 As this report relates to a S73 application (variation/removal of specified conditions) this report will not dwell in detail on specific policies where these relate to the principle of development as the planning permission to which the application relates is extant.



8.3 The **NPPF** has five strands of advice of particular relevance to the consideration of this application and the associated issues:-

8.3.1 Section1: Building a strong, competitive economy - particularly paragraph 19

*“The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.”*

8.3.2 Section 4: promoting sustainable transport –particularly paragraph 32

*“All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:*

- *the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;.....”*

8.3.2.1 and paragraph 34

*“Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas.”*

8.3.3 Section 6: delivering a wide choice of high quality homes – particularly paragraph 50

*“To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should....*

- *where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.”*

#### 8.3.4 Section 7: Requiring good design – particularly paragraph 57

*“The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.”* (Members will be anxious to ensure that where development viability is fragile design quality is not compromised in the search for a viable starting point. Severalls is almost certainly in most peoples’ eyes the most prestigious development site with the finest natural character available in the Borough. Negotiations with the Consortium are predicated on design quality (i.e. the highest) being non-negotiable.

#### 8.3.5 Ensuring viability and deliverability – particularly paragraph 173

*“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”*

#### 8.4 The **Adopted Core Strategy** (December 2008 revised July 2014). Of particular relevance are:-

##### 8.5 **H1: Housing Delivery**

Northern Colchester is identified as a main focus for residential development within the North Growth Area. This is relevant to Severalls.

##### 8.6 **H2: Housing Density (revised July 2014)**

As a result of part of the Severalls site being redeveloped for health purposes there are knock on impacts for total number of units capable of being delivered. H2 requires the efficient use of land and the retention and enhancement of local character.

##### 8.7 **H3: Housing Diversity (revised July 2014)**

This requires the provision of affordable housing and homes suitable to the needs of older persons, persons with disabilities and those with special needs. At the heart of the consideration of the merits of the current proposal sits the extent to which a reasonable number of affordable housing units that can be delivered within a viable wider development

## **8.8 H4: Affordable Housing (revised July 2014)**

This policy reduces the affordable housing requirement in new developments to 20%. Previously policy had been set at 25% (at the time of the original Severalls approval) and then 35% thereafter. H4 acknowledges that viability may be an issue that needs to be balanced against delivery when it states:-

“In exceptional circumstances, where high development costs undermine the viability of housing delivery, developers will be expected to demonstrate an alternative affordable housing provision”

- 8.8.1 In this particular case, the redevelopment of the former Severalls Hospital (a brownfield /previously developed site) carries with it a number of potentially high abnormal costs. (Including extensive backfilling of underground corridor networks, demolition costs, asbestos removal costs and other possible contamination remediation requirements and woodland husbandry). Provisionally these costs have been identified as in excess of £13m (million).

## **8.9 UR1 Urban Renaissance Policies**

Severalls is identified in Table UR1 as a key project site in terms of making an important contribution towards overall housing delivery.

## **8.10 TA1 Accessibility and Changing Travel behaviour and TA3 Public Transport**

Both make it clear that the Council will work with partners to further improve public transport and Table TA3 identifies delivery of the Northern Transit Corridor (which includes the busway) as a key strategic transport infrastructure project.

## **8.11 Table 6d Key Facilities and Infrastructure**

This identifies a number of key projects that are dependent upon [in part or in their entirety] development at Severalls funding them (including transit corridor, allotments, community centre, sport recreation and youth facilities. strategic open space, new primary schools and expanding secondary capacity).

## **9.0 Consultations**

- 9.1 **Highways England** formally “offer no objection”.

- 9.2 The **Environmental Control Service** has specifically commented on four of the proposed condition adjustments: Condition 19, 49, 50 & 51. Namely:-

“Condition 19. [control of dust] The development is still being constructed behind Mill Road and Thomas Wakely Close and therefore the scheme should still be implemented so the condition cannot be removed at this. An Abatement Notice has been served on the developer to abate dust nuisance”

*[Officer comment: Whilst the current application has been submitted with a view to Phase 2, the Environmental Control officer's concerns are noted and it is legitimate to retain controls not just on the uncompleted Phase 1 works but also to ensure that developers of Phase 2 are also required to submit a scheme for the control of dust in the interest of protecting amenity and then be required to follow such protocol as has been agreed. Retaining this condition will not prejudice the sale of the site or the start of development but will help to ensure that the risk of nuisance from dust is limited – **Removal of this condition is considered inappropriate from a planning perspective]***

- 9.3 “Condition 49. [control of business and delivery/dispatch hours in commercial/mixed use areas] To protect resident's amenity from noise disturbance this condition should not be removed at this time. In future when the development is complete it may be acceptable for individual uses to seek to vary delivery or dispatch times.”

*[Officer comment: The current condition restricts operating and delivery dispatch times in the commercial area/mixed use areas within Severalls to between 08.00 and 18.00 hrs (Mon-Sat) and at no times on Sundays and Bank Holidays. This was considered prudent at the time of granting outline planning permission because the predominant character of development within Severalls was to be and will continue to be residential. As the nature of final users in the non-residential areas was and remains unknown the risk of nuisance was and continues to be difficult to assess. This is of particular concern as the mixed use areas could easily include residential uses on the upper floors. Whilst it is accepted that the hours may eventually prove to be unduly restrictive it is considered inappropriate to change them at this stage because the nature of final uses is as yet known and the applicant has not suggested alternative timings.*

- 9.4 A resident of Mill Road has written to say the situation seems unnecessarily complicated but understands now that the NAR and A12 link have been provided some change is needed. He questions the need to change the education clauses. (reasons are explored in this report).

## **10.0 Parish Council Comments**

**Myland Community Council** following routine and regular liaison with the Planning Projects Team at regular liaison meetings has made the following detailed commentary:-

Condition Number	Application proposal	Response
1	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
3a	To be removed to reflect works already completed or no longer relevant	Vincent Pearce to confirm if there is any retained land other than the St Aubyn Centre. If all the retained land has been used then OK - if not needs to stay.
4	Variation to allow for updated Design Code	LEAVE AS IS. Apart from updating the Design Code and correcting the Masterplan drawing reference there is no need to vary the condition. The proposed change dilutes the condition.
6	To be removed to reflect works already completed or no longer relevant	OK to remove on the basis that planned Junction 28 (A12) highway works referred to have now been completed.
7	Removal as obligation is now dealt with in S106	DO NOT REMOVE. Reword as per the S106: No more than 1000 dwellings in total on Phase 1 and 2 of the development (as per BM-26779-01) shall be occupied until Phase 1, 2 3 and 4 of the Northern Approach Road/Phase 3 as illustrated by the Highways Phasing Plan Drawing No. SBA/N91641/PL0003 has been completed. Reason: In the interests of highway safety and to provide adequate visibility for drivers and to ensure the safety of pedestrians and vehicles.
9	To ensure consistency with S106	DO NOT REMOVE. Reword as per the S106: The following works shall be completed prior to the occupation of 250 housing units on Phase 2 of the development as identified in the attached Severalls Phasing Plan (BM-26779-01): • A footway/cycleway along Boxted Road between the existing Boxted Road Link/Nayland Road/Boxted Road/Ford Lane roundabout junction and the A12 Trunk Road/Boxted Road bridge.
15	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035

### Myland Community Council comments part 1 of 2

Condition Number	Application proposal	Response
19	To be removed to reflect works already completed or no longer relevant	DO NOT REMOVE. This has only been partly complied with. The scheme for the control of dust and mud has been made, however the second part of the condition "The scheme as agreed shall be implemented ...." is NOT being complied with and is currently subject to enforcement action it is therefore MOST CERTAINLY still very relevant. The removal of this condition should NOT be agreed.
24	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
29	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
36	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
46	Reference to the updated General Permitted Development Order	No problem - simple date revision from 1995 to 2015
47	Reference to the updated General Permitted Development Order	No problem - simple date revision from 1995 to 2015
48	Reference to the updated General Permitted Development Order	No problem - simple date revision from 1995 to 2015
49	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
50	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
51	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
52	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
53	To be removed to reflect works already completed or no longer relevant	No problem - now dealt with by the School approved application



## 11.0 DETAILED REPORT

### 11.1 Resolving current unintended mismatches (conditions/S106) to address discrepancies in various iterations of legal agreements and associated conditions

11.1.1 Specific detail as to the mismatch is provided below:-

11.1.2 Clause 5.4 of the 2013 Agreement (July 2013) requires that no more than 1000 housing units (or such higher number as may be agreed) on Phase 1 and Phase 2 be occupied before the NAR 3 busway and NAR2 busway works are completed.

**Condition 7** attached to the planning permission of 2013 (131221) requires that no more than 475 dwellings be occupied before the same sections of busway are complete.

11.1.3 Clause 5.3 of the 2013 Agreement (July 2013) requires that no more than 250 housing units on Phase 2 be occupied before the NAR 3 Phase 5 works (footway and crossing to Boxted Road) are completed.

11.1.4 **Condition 9** attached to the planning permission of 2013 (131221) requires that no dwellings on Phase 2 of the Severalls development be occupied before the NAR3 Phase 5 works are complete.

11.1.5 As members will see there is now a tension between conditions 7 & 9 attached to the 2013 planning permission and the relevant related clauses within the associated S106 of 2013. This is summarised Fig1 below:-

requirement	Condition trigger (2013)	S106 trigger (2013)
Completion of NAR3 and associated busway and NAR2 busway	No more than <b>475</b> occupations (phase 1 & 2) [Condition 7] before	No more than <b>1000</b> occupations (phase 1 & 2) before [clause 5.4]
Completion of Phase 5 works (Boxted Road footpath and crossing)	<b>no occupations</b> (phase 1 & 2) before [Condition 7]	No more than <b>250</b> occupations (phase 1 & 2) before [clause 5.3]

**Fig 1: Comparative table showing unintended contradiction between conditions and s106 clauses**

11.1.6 The S106 Agreement of 2013 was signed as a precursor to the release of the amended planning application of 2013 and the tension between the two, as described above, was not intended.

11.1.7 The land owners - The Homes & Communities Agency (HCA), the North Essex Partnership Foundation (NHS) Trust (NEPF(nhs)T) and the prospective purchasers of the Severalls Hospital Phase 2 site have applied to vary the said conditions to bring the triggers into alignment so as to establish certainty and clarity because financial viability of the development is fragile and trigger dates have an important impact on project cash flow. In amending the S106 it was the Council's intention to ease some of the early phase payment requirements and push them to slightly later into the build; thereby facilitating sale and commencement. It is therefore entirely consistent and reasonable to adjust the associated conditions to secure that end as should have occurred in 2013.

11.1.8 **Conditions 1, 3, 4, 15, 24, 29, 36, 49, 50, 51, 52 and 55** of the 2013 planning permission (131221) referred to Severalls Masterplan Drawing No 00.186/3M received 30 June 2003 (the original masterplan) when in fact the relevant masterplan drawing number was (02)301 that having been agreed with the submission and approval of Phase 1 reserved matters. This was an error that needs to be corrected to reflect what was previously approved. The original masterplan that accompanied the 2006 permission was produced by Andrew Martin Associates. This was subsequently updated and revised by Broadway Malyan Architects who acted for Crest Nicholson when submitting reserved matters details for Phase 1. At the same time Broadway Malyan revised and refreshed the Design Statement that supports the masterplan. These are now the principle supporting documents having superseded those from the original approval. In reproducing the new permission for the variation of condition approval (S73) previous conditions were 'cut and pasted' across without having regard to the fact that the masterplan reference needed changing.

## 12.0 Recognising changed circumstances

12.1 Since the last amendment of the Severalls Hospital planning permission in 2013 (131221) circumstances on the ground have moved on and some conditions now refer to delivery triggers for things that have effectively been delivered. The land owners and prospective purchaser wish to tidy up existing conditions to reflect the current position in respect of restrictions relating to trigger events that have been reached or past. (thereby removing certain constraints):-

12.1.1 **Condition 6** refers to a restriction on commencement until junction 28 works have been completed. These works are complete and the condition is now redundant and can therefore be removed.

12.1.2 **Condition 19** refers to the need to submit and then operate the agreed scheme for dust suppression (etc). Crest Nicholson satisfied the condition in respect of Phase 1 and their submission of details but recent complaints of dust nuisance have prompted the service of an abatement notice by the Council's Environmental Protection Team. As a result of this it is not considered prudent to remove this condition and it is reasonable to require the developer/s of Phase 2 to provide their own details as to



how the site will be managed during construction to avoid nuisance. Having been approved the developer/s should then continue to be bound by such control measures as have been agreed. **It is therefore not recommended that condition 19 be removed or varied even if the Environmental Protection team has access to Environmental legislation to prevent the worst excesses of nuisance as local residents reasonably expect their general amenity to be protected by the local planning authority when development is approved and the construction process is under way. When receiving such details as required by condition the planning team liaises closely with the Environmental Protection Team and the former can take planning enforcement action where it is considered expedient to do so if a serious breach of condition occurs. Whilst securing a remedy may be a speedier process under Environmental legislation that may not always be the case.**

- 12.1.3 **Conditions 46, 47 & 48** each relate to restrictions on permitted development and in doing so they refer to The Town & Country (General Permitted Development) Order 1995. Whilst these conditions also extend to reference to include any Order revoking or re-enacting that Order with or without modification) it is considered appropriate to take this opportunity to amend the reference to specifically refer to the current Order - The Town & Country Planning (General Permitted Development ) Order 2012. This is a case of simple technical housekeeping. The restrictions on permitted development are retained.
- 12.1.4 **Condition 49** also restricts operation and delivery times relating to commercial components within the mixed use area to between 08.00hrs and 18.00hrs on weekdays and Saturdays and at no times on Sundays or Public holidays. Members will have noted the concern expressed by the Environmental Control team about relaxing these hours without knowing what uses will occupy the space. Of particular concern is the potential nuisance that may be caused to residential uses on upper floors. In the circumstances it is not considered prudent to amend the hours in condition 49 at this stage. Whilst the mixed use area will be transferred to the Council as a result of the amended s106 package (if agreed) the need to safeguard residential amenity is applicable to any developer no matter whom that is. It will be for the Council to make a case for relaxation at a later date if that can be justified as a result on the nature of the use/s and its compatibility with residential neighbours.
- 12.1.5 **Condition 53** refers to there being no commencement unless a sign has been erected to announce the intended use of the school site. The school site land has now been transferred to Essex County Council for the purpose of building a new primary school. Consequently the condition is now redundant because the County Council has granted itself planning permission for a new school and intends for it to be open by September 2016. The condition is therefore now unnecessary and can be removed as the completion of the school is now likely to precede residential occupations and so anyone considering purchasing a home near the school will be aware of its existence.

12.1.6 Until Essex County Council forward funded the school with a funding mechanism agreed with the land owners it was expected that delivery of the new school would follow a significant number of residential occupations and therefore such signage alerting potential buyers to the future location of the school was felt to be important to informing decisions to buy close to what would later be a school site. (in terms of amenity and practically for those with young children)

12.1.7 **Condition 54** requires the submission of details of the proposed new school building. Essex County Council has now granted itself full planning permission for a new school on the school site and so the condition is now redundant and can be removed.

### **13.0 Consequent S106 amendments**

13.1 Economic conditions have thrown in question the ability of any prospective developer to deliver the full busway works south of Mill Road. Project viability continues to remain fragile.

13.2 As a result the Council has sought to secure a sizeable contribution towards the cost of full delivery rather than require full delivery by the developer. The sum negotiated is £2m. (Two Million Pounds). The overall cost of NAR2 busway delivery has been estimated at more than £5m (five million pounds). A developer could within the current s106 Agreement seek to limit the number of new dwellings to below 1000 (Phase 1 and 2) and thereby not trigger any busway payment on the basis that this remains financially preferable to building out the full 1500 units and making a full busway payment. In such circumstances it would not be possible to properly mitigate the impact of the approximate 750 dwellings on the public transport infrastructure within the Agreement as it currently stands.

13.3 The position is complicated by the fact that the construction of the new CAMHS Unit (St Aubyn Centre) now means that achieving a total of 1500 units on the whole original Severalls site is compromised as building at a density to achieve that many units on what remains is likely to be excessive (especially as the original scheme included significantly more flats). Therefore the Council will look to any developer to deliver significantly less than the 1272 units (after deducting the 248 units arising from Phase 1 – Crest Nicholson Homes) that remain within the currently extant permission.

13.4 The CAMHS unit site occupies some 3.5ha which at, let's say a density of 40 dwellings per hectare, equates to some 140 dwellings). Members will also be anxious to ensure that development does not intrude into or prejudice the retained woodland areas and open space areas within the designated Historic Park & Garden.



***Fig 2: The 'Retained Land'***

## **14.0 Adjustment to components within S106**

14.1 The two main (but not exclusive) areas for proposed adjustments revolve around busway works and affordable housing delivery. These are now described in detail.

### **14.2.1 Busway:**

14.2.2 The development of the St Aubyn's Centre Child & Adolescent Mental Health Service (CAMHS) Unit on what was described in the Severalls Hospital S106 Agreement as 'the retained land' has effectively reduced the developable area within the original outline planning permission red line. (i.e. the development site). The 2006 outline planning permission permitted a total of 1500 dwellings across what emerged as 2 distinct phases. (Phase 1 south of the new NAR3 & Phase 2 north of the new NAR3). Crest Homes are developing phase 1 comprising a total of 248 dwelling units. This means that a possible 1252 dwelling units could be built out within Phase 2. However the development of the St Aubyn's Centre means that it is not possible to develop the remainder of land within Phase 2 at an appropriate density, scale, massing and character if 1252 dwelling units are proposed. The prospective purchasers of the site have indicated that they are looking to build some 752 units which would mean overall numbers (Phase 1 and 2) would not exceed 1000 units.

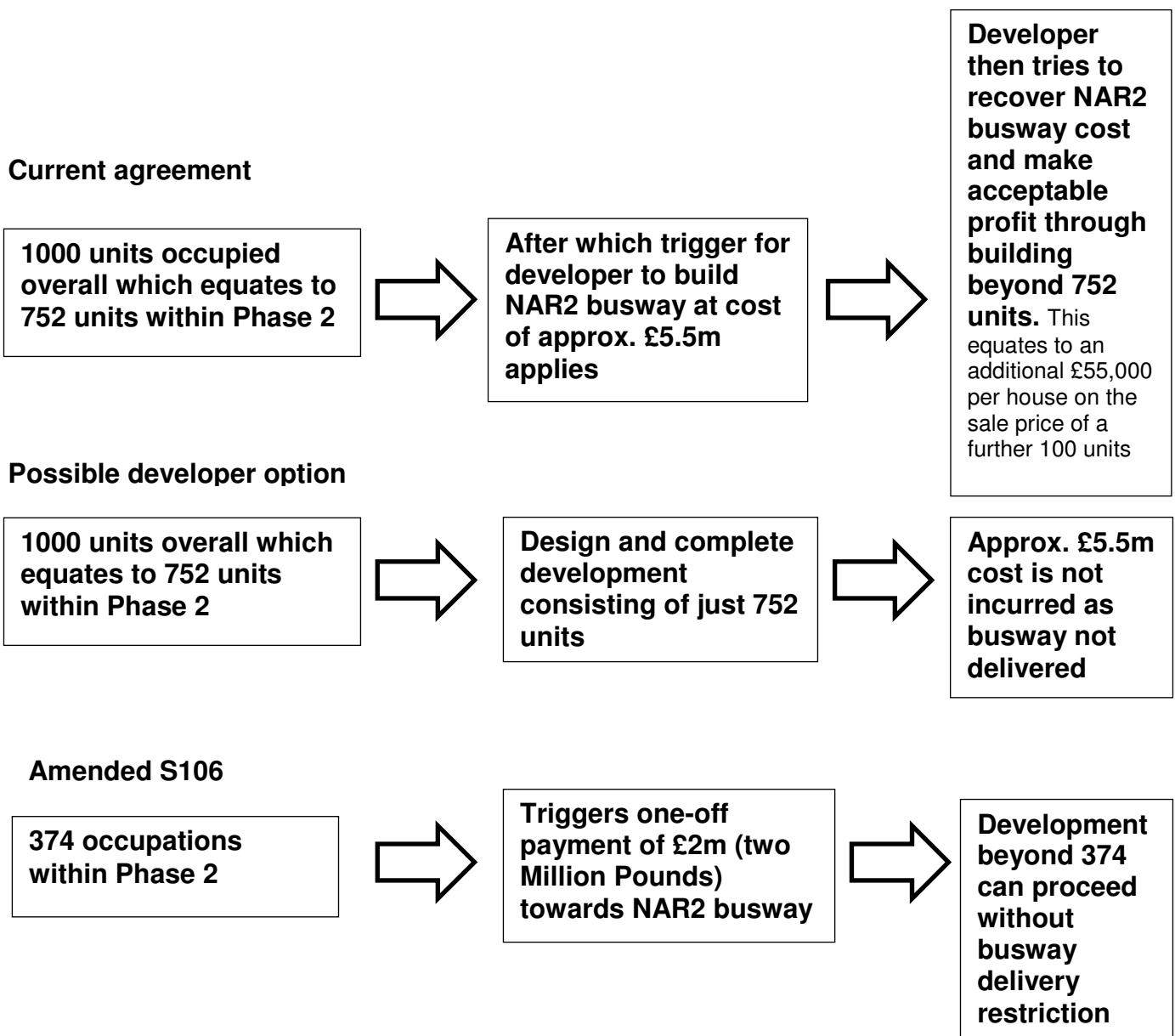


**Fig 3: The new St Aubyn's Centre**

- 14.2.3 Members will have noted that the tension between condition 9 and clause 5.4 of the Agreement referred to earlier has at its heart the trigger for busway delivery by the developer. The Council cannot disregard the fact that the signed S106 sets the trigger for occupation of units on Severalls Hospital (Phase 1 and Phase 2) at no more than 1000 before the NAR2 busway is provided by the developer. In the circumstances now envisaged by the prospective purchasers of Severalls Hospital Phase 2 that point will never be reached and therefore NAR2 busway would not be delivered by the Severalls Hospital development.
- 14.2.4 Since the 2013 Agreement was signed Essex County Council has forward funded construction of the NAR3 (Via Urbis Romanae) and the NAR3 busway with a contribution from the HCA. Essex County Council has also delivered a new Park & Ride facility north of the A12 on land owned by Colchester Borough Council.
- 14.2.5 This has meant that two key strands of the strategic transport strategy for the town are now in place. Delivery of NAR2 busway has yet to be secured and its ultimate delivery will represent a major milestone.
- 14.2.6 The prospective purchasers of the Severalls Hospital Phase 2 site are however proposing to make a substantial contribution towards the NAR2 busway works reflecting the fact that their smaller than originally envisaged development will necessitate public transport improvements as mitigation (i.e. encouraging people to use their cars less frequently for local journeys such as those into the Town Centre via the park & ride facility). The prospective developers have indicated that a sum of £2,000,000 (two million) would be made available. This will not fund full construction of the planned works and funding from other sources would be needed to complete the NAR bus corridor.

- 14.2.7 That said if the current package is agreed by the Planning Committee a significant sum will have been secured that could be used to underpin match funding bids. (e.g.: to the Local Enterprise Partnership - L.E.P.).
- 14.2.8 On this basis the Council should accept that a contribution of £2 million pounds towards the NAR2 busway is reasonable and meets the CIL tests. Essex County Council as highway authority has also accepted the position. The local authorities will then have to source the additional funding from other sources using the contribution as match funding. That is something that both authorities working collaboratively have been able to achieve on a range of other major infrastructure projects.

**Fig 4 Busway delivery options**



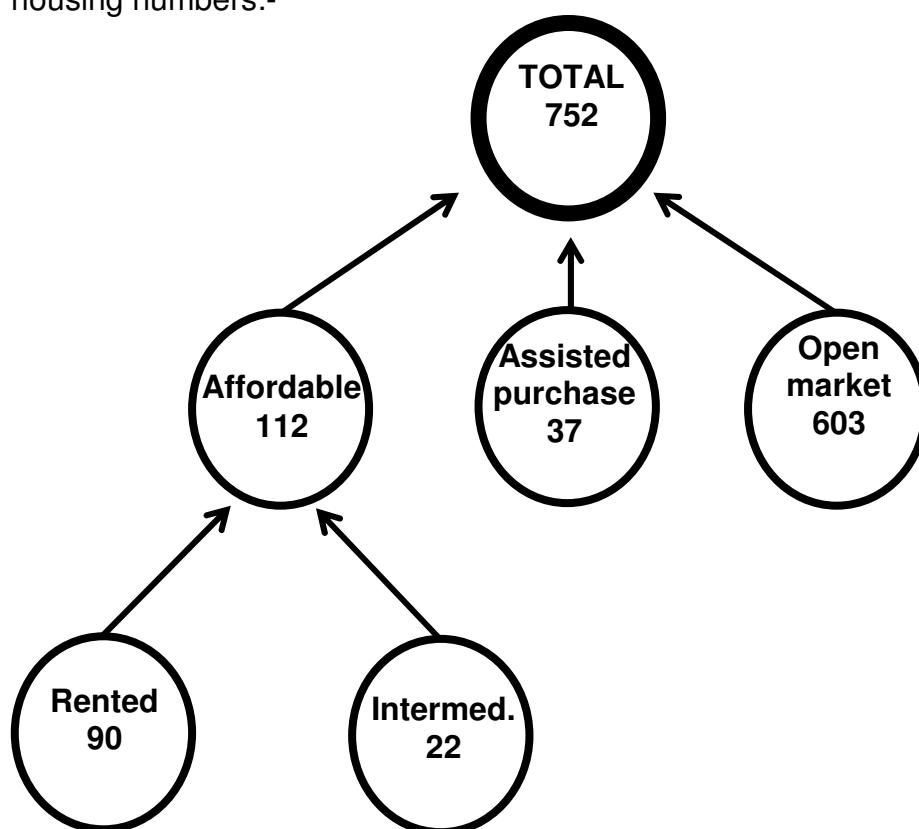
- 14.2.9 Delivery of the full busway remains a corporate objective in that it will further improve the efficiency of public transport and enhance the chances of encouraging modal shift the closer buses get to achieve free-flowing access to the town centre on routes not available to general traffic. The delivery of the full busway also supports the release of major regeneration sites within the Northern Gateway.
- 14.2.10 Members could accept that if concessions and compromises on the overall S106 package are required and reasonable they could seek to either increase or decrease the size of this contribution to the busway by seeking its reallocation in part or in its entirety to other infrastructure that may also be subject to proposed reductions or respectively from other infrastructure to it.
- 14.2.11 Members will inevitably and understandably want to know what will happen to the £2 million of busway funding in the event that suitable match funding cannot be found on the basis that other relevant community benefit will have been foregone to achieve this contribution? It has been agreed that in such an event the £2m contribution will cascade as contributions towards other community benefits in the shape of:-
- £1 million will cascade to the Council as a contribution towards the delivery of specific affordable housing projects with the busway land becoming open space (linear park)
  - £1 million will cascade to Essex County Council as a contribution towards specific alternative transport enhancements
- 14.3.1 **Affordable Housing:**
- 14.3.2 **Members will be acutely aware of the issues that surround the difficulties being experienced in securing the delivery of affordable housing, particularly in the light of the report that was considered by the Committee on 17 September 2015. Affordable housing build out rates associated with speculative housing development have recently been low because of the Government's emphasis on encouraging an open-market housing-led economic recovery.**
- 14.3.3 Since the original S106 Agreement was signed (and subsequently amended) the Council's policy in respect of the percentage of affordable housing to be secured within new residential development has changed. The percentage has been lowered from 25% to 20% in recognition of the fact that the national economic downturn dramatically slowed the rate of building across the UK as project viability became increasingly fragile and the Government required local planning authorities to have regard to viability. (i.e. they were not to ask for s106 contributions that prejudiced sustainable growth from occurring).

- 14.3.4 As discussed earlier Severalls development viability remains fragile and the currently interested parties (the prospective purchasers) have now been able to better cost out the project based on a reduced number of units and a more informed (but not full) view of abnormal development costs. (e.g.: the site is criss-crossed by an unseen network of subterranean service and access corridors – these all have to be filled and service ducts contain asbestos).
- 14.3.5 In negotiating potential amendments to the existing s106 officers of both the planning and housing services have sought to minimise any impact on what has been secured in terms of reducing the overall quantum of affordable housing being delivered. That said some reduction in the proportion has been necessary to achieve a level of viability that should ensure development proceeds. In accepting some reduction officers have also sought to prioritise the delivery of affordable housing ahead of other areas of possible compromise.
- 14.3.6 Whichever way this is wrapped up - countenancing, let alone agreeing to such a reduction will be a bitter pill for Members to swallow.
- 14.3.7 The sugar coating, if it can be considered such, is that at a time when in recent months Members have decried the paucity of schemes coming before Committee with affordable housing the current amendment if agreed would ultimately provide 112 affordable units for families/households in need. (particularly the 90 who will secure rented accommodation)
- 14.3.8 Members will also wish to consider what will happen if the current permission lapses in March 2016 without the site being sold and reserved matters submitted. If that were to occur then no development could proceed on the back of the 2006 permission and the site would sit vacant whilst a new application was worked up. In such circumstances no affordable housing would be delivered for some time. Whilst some Members may feel this is being expressed in a way that is like a '*gun to the head*' (something nobody likes and not what is intended here) it is now a real and pressing possibility.
- 14.3.9 The pointed and somewhat blunt question for the Council and the people of North Colchester is - "is half a loaf (or in this case 3/5ths) better than none", particularly at a time when the Government has little sympathy with local authorities that "unreasonably" "hold- up" residential development.
- 14.3.10 The Severalls Hospital Agreement of 2006 (and subsequent amendments) set affordable housing delivery at 25%. The land owners and prospective purchasers are seeking a reduction to reflect current policy, improve project viability and facilitate the offered £2,000,000 busway contribution to mitigate impact of a reduced development on the local public transport infrastructure.

- 14.3.11** Phase 1 (Crest Homes) is delivering affordable housing at 25% That said the majority of S106 contributions are triggered by Phase 2 of the Severalls Hospital development as that is how the overall development was loaded in order to get Phase 1 successfully away. On this basis proposed changes if agreed will not apply to Phase 1 development.
- 14.3.12** Current Council policy sets the affordable housing requirement within residential developments at 20% of the total as opposed to the 25% required at the time outline permission was granted for this development. Viability of the current proposal means that it is not possible to achieve this level of delivery and for the development to proceed. Officers have successfully negotiated proposed adjustments that mean 15% of the total number of units will be affordable rather than accepting significantly lower numbers. In the circumstances it is considered that this represents a good outcome and will mean development is likely to proceed and 112 households will have access to affordable housing rather than none if the development was not to proceed. (i.e.: 25% of nothing is nothing however much we might wish we could have achieved the 25%).
- 14.3.13** As described at the head of this section of the report the Government's position is clear in terms of its drive to ensure the planning system facilitates housing growth and does not frustrate such development by making 'unreasonable' S106 claims in the face of proven viability fragility. Whilst it is not usual to openly consider appeal prospects in Planning Committee reports it is considered appropriate in this case to suggest that it is unlikely that the Council will be supported at appeal for holding out to secure the originally agreed 25% in the light of all the circumstances that now apply in this particular case.
- 14.3.14** Members will be aware that the Severalls Hospital Phase 2 site has sat empty since 2006 and is gradually falling into disrepair - Something that is ever more evident since the opening of Via Urbis Romanae and the renewed opportunities it has now brought for the public to look across the former cricket ground towards the old hospital buildings. Finding a viable redevelopment solution is becoming ever more pressing as the site is one of the first things that you see when approaching the town from the north via junction 28. It is a poor advertisement. It is also important to see the magnificent parkland restored, managed and rehabilitated to its former glory and for sympathetic development to proceed. The 752 units represent a significant contribution towards the overall number of units needed in Colchester to meet housing demand.
- 14.3.15** However in exploring the potential adjustment the Planning Projects Team and Strategic Housing Team have sought to improve the mix of units within the affordable housing quotient to better reflect the need identified in the current Strategic Housing Market Assessment (SHMA). That is a move away from smaller 1-bed 'rented' units towards more 3-bed rented units and the inclusion of fully wheel chair accessible bungalows.



- 14.3.16 Members have also urged officers to try and secure fully wheelchair enabled bungalows in larger developments. In this case the prospective purchasers have agreed to three such units where previously there were none. Again this is welcomed.
- 14.3.17 Within the affordable housing allocation the percentage of rented units will be 80% and intermediate 20% – in line with current policy. As has been the case in recent years within parts of the Garrison redevelopment (via deeds of variation to accommodate changed viability circumstances) the negotiated, in this case 15% affordable, is accompanied by an additional 5% (of the total number) assisted purchase element . This 5% does not qualify as affordable housing but does represent the inclusion of units attractive to first time buyers as a result of targeted Government incentives. This is considered important as it will open the door to buyers who would otherwise be excluded from homeownership as a result of the difficulties raising deposits. On that basis it is welcome and helps to redress some of the imbalances in the current housing market. It will also help to allow more households to sink new permanent roots in Colchester.
- 14.3.18 Therefore the balance reached within the negotiated amended s106, if agreed by members, will be
- 15% affordable housing (80% rented) : (20% intermediate)
  - 5% assisted purchase
  - 80% open market
- 14.3.19 Based on an overall total number of units of 752 this equates to the following housing numbers:-



**Fig 5: Proposed amended tenure composition-Severalls Phase 2**

- 14.3.20 Proposed adjustments to the current s106 are not restricted to the above two main core areas and this report now considers the other areas of proposed change.
- 14.3.21 **Why are officers not recommending a review clause within the amended S106 to uplift affordable housing numbers in circumstances where profitability improves over the life of the project?**
- 14.3.22 Ordinarily you might expect the Council to build-in a claw-back mechanism within an Agreement where viability some years hence is uncertain due to current market volatility. In straight-talking terms “What stops the community being ‘sold-short’ or ‘ripped-off ‘ if the developer ultimately makes much more profit than was predicted, having been ‘let off’ having to make the full contributions originally expected”
- 14.3.23 This site is unusual in that it is very difficult to accurately establish full development costs because so much is still unknown about the ‘abnormals’ and the extent to which these will multiply as more is uncovered. These include:-
- the cost of filling in the maze of underground service tunnels that burrow mole-like beneath and around the site
  - the cost of safely removing asbestos from around pipes within the tunnels
  - the constraint on developable area defined by the requirement to retain extensive tracts of woodland and established planting
  - the risk of having to use expensive ‘no-dig’ construction methods and piled foundations.
- 14.3.24 Viability can go up or down. Whilst we all expect house prices to increase over time recent events have shown that isn’t necessarily guaranteed in the short-term. The build life of the Severalls scheme if it comprises some 750 units is likely to be somewhere in the region of 7 years. In that time costs and prices will fluctuate and the Consortium is potentially taking a calculated risk by taking on this site compared to a simpler green field site.
- 14.3.25 Officers of the Major Development and Housing Strategy Service have worked closely with the Consortium to identify an alternative method of capturing future potential for adding to the 15% of affordable housing that does not depend upon a requirement to estimate enhanced value through a review which can be complex and troublesome as parties are bound to dispute the figures.
- 14.3.26 In this case a novel solution has been found and agreed in principle between parties. As part of the amended S106, the Consortium will transfer the ‘Mixed Use Area’ of land within the Masterplan to the Council for a peppercorn. This will allow the Council to develop the land itself in ways that will ensure that the residential element on the Mixed Use Area facilitates the provision and delivery of housing for people within the Borough of Colchester whose housing needs are not met by the open market housing. This makes the Council more of a ‘Master of its Own Destiny’ compared to hoping for something from a review clause that may never pay-out. It also means that the developer is better able to minimise project risk.



***Fig 6: Mixed Use Area***

14.3.27 On this basis the Consortium's offer is welcome and well-made and is an acceptable alternative to a review clause

#### **14.4.1 Community Building**

**14.4.2** In re-negotiating the S106 Agreement officers have accepted that the projected reduction in the overall number of residential units warrants a corresponding reduction in the overall size of the Community Building contribution secured within the original agreement. Clearly a development that is 2/3 the size of what was originally expected will necessitate a commensurate reduction in the respective Community Building contribution. If the C.I.L. test is to be passed as it can only be required to mitigate the actual impact of the development rather than anything wider.

**14.4.3** The original S106 required Phase 2 to provide the community building for the entire development (Phase 1 and Phase 2). This facilitated commencement of Phase 1 with an early delivery of 25% affordable housing by reducing its exposure to wider S106 costs.

**14.4.4** The contributions are a pro-rata calculation based on an overall number of units of circa 1000. As the original contribution was calculated on 1500 units overall the pro-rata contribution will be 2/3 of the original. In the event that numbers subsequently exceed 752 (1000 overall) a pro-rata 'per-unit' sum will be applied for those additional units beyond the 752 threshold (1000 overall) units as a further top-up contribution. This means contributions meet the C.I.L. test as they relate to the overall number of units and the mitigation required rather than being a blanket sum. This also provides the Council with the certainty that in the event of numbers ultimately pushing above 752 (1000 overall) it has retained a mechanism for securing additional contributions.

#### **14.5.1 Open space woodland etc**

**14.5.2** S106 clauses will be adjusted to reflect the fact that the prospective purchasers intend to manage all open space and woodland areas via a management company rather than pass these areas to the Council for adoption with a commuted sum. This is acceptable in principle as it means future management and maintenance responsibility does not fall on the Council or the public purse.

**14.5.3** Members will however wish to be reassured that such 'public areas' are accessible to the general public and that the public's right of access lasts in perpetuity. The amended s106 as negotiated will safeguard the public's right to access and use these areas in perpetuity. This arrangement has the benefit to the prospective purchaser that a large commuted sum is no longer required to be passed to the Council thereby improving cash flow and reducing total S106 costs.

#### **14.6.1 Play areas**

- 14.6.2 The prospective developer under the terms of the re-negotiated s106 will be responsible for providing the requisite number and range of play areas and for ongoing maintenance. These will be accessible to the public in perpetuity. Again this means the developer is not required to make significant financial contributions to the Council for the delivery and maintenance of these facilities with the consequent benefits for cash flow and capital outlay. The Council will define the specification for the various areas.

#### **14.7.3 Sports contributions**

- 14.7.4 The level of contribution required will be reduced under the re-negotiated S106 to reflect the reduction in the overall number of units. The contributions are a pro-rata calculation based on an overall number of units of circa 1000. As the original contribution was calculated on 1500 units overall the pro-rata contribution will be 2/3 of the original.  $1000/1500$ . In the event that numbers subsequently exceed 752 (1000 overall) a pro-rata 'per-unit' sum will applied for those additional units beyond the 752 threshold (1000 overall) units as a further top-up contribution. These means contributions meet the C.I.L. test as they relate to the overall number of units and the mitigation required rather than being fixed blanket sum. This also provides the Council with the certainty that in the event of numbers ultimately pushing above 752 (1000 overall) it has retained a mechanism for securing additional contributions.

#### **14.8.1 Education**

- 14.8.2 The Council has not sought to amend the basic education contribution arrangements because the overall size of contribution in the original s106 Agreement was geared to the overall number of 'qualifying units' and was set to go up or down depending on the total number eventually built out. (i.e.: a per unit contribution).

#### **14.9.1 Indexation**

- 14.9.2 The S106 Agreement of 2006 and subsequent amendments all required financial contributions where indexed to be linked to 2003 when it was first resolved to grant planning permission subject to completion of an appropriate s106 Agreement (which was eventually concluded in 2006). Officers have not agreed to amend this reference date in the latest re-negotiations and this position has been factored into the viability appraisal work of the prospective purchasers. In some instances the indexation equates to some 40% of the agreed contribution. Clearly the agreed reductions in overall contribution size described above will result a reduction of total contribution received although the size of the contribution will then be uplifted by the indexation rate.

14.9.3 To illustrate this, a simple example is provided below:-

- Original contribution  
= **£1 million**
- Contribution after pro-rata reduction to reflect drop in overall unit numbers (2/3)  
= **£750,000**
- Reduced contribution + 40% indexation (750,000 + £300,000)  
= **£1,050,000**

14.9.4 In describing the outcome in this way there is a danger that the report could be fairly criticised for trying to deceive the eye with the quickness of the hand. To avoid this it is pointed out that the 40% indexation if applied to the original £1 million would have generated a total sum of £1.4 million. However securing any contribution is dependent on the site being sold and the development implemented and without this package of financial compromises there is a strong risk of no development proceeding.

#### 14.10.1 Summary of other main non-highway occupancy trigger adjustments

<b>CBC relevant triggers</b>	<b>current</b>	<b>amended</b>
Sports off-site sum 1*	<b>251</b>	<b>200</b>
Sports off-site sum 2*	<b>476</b>	<b>350</b>
Sports off-site sum 3*	<b>750</b>	<b>500</b>
Sports off-site sum 4*	<b>476</b>	
Sports off-site sum 5*	<b>476</b>	
Reconciliation		<b>700</b>
Occupation restriction prior to approval of mixed use site marketing strategy	<b>250</b>	<b>150</b>
Occupation restriction prior to completion of full marketing period	<b>750</b>	<b>600</b>
Occupation prior to community building spec approval (if building delivery rather than contribution option triggered)	<b>275</b>	<b>200</b>
Occupation prior to delivery of chosen community facility delivery option	<b>475</b>	<b>400</b>
Occupation prior to delivery of allotments	<b>1000</b>	<b>650</b>
*relating to occupancy of Phase 2 units		

**Fig 6: Summary of other main non-highway trigger changes**

### 14.11.1 Summary of condition changes

condition	recommendation
1(d)	Agree to vary reference to masterplan number
3(a)	Agree to vary reference to masterplan number on basis that the retained land continues to substantially include all of the of the St Aubyn Centre shown at the time of approval for nhs healthcare use
4	Agree to vary reference to masterplan number  <b>BUT REFERENCE TO THE AGREED DESIGN CODE SHALL NOT BE REMOVED (as this sets a vital benchmark for quality) ALTHOUGH A VARIATION TO PERMIT THE SUBMISSION OF AN AMENDED DESIGN CODE WITH RESERVED MATTERS CAN BE AGREED</b>
6	Agree can be removed
7	Agree can be removed on the basis that the £2million fixed contribution towards NAR2 busway is secured within the associated amended s106
9	Agree to vary trigger from no occupations until NAR Phase 5 works complete to 'no more than 250 occupations
15	Agree to vary reference to masterplan number
19	<b>NO VARIATION AGREED</b>
24	Agree to vary reference to masterplan number
29	Agree to vary reference to masterplan number and update the legislative pd reference source
36	Agree to vary reference to masterplan number
46	Agree update the legislative pd reference source
47	Agree update the legislative pd reference source
48	Agree update the legislative pd reference source
49	Agree to vary reference to masterplan number <b>BUT NOT TO VARY OPERATION AND DELIEVRY TIMES WITHIN MIXED USE AREA</b>
50	Agree to vary reference to masterplan number
51	Agree to vary reference to masterplan number
52	Agree to vary reference to masterplan number
53	<b>Agree to remove</b>
54	<b>Agree to remove</b>
55	Agree to vary reference to masterplan number

**Fig 7: Summary of recommendations in respect of proposed condition changes/removals**

## 15.0 Conclusion

- 15.1 The proposed amendments discussed above (to s106 and conditions) are considered acceptable in the light of the fragility of current project viability and in view of the circumstances identified in this report other than the removal of condition19 and variation of condition 49.

## **16.0 Recommendations:-**

**A:**

**That the Head of Commercial Services be authorised to issue an amended planning permission under the reference 151401 subject to the same conditions as 131221 except where amendment or removal has been agreed in Figure 7 above; PROVIDED THAT :-**

**B:**

**The interested parties first sign the amended S106 Agreement, the key components of which are described in this report and which may in the opinion of the Head of Commercial Services need further adjustment to facilitate completion, including the transfer of the Mixed Use Area land to the Council; PROVIDED THAT: further amendments do not reduce the overall percentage of affordable rented units below 15% of the total within Phase 2.**