Colchester City Council

Planning Committee Meeting

Grand Jury Room, Town Hall, High Street, Colchester, CO1 1PJ
Thursday, 06 July 2023 at 18:00

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

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda (the list of items to be discussed at a meeting), which is usually published five working days before the meeting, and minutes once they are published. Dates of the meetings are available here:
https://colchester.cmis.uk.com/colchester/MeetingCalendar.aspx.
Most meetings take place in public. This only changes when certain issues, for instance, commercially sensitive information or details concerning an individual are considered. At this point you will be told whether there are any issues to be discussed in private, if so, you will be asked to leave the meeting.

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

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www.colchester.gov.uk

COLCHESTER CITY COUNCIL
Planning Committee
Thursday, 06 July 2023 at 18:00

The Planning Committee Members are:

Cllr Lilley	Chair
Cllr Barton	Deputy Chair
Cllr Davidson	
Cllr Hogg	
Cllr Mannion	
Cllr MacLean	
Cllr McCarthy	
Cllr McLean	
Cllr Tate	
Cllr Warnes	

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

Councillors:

Cllr Arnold	Cllr Bickersteth	Cllr Bloomfield	Cllr Burrows
Cllr Buston	Cllr Cory	Cllr Dundas	Cllr Ellis
Cllr Goacher	Cllr Hagon	Cllr Harris	Cllr Kirkby-Taylor
Cllr Law	Cllr Laws	Cllr Lissimore	Cllr Luxford-Vaughar
Cllr Naylor	Cllr Nissen	Cllr Pearson	Cllr Powling
Cllr Rippingale	Cllr Rowe	Cllr Scordis	Cllr Scott-Boutell
Cllr Smalls	Cllr Smith	Cllr Sommers	Cllr Sunnucks
Cllr Willetts	Cllr J. Young	Cllr T. Young	

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

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

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

Live Broadcast

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

(107) ColchesterCBC - YouTube

1 **Welcome and Announcements**

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

2 **Substitutions**

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

3 **Declarations of Interest**

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

4 **Urgent Items**

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

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

At meetings of the Planning Committee, members of the public may make representations to the Committee members. This can be made either in person at the meeting or by joining the meeting remotely and addressing the Council via Zoom. These Have Your

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

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

6 **Minutes of Previous Meeting**

The Councillors will be invited to confirm that the minutes of the meeting held on 25 May 2023 are a correct record.

2023-05-25 CCC Planning Committee Minutes 7 - 10

7 **Planning Applications**

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

7.1 **222839 Land Adj, 62 Brook Street, Colchester, CO1 2UT** 11 - 38

Application for outline permission for the erection of 7 almshouse type one bedroom dwelling with associated parking facilities, alterations and improvements to existing vehicular access and diversion of part of footpath no. 137.

7.2 **Variation of S106 Agreement O/COL/01/1799 - 230758 Dinghy Park, Former Cooks Shipyard, Walter Radcliffe Way, Wivenhoe, Colchester** 39 - 112

Application for variation of s106 agreement O/COL/01/1799.

Planning Committee Information Pages v2 113 - 124

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

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

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

PLANNING COMMITTEE
25 May 2023

Present:-	Councillors Lilley (Chair), Barton, Hogg, MacLean, Mannion, McCarthy, McLean, Naylor, Tate and Warnes
Substitute Member:-	Councillor Naylor substituted for Councillor Davidson
Also in Attendance:-	Councillor Buston

991. Minutes

No minutes were submitted for approval at the meeting.

992. 230031 Land between 7 & 15 Marlowe Way, Colchester, CO3 4JP

The Committee considered an application for the variation of condition 2 following grant of planning permission of application 212888 (daylight and sunlight report received). The application was referred to the Planning Committee as it had been called in by Councillor Buston who raised the following concerns:

1. Overdevelopment
2. Ignoring the planning conditions imposed on 212888 approved 21 April 2021
3. Development over a formerly publicly accessible Open Green space
4. The previous application for development on this site (210304) was refused on 10 September 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 212888, in particular the height of these buildings. Policies UR 2 and DP 1, and the (Borough) Council's adopted "Backland & Infill Development SPD, are in particular infringed.

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

Chris Harden, Senior Planning Officer presented the application to the Committee and assisted the Committee in its deliberations. The Committee were shown the site plan and heard that the changes to the proposal since the last meeting were as follows:

- Plot 1 had been reduced in height by 0.4m with chimneys being placed either end to reduce emphasis on a flat roofed section created by truncating the roof pitch.

The Committee were shown the updated street scene as previously approved and as updated following the amendments made to Plot 1. It was noted that Plot 1 would now be

0.3m taller than the existing neighbouring property. It was noted that only Plot 1 had been amended since the deferral and confirmed that the distance between Plot 1 and the existing properties, the height of the kitchens and the heights of Plots 2 & 3 had not been amended. The Committee heard that a further 11 letters of objection had been received which were listed in the amendment sheet which had been thoroughly reviewed. The Senior Planning Officer concluded by detailing that officers considered the proposal to be acceptable and that the recommendation was for approval.

The Chair clarified from the Senior Planning Officer that the developer had offered to lower the height of plot 1 that was before the Committee but that there were no other amendments to the plans before the Committee since its previous presentation.

Simon Sorrell addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that the speaker was representing local residents and asked that the Committee refuse the application and that the developer was showing further contempt to residents by hiding the flat roofs with the chimneys. The proposed chimneys were described as exaggerating the dominance in the street scene and to neighbouring properties. The Committee heard that the developer was not taking responsibility for their mistakes and that the kitchens had been built higher than the approved plans had allowed. The speaker detailed that further representations had come forward from the resident's association and that the Council's Planning Department were disregarding these and not allowing Members of the Committee to view these. The speaker concluded by asking the Committee to have the roofs replaced.

Robert Pomery (Agent) addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that dwellings had been built in the to the correct height under the original permission and conditions. The speaker detailed that the rear projections had been built too large and they were acceptable. The Committee heard that the Applicant acknowledged the upset and disappointment but detailed that the height of the dwellings was lawful and that the applicants did not think that the proposal was an improvement on the existing dwellings.

Councillor Roger Buston addressed the Committee as Ward Member for Prettygate. The Committee heard that the Committee were being asked to ignore the properties surrounding the site and that the changing of the designs was based on the inconvenience of the height and that this was motivated by profit. The Committee heard that planning law was not a subject that could be made up and that the arguments had already taken place regarding intention. It was noted that the de minimis and slab level issues of height would have become apparent even with the noted issues with the Ordinance Survey Maps. It was detailed that the proposal was contrary to policy DP15 and subsequent loss of amenity. The speaker concluded by asking the Committee to impose a demolition order and restore the area to its original state and questioned whether or why there was a Planning Committee and whether they would nod anything through.

At the request of the Chair the Senior Planning Officer responded that the removal of the dwellings would be excessive and that the Committee needed to consider the difference in height and that it was viewed that the street scene did relate to the wider area in a satisfactory way and that the kitchens had been built too tall but that they did not have an adverse impact on residential amenity. It was confirmed that the report had been completed before all neighbour letters had been received but confirmed that they had been detailed in the Amendment Sheet and had been carefully considered by Officers. It was noted that the issues raised in the Amendment Sheet had been raised before and did not change the Officers view on the acceptability of the proposal. The Committee heard that the previous

comments on the application had not been ignored and had been taken into account and confirmed that the application had not been brought in haste to the Committee as there had been 14 days of consultation. The Senior Planning Officer outlined that the developer had explained that they had made an honest mistake and that the changes were not considered to be de minimis and that was why it had been brought before the Committee. It was noted that sometimes there were errors within the Ordinance Survey maps, that the principle of development had already been agreed on the site, and that it was for the Committee to determine on the material planning reasons as detailed in the report.

The Chair described an Appeal case in Babergh District Council's area regarding identifiable harm to a street scene. Simon Cairns, Development Manager responded that he was aware of the case but confirmed that a difference in height did not automatically infer that harm had been caused by a proposal and that there were separate and specific considerations with regards to that application.

Members debated the application noting significant concern that only one of the dwellings was proposed to be altered in height whereas the previous resolution had asked for all three to be altered and queried why the developer was only amending one dwelling. The Senior Planning Officer detailed that officers had asked the developer to reduce all of them but that they could not force them to do so. It was noted that the developer had raised concerns regarding viability.

The debate concluded with a resolution that was proposed and seconded as follows:

- That the application be deferred to seek amendments for the reduction in height for all 3 dwellings.

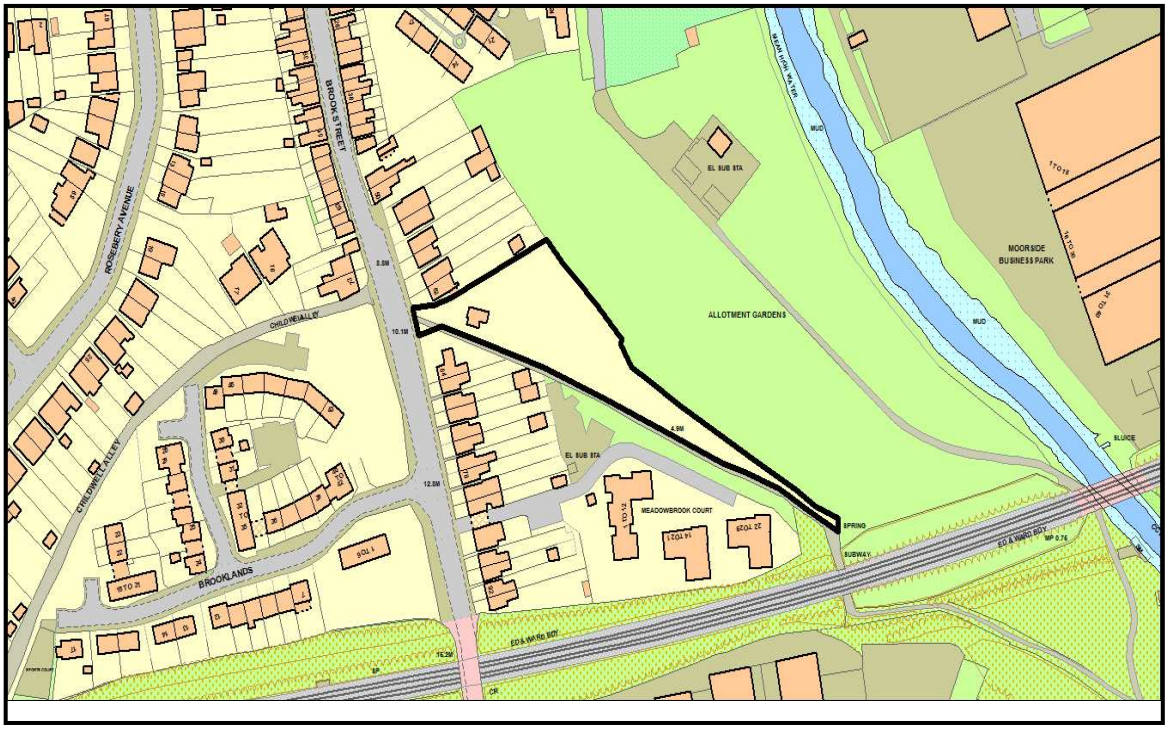
RESOLVED (UNANIMOUSLY) That the application be deferred to seek amendments for the reduction in height for all 3 dwellings.

993. 230959 Foundation House, 1 Long Wyre Street, Colchester

The Committee considered an application for a poster to fit in window space of a retail unit. The application was referred to the Planning Committee as the applicant was Colchester City Council.

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

RESOLVED (UNANIMOUSLY) That the application be approved as detailed in the officer recommendation.



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Item No: 7.1

Application: 222839
Applicant: Bilaman Ltd
Agent: Mr Steve Norman
Proposal: Outline application for erection of 7 almshouse type one bedroom dwellings with associated parking facilities, alterations and improvements to existing vehicular access and diversion of part of footpath no. 137
Location: Land Adj, 62 Brook Street, Colchester, CO1 2UT
Ward: Castle
Officer: Chris Harden

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because Councillor Nissen had expressed a desire to call in the application combined with the fact that the application is locally controversial with an appeal history. Councillor Nissen stated: "A resident has just recently contacted me regarding the planned building of 7 new houses off Brook Street - application number 222839, which closed in mid-December. This is on ecological and infrastructure grounds. I appreciate the date has passed for the call-in, and I did receive the notification as per process; would there be any grounds on which yourself as Chair and the Planning Committee would be willing to accept a late call-in?"

2.0 Synopsis

2.1 The key issues for consideration are the principle of the proposal, the layout and the impact upon highway safety, residential amenity, wildlife, vegetation and the diversion of the footpath.

2.2 The application is subsequently recommended for approval. As the site lies within the settlement limits, the proposal should be judged on its planning merits in accordance with adopted Local Plan settlement policies which aim to direct such development to the most sustainable locations. The NPPF has similar provisions. The principle is therefore considered acceptable as this is deemed a sustainable location. The proposal has overcome previous highway concerns by providing adequate vehicular parking and manoeuvring space and a safe and visually acceptable access with appropriate visibility splays. The layout and access are thus considered acceptable subject to the diversion of part of the public footpath which will need to be formally approved prior to any commencement. It is not considered the diversion of part of the public Footpath would have a significant impact upon its users.

2.3 The layout shows that a scheme of single storey almshouses, aimed at people 60 years of age or over, could fit onto the site without resulting in overdevelopment or detracting from the street scene. It is considered there would not be a significant impact upon wildlife or upon important vegetation, as backed up by the submission of updated reports. There would not be a significant impact upon neighbouring residential amenity and there is no objection on flood risk grounds.

3.0 Site Description and Context

3.1 The site lies within the settlement limits of the City and is currently part of residential curtilage i.e. side and rear garden of the adjacent property. The site has constraints of potential contaminated land and with part of the site along the North East boundary within Floodzone 2/3. It is in an area that benefits from Flood defences. A footpath runs alongside of the site and a section of it would need to be diverted near Brook St.

4.0 Description of the Proposal

4.1 The proposal is an Outline application for erection of 7 Almshouse type dwellings comprising one bedroom dwellings with associated parking facilities, together with alterations and improvements to existing vehicular access and diversion of part of footpath No. 137. All matters are reserved apart from access and layout.

4.2 The proposed access and parking arrangement has been amended from the previous refusal ref:192822. The agent states that alterations to the geometry of the proposed access where it meets Brook Street, that are required to comply with the Highway Authority requirements, mean that the final 13m of public footpath 137 (which runs along the southern boundary of the site) as it connects with Brook Street would need to be realigned.

4.3 An updated Arboricultural Impact Assessment, updated Ecology Survey and Flood Risk Assessment have been submitted.

4.4 The agent states that the proposal is "still based on a development designed for those persons who do not necessarily rely on a motor vehicle, more importantly those over 60 years of age who may no longer have a car. A condition restricting occupancy to those over 60 years of age would be welcomed."

5.0 Land Use Allocation

5.1 Residential curtilage

6.0 Relevant Planning History

6.1 192822 7 almshouses refused.
Resubmission of 171744 but with additional parking (13 in total)- appeal dismissed November 2018. The previous application was itself a resubmission of 170642 which was refused.

The site proposed for 7 one bedroom dwellings lies well beyond the town centre with access off a busy road and in area where parking provision is at a premium. The provision of a build out into Brook Street will introduce a further hazard and obstruction to road users contrary to highway safety and also fails to be supported by a Stage One Road Safety Audit together with the Designers response.
The proposed build out into the carriageway will also provide an informal pedestrian crossing point and introduce pedestrians into the paths of moving traffic which rarely breaks and is relatively constant throughout the day but particularly heavy at peak flows contrary to highway safety.

The proposal fails to provide a vehicular access of sufficient width to enable vehicles to pass unopposed. The proposal is likely to lead to vehicles reversing into the highway contrary to the further detriment of highway safety. In addition the proposal fails to provide a vehicular access at right angles to the existing highway and straight for at least the first 6 metres within the site contrary to current design standards and highway safety.

The proposal fails to provide off street parking spaces with dimensions in accord with current Parking Standards which is likely to lead to vehicles being left parked in the access route or adjacent highway causing conditions of danger, obstruction or congestion contrary to highway safety. In addition the applicant does not appear to own or control sufficient land to provide the proposed access with adequate pedestrian visibility splays contrary to the recommended minimum standards for highway safety. The proposal will deprive the existing dwelling (No 62) of its vehicular access and off street parking facilities leading to additional vehicles being parked in the adjoining highway causing conditions of danger and obstruction to road users contrary to the interests of highway safety.

The proposal would therefore be contrary to the following policies of the Local Plan Development Policies document adopted 2010 (with selected Policies revised July 2014):
(i) DP1 which provides that all development should create a safe environment.
(ii) Policy DP12 which provides that residential development should be guided by high standards of layout including having regard to adopted vehicular parking standards.
(iii)Policy DP19 which refers to the adopted Essex County Council Parking Standards document which states that a minimum of 1 car parking space should be provided for each 1 bedroom dwelling plus 0.25 spaces per dwelling for visitors at a minim size of 5.5m x 2.9 m each.
(iv)The proposal would also be contrary to the Borough Council's Supplementary Planning Document Backland and Infill (Adopted Sept 2009 and revised Dec 2010) which aims to ensure that for any such development, environmental impacts are minimised and that parking arrangements should be considered, including adequate parking provision. The Document also states that residential layouts should be safe and that adequate visibility splays will be required.

6.2 Apart from the previously refused applications ref:171744 & 170642 (7 dwellings), there is further planning history on the site including the appeal 146519 for 5 dwellings. This was dismissed on appeal on the grounds of the access impact upon the amenity of number 62 and also detriment to highway safety as the access visibility splays were poor.

14/6519 Inspector's comments: (impact upon amenity of 62

There is an existing vehicular access to the land at the rear of No 62 which the appellant says provides access to the allotments to the north of the site. However, at the time of my visit access to the site was obstructed by high locked gates and from the condition of the land it appeared that it is little used as there was no evidence of tyre tracks past the gates although there was some evidence of a vehicle being parked in front of the gates.
9. The proposed access to the development would run along the southern boundary of the site and would extend obliquely across almost all of the front garden of No 62. As Brook Street is higher than the level of the ground floor of the existing house the proposed access would not only pass close to No 62 but also at a higher level.

10. The appellant states that it is intended to remodel No 62 so that the main entrance to the property would be provided in the side elevation which would also allow direct access to the proposed new parking space. It is also suggested that there is enough separation between the new access and No 62 to provide soft landscaping that would reduce the visual effect of the proposed access.
11. However, the property contains a habitable room on the ground floor which would still face towards the proposed access that would cross very close to the front of the property. In addition, the proposed development would be likely to lead to a substantial increase in vehicular movements on and off the site. Consequently, the intensification of use, the topography and the proximity of the proposed access to No 62 would result in vehicles passing close to and across the front of No 62. The movement of the vehicles, the light from them during the hours of darkness and associated disturbance would all harm the living conditions of the occupants of No 62. Furthermore, there would be limited room for landscaping and I do not consider the suggested provision of soft landscaping or internal rearrangement of the property would mitigate the harm.
12. In support of the proposal the appellant refers to a number of matters. Reference is made to other developments in the locality which have small frontages and accesses onto significantly busier roads. I do not have the full details of these developments or the circumstances that led to the developments. However, from the information available to me these developments would seem to differ from the appeal proposal in that footways provide a greater separation between the carriageway and the dwelling than would be the case in this appeal where the need for separation is greater because of the level differences noted earlier. The appellant also states a previous application that was refused by the Council for 12 dwellings on the site did not include within the reasons for refusal any reference to the impact of the proposal on the living conditions of the occupants of No 62. That may be so but I must determine this appeal on its merits.

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
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
DM7 Agricultural Development and Diversification
DM8 Affordable Housing
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

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

7.6 There is no applicable Neighbourhood Plan.

7.8 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):
The Essex Design Guide
External Materials in New Developments

EPOA Vehicle Parking Standards
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
Planning for Broadband 2016
Managing Archaeology in Development.
Developing a Landscape for the Future
ECC's Development & Public Rights of Way
Air Quality Management Guidance Note, Areas & Order

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.

8. Five Year Supply Calculation

8.1 The table below illustrates the 5-year supply calculation for the district during the period between 2022/2023 through to 2026/2027.

Housing Need OAHN	
Annualised objectively assessed housing need (OAHN)	920
5 year housing requirement (5x920)	4600
5 year housing requirement and 5% buffer	4830
Supply	
Permissioned sites, existing allocations and windfall allowance	5074
Total number of years' worth of housing supply including emerging allocations	
Supply against OAN with permissioned sites, existing allocations and windfall	5.25

8.2 The calculation above demonstrates that the Council has a sufficient supply of deliverable housing to meet the 5-year requirement. A total of 5.25 years is deliverable within this period.

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 **Contaminated land officer states:**

"Phase II Geoenvironmental Assessment Report. Dated 22.04.2014. Reference 77189-REP-ENV-R4

The above named report has been submitted as part of this application, however it is not supported by a Phase I report which would detail the history of the site.

This report is dated April 2014 and does not contain any site walkover photos or details. We would require a supporting Phase I detailing the historic use of the site, up to date site walkover photographs and relevant information detailing the use of the site from this report in 2014 to now.

The report mentions a further report:

MLMCEL 2014 PCA 771789 -REP-ENV-R1, which has not been submitted at this time and I would need to be in order to be considered.

Water pipework

It is noted the recommendation to contact the local water authority with regards to suitability of drinking water pipework and we would require evidence this has been completed. If any upgraded pipework is required, any verification reports must include evidence of these pipes being purchased and installed.

Clean capping

It is noted the recommendation for capping of gardens and soft landscaped areas. We would require waste transfer tickets for any soil removed form site and testing and delivery notes for any topsoil delivered to site which must be from a reputable supplier.

Ground gas testing

The report suggests that further ground gas testing may be required, and we would require this further information on this.

At the moment there is insufficient information in this application and as stated above we require further clarification.

However it would appear that the site could be made suitable for its proposed residential use and the following will apply;

If you were minded to grant permission for this development, we would apply the following conditions based upon the findings from the report:

ZGX - Contaminated Land Part 1 of 4 (Site Characterization)
ZGY - Contaminated Land Part 2 of 4 (Submission of Remediation Scheme)
ZGZ - Contaminated Land Part 3 of 4 (Implementation of Approved Remediation Scheme)
ZG0 - Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)
ZG3 - *Validation Certificate*”

8.3 **Natural England** Zone of Influence: (RAMS contribution would be required) : not objected and referred to standing advice about protected species.

8.4 **Highway Authority:**

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

No development shall be permitted to commence on site until such time as an Order securing the diversion of the existing definitive right of way to a route to be agreed with the Local Planning Authority has been confirmed and the new route has been constructed to the specifications of the Local Planning Authority.

Prior to the first occupation of the proposed dwellings, the proposed vehicular access shall be reconstructed to a width of 5.5m straight for at least the first 6m within the site tapering one-sided over the next 6m. to no less than 3.7m and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

The gradient of the proposed vehicular access shall be not steeper than 4% (1 in 25) for at least the first 6m. from the highway boundary and not steeper than 8% (1 in 12.5) thereafter.

No unbound materials shall be used in the surface treatment of the proposed vehicular access within 6m of the highway boundary.

Prior to the occupation of the proposed development the applicant shall provide a refuse/ recycling / bin store within 15m of the vehicular access within the site which shall be maintained free from obstruction and retained thereafter.

The development shall not be occupied until such time as car parking has been provided in accord with current Parking Standards together with and workable, convenient and efficient turning area to serve the proposed development site and number 62 Brook Street.
These facilities shall be retained in this form at all times and shall not be used for any purpose other than the parking and turning of vehicles related to the use of the development thereafter.

All footways should be provided at no less than 2.0m in width within the site and designed to ensure safe, efficient and convenient access for wheelchairs and mobility scooters.

No development shall take place, including any site clearance, ground works or works of demolition, until a Construction Management Plan (CMP) has been submitted as a scaled drawing to and approved in writing by the local planning authority. The approved plans shall be adhered to throughout the construction period. The plans shall provide for:
i. the parking of vehicles of site operatives and visitors
ii. loading and unloading of plant and materials
iii. storage of plant and materials used in constructing the development
iv. wheel and under body washing facilities

Prior to the occupation of the proposed dwellings, Public Footpath No 137 (Colchester) shall be improved by the removal of side growth to a height of 2.6m AGL on both sides of the footpath, resurfacing of the footpath with a suitable material (tram & road plannings etc) and compacted to current standards throughout the site to the eastern boundary of the proposed development site together with an appropriately constructed connection to the existing footway on Brook Street.

The development shall not be occupied until such time as details of the provision for parking and storage of bicycles, of a design that shall be

approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.

There shall be no vehicular access or vehicular connection from the highway to Number 62 Brook Street except from the proposed development sites car parking facility and reconstructed access to serve the site and number 62 Brook Street.

Informative1: The public's rights and ease of passage over Public Footpath No.137 (Colchester) shall be maintained free and unobstructed at all times and there shall be no access for any construction activities from the footpath.

Informative2: The necessary reconstructed vehicular access is likely to extend to and over the existing Public Footpath No.137 (Colchester), the proposed diversion of this footpath should provide a reasonable margin between the vehicular access and footpath so as there can be no vehicular overruns of the footpath and areas of conflict between pedestrians and motor cars is designed out.
Furthermore, the diverted section of footpath is likely to be required to be 2.0m in width and the footpath should be as open as possible, 1.8m high fencing on both sides avoided and minimised to retain a degree of intervisibility along the footpath throughout.
(Additional land maybe required from Number 64 Brook Street to accommodate both footpath and reconstructed vehicular access).

Informative3: 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.

8.5 **Environmental Health:** Recommend conditions

ZPA – Construction Method Statement
ZPD - Limits to Hours of Work
No demolition or construction work shall take outside of the following times;
Weekdays: 08.00 – 18.00
Saturdays: 08.00 – 13.00
Sundays and Bank Holidays: none
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.

8.6 **Tree Officer:** Comments that regarding the proposed development and AIA provided that he is in agreement with the tree report provided and the proposal. With All trees to be removed considered to be of low value and/or in a dangerous

condition In conclusion, he is satisfied with the arboricultural content of the proposal.

8.7 **Environment Agency:** Have no observations- previously stated "same response as before i.e. …. have no objection on flood risk grounds, providing that you are satisfied that the development will be safe for its lifetime and you assess the acceptability of the issues within your remit.

Flood Risk
Our maps show the site lies within tidal Flood Zones 3a, 2 and 1, defined by the 'Planning Practice Guidance: Flood Risk and Coastal Change' as having a high,medium and low probability of flooding respectively. The proposal is for new residential housing, which is classified as a 'more vulnerable' development as defined in Table 2: Flood Risk Vulnerability Classification of the Planning Practice Guidance. Therefore, to comply with national policy the application is required to pass the Sequential and Exception Tests and be supported by a site specific Flood Risk Assessment (FRA).
To assist you in making an informed decision about the flood risk affecting this site, the key points to note from the submitted FRA, by Hydrock, referenced R/C14010/001.02 and dated December 2014, are:
Actual Risk
 The site lies partly within the undefended flood extent for a 0.5% annual probability event (1 in 200 chance each year), including an allowance for climate change, with a flood level of 5.26mAOD.
 However the site benefits from the presence of the Colne Barrier at Wivenhoe. The site is not affected by the defended actual risk 0.5% annual probability event (1 in 200 chance each year), including an allowance for climate change, with a flood level of 3.15mAOD.
 Finished ground floor levels have been proposed at a minimum of 4.50m AOD. This is above the defended 0.5% annual probability flood level including
climate change of 3.15m AOD and therefore dry in this event.
 Minimum site levels on the access route are also 4.5mAOD. Therefore this proposal does have a safe means of access in the event of an actual risk defended flood from all new buildings to an area wholly outside the floodplain (up to a 1% (1 in 100) / 0.5% (1 in 200) annual probability including climate change flood event). A Flood Evacuation Plan has not yet been proposed.
 Compensatory storage is not required.
Residual Risk
 The Colchester Strategic Flood Risk Assessment (SFRA) explores the residual risk of a failure of the Colne Barrier in Plan C23. This shows that the site would not flood should the Colne Barrier fail during the 0.5% (1 in 200) annual probability including climate change flood event up to the year 2107.
 Parts of the site are however within an area at risk of flooding if a reservoir was to fail and release the water that it holds. The LPA should determine if they are satisfied that the management pans of the reservoir will ensure the safety of the occupants of the development."

8.8 **Archaeologist:** Suggests Archaeological programme of Works.

There is high potential for encountering important below-ground archaeological remains in this landscape setting, which is topographically favourable for early occupation of all periods, above the floodplain of the River Colne and in a similar landscape context to many known archaeological sites. Groundworks relating to the application would cause ground disturbance that has potential to damage any archaeological deposits that exist.

There are no grounds to consider refusal of permission in order to achieve preservation *in situ* of any important heritage assets. However, in accordance with the *National Planning Policy Framework* (Paragraph 199), any permission granted should be the subject of a planning condition to record and advance understanding of the significance of any heritage asset before it is damaged or destroyed.

The following archaeological condition (**Z00**) is recommended:

No works shall take place until the implementation of a programme of archaeological work has been secured…..

8.9 **Essex Police:**

The NPPF and Colchester Policy DM15: Design and Amenity, requires that developments are safe, secure places to live, that 'minimise the opportunities for crime and anti-social behaviour by ensuring good surveillance, clear definition between public and private spaces'.
Security forms a key part of a sustainable and vibrant development and Essex Police considers that it is important that this site is designed incorporating the maximum achievable benefit of crime prevention through environmental design for which Secured By Design (SBD) is the preferred enabler, in this case Secured by Design - Homes.
SBD is the national official police security initiative that works to improve the security of building and their immediate surroundings to provide a safe and secure environment to help reduce the opportunities for crime and minimise the fear of crime, as referenced in the NPPF, 'Promoting Healthy and Safe Communities'.
Whilst there are no apparent concerns with the layout of this site, Essex Police recommend that the developer seeks to achieve the Secured by Design accreditation in respect of all relevant aspects of this proposed development, Achieving the award will demonstrate to residents that their security has been considered and incorporated "by design" to the current approved, and therefore proven effective, standard.
We would welcome the opportunity to consult with the developer to provide a safe and secure environment for this development and would invite them to contact us via designingoutcrime@essex.police.uk.

8.10 **Senior Scientific Officer:**
The site is within AQMA1 but previously undertaken air quality dispersion modelling for Brook Street suggests that the proposed dwellings will not be exposed to exceedances of the air quality objectives.

Requests that the electric vehicle charging point condition should be added for this application.

9.0 Parish Council Response

9.1 Non-Parished.

10.0 Representations from Notified Parties

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

10.2 1**1 letters objection and 6 other letters** have been received raising points about the following issues:

- Undermine environment and disrupt nearby residents.
- Not in keeping with scenic nature of area.
- Exacerbate pollution and congestion, including parking demand. Brook st already has history of pollution problems.
- Existing traffic noise will increase.
- Dangerous on road parking is an issue on Brook street.
- no reason for footpath 137 to be affected by this development. Wivenhoe trail.
- Meadowbrook Court is privately owned land, providing accommodation for private owners, rented accommodation and social housing for people with social and mental health issues. Could disrupt them.
- Possible illegal parking.
- object to the potential access from anywhere other than via Brook Street.
- Natural ground subsidence in Brook street is Moderate to High. Digging/building on the terrain could destabilise the terrain and adjacent properties.
- Should preserve site for wildlife.
- Will destroy wooded area.
- Brook St should be rejuvenated but not with more houses.

11.0 Parking Provision

11.1 12 car spaces

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 spd compliant contributions for community facilities and sport.

16.0 Report

Principle

16.1 As the site lies within the settlement limits the proposal should be judged on its planning merits in accordance with adopted Local Plan settlement policies SP1, SP3, SG1 and SG2 which aim to direct such development to the most sustainable locations. The NPPF has similar provisions, with a presumption in favour of sustainable development. The principle of development is therefore considered acceptable as this is deemed a sustainable location and therefore key issues relate to highway safety, streetscene and neighbouring residential amenity along with impact upon trees and vegetation and wildlife. The diversion of a section of the public footpath also needs to be considered. At the previous appeals and latest refusal, residential development was not objected to in principle.

16.2 The Council is able to demonstrate a five year housing land supply and as such paragraph 11(d) of the NPPF is not engaged.

Highways and Parking Issues:

16.3 In terms of parking provision, it is proposed that there will be 7 parking spaces for the proposed dwellings (one per dwelling), 2 visitor spaces, 2 for the existing house (62 Brook Street) and 1 disabled space. That totals 12 spaces and represents 1 more than was suggested to be required by the Highway Authority. It is therefore considered there is adequate parking provision on site for the 7 new dwellings and adjacent existing house, as the standards indicate 1 space per one bedroom dwelling and 2 for other dwellings plus visitor space. The proposal thus complies with Policy DM22. An informative will be applied to indicate the sizes of each parking space will need to comply with the sizes specified in the parking standards. In addition, a condition will be applied restricting occupancy to those over 60 years of age (or their dependents), as referred to in the details submitted in the planning statement indicating the Almshouses houses are for people over 60, which may reduce parking demand.

16.4 The revised access arrangement is also considered acceptable in terms of width and visibility splays, and all the conditions suggested by the Highway Authority will be applied including diversion of footpath and appropriate widths. There is also scope for cycle provision. The travel information pack can be conditioned.

16.5 It is also considered the proposal would not cause a severe impact upon the Highway network, as referred to in the NPPF (para.111) to justify refusal on highway grounds in accordance with the NPPF. It is therefore considered the proposal is acceptable on highway safety grounds.

Layout and Design

16.6 With regard to the layout and design of the proposal, Policies SP7 and DM15 of the Local Plan provide that development must respect and enhance the character of the site, its context and surroundings in terms of architectural approach, height, size, scale, form and massing.

16.7 As this is outline, the layout and access only are to be agreed so the illustrative design and form of the units is not agreed in detail. Nevertheless, the illustrative details indicate 7 units in this or similar form could be accommodated satisfactorily on the site without an over intensification or detriment to the street scene. The scheme was not previously refused on design and layout grounds. The frontage area is not particularly prominent from Brook St. As before, the layout/positioning of the dwellings appears reasonable in this context.

16.8 It is not considered the alterations to the footpath would be detrimental to the amenity of users. However, a footpath diversion would need to be completed before the scheme could be implemented.

16.9 For the above reasons it is therefore considered the proposal would comply with adopted Local Plan Policy DM15 as the proposal respects the character of the site and its surroundings. Local Plan Policy SP7 (Place Shaping Principles) has similar provisions.

Residential Amenity:

16.10 It is considered impact upon residential amenity from vehicular disturbance is acceptable as the access does not cross the entire frontage of No.62 whereas in the case of the previous appeal in 2014 it cut completely across the frontage. It is not considered an objection can be sustained on the grounds of detriment to neighbouring residential amenity on other grounds. Whilst some parking is shown alongside the side boundary, a fence can be constructed to minimise impact and disturbance. Environmental Protection has not raised an objection on residential amenity grounds. A scheme, particularly adopting the single storey form shown, could be designed that would avoid potential overlooking, a overbearing relationship or loss of light impact.

16.11 The proposal would thus comply with Policies SP7 and DM15 which provide that all development should avoid unacceptable impacts upon amenity, including the protection of residential amenity with regard to noise and disturbance and overlooking.

Flood Risk

16.12 As with the previous applications, it is not considered an objection can be raised on flood risk grounds. The Flood zone 2 area designation is shown just clipping

the rear of the site. It is also an area that benefits from flood defences. A Flood Risk assessment has been submitted which recommends finished floor levels and concludes that there will be no increase flood risk elsewhere due to the proposed development through loss of flood plain storage or impedance of flood flows. Accordingly, it is not considered the sequential test or exception test are contravened. Flood risk was not a reason for refusal on the previous appeals. Accordingly, it is not considered the proposal conflicts with Flood Risk policy DM23.

Archaeology

16.13 An archaeological programme of works condition will be applied as recommended by the Council's Archaeologist, in accordance with Policy DM16.

Unilateral Undertaking:

16.14 A Unilateral Undertaking has been completed in order to secure the required contributions as requested.

Wildlife Impact

16.15 It is not considered an objection can be maintained in terms of impact upon ecology. The ground is generally well-maintained grass and an Ecological assessment has been submitted which indicates the site is considered to be of low ecological value. The proposal therefore does not conflict with Policy ENV 1 which aims to conserve or enhance ecology.

16.16 A wildlife enhancement condition will be applied to ensure it is demonstrated that there is a 10% Biodiversity net gain delivered in accordance with Local Plan Policy ENV1. The Defra Biodiversity Metric 3.1 is the biodiversity accounting tool that can be used for the purposes of calculating biodiversity net gain.

16.17 A RAMS wildlife mitigation payment has been incorporated into the Unilateral Undertaking.

Other Issues

16.18 An updated Arboricultural Impact Assessment has been submitted and, given the comments from the tree officer including previous comments, previous appeal case and the nature of vegetation on site, it is not considered impact on vegetation could form part of the refusal. This is consistent with the previous application. A landscaping condition can be applied at Reserved Matters stage if not submitted with the Reserved Matters application.

16.19 The contaminated land issue will be conditioned in accordance with the recommendation from the contaminated land officer.

16.20 Environmental Protection have not raised objections on air quality grounds.

16.21 The site has space to provide adequate amenity space in accordance with Policy DM19.

16.22 No comments have been received from Network Rail and the dwellings are a significant distance from the railway line.

17.0 Planning Balance and Conclusion

17.1 In conclusion, as site lies within the settlement limits the proposal should be judged on its planning merits in accordance with adopted Local Plan settlement policies which aim to direct such development to the most sustainable locations. The NPPF has similar provisions. The principle is therefore considered acceptable as this is deemed a sustainable location. The proposal has overcome previous highway concerns by providing adequate vehicular parking and manoeuvring space and a safe and visually acceptable access with appropriate visibility splays. The layout and access is thus considered acceptable subject to the diversion of part of the public footpath which will need to be formally approved prior to any commencement. It is not considered the diversion of part of the public Footpath would have a significant impact upon its users.

17.2 The layout shows that a scheme of single storey almshouses could fit onto the site without resulting in overdevelopment or detracting from the wider street scene. It is not considered there would be a significant impact upon wildlife or upon important vegetation, a view supported by the submission of updated reports. There would not be a significant impact upon neighbouring residential amenity and there is no objection raised on flood risk grounds

18.0 Recommendation to the Committee

18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

1. **ZAC - Time Limit outline**
   No development shall be commenced until plans and particulars of "the reserved matters" referred to in the below conditions relating to the APPEARANCE, LANDSCAPING AND SCALE have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
   Reason: The application as submitted does not provide sufficient particulars for consideration of these details.
2. **ZAD – Time Limit Outline**
   Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
   Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. **ZAE- Time Limit Outline**
The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

4. **ZAM – Development Accord with Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers: 1924/1 Rev A , 1924/2 Rev A, 1942/3, IT2012/SK/001 Rev B Rec'd 14.11.22, IT2012_ST_001-1 Rec'd 14.11.23 re-indexed 7.6.23, Arboricultural Impact Assessment Rec'd 6.4.23.

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

5. **Z00- Footpath Diversion**
No development shall be permitted to commence on site until such time as an Order securing the diversion of the existing definitive right of way to a route to be agreed with the Local Planning Authority has been confirmed and the new route has been constructed to the specifications of the Local Planning Authority.
Reason: To ensure the continued safe passage of pedestrians on the definitive right of way.

6. **Z00- Access** Prior to the first occupation of the proposed dwellings, the proposedvehicular access shall be reconstructed to a width of 5.5m straight for at least the first 6m within the site tapering one-sided over the next 6m. to no less than 3.7m 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 all vehicles using the private drive access do so in a controlled manner and to ensure that opposing vehicles may pass clear of the limits of the highway, in the interests of highway safety.

7. **Z00- Access Gradient**
The gradient of the proposed vehicular access ramp shall be not steeper than 4% (1 in 25) for at least the first 6m. from the highway boundary and not steeper than 8% (1 in 12.5) thereafter.
Reason: To ensure that vehicles using the access both enter and leave the highway in a controlled manner, in the interests of highway safety

8. **Z00- No unbound**
No unbound materials shall be used in the surface treatment of the proposed vehicular access within 6m of the highway boundary.
Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety

9. **Z00- Refuse**
Prior to the occupation of the proposed development the applicant shall provide a refuse/ recycling / bin store within 15m of the

vehicular access within the site which shall be maintained free from obstruction and retained thereafter.
Reason: To limit and reduce the time a refuse freighter is left waiting within the highway causing congestion and obstruction in the interests of highway safety

10. **Z00- Parking**
The development shall not be occupied until such time as car parking has been provided in accord with current Parking Standards together with and workable, convenient and efficient turning area to serve the proposed development site and number 62 Brook Street.
These facilities shall be retained in this form at all times and shall not be used for any purpose other than the parking and turning 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.

11. **Z00-Footways**
All footways should be provided at no less than 2.0m in width within the site and designed to ensure safe, efficient and convenient access for wheelchairs and mobility scooters.
Reason: To ensure that footways are constructed to an acceptable standard for all users, in the interests of highway safety

12. **ZPA- Construction Method Statement**
No development shall take place, including any site clearance, ground works or works of demolition, until a Construction Management Plan (CMP) has been submitted as a scaled drawing to and approved in writing by the local planning authority. The approved plans shall be adhered to throughout the construction period. The plans shall provide for:
i. the parking of vehicles of site operatives and visitors
ii. loading and unloading of plant and materials
iii. storage of plant and materials used in constructing the development
iv. wheel and under body washing facilities
Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur, in the interests of highway safety.

13. **Z00- Public Footpath Surface**
Prior to the occupation of the proposed dwellings, the new element of Public Footpath No 137 (Colchester) shall be surfaced with a suitable material (terram & road planings etc) and compacted to current standards throughout the site to the eastern boundary of the proposed development site together with an appropriately constructed connection to the existing footway on Brook Street with all such details submitted to and agreed in writing by the Local Planning Authority.
Reason: To ensure the continued safe passage of pedestrians on the definitive right of way.

14. **Z00- Bicycle Storage**
The development shall not be occupied until such time as details of the provision for parking and storage of bicycles, of a design that shall be approved in writing with the Local Planning Authority. The

approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.
Reason: To promote the use of sustainable means of transport.

15. **Z00- Access**
There shall be no vehicular access or vehicular connection from the highway to Number 62 Brook Street except from the proposed development site's car parking facility and reconstructed access to serve the site and number 62 Brook Street.
Reason: To ensure the removal of and to preclude the creation of un-necessary points of traffic conflict in the highway and to prevent indiscriminate access and parking on the highway, in the interests of highway safety.

16. **Z00- Contaminated Land**
No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:
(i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
(ii) an assessment of the potential risks to:
• human health,
• property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
• adjoining land,
• groundwaters and surface waters,
• ecological systems,
• archaeological sites and ancient monuments;
(iii) an appraisal of remedial options, and proposal of the preferred option(s).
This must be conducted in accordance with all relevant, current, best practice guidance, including the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.
Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

17. **Z00- Contaminated Land**
No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing

unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and then submitted to and agreed, in writing, by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

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

18. **Z00 Contaminated Land**
No works shall take place other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.
Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

19. **Z00- Contaminated Land**
In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 16 and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 17, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 18.
Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

20. **Z00- Contaminated Land**
Prior to the first OCCUPATION/USE of the development, the developer

shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 17.
Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

21. **Z00- Work hours**
No demolition or construction work shall take outside of the following times;
Weekdays: 08.00 – 18.00
Saturdays: 08.00 – 13.00
Sundays and Bank Holidays: none
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.

22. **Z00- Tree Hedge Retention**
All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site in accordance with the Local Planning Authorities guidance notes and the relevant British Standard. All existing trees and hedgerows shall then be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried
out in accordance with BS 3998.

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

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

The scheme shall include an assessment of significance and research questions; and:
a. The programme and methodology of site investigation and recording.
b. The programme for post investigation assessment.
c. Provision to be made for analysis of the site investigation and recording.
d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.

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

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance with Policy DM16 of the Colchester Borough Local Plan (2017-33) and the Colchester Borough Adopted Guidance titled Managing Archaeology in Development (2015).

24. **ZAN- Site Levels Plan**
No works shall take place until detailed scale drawings by cross section and elevation that show the development in relation to adjacent property, and illustrating the existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill, have been submitted and agreed, in writing, by the Local Planning Authority. The development shall thereafter be completed in accordance with the agreed scheme before the development is first occupied.
Reason: In order to allow more detailed consideration of any changes in site levels where it is possible that these may be uncertain and open to interpretation at present and where there is scope that any difference in such interpretation could have an adverse impact of the surrounding area.

25. **Z00- Travel Packs**
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 together with details of public transport (timetables and locations of bus stops etc), walking and cycling being prominently displayed and regularly updated and maintained in perpetuity within the site, which shall be 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 prior to first occupation.
Reason: In the interests of reducing the need to travel by car and promoting sustainable development.

26. **Z00- Surface Water**

No drainage works shall commence until a surface water management strategy has been submitted to and approved in writing by the Local Planning Authority. No hard-standing areas shall be constructed until the works have been carried out in accordance with the surface water strategy so approved unless otherwise agreed in writing by the Local Planning Authority.
Reason: To prevent environmental and amenity problems arising from flooding.

27. **Z00- Biodiversity Net Gain**
Prior to first occupation of the development hereby approved, precise details of a scheme of wildlife enhancement measures to deliver a 10% Net Biodiversity Gain, together with an implementation timetable shall be submitted to and agreed in writing by the Local Planning Authority. The measures shall thereafter be implemented in accordance with the approved detailed scheme and implmentation timetable and therafter so maintained.
Reason: To ensure adequate wildlife mitigation in accordance with Local Plan Policy ENV1 c).

28. **Z00- Boundary Details**
The dwelling(s) hereby approved shall not be occupied until details of the provision, siting, design and materials of screen walls and fences have been submitted to and agreed, in writing, by the Local Planning Authority. The approved screen walls and fences shall then be erected prior to the first occupation of the dwelling to which they relate and shall thereafter be retained in the approved form.

Reason: There are insufficient details within the submitted application to ensure that the boundary treatments are satisfactory in relation to amenities and the surrounding context.

29. **Z00- Age Restriction**
The occupation of the dwellings hereby approved shall be limited to a person over 60 years of age or to their spouse/partner or widow or widower of such a person and to any resident dependants.
Reason: For the avoidance of doubt as to what has been considered and approved.

30. **Z00 – PROW Diversion Scheme**
Prior to occupation of the dwellings a scheme for the diversion of Footpath No.137 shall be submitted to and agreed by ECC Highways. The approved scheme of diversion shall thereafter be implemented strictly in accordance with the approved scheme by the developer. Reason: To ensure that the PROW is not obstructed in accordance with NPPF para. 100 and local plan policies DM20 and DM21.

31. Z1A – Street Name Signs
Prior to the first occupation of any of the dwellings hereby approved street name signs shall have been installed at the junction of the new highway with the existing road network.
Reason: To ensure that visitors to the development can orientate themselves in the interests of highway safety.

19.1 Informatives

19.1 The following informatives are also recommended:

Informative1: The public's rights and ease of passage over Public Footpath No.137 (Colchester) shall be maintained free and unobstructed at all times and there shall be no access for any construction activities from the footpath.

Informative2: The necessary reconstructed vehicular access is likely to extend to and over the existing Public Footpath No.137 (Colchester), the proposed diversion of this footpath should provide a reasonable margin between the vehicular access and footpath so as there can be no vehicular overruns of the footpath and areas of conflict between pedestrians and motor cars is designed out. Furthermore, the diverted section of footpath is likely to be required to be 2.0m in width and the footpath should be as open as possible in its new position, 1.8m high fencing on both sides avoided and minimised to retain a degree of intervisibility along the footpath. (Additional land maybe required from Number 64 Brook Street to accommodate both footpath and reconstructed vehicular access).

Informative3: 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.

ZT0 – Advisory Note on Construction & Demolition
The developer is referred to the attached advisory note *Advisory Notes for the Control of Pollution during Construction & Demolition Works* for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

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

Positivity Statement
The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Colchester

Planning Committee

Item **7.2**

Report of:	**Assistant Director – Place and Client Services**	**Author**	**Eleanor Moss**
Title:	**Variation of s106 agreement O/COL/01/1799**		
Wards affected:	**Wivenhoe**		

1.0 Executive Summary

1.1 The site is affected by a Section 106 Agreement. Under this agreement, the Dinghy Park land is to be used as a parking facility for boats and their trailers.

1.2 The reason for seeking the Deed of Variation is that Wivenhoe Town Council (WTC) are looking at alternative uses for the Dinghy Park land as it is underused and costs over £2,000 per annum in business rates to WTC with the adjacent car park. WTC are seeking to hold a monthly market during the summer with one Christmas market in December being held on the Dinghy Park to help raise required revenue. The variation to the S106 is to allow markets to be held on the Dinghy Park.

1.3 The City Council and Taylor Wimpey are also parties to the existing S106 agreement, and both would need to agree to the proposed variation. WTC has confirmed that Taylor Wimpy has agreed to the proposed variation. The variation has been to Development Team where no issues were raised and therefore does not raise an objection to the variation.

2.0 Decision Required

2.1 Planning Committee is asked to agree the revised S106 agreement with delegation to Officer level to complete the variation of the legal agreement. The S106 agreement would be varied in a similar manner provided below, however wording would be subject to the advice of the Solicitor (which is standard procedure in S106 agreements given these are legal documents) and thus is subject to modification. Delegated authority is requested to process the amended S106 further.

2.2

Clause	Title	Amendments
5.5	**Developers Covenants**	**To include "outdoor markets", thus amended to:**

		"…any purpose other than as a dinghy park for the parking or storage of boats, their trailers and outdoor markets on behalf of Wivenhoe Town Council"

3.0 Reasons for Decision(s)

3.1 Wivenhoe Town Council has submitted an application to vary the existing S106 to allow occasional markets to be held on the Dinghy Park in order to create additional revenue. WTC has confirmed that the Dinghy Park land currently costs over £2,000 per year in business rates. The Dinghy Park has been underused and thus is costing WTC in upkeep.

4.0 Alternative Options

4.1 The alternative option is for Members to decline agreement to vary the S106. WTC would have to seek alternative revenue streams.

4.0 Supporting Information

4.1 The relevant background to the S106 agreement is as follows:

4.2 O/COL/01/1799 - Outline planning permission approved on 5 November 2004 for erection of houses, flats, offices, fisherman's store and W.C. Refurbishment of wet dock, jetty, slipway and waterfront. Reconstruction of St John's Road and Walter Radcliffe Way. Approved 5 November 2004.

4.3 The development has been fully commenced with the development now built out. The variation will not grant any other amendments to the S106 agreement.

4.4 Section 106A of the Town and Country Planning Act 1990 provides for the modification of planning obligations through a deed of variation. An agreement to modify or discharge a S106 obligation can be made at any time (and can only be entered into by Deed, by virtue of section 106A (2)). Therefore, a s106 agreement can be renegotiated and varied at any time between the parties.

4.5 The Town and Country Planning (General Permitted Development) Order 2015 (as amended) permits certain types of development without needing to seek planning permission from the local planning authority. These are known as 'permitted developments'. Schedule 2 of the Order, Part 4: Temporary buildings and uses, permits:

4.6 Class B *"…use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes referred to in paragraph B.2 (the holding of a market, motor car and motorcycle racing including trials of speed, and practicing for these activities), and the provision on the land of any moveable structure for the purposes of the permitted use*."

4.7 Given the above, provided the outdoor market is not more than 14 days in any calendar year, then a change of use application is not required. Should WTC wish to hold a market for more than 14 days per calendar year on the Dinghy Park, then planning permission would be required and any such proposal would be considered on its planning merits.

4.8 The variation to the S106 has received 34 letters of objection following the consultation exercise. These are summarised as follows:

- Causes harm to residential amenity
- Security concerns
- Would increase rubbish and vermin
- Would reduce property value
- WTC has ignored residents
- Highway safety concerns
- No toilet facilities
- No adequate parking
- The area will become crowded and disruptive
- Contrary to the original S106 agreement
- Limited information regarding the markets
- Lack of customers
- Harm to the adjacent RAMSAR
- Contrary to Wivenhoe Neighbourhood Plan

4.9 Members will be aware that this is in relation to a variation of a S106 agreement, rather than a change of use planning application. If the signatories of the original 106 are agreeable to the amendment to allow the Dinghy Park to be used as a market, then that would be sufficient. While the concerns of interested parties are appreciated, this is not a change of use application and therefore such material planning considerations (i.e. parking, residential amenity, ecology etc.) are not applicable. If the amendment was agreed by the signatories, WTC would only need to apply for planning permission should the markets exceed 14 days per calendar year. If that does happen, the material planning considerations raised by interested parties could then be taken into consideration through a formal planning application.

4.10 The Officer's advice in this case remains that the Council's Development Team has considered the variation and no reasons to resist the Deed of Variation have been found. It is reminded that material planning considerations are not relevant to a Deed of Variation and a S106 can be varied at any time, subject to the signatories of the original S106 being

agreeable. Should a planning application be submitted for the outdoor markets, then such material planning considerations can be weighed appropriately.

5.0 Strategic Plan References

5.1 The Council's Strategic Plan includes the objective to deliver infrastructure projects alongside new homes. Effective use of S106 agreements can help deliver affordable housing and infrastructure to support our communities.

6.0 Consultations

6.1 The Deed of Variation application has been subject to public consultation, with a number of interested parties raising objections to the variation. These are summarised at 4.8 and can be viewed in full online.

7.0 Publicity Considerations

7.1 Members are reminded that following publicity of the Deed of Variation, a number of concerns have been raised by interested parties. These are very much appreciated by Officer's and many material planning considerations have been raised. Should a planning application be required, these will be taken into consideration. At this stage, the Deed of Variation is to expand the uses of the Dinghy Park allowed within the original S106 agreement. Under certain circumstances planning permission is not required for markets and this application is only before Members in the interests of transparency, given the number of objections.

8.0 Financial Implications

8.1 The City Council will not face financial implications as WTC would be liable for the legal fees in this instance. If Members decide to decline to sign the varied S106 agreement, then WTC would need to find alternative funding sources.

9.0 Health, Wellbeing and Community Safety Implications

9.1 None directly arising from this report. The Council's Environmental Protection Team and Essex County Council Highway Authority have not raised any concerns in relation to holding markets at Dinghy Park.

10.0 Risk Management Implications

10.1 None directly arising from this report.

11.0 Environmental and Sustainability Implications

11.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives. Sustainable Development is the golden thread running through planning.

12.0 Equality, Diversity and Human Rights implications

12.1 An Equality Impact Assessment has been prepared for the Local Plan, and is available to view by clicking on this link: Equality Impact Assessment June 2017.pdf (windows.net)

Appendix 1 – The original S106 agreement

THIS AGREEMENT is made the 8th day of November Two Thousand and Eleven **BETWEEN:**

(1) COLCHESTER BOROUGH COUNCIL of Town Hall, High Street, Colchester, Essex CO1 1FR (**"the Council"**)

(2) TAYLOR WIMPEY DEVELOPMENTS LIMITED (Co Reg No: 643420) of Gate House Road Buckinghamshire Wycombe HP12 3NR (**"the Developer"**)

(3) WIVENHOE TOWN COUNCIL of 77 High Street, Wivenhoe, Colchester, Essex, CO7 9AB (**"WTC"**)

WHEREAS:

A. The Council is the local planning authority for the purposes of the Act for the area within which the Site is located and is the relevant planning authority by whom the planning obligations contained in this Agreement are enforceable.

B. The Developer is the registered proprietor of the Site under Title Number EX350392

C. The Developer has submitted the Planning Application to the Council and Planning Permission may be granted subject to certain conditions PROVIDED THAT the Developer first enters into this Agreement and covenants in the manner hereinafter appearing

NOW THIS AGREEMENT WITNESSETH as follows:

1. DEFINITIONS

1.1 In this Agreement where the context so admits the following expressions shall have the following Meanings:

"Act"	means the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991
"Affordable Housing Contribution"	means a sum of money to be agreed in writing with the Council in lieu of the Developer being required to make the Affordable Housing Units available for the purposes of Rented Affordable Housing
"Affordable Housing Transfer"	means the standard form of transfer used by Registered Providers and which in any event

shall include the provisions contained in the Second Schedule

"Affordable Housing Units" means the 2 dwellings known as plots 97 and 98 (which are identified as such on the Site Layout Plan and which form part of the Development) to be used for the purposes of Rented Affordable Housing

"Blue Land" means the area of land within the Site shown coloured light blue and dark blue on the Site Layout Plan

"Blue Land Landscaping Scheme" means a scheme (including plans and drawings) for the laying out and planting of the Blue Land for use by members of the public as an area for recreation

"Business Units" means those units comprised in the Development to be used for the purposes of: (a) Class A1 of the Use Classes Order (retail use); and (b) Class B1 of the Use Classes Order (business use space) and which units (including the relevant car parking spaces) are to be constructed on the Blue Land

"Car Park Land" means all that land coloured orange on the Site Layout Plan which land is to be used as a public car park (with or without charge)

"Car Park Lease" means the form of lease set out in Appendix 1 hereto relating to the Car Park Land

"Compound Licence" means a bare licence granted by the Council for the use of the Play Area Land as a site compound and which will include (amongst other things) provisions that the licensee will have in place public liability insurance of not less than £10million and will indemnify the Council for any claims made against it while the said Play Area Land is being used (or is capable of being used) as a site compound

"Commencement of the Development" means the implementation of the Planning Permission by the carrying out of a material operation described in Section 56 of the Act and "Commence the Development" shall mutatis mutandis be construed accordingly

"Completion"	means completion of a building with all Drainage Systems and Service Installations connected such that the building concerned is ready and available to be occupied for its intended purpose
"Contributions"	means the First Contribution and the Second Contribution
"Date of Completion"	means the date that the Development has been substantially completed as evidenced by the Date of Completion Notice
"Date of Completion Notice"	means the notice to be served on the Council to advise of the Date of Completion
"Development"	means the development permitted by the Planning Permission
"Dinghy Park Land"	means all that land coloured purple on the Site Layout Plan which land is to be used as a parking facility for boats and their trailers
"Dinghy Park Lease"	means the form of lease set out in Appendix 1 hereto relating to the Dinghy Park Land
"Drainage"	means the disposal of foul and surface water
"Drainage Systems"	means any sewers drains pipes manholes culverts soakaways channels watercourses and other conduits and systems necessary for Drainage and all ancillary apparatus and equipment
"Final Occupation"	means occupation of the 32nd residential dwelling comprised within the Development PROVIDED THAT in the event that it becomes clear to the Council that the Developer is deliberately failing to complete dwellings comprised within the Development to escape obligations linked to completion of those dwellings then Final Occupation shall mean occupation of the final dwelling comprised within Phase 3A
"First Contribution"	means the sum of FORTY FIVE THOUSAND POUNDS (£45,000)

"First Contribution Purposes"	means the use of the First Contribution towards: (a) providing and installing playground facilities on the Play Area Land; and (b) the provision of hard and soft landscaping materials and the carrying out of hard and soft landscaping works to the Play Area Land
"Housing Needs Register"	means the statutory register maintained by the Council of persons identified in need for housing in the borough of Colchester
"Index"	means the Retail Prices Index published by the Government of the United Kingdom or any other replacement index
"Interim Landscaping Land"	means a 3 metre (minimum) deep strip of land along the south side of the Blue Land (and which may incorporate some of the Blue Land)
"Interim Landscaping Works"	means: (a) the erection of site hoarding along the northern edge of the Interim Landscaping Land; (b) the painting of a mural on the south side of the site hoarding (i.e. the side in public view when looking from the Dinghy Park Land); (c) the grassing of the Interim Landscaping Land; and (d) the planting of a hedge along the southern most edge of the Interim Landscaping Land
"Method Statement"	means the method statement for the construction of the Development relating to: (1) the means of removing demolition rubble and contaminated land from the Site (2) the means of bringing construction materials onto the Site (3) the means of constructing the foundations (4) the timing, routing and type of construction traffic and which method statement shall include the matters contained in the First Schedule
"Notice of Commencement"	means the notice to be served on the Council to advise that the Commencement

	of the Development will occur within 14 days of the date of the said notice
"Notice of Occupation"	means the notice to be served on the Council to advise that 16 of the Open Market Units (i.e. those comprised in Phase 3A) have been Occupied
"Occupation"	means occupation for the purposes permitted by the Planning Permission other than the construction of the Development and shall not include day time occupation by workmen involved in the construction of the Development or insofar as such uses are ancillary to the construction of the Development, the use of finished buildings for sale purposes, for use as temporary offices or for the storage of plant and materials and the expressions "Occupation" and "Occupy" and "Occupied" shall be construed accordingly
"Open Market Units"	means the residential dwellings (other than the Affordable Housing Units) comprised in the Development and the expression "Open Market Unit" shall be construed accordingly
"Original Consent"	means together: (a) the planning permission granted pursuant to the planning application O/COL/01/1799 for the Site and the other phases of the development at the former Cooks Shipyard site; and (b) the reserved matters approval granted pursuant to the application 072701 for 32 residential dwellings to be constructed on the Site
"Permissive Rights of Way"	means those routes coloured yellow on the Site Layout Plan being routes proposed as permissive rights of way for pedestrians, but subject to vehicular rights to enable access to the Business Units and the Dinghy Park Land
"Persons In A Housing Need"	means a person or persons registered on the Borough Council's Housing Needs Register

"Phase 3A"	means the plots identified on the Site Layout Plan as plots 67 – 78 (inclusive) and plots 93 – 96 (inclusive)
"Planning Application"	means the full planning application submitted by the Developer (and given the reference **091559** by the Council) seeking planning permission for the erection of 32 no. dwellings, commercial units (within Class A1 (Retail) of the Use Classes Order and Class B (Business) of the Use Classes Order), garages, off street parking, roads and footpaths, public open space, foul and surface water drainage and hard and soft landscaping
"Planning Permission"	means the conditional planning permission for the development described generally in the Planning Application
"Play Area Clearance Works"	means works for the complete clearance and restoration of the Play Area Land and such works will include: (a) the removal of all equipment and materials stored on the said Play Area Land whilst being used as a site compound; (b) the removal of all contaminated material including contaminated soil; and (c) landscaping
"Play Area Clearance Works Bond"	means a bond that the Council can call on to provide the necessary funds to carry out all or any of the Play Area Clearance Works in the event that the Developer fails to carry out the said Play Area Clearance Works in accordance with the terms of clause 5.10 of this Agreement
"Play Area Land"	means all that land shown coloured light pink on the Site Layout Plan which land is to be used as public amenity land and a children's play area
"Protected Tenant"	means a tenant of the Rented Affordable Dwellings who acquires a leasehold or freehold interest in the whole of or part of such Dwelling from a Registered Provider pursuant to a statutory right

"Registered Provider"	means a registered provider who is: (a) registered with the Homes and Communities Agency under the provisions of the Housing & Regeneration Act 2008; and (b) nominated or approved by the Council
"Rented Affordable Dwellings"	means residential dwellings to be used as Rented Affordable Housing
"Rented Affordable Housing"	means housing that is: (a) wholly rented; (b) made available to Persons In A Housing Need via a Registered Provider; (c) remains permanently accessible to people who for whatever reason cannot afford to buy or rent a suitable home at prevailing market prices (unless an occupier has exercised the statutory right to acquire), and (d) is let at affordable rent in accordance with such rent as may be agreed with a Registered Provider
"Second Contribution"	means the sum of TWENTY ONE THOUSAND EIGHT HUNDRED AND FORTY SEVEN POUNDS FIFTY PENCE (£21,847.50)
"Service Installations"	means conduits culverts channels pipes outlets mains wires cables optic fibres ducts flues poles ventilation shafts electricity substations gas governors and all and any other ancillary equipment and apparatus for the conduct of Services
"Services"	means the supply of water gas electricity telephone telecommunications cable television (if available) and all other appropriate services other than Drainage
"Site"	means all that land edged red on the Site Layout Plan being part of the land at the former Cooks Shipyard and the former Gas Works, Wivenhoe
"Site Layout Plan"	means the drawing annexed at Appendix 2

"Use Classes Order" means the Town and Country Planning (Use Classes) Order 1987, as amended

1.2 where the context so requires:

(a) A reference in this Agreement to an Act of Parliament or any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same

(b) Words importing the masculine gender include the feminine gender and vice versa. Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa

(c) Any headings or side notes are for ease of reference only and shall not affect the construction of this Agreement

(d) Where a party includes more than one person any obligations of that party shall be joint and several

2. INTERPRETATION AND LEGAL EFFECT

2.1 This Agreement is made pursuant to Section 106 of the Act and the covenants contained herein are planning obligations for the purposes of Section 106 of the Act in respect of which:

(a) The Developer owns the freehold title to the Site and the Site is free from any third party interests and encumbrances other than those described in the Title Number EX350392

(b) The Council is the Local Planning Authority entitled to enforce the provisions of this Agreement and the covenants contained in this Agreement shall be so enforceable

(c) This Agreement is entered into in respect of the Site with the intent that it shall bind the Developer's freehold interest in the Site

(d) This Agreement shall be binding on all successors and/or assigns in title of the parties hereto and any persons claiming under or through them

(e) This Agreement has been executed as a Deed and shall be registered by the Council against the Site as a Local Land Charge

2.2 This Agreement is made pursuant to Section 106 of the Act and all other powers enabling the parties to enter into such an Agreement and in consideration of the covenants herein contained

2.3 Nothing in this Agreement is or amounts to or shall be construed as a planning permission or approval

2.4 This Agreement shall come into force on the date of the grant of the Planning Permission

2.5 If the Planning Permission is quashed or revoked or ceases to have effect by operation of law or expires before the Commencement of the Development then this Agreement will at that time cease to have effect except that the Council will be required forthwith to cancel all entries made in the Register of Local Land Charges in respect of this Agreement

2.6 Nothing in this Agreement, whether express or implied, shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a local authority and the rights powers duties and obligations of the Council under all public and private statutes byelaws orders and regulations may be fully and effectually exercised in relation to the Site or any part of it and any works executed on it as if this Agreement had not been executed by the Council

2.7 Any approval given by the Council under this Agreement or for the purposes of this Agreement shall not be deemed to be an approval for any other purpose whatsoever

2.8 The Developer hereby agrees with the Council that the Site will be bound by this Agreement and more particularly covenants to observe and perform the restrictions and obligations contained in this Agreement

2.9 No party shall be liable for a breach of any covenant in this Agreement when that party no longer has any interest in any part of the Site but without prejudice to that party's liability for a breach of any covenant that occurred prior to the cessation of its interest in the Site

2.10 An obligation that prohibits the Developer from allowing any or limited occupation of the Development until certain events occur shall also be an obligation on the Developer to positively carry out those certain events by no later than the number of occupations set out therein unless the context otherwise requires

3. NOTICES AND COSTS

3.1 All works and/or acts required to be undertaken by the Developer shall in all respects be at the cost of the Developer

3.2 All notices given or served or required to be given or served under this Agreement shall be given or served as follows:

(a) by personal delivery by hand (in which case service is immediately effected)

(b) by first class post (in which case service is effected on the second day after posting)

(c) by facsimile transmission (in which case service is effected at the time of successful transmission)

3.3 The address for service of Notices to the Council shall be at the Council's address at the head of this Agreement and Notices shall be marked for the attention of the Head of Planning and Protection

3.4 The Developer shall on completion of this Agreement pay:

3.4.1 the reasonable and proper fees disbursements and incidental expenses of the Council in relation to the negotiation preparation execution and completion of this Agreement

3.4.2 a contribution of £[3549.00] towards the Council's administration costs of monitoring the performance of the planning obligations under the terms of this Agreement

4. ARBITRATION

4.1 Any dispute or difference between any of the parties to this Agreement as to the interpretation of or as to the performance or non-performance of any obligation may be decided by Arbitration under Part I of the Arbitration Act 1996 by a single arbitrator appointed by the parties in dispute. If the parties do not agree on that appointment then the President of the Bar Council of England and Wales may appoint the arbitrator at the request of either party to the dispute

4.2 Before referring any dispute to arbitration under this Agreement either party to the dispute may (without obligation) suggest to the other that they voluntarily seek mediation to resolve their differences. If the suggestion is acceptable the parties to the dispute will:

(a) Apply to the then President of the Law Society of England and Wales to nominate a person of suitable knowledge and experience as the mediator; and

(b) Pay the costs of nominating the mediator and his fees and expenses as the mediator shall propose at the conclusion of the mediation but in the interim such fees shall be borne equally by the parties in dispute

5. THE DEVELOPER'S COVENANTS

The Developer HEREBY COVENANTS with the Council:

5.1 That the Affordable Housing Units shall be used only for the purposes of Rented Affordable Housing in perpetuity PROVIDED THAT:

5.1.A this obligation shall not be binding on any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving

title from the Protected Tenant or any successor in title thereto and their respective mortgagees and charges, any mortgagee chargee or receiver of the Registered Provider and any person who shall derive title directly or indirectly from such mortgagee chargee or receiver (other than a Registered Provider) and any service companies or statutory undertakers who purchase (including by way of lease) or otherwise become proprietor of any part of the Affordable Housing Units for the purposes of providing services or facilities in connection with the Affordable Housing Units

5.1.B the said Affordable Housing Units shall be released from this covenant and the said covenant shall be discharged and extinguished from the date of the transfer of the said Affordable Housing Units to the Registered Provider

5.1.C in the event that the Council is satisfied with evidence provided by the Developer that by the time the Affordable Housing Units are due to be delivered in accordance with clause 5.2.1 herein no Registered Provider is interested in taking the Affordable Housing Units then the Developer shall instead agree with the Council the Affordable Housing Contribution and upon payment of the said Affordable Housing Contribution the said Affordable Housing Units shall be released from the occupancy restriction provided for by this clause 5.1 and the dwellings shall be available thereonafter as Open Market Units

5.2 Not to Occupy or allow cause or permit to be Occupied any of the Open Market Units other than those comprised in Phase 3A unless and until:

5.2.1 the Affordable Housing Units have been constructed to Completion and have been transferred (along with any associated car parking and amenity land and rights concerning Drainage and Services) to the Registered Provider PROVIDED THAT in the event that by the time the Affordable Housing Units have been constructed to Completion the Council is satisfied with evidence provided by the Developer that no Registered Provider is interested in taking the Affordable Housing Units then the Developer shall instead pay to the Council the Affordable Housing Contribution in lieu of transferring the said Affordable Housing Units to a Registered Provider and for the avoidance of any doubt from the date of payment of the Affordable Housing Contribution the said Affordable Units shall thereonafter be available as Open Market Units

5.2.2 the extent of the Interim Landscaping Land and the Interim Landscaping Works have been agreed in writing with the Council

5.2.3 the construction details for a dinghy park have been agreed with the Council and the Dinghy Park Land has been laid out as a dinghy park in accordance with the agreed construction details and in the manner indicated on the Site Layout Plan to enable the said Dinghy Park Land to be used for the parking or storage of boats and their trailers

5.2.4 the construction details for a car park have been agreed with the Council and the Car Park Land has been laid out as a car park in accordance with the agreed construction details and in the manner indicated on the Site Layout Plan to enable the said Car Park Land to be used as a public car park

5.2.5 the Dinghy Park Lease and the Car Park Lease have been completed

5.2.6 the Contributions have been paid to the Council

5.2.7 the freehold of the Play Area Land has been transferred to the Council for the nominal consideration of one pound (£1.00)

5.2.8 the Play Area Clearance Works have been agreed with the Council

5.2.9 the Play Area Clearance Works Bond (including the amount) has been agreed with and submitted to the Council

5.2.10 a notice board containing information (including pictures) on the former shipyard has been agreed with the Council and WTC and erected in a position agreed with the Council and WTC

5.2.11 the Blue Land Landscaping Scheme has been agreed in writing with the Council

5.3 To allow unrestricted and unhindered pedestrian and vehicular access to the Business Units and the Dinghy Park Land over and across the Permissive Rights of Way and the land shown coloured red on the Site Layout Plan (the said land coloured red being proposed adopted highway maintainable at the public expense)

5.4 To allow unrestricted and unhindered pedestrian and vehicular access to the Car Park Land over and across the land shown coloured red on the Site Layout Plan

5.5 Not to use the Dinghy Park Land or allow cause or permit the Dinghy Park Land to be used for any purpose other than as a dinghy park for the parking or storage of boats and their trailers

5.6 Not to allow the Dinghy Park Land to be used for the parking or storage of any boats that exceed 5 metres in length

5.7 Not to use the Car Park Land or allow cause or permit the Car Park Land to be used for any purpose other than as a public car park (with or without a reasonable charge)

5.8 From the Date of Completion of the residential development to: (a) allow all members of the public to have full unhindered and unrestricted pedestrian access without charge at all times over the Permissive

Rights of Way in perpetuity; and (b) maintain the Permissive Rights of Way in perpetuity to ensure that members of the public have safe use of the Permissive Rights of Way

5.9 From the Date of Completion of the residential development to erect appropriate signs on the Site stating that it is not intended that the use of the Permissive Rights of Way should create any public rights of way (the location and wording of such signs to be agreed with the Council prior to their erection)

5.10 To carry out the Play Area Clearance Works by the earlier of: (a) 3 months from the Date of Completion; or (b) 30 calendar months from the date of this Agreement

5.11 Not to Commence the Development until the Method Statement has been agreed with the Council and then to carry out all construction, demolition and de-contamination works in accordance with the agreed Method Statement

5.12 Not to allow cause or permit any heavy goods vehicles delivering construction materials to the Site to enter the Site at any time other than:

5.12.1 08.00 hours to 17.00 hours (inclusive) on Mondays to Fridays (but at no time on public holidays)

5.12.2 09.00 hours to 13.00 hours on Saturdays

5.13 Occupiers and users of the Business Units shall not operate vehicles with a kerb mass (which for the purposes of this Agreement means the weight of the complete vehicle and all equipment including fuel and water but without the payload, driver or any crew) in excess of 2300 kilograms from such units in association with the carrying out of such business or operation. Such Occupiers and users shall use reasonable endeavours to ensure that routine deliveries/collections made by others from/to such units are made using vehicles with a kerb mass that is no greater than 2300 kilograms

5.14 To serve on the Council at the appropriate times the First Notice of Occupation the Second Notice of Occupation and the Date of Completion Notice

5.15 If by the time that 16 of the Open Market Units are Occupied the obligations that are required to be performed before that Occupation have not been so performed not to carry out or allow cause or permit to be carried out any further works to construct the Development unless and until those obligations have been performed

5.16 If for any reason the Dinghy Park Lease comes to an end before the contractual term expressed in the said Dinghy Park Lease expires, to observe and perform all of the requirements and limitations of the said Dinghy Park Lease

5.17 To carry out the agreed Interim Landscaping Works within 4 weeks of the Car Park Land and the Dinghy Park Land being available for use for their respective purposes in accordance with the provisions of this Agreement

5.18 To construct the Business Units to Completion (with the exception of any final internal fitting out works) by no later than 12 calendar months from the date of Final Occupation PROVIDED THAT in the event that the Council is satisfied with evidence provided by the Developer that funding for the construction of the Business Units is not available to enable construction to be completed within the said 12 calendar months then the obligation to construct the said Business Units to Completion (with the exception of any final internal fitting out works) shall be extended to 24 calendar months from Final Occupation

5.19 To complete the agreed Blue Land Landscaping Scheme within 3 calendar months of Final Occupation and from thereonin to allow all members of the public to have full and unrestricted access to the Blue Land for recreational purposes until such time as the said Blue Land is required for the construction of the Business Units or for any other development permitted by a planning permission

5.20 That once Commencement of the Development has taken place the Developer shall not carry out any development on the Site pursuant to the Original Consent

5.21 If for any reason the Car Park Lease comes to an end before the contractual term expressed in the said Car Park Lease expires, to observe and perform all of the requirements and limitations of the said Dinghy Park Lease

6. THE COUNCIL'S COVENANTS

The Council HEREBY COVENANTS with the Developer as follows:

6.1 That it will grant the Planning Permission immediately upon completion of this Agreement or as soon as practicably possible thereafter

6.2 That it will only use the First Contribution towards the First Contribution Purposes and will return to the Developer any unexpended part of the said contribution (together with interest accrued that relates to that unexpended part) on the first anniversary of the date of completion of the Play Area Clearance Works

6.3 That it will install the playground facilities referred to in the First Contribution Purposes no later than six months of completion of the Play Area Clearance Works

6.4 That it will only use the Second Contribution towards:

(a) the ongoing maintenance of the playground equipment referred to at clause 6.3 above

(b) the ongoing maintenance of the Play Area Land used as public amenity land

and will return to the Developer any unexpended part of the said contribution (together with interest accrued that relates to that unexpended part) on the twenty-fifth anniversary of the date that the Council received the said contribution

6.5 That it will take the transfer of the Play Area Land at the appropriate time as provided for by clause 5.2.7 herein and will thereupon grant to the Developer the Compound Licence

6.6 That it shall forever after the completion of the Play Area Clearance Works keep the Play Area Land as open space available for usual recreational use by members of the public and shall not use the Play Area Land for any other purpose whatsoever

7. THE WTC COVENANTS

7.1 WTC covenants with the Council and the Developer that it will enter into the Car Park Lease and the Dinghy Park Lease when required to do so

8. MISCELLANEOUS PROVISIONS

8.1 The Contributions shall be increased or decreased in line with any increase or decrease that occurs in the Index from a date one month before the date of this Agreement to a date three months before the date that each of the Contributions is due

8.2 Each of the Contributions shall be paid on the date that they are due and in the event that they are not paid on the date that they are due then those payments shall attract interest at the rate of 4% above the base lending rate of Barclays Bank Plc from the first day after payment is due until such time as the payment is made in full

8.3 Any consent or agreement or approval required to be given by any party under this Agreement shall not be unreasonably withheld

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999

IN WITNESS WHEREOF this Agreement has been sealed by the Council the Developer and WTC the day and year first before written

THE COMMON SEAL of)
COLCHESTER BOROUGH COUNCIL)
was hereunto affixed in the presence of:)

Authorised Signatory

Mayor

Proper Officer

SIGNED as a DEED by)
TAYOR WIMPEY DEVELOPMENTS)
LIMITED acting by its attorneys in the)
presence of)

C J THOMETH

L J TURNER

Witness signature:

Witness name: P LORD

Witness address: TAYLOR WIMPEY UK LIMITED
TARTAN HOUSE ETNA ROAD
BURY ST EDMUNDS IP33 1JF

THE COMMON SEAL of)
WIVENHOE TOWN COUNCIL)
was hereunto affixed in the presence of:)

MAYOR.

TOWN CLERK

THE FIRST SCHEDULE

METHOD STATEMENT

The Method Statement shall include the following:

1. That the crushing of concrete on the Site is to take place at a point on hardstanding as far away from existing houses as is practicable

2. That the crushing of concrete on the Site shall only take place on weekdays (but not public holidays) and only take place between the hours of 08.00 hours to 17.00 hours (inclusive)

3. That any material relating to decontamination and demolition to be removed from the Site will be accumulated and moved from the Site in intensive bursts and to give not less than 4 days notice to residents on the affected access roads that the material is to be removed

4. That the access roads referred to at paragraph 3 of this Schedule shall be agreed with the Council and WTC before material is removed from the Site

5. That reasonable endeavours will be used to avoid driven piles on the Site in the vicinity of existing houses

6. That no construction work relating to this permission shall be carried out:

   (a) on any Sunday or Bank/Public Holiday

   (b) before 07.30 hours or after 18.00 hours on any weekday

   (c) before 08.00 hours or after 13.00 hours on any Saturday

7. That there shall be washing facilities at the access to the Site to wash away mud (or any other site material) from the wheels of all vehicles that exit the site during the demolition and decontamination of the Development

8. That the approach roads to the Site being Brook Street, East Street, Queens Road and Valley Road will be swept clean of all mud (or other site material) not less than once a week and in any event as and when required by the Council

THE SECOND SCHEDULE

AFFORDABLE HOUSING TRANSFER

The Affordable Housing Transfer shall include the following:

1. That the Affordable Housing Units are sold:

1.1 with full title guarantee

1.2 with vacant possession

1.3 at a price that ensures that the Registered Provider is able to charge rents that the Council reasonably considers to be affordable

2. A grant by the transferor to the Registered Provider of all rights of access and passage of Drainage and Services and all other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units

3. A covenant by the transferor that it will enter into the necessary adoption agreements with the local highway authority (for the adoption of the estate roads as publicly maintainable highway) and the water undertaker (for the adoption of the foul and surface water sewers as sewers maintainable by the water undertaker)

4. A reservation of all rights of access and passage of Drainage and Services and rights of entry reasonably necessary for the purposes of the Development

5. Such other covenants as the transferor may require for the maintenance of the Development once it is completed and the preservation of the appearance thereof

APPENDIX 1

CAR PARK LEASE AND DINGHY PARK LEASE

EVERSHEDS

Dated 2011

(1) TAYLOR WIMPEY DEVELOPMENTS LIMITED

(2) WIVENHOE TOWN COUNCIL

Lease

---

relating to premises known as The Car Park Land forming part of land at and to the East and West of Walter Radcliffe Way, Wivenhoe

Eversheds LLP
1 Royal Standard Place
Nottingham
NG1 6FZ

Tel 0845 497 9797
Fax 0845 497 7477
Int +44 20 7497 9797
DX 10031 Nottingham
www.eversheds.com

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LAND REGISTRY PARTICULARS

PART 1: LAND REGISTRY PARTICULARS

LR1.	**Date of lease**	2011
LR2.	**Title number(s)**	
LR2.1	**Landlord's title number(s)**	TITLE NUMBER EX350392
LR2.2	**Other title numbers**	None
LR3.	**Parties to this lease**	
	Landlord	TAYLOR WIMPEY DEVELOPMENTS LIMITED (registered number 00643420) of St Davids Court, Union Street, Wolverhampton, West Midlands WV1 3JE.
	Tenant	WIVENHOE TOWN COUNCIL of 77 High Street, Wivenhoe, Essex CO7 9AB
LR4	**Property**	**In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.** The premises (referred to in this Lease as "the Premises") including all the land for identification only coloured red on the Plan and marked as the Public Car Park (or such similar and adjacent areas as may have been constructed in the vicinity under the Planning Consent) ("the Car Park")
LR5.	**Prescribed statements etc**	
LR5.1	**Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act**	Not applicable

	1993) of the Land Registration Rules 2003	
LR5.2	**This lease is made under, or by reference to, provisions of:**	Not applicable
LR6.	**Term for which the Property is leased**	999 years from and including the date of this Lease (referred to in this Lease as "the Term Commencement Date") To and including [ ]. (This term is referred to in this Lease as "the Contractual Term")
LR7.	**Premium**	None
LR8.	**Prohibitions or restrictions on disposing of this lease**	This Lease contains a provision that prohibits or restricts dispositions.
LR9.	**Rights of acquisition etc**	
LR9.1	**Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**	None
LR9.2	**Tenant's covenant to (or offer to) surrender this lease**	None
LR9.3	**Landlord's contractual rights to acquire this lease**	None
LR10.	**Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**	None
LR11.	**Easements**	
LR11.1	**Easements granted by this lease for the benefit of the Property**	None
LR11.2	**Easements granted or reserved by this lease over the**	None.

	Property for the benefit of other property	
LR12.	**Estate rentcharge burdening the Property**	None
LR13.	**Application for standard form of restriction**	None
LR14.	**Declaration of trust where there is more than one person comprising the Tenant**	Not applicable

PART 2: OTHER PARTICULARS

PARTICULARS

Date	2011
Landlord	TAYLOR WIMPEY DEVELOPMENTS LIMITED (registered number 00643420) of St Davids Court, Union Street, Wolverhampton, West Midlands WV1 3JE.
Tenant	WIVENHOE TOWN COUNCIL of 77 High Street, Wivenhoe, Essex C07 9AB.
Landlord's Title	The Landlord's title to the Premises registered at the Land Registry under title number(s) EX350392
Principal Rent	A peppercorn if demanded
Rent Commencement Date	The date of this Lease

THIS LEASE is made on the date set out in the Particulars
BETWEEN

(1) the Landlord; and

(2) the Tenant.

OPERATIVE PROVISIONS

1. **INTERPRETATION**

1.1 In this Lease, the following words and expressions have the following meanings:

"Contractual Term"	means 999 years commencing on and including the date of this lease
"Interest Rate"	means the rate of 4% per year above the base lending rate of National Westminster Bank Plc or such other bank as the Landlord may from time to time nominate in writing
"Plan"	means the plan annexed to this document
"Planning Acts"	means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991
"Planning Consent"	means the Planning Consent granted pursuant to application O/COL/01/1799
"Term"	includes the Contractual Term and any period of holding over or extension or continuance of the Contractual Term by statute or common law
"VAT"	means value added tax or any other tax of a similar nature and unless otherwise expressly stated all references to rents or other sums payable by the Tenant are exclusive of VAT

1.2 In this Lease:

Development

1.2.1 references to 'development' are references to development as defined by the Town and Country Planning Act 1990 section 55.

Gender and number

1.2.2 words importing one gender include all other genders; words importing the singular include the plural and vice versa

Headings

1.2.3 the clause, paragraph and schedule headings do not form part of this document and are not to be taken into account in its construction or interpretation

'Interest'

1.2.4 references to 'interest' are references to interest payable during the period from the date on which the payment is due to the date of payment both before and after any judgment at the Interest Rate then prevailing

'Interest Rate'

1.2.5 the 'Interest Rate' means the rate of 4% per year above the base lending rate of National Westminster Bank plc or such other bank as the Landlord may from time to time nominate in writing

Interpretation of 'consent' and 'approved'

1.2.6 references to 'consent of the Landlord' or words to similar effect are references to a prior written consent signed by or on behalf of the Landlord and references to the need for anything to be 'approved by the Landlord' or words to similar effect are references to the need for a prior written approval by or on behalf of the Landlord

Consent or approval of mortgagee

1.2.7 any provisions in this Lease referring to the consent or approval of the Landlord are to be construed as also requiring the consent or approval of any mortgagee of the Premises where that consent is required under a mortgage in existence at the date of this lease

Interpretation of 'the Landlord'

1.2.8 the expression 'the Landlord' includes the person or persons from time to time entitled to possession of the Premises when this Lease comes to an end

Interpretation of 'the last year of the Term' and 'the end of the Term'

1.2.9 references to the 'last year of the Term' are references to the actual last year of the Term however it determines and references to the 'end of the Term' are references to the end of the Term when and how it determines

Interpretation of 'the Tenant'

1.2.10 the 'Tenant' includes any person who is for the time being bound by the tenant covenants of this Lease and includes the Successors in Title to the Tenant

Interpretation of 'this Lease'

1.2.11 the expression 'this Lease' includes unless expressly stated to the contrary any document supplemental to or collateral with this document or entered into in accordance with this document

Joint and several liability

1.2.12 where any party to this Lease for the time being comprises two or more persons obligations expressed or implied to be made by or with that party are deemed to be made by or with the persons comprising that party jointly and severally

Losses

1.2.13 references to 'losses' are references to liabilities damages or losses awards of damages or compensation penalties costs disbursements and expenses arising from any claim demand action or proceedings

Obligations not to permit or suffer

1.2.14 any covenant by the Tenant not to do anything includes an obligation not to permit or suffer that thing to be done by another person where the Tenant is aware that the thing is being done

References to clauses and schedules

1.2.15 any reference in this document to a clause subclause paragraph subparagraph or schedule without further designation is to be construed as a reference to the clause subclause paragraph subparagraph or schedule of this document so numbered

References to rights of access

1.2.16 references to any right of the Landlord to have access to the Premises are to be construed as extending to any mortgagee of the Premises and to all persons authorised in writing by the Landlord and any mortgagee including agents professional advisors contractors workmen and others

References to statutes

1.2.17 unless expressly stated to the contrary any reference to a specific statute includes any statutory extensions or modification amendment or re-enactment of that statute and any regulations or orders made under that statute and any general reference to a statute includes any regulations or orders made under that statute

Terms from the 1995 Act

1.2.18 where the expression 'landlord covenants' 'tenant covenants' or 'authorised guarantee agreement' are used in this Lease they are to have the same meaning as is given by the 1995 Act section 28(1)

2. DEMISE

The Landlord demises the Premises to the Tenant with full title guarantee to hold to the Tenant for the Contractual Term yielding and paying the Principal Rent without any deduction in advance on the anniversary of the commencement of the term the first payment to be paid on the date of this document

3. THE TENANT'S COVENANTS

3.1 Rent

3.1.1 The Tenant must pay the rent, if demanded, on the date and in the manner set out in this Lease and must not exercise or seek to exercise any right or claim to withhold rent or any right or claim to legal or equitable set-off

3.2 Outgoings and VAT

The Tenant must pay and must indemnify the Landlord against:

3.2.1 all rates taxes assessments duties charges impositions and outgoings that are now or may at any time during the Term be charged assessed or imposed on the Premises or on the owner or occupier of them excluding any payable by the Landlord occasioned by receipt of the rent or by any disposition of or dealing with this Lease or ownership of any interest reversionary to the interest created by it

3.2.2 all VAT that may from time to time be charged on the rent or other sums payable by the Tenant under this Lease; and

3.2.3 all VAT incurred in relation to any costs that the Tenant is obliged to pay or in respect of which he is required to indemnify the Landlord under the terms of this Lease save where such VAT is recoverable or available for set-off by the Landlord as input tax

3.3 **Repair and cleaning**

3.3.1 The Tenant must repair the Premises and keep them in good repair and in particular where any part of the Premises is painted to repaint the same with good quality paint in the same colour as originally painted every three years further when replacing or repairing any hard surfaced areas must use the same materials and finishes unless unobtainable

3.3.2 The Tenant must replace any landlord's fixtures and fittings in the Premises that are beyond repair at any time during or at the end of the Term

3.3.3 The Tenant must keep the Premises clean and tidy and clear of all rubbish and in particular must remove any dumped or unsightly items the Tenant must not bring on to the Premises any bins or skips save where the Landlord's consent has been given

3.3.4 The Tenant must not cause any land roads or pavements abutting the Premises to be untidy or dirty and in particular but without prejudice to the generality of the above must not deposit refuse or other materials on them

3.3.5 Where the use of any of the Conduits or other things is common to the Premises and other property the Tenant must be responsible for and indemnify the Landlord against all sums due from the owner tenant or occupier of the Premises in relation to those Conduits boundary structures or other things and must undertake all work in relation to them that is his responsibility

3.4 **The Car Park**

The Tenant must not:

3.4.1 use the Car Park save for a Public Car Park without the prior written consent of the Landlord;

3.4.2 allocate the use of any space to any person;

3.4.3 treat in any different way the residents and occupiers of Cooks Shipyard from other members of the public;

3.4.4 save as set out below or with the consent of the Landlord restrict the hours during which the Car Park can be used;

3.4.5 use the Car Park for commercial vehicles boats and trailers or caravans or unroadworthy vehicles

The Tenant must:

3.4.6 retain and maintain in good condition the surface kerbs bollards walls racks bins signs or surface markings as may have been in existence at the commencement of the Term;

3.4.7 use all reasonable endeavours to remove any dumped or unroadworthy vehicles within 28 days of their becoming known to the Tenant and clean and clear rubbish from the Car park on not less than a quarterly basis taking steps to remove any graffiti there;

3.4.8 retain the Car Park as a visitors facility to Cooks Shipyard and Wivenhoe Town;

The Tenant may:

3.4.9 charge a reasonable fee for the use of spaces within the Car Park;

3.4.10 prohibit parking for continuous periods in excess of 7 days;

3.4.11 lock the Car Park between 0600 to 0800 or such other hours as may be agreed with the Landlord to prevent the use of the Car Park as a commuter facility;

3.4.12 provide up to four spaces for disabled users;

3.4.13 use all such reasonable means as may be appropriate to further the objectives set out at **clauses 3.4.9** and **3.4.10** and to prevent the Car Park being used as a commuter or residents only facility

3.4.14 close the car park and request the removal of any vehicles, both of which with the prior written agreement of the Landlord (such agreement to be in the Landlord's absolute discretion)

3.4.15 subject to obtaining the consent referred to in **clause 3.5.2** install at its own cost appropriate meters/machinery to enable the collection of fees referred to at **clause 3.4.9** above together with such necessary signage relating to parking regulations in a form to be approved by the

Landlord acting reasonably and pay any charges relating to the use of the meters/machinery that may be incurred

3.5 **Waste and Alterations**

3.5.1 The Tenant must not commit any waste make any addition to the Premises unite the Premises with any adjoining premises or make any alterations to the Premises save as required or permitted by this Lease

3.5.2 The Tenant must not make any connection with any conduits except with the consent of the Landlord and competent authority undertaker or supplier

3.6 **Statutory Obligations**

3.6.1 The Tenant must comply in all respects with the requirements of any statutes applicable to the Premises or the trade or business for the time being carried on their and any other obligations so applicable imposed by law or by any byelaws

3.7 **Particular Obligations**

3.7.1 Without prejudice to the generality of **clause 3.6.1** the Tenant must execute all works and provide and maintain all arrangements on or in respect of the Premises or the use to which the Premises are being put that are required in order to comply with the requirements of any statute already or in the future to be passed or the requirements of any government department local authority or other public or competent authority or court of competent jurisdiction regardless of whether such requirements are imposed on the owner the occupier or any other person

3.7.2 With prejudice to the generality of **clause 3.6.1** the Tenant must not do in or near the Premises anything by reason of which the Landlord may incur any losses under any statute

3.8 **Use**

The Tenant must not use the Premises for any purpose other than as set out in this Lease

3.9 **Nuisance**

The Tenant must not do anything on the Premises or allow anything to remain on them that may be or become or cause a nuisance or annoyance disturbance inconvenience injury or damage to the Landlord or his tenants or the owners or occupiers of adjacent or neighbouring premises

3.10 **Auctions Trade and Immoral Purposes**

The Tenant must not use the Premises for any auction sale any dangerous noxious noisy or inoffensive trade business manufacture or occupation or for any illegal or immoral act or purpose

3.11 **Residential Use Sleeping and Animals**

The Tenant must not use the Premises as sleeping accommodation or for residential purposes or keep any animal on the Premises

3.12 **Entry to Inspect and Notice to Repair**

3.12.1 The Tenant must permit the Landlord on reasonable notice during normal business hours except in emergency:

3.12.1.1 to enter the Premises to ascertain whether or not the covenants and conditions of this Lease have been observed and performed;

3.12.1.2 to view the state of repair and condition of the Premises; and

3.12.1.3 to give to the Tenant a notice specifying the Works required to remedy any breach of the Tenant's obligations in this Lease ("a notice to repair")

Works to be carried out

3.12.2 The Tenant must immediately carry out the works specified in a notice to repair

Landlord's power in default

3.12.3 If within one month of the service of a notice to repair the Tenant has not started to execute the work referred to in the notice or is not proceeding diligently with it or if the Tenant fails to finish the work within four months or the Tenant is unlikely to finish the work within that period the Tenant must permit the Landlord to enter the Premises to execute the outstanding work and must within 14 days of a written demand pay to the Landlord the cost of so doing and all expenses incurred by the Landlord including legal costs and surveyors fees

3.13 **Alienation**

3.13.1 The Tenant must not hold the Premises on trust for another the Tenant must not part with possession of the whole or any part of the Premises

or permit another to occupy them or any part of them except pursuant to a transaction permitted by and effected in accordance with the provisions of this Lease

3.13.2 The Tenant must not assign sublet or charge part only of the Premises

3.13.3 The Tenant must not assign sublet or charge the whole of the Premises without the prior written consent of the Landlord such consent not to be unreasonably withheld

3.13.4 The parties agree that upon any approved assignment the Tenant shall not be obliged to enter into an authorised guarantee agreement under the terms of the Landlord and Tenant (Covenants) Act 1995, and that on any approved sub-letting of all or part of the premises it shall not be unreasonable for the Tenant to charge a rent not exceeding the market rent of the sub-let premises from time to time

3.13.5 To lodge or procure to be lodged with the Landlord (or the Landlord's Solicitors if the Landlord shall so direct) for the purpose of registration:

(a) all assignments and transfers of the term created in the Premises or any part;

(b) all underleases of and all charges by way of legal mortgage upon the Premises or any part and all transfers; and

(c) all other instruments made for effecting or evidencing any devolution of any legal estate in the Premises whether of the term hereby created or any sub-term or other derivative interest in the Premises or any part thereof and including probates and letters of administration and surrenders of any sub-terms and discharges of any charges by way of legal mortgage or copies of any of the above certified copies of the originals.

3.13.6 To supply on registering any such instrument a copy of any plan referred to and in the case of probates or letters of administration a written statement of the number of the Premises the title to which devolves thereunder.

3.13.7 To effect such lodgement within one month of the execution of any such instrument or in the case of probates or letters of administration within one month of the grant thereof.

3.13.8 On lodging any such instrument or particulars as aforesaid to pay to the Landlord (or the Landlord's Solicitors if application) a reasonable fee to cover the registration of such instrument or particulars.

3.14 **Costs of Applications Notices and Recovery of Arrears**

The Tenant must pay to the Landlord on an indemnity basis all costs fees charges disbursements and expenses including without prejudice to the generality of the above those payable to counsel solicitors surveyors and bailiffs properly and reasonably incurred by the Landlord in relation to or incidental to:

3.14.1 every application made by the Tenant for a consent or licence required by the provisions of this Lease whether it is granted or refused or offered subject to any lawful qualification or condition or whether the application is withdrawn unless the refusal qualification or condition is unlawful whether because it is unreasonable or otherwise;

3.14.2 the contemplation preparation and service of a notice under the Law of Property Act 1925 section 146 or the contemplation or taking of proceedings under sections 146 or 147 of that Act notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;

3.14.3 the recovery or attempted recovery of arrears of rent or other sums due under this Lease; and

3.14.4 any steps taken in contemplation of or in connection with the preparation and service of a schedule of dilapidations during or after the end of the Term

3.15 **Planning**

3.15.1 The Tenant must observe and comply with the provisions and requirements of the Planning Acts affecting the Premises and their use and must indemnify the Landlord and keep him indemnified both during and following the end of the Term against all losses in respect of any contravention of those Acts

3.15.2 The Tenant must not make any application for planning permission relating to the Premises without the written consent of the Landlord

3.16 **Indemnities**

The Tenant must keep the Landlord fully indemnified against all Losses arising directly or indirectly out of any act omission or negligence of the Tenant or any persons at the Premises expressly or implied with the Tenant's authority and under his control or any breach or non-observance by the Tenant of the

covenants conditions or other provisions of this Lease or any of the matters to which this demise is subject

3.17 **Encroachments**

The Tenant must take all reasonable steps to prevent the construction of any new path passage pipe or the making of any encroachment or the acquisition of any easement in relation to the Premises and must notify the Landlord immediately if any such thing is constructed encroachment is made or easement acquired or if any attempt is made to encroach or acquire an easement at the request of the Landlord the Tenant must adopt such means as are reasonably required to prevent the making of any encroachment or the acquisition of any easement

3.18 **Yielding Up**

At the end of the Term the Tenant must yield up the Premises with vacant possession decorated and repaired in accordance with and in the condition required by the provisions of this Lease give up all keys of the Premises to the Landlord remove tenant's fixtures and fittings if requested to do so by the Landlord

3.19 **Interest on Arrears**

The Tenant must pay interest on the rents or other sums due under this Lease that are not paid within 14 days of the date due whether formally demanded or not nothing in this clause entitles the Tenant to withhold or delay any payment of the rent or any other sum due under this Lease or affects the rights of the Landlord in relation to any non-payment

3.20 **Statutory Notices**

The Tenant must give full particulars to the Landlord of any notice direction order or proposal relating to the Premises made given or issued to the Tenant by any government department or local public regulatory or other authority or court within 7 days of receipt and if so requested by the Landlord must produce it to the Landlord the Tenant must without delay take all necessary steps to comply with the notice direction or order at the request of the Landlord but at his own cost the Tenant must make or join with the Landlord in making any objection or representation the Landlord deems expedient against or in respect of any notice direction order or proposal

3.21 **Keyholders/Supervisors**

The Tenant must ensure that at all times the Landlord has written notice of the name home address and home telephone number of at least 2 keyholders or supervisors of the Premises

3.22 **Consent to the Landlord's Release**

The Tenant must not unreasonably withhold consent to a request made by the Landlord under the 1995 Act section 8 for a release from all or any of the landlord covenants of this Lease

4. **QUIET ENJOYMENT**

The Landlord covenants with the Tenant to permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for him

5. **INSURANCE**

5.1 **Definitions**

In this **clause 5** the terms defined in this **clause 5.1** have the meanings specified

"Insured Risks"	means the risks of loss or damage by fire lighting explosion aircraft including articles dropped from aircraft riot civil commotion malicious persons earthquake storm tempest flood bursting and overflowing of water pipes tanks and other apparatus and impact by boats or road vehicles and any other risks the Landlord from time to time by notice to the Tenant reasonably requires the Tenant to insure against
"Permissions"	means references to all the planning permissions and other permits and consents that may be required under the Planning Acts or other statutes for the time being in force to enable the Premises to be rebuilt and reinstated lawfully in the event of any damage or destruction

5.2 **Covenant to Insure**

5.2.1 The Tenant covenants with the Landlord to insure the Premises and keep them insured against damage or destruction by the Insured Risks in the joint names of the Landlord and the Tenant and of any other persons the Landlord from time to time by notice to the Tenant reasonably requires in an amount equal to the full cost of rebuilding and reinstating the Premises as new in the event of their total destruction including VAT architects' surveyors' and other professional fees payable on application for any permissions the cost of debris removal demolition site clearance and any works that may be required by statute and incidental expenses

5.2.2 The Tenant covenants with the Landlord to effect and maintain such insurance, in such amount as the Landlord reasonably and properly by notice to the Tenant requires (and in any event no less than £5 million for the aggregate of this and any other leases granted by the Landlord to the Tenant out of the Landlord's Title Number) in respect of the Tenant's liability to indemnify the Landlord against losses arising from the Tenant's acts omissions or negligence

5.2.3 All insurance must be effected in a substantial and reputable insurance office or with such underwriters and through such agency as the Landlord from time to time by notice to the Tenant reasonably requires such approval not to be unreasonably withheld or delayed

5.3 **Tenant's Further Insurance Covenants**

The Tenant covenants with the Landlord to observe and perform the requirements of this **clause 5.3**:

5.3.1 the Tenant must comply with all requirements and recommendations of the insurers;

5.3.2 the Tenant must not do or omit to do anything that could cause any insurance policy effected in accordance with this Lease to become wholly or partly void or voidable;

5.3.3 the Tenant must comply with all requirements and recommendations of the insurers;

5.3.4 the Tenant must immediately give notice to the Landlord of anything that might affect any insurance policy effected in accordance with this Lease and of any destruction or damage to the Premises whether or not caused by one or more of the Insured Risks;

5.3.5 the Tenant must produce to the Landlord on demand every insurance policy effected in accordance with this Lease and the receipt for the then current year's premium and if so required must supply the Landlord with a copy of every such policy

5.4 **Reinstatement**

If and whenever during the Term the Premises are damaged or destroyed by one or more of the Insured Risks then:

5.4.1 all money received under any insurance policy effected in accordance with this Lease must be placed in an account in the joint names of the Landlord and the Tenant at a bank designated by the Landlord [acting reasonably] and must subsequently be released to the Tenant from that account by instalments against architect's certificates or other evidence acceptable to the Landlord whose acceptance may not be unreasonably withheld of expenditure actually incurred by the Tenant in rebuilding and reinstating the Premises; and

5.4.2 the Tenant must with all convenient speed obtain the Permissions and as soon as they have been obtained rebuild and reinstate the Premises in accordance with them making up out of his own money any difference between the cost of rebuilding and reinstatement and the money received from the insurance policy

6. **FORFEITURE**

If and whenever during the Term:

6.1 the Tenant breaches any covenant or other term of this Lease;

the Landlord may at any time re-enter the Premises or any part of them in the name of the whole even if any previous right of re-entry has been waived and then the Term is to cease absolutely but without prejudice to any rights or remedies that may have accrued to the Landlord against the Tenant in respect of any breach of covenant or other term of this Lease including the breach in respect of which the re-entry is made

7. **AGREED SURRENDER**

If the Tenant notifies the Landlord that it is unable to regulate or manage the Premises then (without prejudice to the right of the Landlord to enforce the covenants to that effect in this Lease) the Landlord may (but shall not be obliged to) accept a surrender of the Premises at the cost of the Tenant

8. MEDIATION

8.1 Any dispute arising out of or in connection with this lease shall, at first instance, be referred to a mediator for resolution. The parties shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. Should the parties fail to agree within fourteen days, either party, upon giving written notice, may apply to the President or the Deputy President, for the time being, of the Royal Institute of Chartered Surveyors, for the appointment of a mediator.

8.2 Should the mediation fail, in whole or in part, either party may, upon giving written notice, and within twenty-eight days, apply to the President or the Deputy President, for the time being, of the Royal Institute of Chartered Surveyors, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Royal Institution of Chartered Surveyors, which Rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be England and Wales. The ruling of the arbitrator shall be final save on a point of law.

9. MISCELLANEOUS

9.1 Exclusion of Warranty as to Use

9.1.1 Nothing in this Lease is intended to confer any benefit on any person who is not a party to it

9.1.2 Nothing in this Lease shall grant to the Tenant any Riparian Rights to the River Colne or its foreshore and all such rights including the right to create or refuse berthing facilities along the river frontage of Cooks Shipyard shall remain vested in the Landlord

9.2 Compensation on Vacating Excluded

Any statutory right of the Tenant to claim compensation from the Landlord on vacating the Premises is excluded to the extent that the law allows

9.3 Notices

9.3.1 Form and services of notices

A notice under this Lease must be in writing and unless the receiving party or his authorised agent acknowledges receipt is valid if and only if:

9.3.1.1 it is given by hand sent by registered post or recorded delivery or sent by fax provided a confirmatory copy is given by hand or sent by registered post or recorded delivery on the same day; and

9.3.1.2 it is served

(a) where the receiving party is a company incorporated within Great Britain at the registered office; or

(b) where the receiving party is the Tenant and the Tenant is not such a company at the Premises; or

(c) where the receiving party is the Landlord and the Landlord is not such a company at the Landlord's address shown in this Lease or at any address specified in a notice given by the Landlord to the Tenant

9.3.2 **Deemed delivery**

9.3.2.1 Unless it is returned through the Royal Mail undelivered a notice sent by registered post or recorded delivery is to be treated as served on the third working day after posting whenever and whether or not it is received

9.3.2.2 A notice sent by fax is to be treated as served on the day upon which it is sent or the next working day where the fax is sent after 1600 hours or on a day that is not a working day whenever and whether or not it or the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail undelivered

9.3.2.3 References to "a working day" are references to a day when the United Kingdom clearing banks are open for business in the City of London

9.3.3 **Joint recipients**

If the receiving party consists of more than one person a notice to one of them is notice to all

9.4 **Agreement for Lease**

It is certified that there is no agreement for lease to which this document gives effect

10. EXECUTION

The parties have executed this Lease as a deed and it is delivered on the date set out in the Particulars.

THE COMMON SEAL of)
WIVENHOE TOWN COUNCIL was)
affixed to this deed in the presence of:)

Town Mayor

Town Clerk

EXECUTED as a deed by)
TAYLOR WIMPEY DEVELOPMENTS LIMITED)
acting by a director and its secretary)
or two directors)

Director

Director / Secretary

EVERSHEDS

Dated 2011

(1) TAYLOR WIMPEY DEVELOPMENTS LIMITED

(2) WIVENHOE TOWN COUNCIL

Lease

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relating to premises known as The Dinghy Park, forming part of land at and to the East and West of Walter Radcliffe Way,Wivenhoe

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LAND REGISTRY PARTICULARS

PART 1: LAND REGISTRY PARTICULARS

LR1.	**Date of lease**	2011
LR2.	**Title number(s)**	
LR2.1	**Landlord's title number(s)**	TITLE NUMBER EX350392
LR2.2	**Other title numbers**	None
LR3.	**Parties to this lease**	
	Landlord	TAYLOR WIMPEY DEVELOPMENTS LIMITED (registered number 00643420) of St Davids Court, Union Street, Wolverhampton, West Midlands WV1 3JE.
	Tenant	WIVENHOE TOWN COUNCIL of 77 High Street, Wivenhoe, Essex C07 9AB.
LR4	**Property**	**In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.** The premises (referred to in this Lease as "the Premises") including all land for identification only coloured pink on the Plan and marked as the Dinghy Park (or such similar adjacent area as may have been constructed in the vicinity under the Planning Consent) ("the Dinghy Park")
LR5.	**Prescribed statements etc**	
LR5.1	**Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act**	Not applicable

	1993) of the Land Registration Rules 2003	
LR5.2	**This lease is made under, or by reference to, provisions of:**	Not applicable
LR6.	**Term for which the Property is leased**	999 years from and including the date of this Lease (referred to in this Lease as "the Term Commencement Date") To and including [ ]. (This term is referred to in this Lease as "the Contractual Term")
LR7.	**Premium**	None
LR8.	**Prohibitions or restrictions on disposing of this lease**	This Lease contains a provision that prohibits or restricts dispositions.
LR9.	**Rights of acquisition etc**	
LR9.1	**Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**	None
LR9.2	**Tenant's covenant to (or offer to) surrender this lease**	None
LR9.3	**Landlord's contractual rights to acquire this lease**	None
LR10.	**Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**	None
LR11.	**Easements**	
LR11.1	**Easements granted by this lease for the benefit of the Property**	The rights specified in **clause 9**
LR11.2	**Easements granted or reserved by this lease over the**	None.

	Property for the benefit of other property	
LR12.	**Estate rentcharge burdening the Property**	None
LR13.	**Application for standard form of restriction**	None
LR14.	**Declaration of trust where there is more than one person comprising the Tenant**	Not applicable

PART 2: OTHER PARTICULARS

PARTICULARS

Date	2011
Landlord	TAYLOR WIMPEY DEVELOPMENTS LIMITED (registered number 00643420) of St Davids Court, Union Street, Wolverhampton, West Midlands WV1 3JE.
Tenant	WIVENHOE TOWN COUNCIL of 77 High Street, Wivenhoe, Essex CO7 9AB
Landlord's Title	The Landlord's title to the Premises registered at the Land Registry under title number(s) EX350392
Principal Rent	A peppercorn if demanded
Rent Commencement Date	The date of this Lease

THIS LEASE is made on the date set out in the Particulars

BETWEEN

(1) the Landlord; and

(2) the Tenant.

OPERATIVE PROVISIONS

1. **INTERPRETATION**

1.1 In this Lease, the following words and expressions have the following meanings:

"Contractual Term"	means 999 years commencing on and including the date hereof of this lease
"Interest Rate"	means the rate of 4% per year above the base lending rate of National Westminster Bank Plc or such other bank as the Landlord may from time to time nominate in writing
"Plan"	means the plan annexed to this document
"Planning Acts"	means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991
"Planning Consent"	means the Planning Consent granted pursuant to application O/COL/01/1799
"Shared Access"	the shared access area leading to the Premises and delineated with cross stitching on the Plan
"Term"	includes the Contractual Term and any period of holding over or extension or continuance of the Contractual Term by statute or common law
"VAT"	means value added tax or any other tax of a similar nature and unless otherwise expressly stated all references to rents or other sums payable by the Tenant are exclusive of VAT

1.2 In this Lease:

Development

1.2.1 references to 'development' are references to development as defined by the Town and Country Planning Act 1990 section 55.

Gender and number

1.2.2 words importing one gender include all other genders; words importing the singular include the plural and vice versa

Headings

1.2.3 the clause, paragraph and schedule headings do not form part of this document and are not to be taken into account in its construction or interpretation

'Interest'

1.2.4 references to 'interest' are references to interest payable during the period from the date on which the payment is due to the date of payment both before and after any judgment at the Interest Rate then prevailing

'Interest Rate'

1.2.5 'The Interest Rate' means the rate of 4% per year above the base lending rate of National Westminster Bank Plc or such other bank as the Landlord may from time to time nominate in writing

Interpretation of 'consent' and 'approval'

1.2.6 references to 'consent of the Landlord' or words to similar effect are references to a prior written consent signed by or on behalf of the Landlord and references to the need for anything to be 'approved by the Landlord' or words to similar effect are references to the need for a prior written approval by or on behalf of the Landlord

Consent or approval of mortgagee

1.2.7 any provisions in this Lease referring to the consent or approval of the Landlord are to be construed as also requiring the consent or approval of any mortgagee of the Premises where that consent is required under a mortgage in existence at the date of this lease

Interpretation of 'the Landlord'

1.2.8 the expression 'the Landlord' includes the person or persons from time to time entitled to possession of the Premises when this Lease comes to an end

Interpretation of 'the last year of the Term' and 'the end of the Term'

1.2.9 references to the 'last year of the Term' are references to the actual last year of the Term however it determines and references to the 'end of the Term' are references to the end of the Term when and how it determines

Interpretation of 'the Tenant'

1.2.10 the 'Tenant' includes any person who is for the time being bound by the tenant covenants of this Lease and includes the Successors in Title to the Tenant

Interpretation of 'the Lease'

1.2.11 the expression 'this Lease' includes unless expressly stated to the contrary any document supplemental to or collateral with this document or entered into in accordance with this document

Joint and several liability

1.2.12 where any party to this Lease for the time being comprises two or more persons obligations expressed or implied to be made by or with that party are deemed to be made by or with the persons comprising that party jointly and severally

Losses

1.2.13 references to 'losses' are references to liabilities damages or losses awards of damages or compensation penalties costs disbursements and expenses arising from any claim demand action or proceedings

Obligations not to permit or suffer

1.2.14 any covenant by the Tenant not to do anything includes an obligation not to permit or suffer that thing to be done by another person where the Tenant is aware that the thing is being done

References to Clauses and Schedules

1.2.15 any reference in this document to a clause subclause paragraph subparagraph or schedule without further designation is to be

construed as a reference to the clause subclause paragraph subparagraph or schedule of this document so numbered

References to rights of access

1.2.16 references to any right of the Landlord to have access to the Premises are to be construed as extending to any mortgagee of the Premises and to all persons authorised in writing by the Landlord and any mortgagee including agents professional advisors contractors workmen and others

References to statutes

1.2.17 unless expressly stated to the contrary any reference to a specific statute includes any statutory extensions or modification amendment or re-enactment of that statute and any regulations or orders made under that statute and any general reference to a statute includes any regulations or orders made under that statute

Terms from the 1995 Act

1.2.18 where the expression 'landlord covenants' 'tenant covenants' or 'authorised guarantee agreement' are used in this Lease they are to have the same meaning as is given by the 1995 Act section 28(1)

2. DEMISE

The Landlord demises the Premises to the Tenant with full title guarantee to hold to the Tenant for the Contractual Term yielding and paying the Principal Rent without any deduction in advance on the anniversary of the commencement of the term the first payment to be paid on the date of this document.

3. THE TENANT'S COVENANTS

3.1 Rent

The Tenant must pay the rent, if demanded, on the date and in the manner set out in this Lease and must not exercise or seek to exercise any right or claim to withhold rent or any right or claim to legal or equitable set-off

3.2 Outgoings and VAT

The Tenant must pay and must indemnify the Landlord against:

3.2.1 all rates taxes assessments duties charges impositions and outgoings that are now or may at any time during the Term be charged assessed or imposed on the Premises or on the owner or occupier of them

excluding any payable by the Landlord occasioned by receipt of the rent or by any disposition of or dealing with this Lease or ownership of any interest reversionary to the interest created by it

3.2.2 all VAT that may from time to time be charged on the rent or other sums payable by the Tenant under this Lease; and

3.2.3 all VAT incurred in relation to any costs that the Tenant is obliged to pay or in respect of which he is required to indemnify the Landlord under the terms of this Lease save where such VAT is recoverable or available for set-off by the Landlord as input tax

3.3 **Repair and cleaning**

3.3.1 The Tenant must repair the Premises and keep them in good repair and in particular where any part of the Premises is painted to repaint the same with good quality paint in the same colour as originally painted every three years further when replacing or repairing any hard surfaced areas must use the same materials and finishes unless unobtainable

3.3.2 The Tenant must replace any landlord's fixtures and fittings in the Premises that are beyond repair at any time during or at the end of the Term

3.3.3 The Tenant must keep the Premises clean and tidy and clear of all rubbish and in particular must remove any dumped or unsightly items the Tenant must not bring on to the Premises any bins or skips save where the Landlord's consent has been given

3.3.4 The Tenant must not cause any land roads or pavements abutting the Premises to be untidy or dirty and in particular but without prejudice to the generality of the above must not deposit refuse or other materials on them

3.3.5 Where the use of any of the Conduits or other things is common to the Premises and other property the Tenant must be responsible for and indemnify the Landlord against all sums due from the owner tenant or occupier of the Premises in relation to those Conduits boundary structures or other things and must undertake all work in relation to them that is his responsibility

3.4 **The Dinghy Park**

The Tenant must not:

3.4.1 use the Dinghy Park other than as a Dinghy Park without the Landlord's prior written consent;

3.4.2 use any of the spaces within the Dinghy Park for any purpose other than the storage of a single dinghy (meaning boats of up to 5 metres in length) and its trailer provided that whilst the dinghy is in use, the owner may park one private motor vehicle with the dinghy trailer;

3.4.3 allocate the use of any space in the Dinghy Park for a period of more than one year without annual review;

3.4.4 allow boats or trailers to remain or impede the Shared Access;

3.4.5 allow any vehicles (whether or not associated with the Dinghy Park users) to access it by way of the Shared Access save that the Tenant may access the Dinghy Park over the Shared Access on foot only together with the right to pull dinghy trailers

3.4.6 make any differential charges for spaces between residents at Cooks Shipyard and others

The Tenant must:

3.4.7 actively manage the use and allocation of spaces within the Dinghy Park imposing such rules and regulations as will prevent its use becoming a nuisance to neighbouring occupiers on Cooks Shipyard;

3.4.8 retain and maintain any bollards tie down loops or features and surface marking features delineating any dinghy space;

3.4.9 allocate the use of all the spaces within the Dinghy Park at least annually and at that time give priority to applicants who are resident at Cooks Shipyard (for the first three years from the date of this lease and from the third anniversary of that date to all residents of Wivenhoe on a first come first serve basis.) Priority shall be given to existing allocatees who request renewal of their spaces;

The Tenant may:

3.4.10 charge a fair licence fee to all persons using the Dinghy Park;

3.4.11 delegate management of the Dinghy Park to Wivenhoe Sailing Club or similar organisation with the written consent of the Landlord

3.5 **Waste and Alterations**

3.5.1 The Tenant must not commit any waste make any addition to the Premises unite the Premises with any adjoining premises or make any alterations to the Premises save as required or permitted by this Lease

3.5.2 The Tenant must not make any connection with any conduits except with the consent of the Landlord and competent authority undertaker or supplier

3.6 **Statutory Obligations**

3.6.1 The Tenant must comply in all respects with the requirements of any statutes applicable to the Premises or the trade or business for the time being carried on their and any other obligations so applicable imposed by law or by any byelaws

3.7 **Particular Obligations**

3.7.1 Without prejudice to the generality of **clause 3.6.1** the Tenant must execute all works and provide and maintain all arrangements on or in respect of the Premises or the use to which the Premises are being put that are required in order to comply with the requirements of any statute already or in the future to be passed or the requirements of any government department local authority or other public or competent authority or court of competent jurisdiction regardless of whether such requirements are imposed on the owner the occupier or any other person

3.7.2 With prejudice to the generality of **clause 3.6.1** the Tenant must not do in or near the Premises anything by reason of which the Landlord may incur any losses under any statute

3.8 **Use**

The Tenant must not use the Premises for any purpose other than as set out in this Lease except with the written consent of the Landlord

3.9 **Nuisance**

The Tenant must not do anything on the Premises or allow anything to remain on them that may be or become or cause a nuisance or annoyance disturbance inconvenience injury or damage to the Landlord or his tenants or the owners or occupiers of adjacent or neighbouring premises

3.10 **Auctions Trade and Immoral Purposes**

The Tenant must not use the Premises for any auction sale any dangerous noxious noisy or inoffensive trade business manufacture or occupation or for any illegal or immoral act or purpose

3.11 **Residential Use Sleeping and Animals**

The Tenant must not use the Premises as sleeping accommodation or for residential purposes or keep any animal on the Premises

3.12 **Entry to Inspect and Notice to Repair**

3.12.1 The Tenant must permit the Landlord on reasonable notice during normal business hours except in emergency:

3.12.1.1 to enter the Premises to ascertain whether or not the covenants and conditions of this Lease have been observed and performed;

3.12.1.2 to view the state of repair and condition of the Premises; and

3.12.1.3 to give to the Tenant a notice specifying the Works required to remedy any breach of the Tenant's obligations in this Lease ("a notice to repair")

Works to be carried out

3.12.2 The Tenant must immediately carry out the works specified in a notice to repair

Landlord's power in default

3.12.3 If within one month of the service of a notice to repair the Tenant has not started to execute the work referred to in the notice or is not proceeding diligently with it or if the Tenant fails to finish the work within four months or the Tenant is unlikely to finish the work within that period the Tenant must permit the Landlord to enter the Premises to execute the outstanding work and must within 14 days of a written demand pay to the Landlord the cost of so doing and all expenses incurred by the Landlord including legal costs and surveyors fees

3.13 **Alienation**

3.13.1 The Tenant must not hold the Premises on trust for another the Tenant must not part with possession of the whole or any part of the Premises or permit another to occupy them or any part of them except pursuant

to a transaction permitted by and effected in accordance with the provisions of this Lease

3.13.2 The Tenant must not assign sublet or charge part only of the Premises

3.13.3 The Tenant must not assign sublet or charge the whole of the Premises without the prior written consent of the Landlord

3.13.4 To lodge or procure to be lodged with the Landlord (or the Landlord's Solicitors if the Landlord shall so direct) for the purpose of registration:

(a) all assignments and transfers of the term created in the Premises or any part;

(b) all underleases of and all charges by way of legal mortgage upon the Premises or any part and all transfers; and

(c) all other instruments made for effecting or evidencing any devolution of any legal estate in the Premises whether of the term hereby created or any sub-term or other derivative interest in the Premises or any part thereof and including probates and letters of administration and surrenders of any sub-terms and discharges of any charges by way of legal mortgage or copies of any of the above certified copies of the originals.

3.13.5 To supply on registering any such instrument a copy of any plan referred to and in the case of probates or letters of administration a written statement of the number of the Premises the title to which devolves thereunder.

3.13.6 To effect such lodgement within one month of the execution of any such instrument or in the case of probates or letters of administration within one month of the grant thereof.

3.13.7 On lodging any such instrument or particulars as aforesaid to pay to the Landlord (or the Landlord's Solicitors if application) a reasonable fee to cover the registration of such instrument or particulars.

3.14 **Costs of Applications Notices and Recovery of Arrears**

The Tenant must pay to the Landlord on an indemnity basis all costs fees charges disbursements and expenses including without prejudice to the generality of the above those payable to counsel solicitors surveyors and bailiffs properly and reasonably incurred by the Landlord in relation to or incidental to:

3.14.1 every application made by the Tenant for a consent or licence required by the provisions of this Lease whether it is granted or refused or offered subject to any lawful qualification or condition or whether the application is withdrawn unless the refusal qualification or condition is unlawful whether because it is unreasonable or otherwise;

3.14.2 the contemplation preparation and service of a notice under the Law of Property Act 1925 section 146 or the contemplation or taking of proceedings under sections 146 or 147 of that Act notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;

3.14.3 the recovery or attempted recovery of arrears of rent or other sums due under this Lease; and

3.14.4 any steps taken in contemplation of or in connection with the preparation and service of a schedule of dilapidations during or after the end of the Term

3.15 **Planning**

3.15.1 The Tenant must observe and comply with the provisions and requirements of the Planning Acts affecting the Premises and their use and must indemnify the Landlord and keep him indemnified both during and following the end of the Term against all losses in respect of any contravention of those Acts

3.15.2 The Tenant must not make any application for planning permission relating to the Premises without the written consent of the Landlord

3.16 **Indemnities**

The Tenant must keep the Landlord fully indemnified against all Losses arising directly or indirectly out of any act omission or negligence of the Tenant or any persons at the Premises expressly or implied with the Tenant's authority and under his control or any breach or non-observance by the Tenant of the covenants conditions or other provisions of this Lease or any of the matters to which this demise is subject

3.17 **Encroachments**

The Tenant must take all reasonable steps to prevent the construction of any new path passage pipe or the making of any encroachment or the acquisition of any easement in relation to the Premises and must notify the Landlord immediately if any such thing is constructed encroachment is made or easement acquired or if any attempt is made to encroach or acquire an easement at the request of the Landlord the Tenant must adopt such means as are reasonably

required to prevent the making of any encroachment or the acquisition of any easement

3.18 **Yielding Up**

At the end of the Term the Tenant must yield up the Premises with vacant possession decorated and repaired in accordance with and in the condition required by the provisions of this Lease give up all keys of the Premises to the Landlord remove tenant's fixtures and fittings if requested to do so by the Landlord

3.19 **Interest on Arrears**

The Tenant must pay interest on the rents or other sums due under this Lease that are not paid within 14 days of the date due whether formally demanded or not nothing in this clause entitles the Tenant to withhold or delay any payment of the rent or any other sum due under this Lease or affects the rights of the Landlord in relation to any non-payment

3.20 **Statutory Notices**

The Tenant must give full particulars to the Landlord of any notice direction order or proposal relating to the Premises made given or issued to the Tenant by any government department or local public regulatory or other authority or court within 7 days of receipt and if so requested by the Landlord must produce it to the Landlord the Tenant must without delay take all necessary steps to comply with the notice direction or order at the request of the Landlord but at his own cost the Tenant must make or join with the Landlord in making any objection or representation the Landlord deems expedient against or in respect of any notice direction order or proposal

3.21 **Keyholders/Supervisors**

The Tenant must ensure that at all times the Landlord has written notice of the name home address and home telephone number of at least 2 keyholders or supervisors of the Premises

3.22 **Consent to the Landlord's Release**

The Tenant must not unreasonably withhold consent to a request made by the Landlord under the 1995 Act section 8 for a release from all or any of the landlord covenants of this Lease

4. QUIET ENJOYMENT

The Landlord covenants with the Tenant to permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for him

5. INSURANCE

5.1 Definitions

In this **clause 5** the terms defined in this **clause 5.1** have the meanings specified

"Insured Risks"	means the risks of loss or damage by fire lighting explosion aircraft including articles dropped from aircraft riot civil commotion malicious persons earthquake storm tempest flood bursting and overflowing of water pipes tanks and other apparatus and impact by boats or road vehicles and any other risks the Landlord from time to time by notice to the Tenant reasonably requires the Tenant to insure against
"Permissions"	means references to all the planning permissions and other permits and consents that may be required under the Planning Acts or other statutes for the time being in force to enable the Premises to be rebuilt and reinstated lawfully in the event of any damage or destruction

5.2 Covenant to Insure

5.2.1 The Tenant covenants with the Landlord to insure the Premises and keep them insured against damage or destruction by the Insured Risks in the joint names of the Landlord and the Tenant and of any other persons the Landlord from time to time by notice to the Tenant reasonably requires in an amount equal to the full cost of rebuilding and reinstating the Premises as new in the event of their total destruction including VAT architects' surveyors' and other professional fees payable on application for any permissions the cost of debris removal demolition site clearance and any works that may be required by statute and incidental expenses

5.2.2 The Tenant covenants with the Landlord to effect and maintain such insurance, in such amount as the Landlord reasonably and properly by notice to the Tenant requires (and in any event no less than £5 million for the aggregate of this and any other leases granted by the Landlord to the Tenant out of the Landlord's Title Number) in respect of the Tenant's liability to indemnify the Landlord against losses arising from the Tenant's acts omissions or negligence

5.2.3 All insurance must be effected in a substantial and reputable insurance office or with such underwriters and through such agency as the Landlord from time to time by notice to the Tenant reasonably requires such approval not to be unreasonably withheld or delayed

5.3 **Tenant's Further Insurance Covenants**

The Tenant covenants with the Landlord to observe and perform the requirements of this **clause 5.3**:

5.3.1 the Tenant must comply with all requirements and recommendations of the insurers;

5.3.2 the Tenant must not do or omit to do anything that could cause any insurance policy effected in accordance with this Lease to become wholly or partly void or voidable;

5.3.3 the Tenant must comply with all requirements and recommendations of the insurers;

5.3.4 the Tenant must immediately give notice to the Landlord of anything that might affect any insurance policy effected in accordance with this Lease and of any destruction or damage to the Premises whether or not caused by one or more of the Insured Risks;

5.3.5 the Tenant must produce to the Landlord on demand every insurance policy effected in accordance with this Lease and the receipt for the then current year's premium and if so required must supply the Landlord with a copy of every such policy

5.4 **Reinstatement**

If and whenever during the Term the Premises are damaged or destroyed by one or more of the Insured Risks then:

5.4.1 all money received under any insurance policy effected in accordance with this Lease must be placed in an account in the joint names of the Landlord and the Tenant at a bank designated by the Landlord [acting reasonably] and must subsequently be released to the Tenant from

that account by instalments against architect's certificates or other evidence acceptable to the Landlord whose acceptance may not be unreasonably withheld of expenditure actually incurred by the Tenant in rebuilding and reinstating the Premises; and

5.4.2 the Tenant must with all convenient speed obtain the Permissions and as soon as they have been obtained rebuild and reinstate the Premises in accordance with them making up out of his own money any difference between the cost of rebuilding and reinstatement and the money received from the insurance policy

6. **FORFEITURE**

If and whenever during the Term:

6.1 the Tenant breaches any covenant or other term of this Lease;

the Landlord may at any time re-enter the Premises or any part of them in the name of the whole even if any previous right of re-entry has been waived and then the Term is to cease absolutely but without prejudice to any rights or remedies that may have accrued to the Landlord against the Tenant in respect of any breach of covenant or other term of this Lease including the breach in respect of which the re-entry is made

7. **AGREED SURRENDER**

If the Tenant notifies the Landlord that it is unable to regulate or manage the Premises then (without prejudice to the right of the Landlord to enforce the covenants to that effect in this Lease) the Landlord may (but shall not be obliged to) accept a surrender of the Premises at the cost of the Tenant.

8. **MEDIATION**

8.1 Any dispute arising out of or in connection with this lease shall, at first instance, be referred to a mediator for resolution. The parties shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. Should the parties fail to agree within fourteen days, either party, upon giving written notice, may apply to the President or the Deputy President, for the time being, of the Royal Institute of Chartered Surveyors, for the appointment of a mediator.

8.2 Should the mediation fail, in whole or in part, either party may, upon giving written notice, and within twenty-eight days, apply to the President or the Deputy President, for the time being of the Royal Institute of Chartered Surveyors, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation

proceedings, unless both parties have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Royal Institution of Chartered Surveyors, which Rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be England and Wales The ruling of the arbitrator shall be final save on a point of law.

9. MISCELLANEOUS

9.1 Exclusion of Warranty as to Use

9.1.1 Nothing in this Lease is intended to confer any benefit on any person who is not a party to it

9.1.2 Nothing in this Lease shall grant to the Tenant any Riparian Rights to the River Colne or its foreshore and all such rights including the right to create or refuse berthing facilities along the river frontage of Cooks Shipyard shall remain vested in the Landlord

9.2 Compensation on Vacating Excluded

Any statutory right of the Tenant to claim compensation from the Landlord on vacating the Premises is excluded to the extent that the law allows

9.3 Notices

9.3.1 Form and services of notices

A notice under this Lease must be in writing and unless the receiving party or his authorised agent acknowledges receipt is valid if and only if:

9.3.1.1 it is given by hand sent by registered post or recorded delivery or sent by fax provided a confirmatory copy is given by hand or sent by registered post or recorded delivery on the same day; and

9.3.1.2 it is served

(a) where the receiving party is a company incorporated within Great Britain at the registered office; or

(b) where the receiving party is the Tenant and the Tenant is not such a company at the Premises; or

(c) where the receiving party is the Landlord and the Landlord is not such a company at the Landlord's

address shown in this Lease or at any address specified in a notice given by the Landlord to the Tenant

9.3.2 **Deemed delivery**

9.3.2.1 Unless it is returned through the Royal Mail undelivered a notice sent by registered post or recorded delivery is to be treated as served on the third working day after posting whenever and whether or not it is received

9.3.2.2 A notice sent by fax is to be treated as served on the day upon which it is sent or the next working day where the fax is sent after 1600 hours or on a day that is not a working day whenever and whether or not it or the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail undelivered

9.3.2.3 References to "a working day" are references to a day when the United Kingdom clearing banks are open for business in the City of London

9.3.3 **Joint recipients**

If the receiving party consists of more than one person a notice to one of them is notice to all

9.4 **Agreement for Lease**

It is certified that there is no agreement for lease to which this document gives effect

10. **RIGHTS GRANTED**

The Premises are let together with the following rights for the benefit of the Tenant, so far as the Landlord is able to grant them, to be enjoyed in common with the Landlord and any others entitled to use them:

10.1 A right of way on foot (pulling dinghy trailers as necessary) across the Shared Access

11. **EXECUTION**

The parties have executed this Lease as a deed and it is delivered on the date set out in the Particulars.

THE COMMON SEAL of)
WIVENHOE TOWN COUNCIL affixed to)
this deed in the presence of:)

Town Mayor

Town Clerk

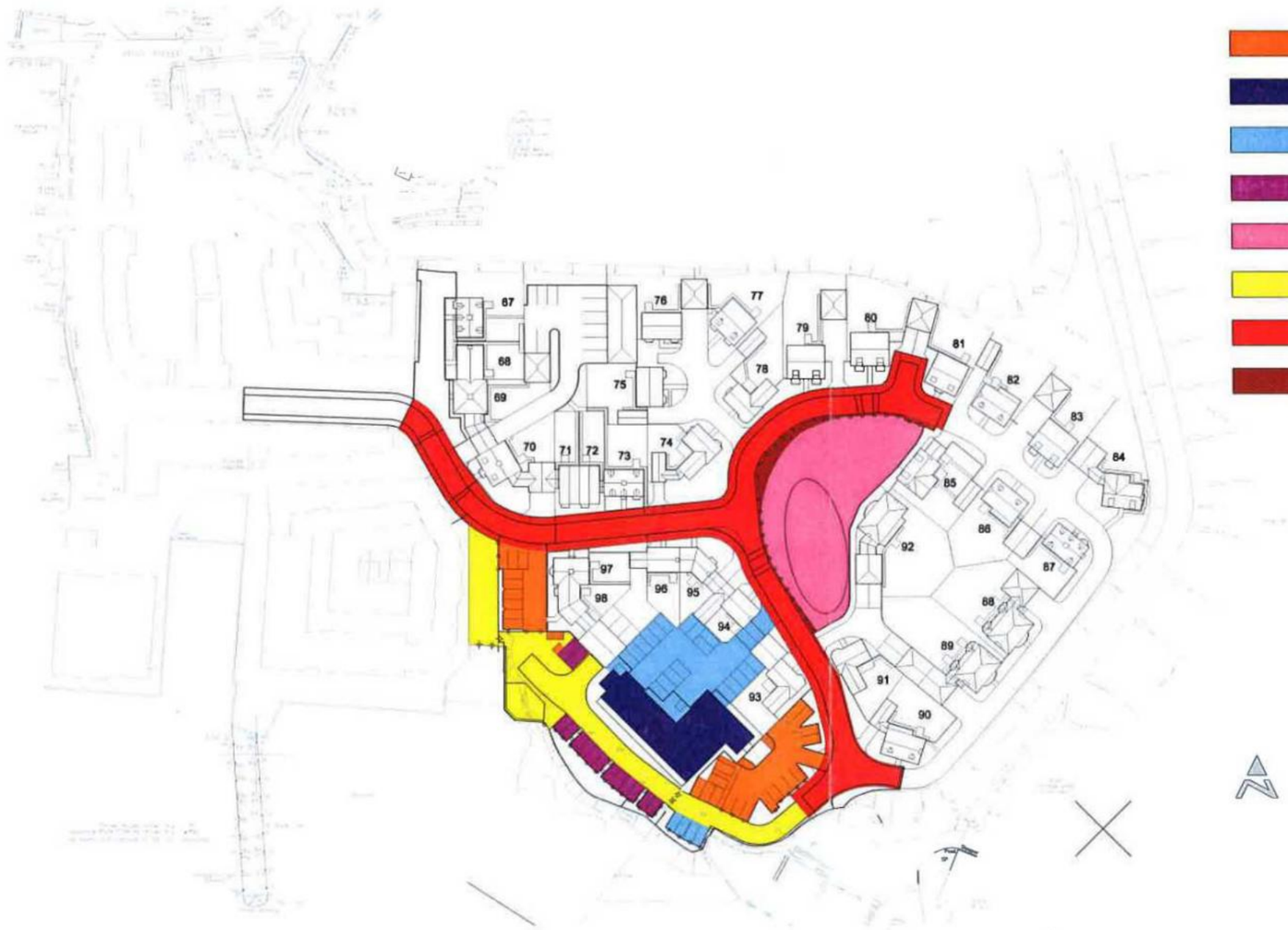
EXECUTED as a deed by)
TAYLOR WIMPEY DEVELOPMENTS LIMITED)
acting by a director and its secretary)
or two directors)

Director

Director / Secretary

APPENDIX 2

SITE LAYOUT PLAN



Public Car Park

Commercial Building

Commercial Building Parking

Dinghy Park

Play Area Land

Pedestrian Area with Public Access

Adopted Highway

Highway Visibility Splay Used as POS

WIVENHOE TOWN MAYOR

AJ Stinson
TOWN CLERK

Date.	April 2011
Scale.	1:500 @ A1
Revision.	-

Section 106 - Plan 1
Proposed Residential & Office Development at Cook's Shipyard
for Taylor Wimpey East London

Title.	Section 106 Plan 1
Project.	Cook's Shipyard, Wivenhoe
DWG No.	106 Plan 1

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Material Planning Considerations

The National Planning Policy Framework highlights that the planning system is plan-led and reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require (in law) that planning applications "must be determined in accordance with the development plan, unless material considerations indicate otherwise".

Where our Development Plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable development unless otherwise specified.

The following approach should be taken in all planning decisions:

- Identify the provisions of the Development Plan which are relevant to the decision and interpret them carefully, looking at their aims and objectives
- Identify and consider relevant material considerations for and against the proposal
- Consider whether or not the proposal accords with the Development Plan and, if not, whether material considerations warrant a departure from the Development Plan.

A material planning consideration is one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission). The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.

When applying material considerations the Committee should execute their decision making function accounting for all material matters fairly, reasonably and without bias. In court decisions (such as R v Westminster CC ex-parte Monahan 1989) it has been confirmed that material considerations must relate to the development and use of land, be considered against public interest, and be fairly and reasonably related to the application concerned.

Some common material planning considerations which the Planning Committee can (and must) take into consideration in reaching a decision include:-

- Planning policies, including the NPPF and our own Development Plan
- Government guidance, case law, appeal decisions, planning history
- Design, scale, bulk, mass, visual appearance and layout
- Protection of residential amenities (light, privacy, outlook, noise or fumes)
- Highway safety and traffic issues, including parking provisions
- Heritage considerations; archaeology, listed buildings and conservation areas
- Environmental issues; impacts on biodiversity, trees and landscape, flooding
- Economic issues such as regeneration, job creation, tourism and viability
- Social issues; affordable housing, accessibility, inclusion, education, recreation

The above list is not exhaustive

The following are among the most common issues that are **not** relevant planning issues and cannot be taken into account in reaching a decision:-

- land ownership issues; private property rights, boundary disputes and covenants
- effects on property values
- loss of a private view
- identity of the applicant, their character, previous history, or possible motives
- moral objections to a development, such as may include gambling or drinking etc
- competition between commercial uses

- matters specifically controlled through other legislation

Strong opposition to large developments is a common feature of the planning process but whether or not a development is popular or unpopular will not matter in the absence of substantial evidence of harm (or support from the policies within the Development Plan). It is the quality of content, not the volume that should be considered.

The law also makes a clear distinction between the question of whether something is a material consideration, and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case but provided it has given regard to all material considerations, it is for the Council to decide what weight is to be given to these matters. Subject to the test of “reasonableness”, the courts (or the Local Government Office) will not get involved in the question of weight. Weight may be tested at appeal.

Planning Obligations

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are:

1. necessary to make the development acceptable in planning terms
2. directly related to the development, and
3. fairly and reasonably related in scale and kind.

These legal tests are set out as statutory tests in the Community Infrastructure Levy Regulations and as policy tests in the National Planning Policy Framework.

Human Rights, Community Safety and Equality and Diversity Implications

All applications are considered against the background and implications of the:

- Human Rights Act 1998
- Crime and Disorder Act 1998 (and in particular Section 17)
- Equality Act 2010
- Colchester Borough Council Equality Impact Assessment (EIA) Framework

In order that we provide a flexible service that recognises people's diverse needs and provides for them in a reasonable and proportional way without discrimination.

Using Planning Conditions or Refusing Planning Applications

The Planning System is designed to manage development, facilitating (not obstructing) sustainable development of a satisfactory standard. The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (PPG) reinforce this, stating that "Planning should operate to encourage and not act as an impediment to sustainable growth". Therefore, development should be considered with a positive approach. Where a condition could be used to avoid refusing permission this should be the approach taken.

The PPG sets out advice from the Government regarding the appropriate use of conditions, and when decision makers may make themselves vulnerable to costs being awarded against them at appeal due to "unreasonable" behaviour. Interpretation of court judgments over the years is also an important material consideration. Reasons why a Planning Authority may be found to have acted unreasonably at appeal include lack of co-operation with applicants, introducing fresh evidence at a later stage, introducing a new reason for refusal, withdrawal of any reason for refusal or providing information that is shown to be manifestly inaccurate or untrue.

In terms of the Planning Committee, Members are not bound to accept the recommendations of their officers. However, if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority.

Whenever appropriate, the Council will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed. Therefore, before refusing any application the Planning Committee should consider whether it is possible to resolve any concerns by use of conditions before refusing permission. Failure to do so on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead.

Any planning condition imposed on a development must pass 6 legal tests to be:

1. Necessary
2. Relevant to planning
3. Relevant to the development permitted
4. Reasonable
5. Precise
6. Enforceable

Unless conditions fulfil these criteria they are challengeable at appeal as ultra vires (i.e. their imposition is beyond the powers of local authorities).

If no suitable condition exists that can satisfy these tests a refusal of planning permission may then be warranted. In considering the reasons for that refusal, the Council must rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason. In all matters relating to an application it is critically important for decision makers to be aware that the courts will extend the common law principle of natural justice to any decision upon which they are called to adjudicate. The general effect of this is to seek to ensure that the Council acts fairly and reasonably in executing our decision making functions, and that it is evident to all that we have done so.

Highway Safety Issues

When considering planning applications, Colchester Borough Council consults Essex County Council Highways Authority on all highway safety issues. They are a statutory consultee, and a recognised expert body. This means that they must be consulted on planning applications, by law, where the proposed development will involve a new access to the highway network, create "material" changes in traffic movement, or where new roads are to be laid out. Where developments affect the trunk road network Highways England become a statutory consultee.

When the Highway Authority is consulted they are under a duty to provide advice on the proposal in question as the experts in highway matters. Their opinion carries significant weight upon which the Local Planning Authority usually relies. Whilst this Council could form an opinion different to the Highway Authority, it would need to provide counter-evidence to justify an argument that the expert body was incorrect. That evidence would need to withhold challenge in appeal or through the courts. Failure to do so would result in a costs award against the Council for acting unreasonably (see other notes pages within this Agenda). Similarly, if the Highway Authority were unable to support their own conclusions they may face costs being awarded against them as the statutory consultee.

Officers of Essex County Council Highway Authority conduct their own site visits to each site in order to take account of all highway safety matters. They also consult their own records and databases, traffic flow information and any other relevant material that may be available, including any submitted documents within planning applications.

Parking Standards

Although the Highway Authority has some remit over parking in so far as it relates to highways safety issues, parking itself is a matter for the Local Planning Authority to determine against national policy and our own adopted standards. Like the other Essex Authorities, Colchester Borough Council has adopted the Essex Planning Officer's Association Parking Standards. These standards set out that:

- A parking space should measure 2.9 metres by 5.5 metres. A smaller size of 2.5 metres by 5 metres is acceptable in special circumstances.

For residential schemes:

- The residential parking standard for two bedroom flats and houses is two spaces per unit.
- The residential parking standard for one bedroom units is one space per unit.
- A garage should have an internal space of 7 metres by 3 metres. Smaller garages do not count towards the parking allocation.
- One visitor space must be provided for every four units.

Residential parking standards can be relaxed in areas suitable for higher density development and where there is good walkable access to shops, service and public transport, such as town centres.

Colchester Borough Council Environmental Control

Advisory Notes for the Control of Pollution during Construction and Demolition Works

The following information is intended as guidance for applicants/developers and construction firms. In order to minimise potential nuisance to nearby existing residents caused by construction and demolition works, Environmental Control recommends that the following guidelines are followed. Adherence to this advisory note will significantly reduce the likelihood of public complaint and potential enforcement action by Environmental Control.

Best Practice for Construction Sites

Although the following notes are set out in the style of planning conditions, they are designed to represent the best practice techniques for the site. Therefore, failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974)

Noise Control

1. No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holiday days.
2. The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:1984.
3. Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
4. Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

Emission Control

1. All waste arising from the ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
2. No fires to be lit on site at any time.
3. On large scale construction sites, a wheel-wash facility shall be provided for the duration of the works to ensure levels of soil on roadways near the site are minimised.
4. All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Best Practice for Demolition Sites

Prior to the commencement of any demolition works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Planning & Protection Department. In addition to the guidance on working hours, plant specification, and emission controls given above, the following additional notes should be considered when drafting this document: -

Noise Control
If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Planning & Protection prior to the commencement of works.
The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.

Emission Control
All waste arising from the demolition process to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.

The Town and Country Planning (Use Classes) Order 1987 (as amended)

Class A1. Shops
Use for all or any of the following purposes—
(a) for the retail sale of goods other than hot food,
(b) as a post office,
(c) for the sale of tickets or as a travel agency,
(d) for the sale of sandwiches or other cold food for consumption off the premises,
(e) for hairdressing,
(f) for the direction of funerals,
(g) for the display of goods for sale,
(h) for the hiring out of domestic or personal goods or articles,
(i) for the washing or cleaning of clothes or fabrics on the premises,
(j) for the reception of goods to be washed, cleaned or repaired,
(k) as an internet café; where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet where the sale, display or service is to visiting members of the public.

Class A2. Financial and professional services
Use for the provision of —
(a) financial services, or
(b) professional services (other than health or medical services), or
(c) any other services (including use as a betting office)
which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

Class A3. Restaurants and cafes
Use for the sale of food and drink for consumption on the premises.

Class A4. Drinking establishments
Use as a public house, wine-bar or other drinking establishment

Class A5. Hot food takeaways
Use for the sale of hot food for consumption off the premises.

Class B1. Business
Use for all or any of the following purposes—
(a) as an office other than a use within class A2 (financial and professional services),
(b) for research and development of products or processes, or
(c) for any industrial process,
being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2. General industrial
Use for the carrying on of an industrial process other than one falling within class B1 above

Class B8. Storage or distribution
Use for storage or as a distribution centre.

Class C1. Hotels
Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.

Class C2. Residential institutions
Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).
Use as a hospital or nursing home.
Use as a residential school, college or training centre.

Class C2A. Secure residential institutions
Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.

Class C3. Dwellinghouses
Use as a dwellinghouse (whether or not as a sole or main residence) by—
(a) a single person or by people to be regarded as forming a single household;
(b) not more than six residents living together as a single household where care is provided for residents; or
(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation
Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.

Class D1. Non-residential institutions
Any use not including a residential use —
(a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practioner,
(b) as a crêche, day nursery or day centre,
(c) for the provision of education,
(d) for the display of works of art (otherwise than for sale or hire),
(e) as a museum,
(f) as a public library or public reading room,
(g) as a public hall or exhibition hall,
(h) for, or in connection with, public worship or religious instruction, (i) as a law court.

Class D2. Assembly and leisure
Use as —
(a) a cinema,
(b) a concert hall, (c) a bingo hall or casino,
(d) a dance hall,
(e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

Sui Generis Uses
Examples of sui generis uses include (but are not exclusive to):
theatres, amusement arcades or centres, funfairs, launderettes sale of fuel for motor vehicles, sale or display for sale of motor vehicles, taxi businesses or a business for the hire of motor vehicles, a scrapyard or the breaking of motor vehicles, hostels, retail warehouse clubs (where goods are sold, or displayed for sale, only to persons who are members of that club), night-clubs, or casinos.

Interpretation of Class C3
For the purposes of Class C3(a) "single household" shall be construed in accordance with section 258 of the Housing Act 2004.

Interpretation of Class C4
For the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004

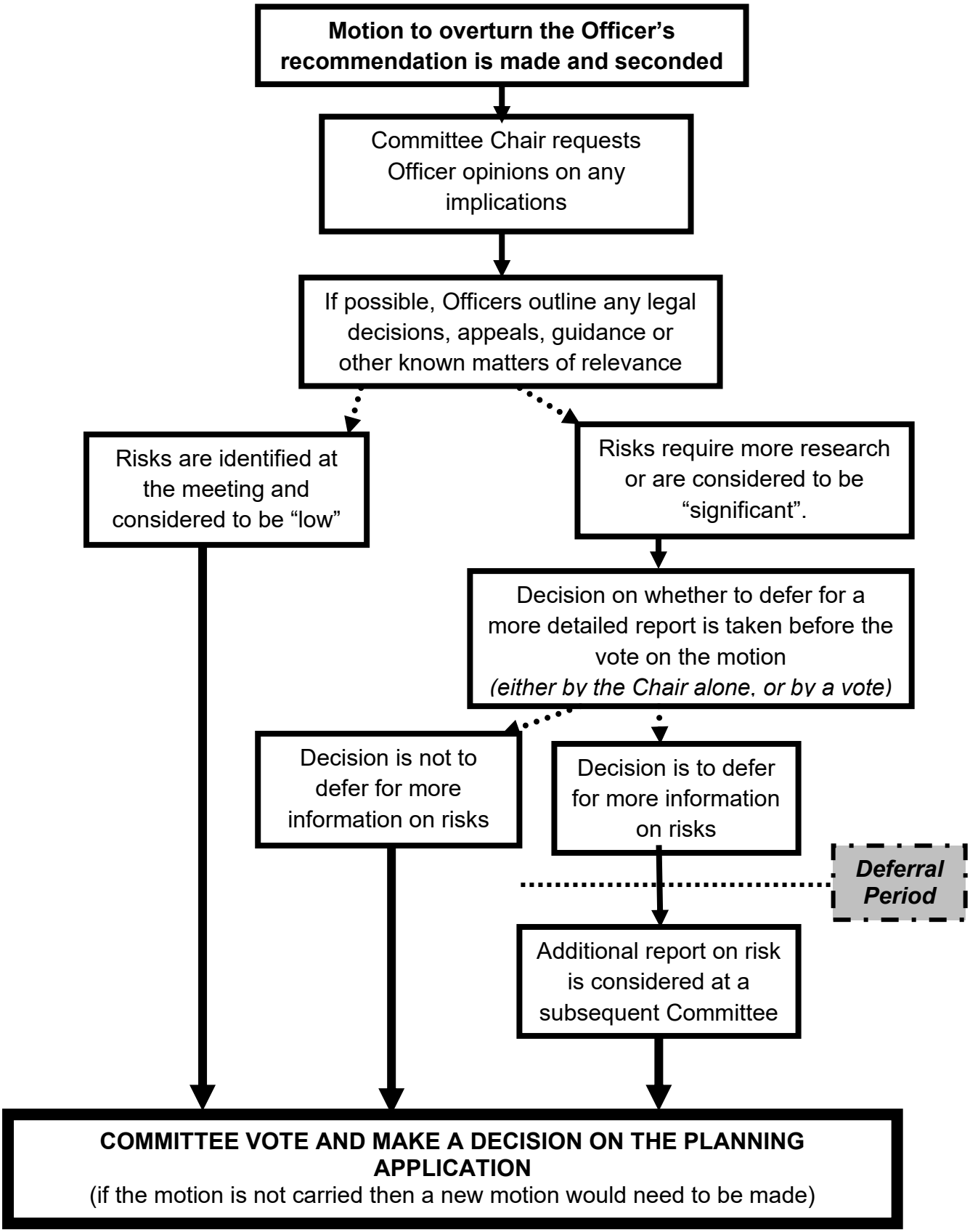
Supreme Court Decision 16 October 2017

CPRE Kent (Respondent) v China Gateway International Limited (Appellant).

This decision affects the Planning Committee process and needs to be acknowledged for future reference when making decisions to approve permission contrary to the officer recommendations.

For formal recording in the minutes of the meeting, when the Committee comes to a decision contrary to the officer recommendation, the Committee must specify:

- Full reasons for concluding its view,
- The various issues considered,
- The weight given to each factor and
- The logic for reaching the conclusion.

Deferral and Recommendation Overturn Procedure (DROP) Flowchart

If Councillors require more information, or minor amendments to be explored, then the item should be deferred.
If no more information or amendment is desired Councillors will proceed to propose a motion.