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**Chief Executive**

## AGENDA

**Committee:** DEVELOPMENT CONTROL

**Date and Time:** Tuesday 4<sup>th</sup> November 2014 at 7.30 p.m.

**Venue:** Council Chamber

**N.B. This meeting will be webcast live on the internet.**

**Membership:** Councillors Ladzrie (Chairman), Smith (Vice Chairman),  
Anderson, Barrett, Blackwell, Burch, Cross, Hart, Mrs King,  
Varker, Mrs Wass, N. Watson and Wood

Canvey Island Town Councillors : Acott and Greig

**Officers attending:** Steve Rogers – Head of Regeneration and Neighbourhoods  
Fiona Wilson – Head of Legal Services  
Kim Fisher – Chief Development Control Officer

**Enquiries:** Cheryl Salmon, ext. 2454

### PART I (Business to be taken in public)

#### 1. Apologies

#### 2. Members' Interests

#### 3. Minutes

A copy of the Minutes of the meeting held on 7<sup>th</sup> October 2014 is attached.

#### 4. Public Speakers

The Chairman will announce the names of those persons who wish to speak in support /objection under Agenda Item No. 5 (if any).

## 5. Deposited Plans

Report of the Head of Regeneration and Neighbourhoods is attached.

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**DEVELOPMENT CONTROL COMMITTEE**

**7<sup>TH</sup> OCTOBER 2014**

**PRESENT:** Councillors Ladzrie (Chairman), Smith (Vice-Chairman), Anderson, Barrett, Blackwell, Cross, Hart, Varker, Mrs Wass, N. Watson, Wood and Canvey Island Town Councillors Acott and Greig.

Apologies for absence were received from Councillors Burch

**13. MEMBERS' INTERESTS**

Councillor Blackwell declared an interest in Agenda Item No. 5(3), as shown under Minute No. 15(c) and Agenda Item No. 6, as shown under Minute No. 16.

Councillor Mrs King declared an interest in Agenda Item No. 5(3), as shown under Minute No. 15(c) and Agenda Item No. 6, as shown under Minute No. 16.

Councillor Smith declared an interest in Agenda Item No. 5(2), as shown under Minute No. 15(b) and Agenda Item No. 6, as shown under Minute No. 16.

**14. MINUTES**

The Minutes of the meeting held on 23<sup>rd</sup> September 2014 were taken as read and signed as correct.

**15. DEPOSITED PLANS**

**(a) 14/0348/FUL – 20 CLEVELAND ROAD, CANVEY ISLAND (CANVEY ISLAND SOUTH WARD) – SINGLE STOREY SIDE EXTENSION AND GARAGE CONVERSION – MRS LINDA CLAYTON**

The application sought consent for a single storey, monopitched roofed, side extension and the conversion of the existing garage to living accommodation. The proposed development was of reasonable design and accorded with the relevant paragraphs of the NPPF, policies in the Adopted Local Plan and residential design guidance and represented an acceptable form of development. The proposal was therefore recommended for approval.

The application was presented to the Development Control Committee as the applicant was an employee of the Council.

During discussion Members expressed their approval for the proposal. It was therefore:-

**Resolved** – That the application be approved subject to the conditions as set out in the Planning Officer's report.

**(b) 14/0452/FUL – HADLEIGH AND THUNDERSLEY CRICKET CLUB JOHN BURROWS RECREATION GROUND, RECTORY ROAD, HADLEIGH, BENFLEET (VICTORIA WARD) – CONSTRUCTION OF BALCONY/VIEWING GALLERY TO THE EXISTING CRICKET PAVILLION – MR HEATH**

(Councillor Smith declared a non-pecuniary interest in the above item, as his son played cricket at the club, and remained in the Chamber during its consideration).

The application sought the provision of a balcony/viewing gallery to the existing cricket pavilion. It was considered that the proposal would accord with the NPPF and Adopted Local Plan policies and was therefore recommended for approval.

The application was presented to the Committee as the land, the subject of the application, was within the control or ownership of the Council.

During discussion, whilst Members were in favour of the proposal, some concern was raised regarding the appearance of the balcony/viewing gallery after its construction and whether it would be in keeping with the existing building. It was agreed that a condition should be imposed that the columns and frame be painted in white.

Following discussion it was:-

**Resolved** – That the application be approved subject to the conditions set out in the Planning Officer's report and an additional condition that the proposed columns and balustrade be painted white and permanently maintained as such.

**(c) 14/0465/FUL – 7 KOLLUM ROAD, CANVEY ISLAND (CANVEY ISLAND EAST WARD) – CONSTRUCTION OF TWO LINK DETACHED TWO BEDROOMED CHALETs – MRS ALICIA BLACKWELL**

(Councillor Blackwell disclosed an interest under paragraph 10.2 of the Councillor's Code of Conduct as the applicant was a relative and left the Chamber during consideration of the item).

(Councillor Mrs King disclosed an interest under paragraph 10.2 of the Councillor's Code of Conduct as the applicant was known to her and left the Chamber during consideration of the item).

The application sought permission for a pair of linked-detached properties to replace a bungalow. It was considered that the proposal represented an acceptable form of development and the recommendation was therefore for approval.

The application was presented to the Committee as the applicant was a relative of a Member of the Council.

During discussion some Members were unhappy with the design and expressed concern that the proposal was not be in keeping with the surrounding area. The Planning Officer explained that Kollum Road was mixed in terms of its character and buildings therefore it was not considered that the proposed dwellings were out of character with the street scene, contrary to planning policy and in those circumstances it would be difficult to maintain a reason for refusal on that basis.

Following further consideration it was:-

**Resolved** – That the application be approved subject to the planning conditions as set out in the Planning Officer's report.

**(d) 14/0487/FUL – FERNLEIGH, WENSLEY ROAD, BENFLEET (CEDAR HALL WARD) – DEMOLITION OF EXISTING DWELLING AND OUTBUILDING AND CONSTRUCTION OF 2 NO. FOUR BED DETACHED HOUSES – M HUNTLEY**

The proposal was for the replacement of a detached bungalow with two detached houses. The proposal achieved all relevant policy guidance and provisions and would not have a negative effect on the character and appearance of the area. As such it was considered that the proposal represented an acceptable form of development which was recommended for approval.

The application was presented to the Committee as approval of the scheme would require the applicant to enter into an agreement under Section 106 of the Town and Country Planning Act, to secure improvements in the condition of the highway.

During discussion a Member raised concern that the properties were identical and requested that the applicant make them different in some way. The Planning Officer explained that whilst a condition could not be imposed to require the applicant to change the design of the properties they could be requested to vary the materials used.

Following discussion it was:-

**Resolved** – That the application be approved subject to the applicant entering into a S106 Agreement in respect of improvements to the highway, the conditions set out in the Planning Officer's report and an additional condition to vary the materials used.

## **16. LAND AT LUBBINS CAR PARK – AFFORDABLE HOUSING**

(Councillor Blackwell disclosed an interest under paragraph 10.2 of the Councillor's Code of Conduct as the applicant was known to him and left the Chamber during consideration of the item).

(Councillor Mrs King disclosed an interest under paragraph 10.2 of the Councillor's Code of Conduct as the applicant was known to her and left the Chamber during consideration of the item).

(Councillor Smith disclosed a non-pecuniary interest as the applicant was known to him but remained in the Chamber during consideration of the item).

The Committee's authority was sought to agree to a variation of terms of a Section 106 Planning Obligation regarding land at Lubbins Car Park to allow a payment to be made to the Council in lieu of the provision of on-site affordable housing.

The Head of Regeneration and Neighbourhoods explained that on 4<sup>th</sup> September 2007, planning permission had been granted by the Development Committee for the redevelopment of this land for a block of 32 flats, comprising 16 one bed and 16 two bed homes (reference CPT/163/07/FUL). At the time of the decision the applicant provided a Planning Obligation under Section 106 of the Town & Country Planning Act 1990, undertaking to make 6 flats available as affordable homes. These were to be provided through a Registered Provider.

The applicant had subsequently found no interest amongst Registered Providers for the affordable homes being proposed. Accordingly on 7<sup>th</sup> August 2012 the Council agreed to a variation of the Planning Obligation to allow work to start on site, but before occupation, to arrange for 4 one bed flats and 2 two bed flats as the affordable homes to be delivered either as affordable rented homes or shared equity homes, with the Council taking an interest in any shared equity homes.

The development had now been carried out and was almost complete. However it had become evident that the provision of affordable homes within the building, either as affordable rent or as shared equity, was impractical because of the need to share access, car parking, maintenance and other charges which Registered Providers would be unable to pass onto tenants. Shared equity arrangements had also proved unattractive for similar reasons.

The applicant had therefore asked that the Council accept a payment in lieu of providing affordable housing at the site, to be used for the delivery of affordable housing elsewhere in the Borough. The payment would be £215,852, calculated in accordance with Council policy.

The implications of the request were set out in detail in the report.

During discussion Members raised concern that the affordable housing aspect of the development was not being provided and that the financial contribution requested was not sufficient for the Council to be able to provide the same number of properties elsewhere. Members also requested assurance that the situation would not be repeated with other developments.

The Head of Regeneration and Neighbourhoods explained that the calculation, as set out in the report, was fair, reasonable and in accordance with the Council's policy on developer's contributions. He further stated that this was a unique situation and at the time the application was considered in 2007 there was a very different economic climate. Circumstances had now changed due a number of factors including the recession and a change in Government policy.

During the debate the Committee recognised that the properties would remain empty if the financial contribution from the developer was not accepted. Following discussion, it was therefore:-

**Resolved** – That the variation of the Planning Obligation dated 7<sup>th</sup> August 2012 in respect of the development of Land at Lubbins Car Park (reference CPT/163/07/FUL) to allow a payment of £215,852 to be made to the Council in lieu of the provision of on-site affordable homes, plus a payment to the Council to cover its costs in preparing and executing the variation, be agreed.

## 17. QUARTERLY ENFORCEMENT UPDATE

Members were informed of all formal planning enforcement action and investigations undertaken by the Council's Planning Enforcement Officer.

Chairman

**ITEM 1**

<b>Application Number:</b>	<b>14/0474/FUL</b>
<b>Address:</b>	<b>St Johns Ambulance Centre Eastern Esplanade Canvey Island Essex SS8 7PN (Canvey Island South Ward)</b>
<b>Description of Development:</b>	<b>Erection of new first and second floors and change of use to Coastwatch station</b>
<b>Applicant:</b>	<b>Mr Paul Roberts</b>
<b>Case Officer</b>	<b>Mr Keith Zammit</b>

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**Summary**

The application seeks permission for the creation of a new Coastwatch Station through the extension of an existing building on the south side of Eastern Esplanade. The provision of a Coastwatch Station within the Seafront Entertainment Area is considered to be inconsistent with the regeneration ambitions for the area, and the specific design and location of the proposal would result in an unattractive, obtrusive and dominant feature in the street scene which would be out of character with its context and detract from the low rise and more open character of development in this location. The proposal is therefore recommended for REFUSAL.

The application is presented to the Committee as the application site is within the control or ownership of the Local Authority.

**Site Visit**

It is considered appropriate for Members to visit the site prior to determination of the application.

**Introduction**

The application relates to a single storey flat roofed building formerly used by St John's Ambulance, located on the south side of Eastern Esplanade. To the west of the site is a path leading to the top of the seawall, beyond which is an amusement park. To the east are some catering huts and a building currently being refurbished as a 'bar and grille'. To the north, opposite the site, is the Monico Public House, a two storey building, and to the south is the seawall itself which is formed of a grassed bank with concrete wall and walkway at the top.

**The Proposal**

Permission is sought for the erection of two additional floors over part of the existing building and its conversion for use by the National Coastwatch Institution.

A pitched roof would be provided over the unaltered ground floor.

The maximum overall height of the structure would be some 9.6m. Weatherboard cladding is proposed as the external material for the new upper floor, with a tiled roof.



The main feature of the building would be the outlook station at second floor level which would be characterised by glazing on the southern eastern and western elevations.

At first floor would be a kitchen and at ground floor would be a lobby, storeroom, cupboard and accessible toilet.

### **Supplementary Documentation**

The application is accompanied by a flood risk assessment which can be viewed on the Council's website.

### **Planning History**

None of relevance

### **Relevant Government Guidance and Local Plan Policies**

National Planning Policy Framework – paras 70, 100-104

#### Current Local Plan

The site is allocated as Seafront Entertainment Area and Public Open Space. The following policies are of relevance:

EC2 – Design

EC39 – Seafront Entertainment Area

T8 – Parking Standards

### **Consultation**

#### CPBC Legal Services

No objection. A new lease will be required from the Council as landowner if planning permission is granted.

#### Canvey Town Council

No objection, although concerns expressed with regard to potential flooding in this location.

#### Environment Agency

No objection, subject to a condition regarding finished floor levels to be set no lower than 5.230m above AOD.

#### Regeneration Manager

Objects on grounds of inappropriate development that will undermine the comprehensive redevelopment of the Central Seafront Area as Castle Point Regeneration Framework.

### **Public Consultation**

No responses received.

### **Evaluation of Proposal**

The main issues here are the acceptability of the principle of such a use on this site, flood risk implications, the design of the proposed building and any parking implications.

## Principle

The site carries a dual allocation of Seafront Entertainment Area and Public Open Space in the adopted Local Plan.

Policy EC39 of the Local Plan states that within the Seafront Entertainment Area the Council will encourage the provision of additional leisure facilities and will refuse development which would lead to the loss of existing facilities. This is broadly consistent with paragraph 70 of the NPPF, although the NPPF also requires the Planning Authority to plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments.

The proposed development is for a Coastwatch Station. The National Coastwatch Institution (NCI) is an entirely voluntary organisation charged with keeping a visual watch along UK shores. This function is performed through a network of Coastwatch Stations, the operation of which supplements the existing technology based coastal security system by providing the opportunity for the visual surveillance of coastal areas.

Whilst the provision of a Coastwatch Station may not be viewed as a leisure facility per se, the provision of such a facility could, in principle, improve safety conditions and the perception of safety in the surrounding area and as such may be considered to enhance the recreational experience in the seafront area.

Furthermore, the provision of a Coastwatch facility is considered to represent a community facility, being provided for the benefit of the local and visiting community.

The footprint of built development would not be increased by the proposal so there would be no loss of open space.

However, in terms of the regeneration of the wider seafront area, it is considered that the provision of this Coastwatch Station within the Seafront Entertainment Area would prejudice the potential future comprehensive redevelopment of this area.

## Flood Risk

The NPPF at paragraph 100 requires inappropriate development in areas at risk of flooding to be avoided by directing development away from areas at highest risk but where development is necessary, making it safe without increasing flood risk elsewhere. This should be done applying the sequential test and, if necessary, the exception test.

Canvey Island is located within Flood Zone 3A, which has a high probability of flooding. Table 2 within the National Planning Practice Guidance (Paragraph 066 Reference ID 7-066-20140306) list various land uses and their level of flood risk vulnerability. The proposed use is listed as water-compatible development, as it necessarily requires a coastal location. Table 3 (Paragraph 067 Reference ID 7-067-20140306) shows flood risk vulnerability and flood zone compatibility and states that water compatible development is appropriate within Flood Zone 3A. There is therefore no objection to the proposed use on the basis of flood risk.

The "Flood Risk Worksheet" that has been submitted with this application states that the modelled flood depth for a 1 in 1000 year flood event is a maximum of 4.380m AOD. The finished ground floor level would be 2.380m AOD; therefore the ground floor of the building would be liable to flooding. However, the finished first floor level would be set at a minimum of 5.230m AOD, so the first and second floors of the building could provide safe refuge in the event of the building being

affected by flooding. Provided that the response of occupiers to flooding or a flood warning is managed by a Flood Response Plan, it is not considered that there would be undue risk posed by the development.

A Flood Response Plan has been submitted as part of the application; however this appears to be tailored to domestic properties. If flooding were to affect this building or should the occupants be in receipt of a flood warning, the manner in which they should respond may well be different from that of occupiers of a domestic property. Were permission granted, a condition should be imposed requiring submission and approval of a new flood response plan, pertinent to the development proposed.

It is noted that there is the possibility of incorporating flood resistance and resilience measures into the construction of buildings in order to minimise damage during a flood event and to enable a faster recovery once floodwaters have subsided. Although the new construction would be at first and second floor level, there is still the opportunity to provide flood resistance and resilience measures to the ground floor level through any fitting out that may be done pursuant to the conversion works. The submission does not include consideration of such matters. Were permission granted, a condition should be imposed requiring submission and approval of a scheme of flood resistance and resilience measures for those areas likely to be affected by flooding.

The National Planning Practice Guidance states at paragraph 054 Reference ID: 7-054-20140306 that when considering safety, the depth and velocity of flood water and the structural safety of buildings needs to be considered. The submission does contain a statement on drawing no. NC1/AGC/01 that the proposed first and second floors are to be supported by prefabricated steel beams and columns anchored down to the existing raft foundation, designed to withstand hydrostatic and hydrodynamic pressures that may act upon the building during a 1 in 200 and 1 in 1000 year flood event. This has not, however, been verified by a structural engineer so a condition is required to ensure that details demonstrating the structural stability of the building, verified by a structural engineer, are submitted for separate consideration.

The NPPF requires that proposals do not increase flood risk elsewhere. The proposal would not increase the footprint of development. Therefore the proposal would not result in increased surface water runoff from the site.

## Design

Policy EC2 of the current Local Plan seeks a high standard of design in all alterations to existing buildings. This is consistent with paragraphs 56 to 58 of the NPPF.

The proposed building would be three storeys in height; clearly users of the station would need to be able to see over the seawall which means that the building would necessarily need to be higher than the wall. This would, however, result in the provision of a somewhat dominant structure in this prominent seafront location. Whilst it is recognised that there is a three storey mixed use residential and commercial building on the north side of Eastern Esplanade, the area to the south and west of the road currently has a more open character with single storey structures set in the open space created by the toe of the seawall. It is considered that the introduction of a three storey structure into this landscape would result in the creation of a building which would be out of place with its context, dominating the surroundings and creating an obtrusive and unattractive feature in a prominent location. Such development would be inconsistent with the provisions of Policy EC2 and the provisions of the NPPF which seek to achieve development which successfully integrates into its surroundings. It is not considered that the proposed development could achieve this.

Furthermore, it is considered that the overall proportions of the building result in a visually discordant and unbalanced structure which would further detract from the appearance of the area.

The provision a Coastwatch Station in the currently proposed location, by virtue of the design of the building and particularly its height, which is a requirement of its function and therefore incapable of alteration, would result in the creation of a discordant and obtrusive feature in the street scene. As such, the principle of the provision of a Coastwatch station on this site is considered unacceptable.

An objection is therefore raised to the proposal on this basis.

Such an approach would be in accordance with the guidance offered by paragraph 58 of the NPPF, which seeks to promote development which establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit. The proposed development, by reason of its height and consequent dominant and obtrusive nature and unattractive proportions is not considered to be consistent with this advice.

It is further considered that the proposed external material for the first and second floor extension, synthetic weatherboarding in Lavender Blue, is uncharacteristic of the area, would look out of place and would be detrimental to visual amenity.

An objection is raised accordingly.

Whilst the need for a Coastwatch Station to be located adjacent to the coastline is recognised, there would appear to be no overriding need for the station to be in this specific location, the siting appearing to owe more to the existence of an existing building than any specific needs of the Coastwatch Institute. It is not considered that this set of circumstances creates a precedent for what is in design and landscape terms an unacceptable form of development.

### Parking implications

Policy T8 of the Local Plan requires parking to be provided in accordance with adopted standards. This is consistent with paragraph 39 of the NPPF which requires local planning authorities to set such standards reflecting local circumstances.

The proposed use is considered to be a sui generis use to which no specific reference is made in the currently adopted parking standards. Parking therefore falls to be considered on merit.

The application does not specify a precise number of personnel that would likely be manning the facility at any one time. There is, however, parking for 3 or 4 cars on hard surfaced areas adjacent to the building. It is considered that this level of parking would be sufficient for the proposed use given the compact nature of the facilities.

Any additional parking requirement could be met in local car parks. As such no objection is raised to the proposal on parking grounds.

### **Conclusion**

The provision of a Coastwatch Station within the Seafront Entertainment Area is considered to compromise the potential regeneration ambitions for the area, and the specific design and location of the proposal would result in an unattractive, obtrusive and dominant feature in the street scene which was out of character with its context and detracted from the low rise and more open character of development in this location.

I have taken all other matters raised by interested parties into consideration, but none are sufficient to outweigh the considerations that led to the recommendation.

**My Recommendation is Refusal for the following reasons**

- 1 The proposed development would be likely to compromise the comprehensive regeneration of this important seafront area, prejudicial to its longer term vitality and viability and contrary to the aims of the Castle Point Regeneration Framework.
- 2 The proposed development, by reason of its height, poor proportions, discordant materials and prominent location would be unduly dominant and obtrusive in the street scene and would fail to successfully integrate with the character of the surrounding area which is characterised by single storey buildings in an open setting. The proposal therefore would be contrary to Policy EC2 of the Adopted Local Plan and Government guidance as expressed in the National Planning Policy Framework.

**Informatives**

- 1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal.

## ITEM 2

<b>Application Number:</b>	<b>14/0499/REM</b>
<b>Address:</b>	<b>56 Stadium Way Thundersley Benfleet Essex SS7 3NZ (Victoria Ward)</b>
<b>Description of Development:</b>	<b>Removal of Condition 2 of Section 106 agreement attached to application CPT/75/01/FUL</b>
<b>Applicant:</b>	<b>Mr Bernard Litman</b>
<b>Case Officer</b>	<b>Ms Kim Fisher</b>

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### **Agreements under Section 106 of the Town and Country Planning Act 1990**

Members will be aware that Section 106 (S106) of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a landowner in association with the granting of planning permission. The obligation is termed a Section 106 Agreement.

These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms. They are increasingly used to support the provision of services and infrastructure, such as highways, recreational facilities, education, health and affordable housing.

The scope of such agreements is laid out in Government advice which makes it clear that matters agreed as part of a S106 must be:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and .
- (c) fairly and reasonably related in scale and kind to the development.

The use of planning obligations is governed by the fundamental principle that planning permission may not be bought or sold. It is not therefore legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms.

Although agreements are mutually acceptable in the first instance circumstances may change over time which alter the context of the agreement and the factors which influenced the initial preparation of an agreement may not apply in later years. Indeed the Courts have held (*R (on the application of Batchelor Enterprises Ltd) v North Dorset District Council* JPL 1222 (2004)) that *“where over a period of time the overall planning circumstances of an area have altered, it may not be reasonable for a landowner to be bound indefinitely”*.

In order to accommodate alterations to Agreements, processes exist which allow planning obligations to be modified or discharged by agreement between the applicant and the Local Planning Authority.

Where an application is made for modification or discharge the Planning Authority may determine that:

- (i) the obligation can continue to have effect without modification
- (ii) the obligation no longer serves a useful purpose and should be discharged, or
- (iii) that the obligation continues to serve a useful purpose but that purpose could be equally well served if it were to be modified in accordance with the modifications specified in the application. Under these circumstances the obligation may be modified.

Where a dispute arises in respect of the determination of the application the applicant may lodge an appeal. In the case of obligations made after 10<sup>th</sup> December 1992 such appeals are determined by the Secretary of State. Disputes in respect of earlier agreements are dealt with by the Lands Tribunal.

### **The Current Proposal**

In September 2002 retrospective planning permission was granted, contrary to recommendation, for the change of use of premises at 56 Stadium Way, to warehousing, ancillary office and ancillary retail sales. (CPT/75/01/FUL). The consent was subject to four planning conditions which related to the commencement of development, provision of sight splays, car parking and external storage and a legal agreement, condition 2 of which had the effect of limiting the use of the unit to that of a Retail Warehouse Club, with requirements for purchasers to be Members of the Club and pay a Membership fee in order to purchase goods.

Within the agreement no reason is provided as to why the Council felt it was necessary to impose these restrictions or why such restrictions were not imposed as a condition on the grant of consent rather than an agreement. It is considered however that the restrictions were primarily imposed in order to limit the expansion of retail activity within an area of the estate allocated for employment purposes.

The owner of the property now wishes to be released from the restrictions imposed on the original consent and has stated that the requirements of Condition 2 of the legal agreement have never been implemented and that no harm has been caused as a result of this non implementation.

No specific reason for the request to discharge the requirements of the S106 Agreement has been provided.

### **The Site and its Surroundings**

The application site is located on the south side of Stadium Way, some 180m east of the junction with Phoenix Way, and consists of a modern, dual pitched roofed building with front projections. The building, which includes a mezzanine floor, has a total floor space of some 2062sqm. As originally submitted some 1924sqm of floorspace was to be used for warehousing with 577sqm used as a retail area for bulky white goods. The remaining 138sqm was to be used as office space.

23 car parking spaces were provided to the front of the building.

### **The Content of the Legal Agreement**

Condition 2 states:

*In consideration of the granting of permission by the Council hereinbefore set forth the Owners and the tenant for themselves and their successors in title hereby covenant with the Council as follows:*

- (a) to operate a system at the said property requiring Members of the public to sign in before they can view the Store and not to allow any goods to be purchased other than by members of the Club*
- (b) to operate a membership scheme at the above property requiring an annual membership fee of £20*
- (c) not to advertise at the said property inviting the public to enter or have a window display at the premises*
- (d) to ensure that car parking bays at the said property are marked either for staff or members of the Club and not for members of the public*

### **Consideration of the Agreement in the Context of Current Government Guidance**

The most recent guidance in respect of the drafting of planning agreements can be found in the National Planning Policy Framework and Guidance which has replaced Circular 05/2005 and the guidance offered by Circular 1/97 which was in place at the time of the drafting of the original agreement.

Any appeal is likely to be determined on the basis of the advice contained in the NPPF and it is therefore appropriate to consider the current application in the light of this most up to date advice.

The NPPF clarifies that planning obligations should be used to mitigate the impact of unacceptable development to make it acceptable in planning terms and states that a planning obligation may only be imposed where it is:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

The guidance makes it clear that in order for the agreement to be considered acceptable, it must meet ALL of the principles.

The applicant has advised that the requirements of the Agreement have not been implemented and that non compliance with the Agreement has not resulted in harm to the adjoining area. However, such considerations carry little weight in consideration of the proposal in the light of Government Guidance which seek only to determine the validity of the requirements of the Agreement.

The requirements of the Agreement shall therefore be considered in the light of each of the above principles.

### **Necessary to make the proposed development acceptable in planning terms.**

No reason is provided for the imposition of the requirement on the grant of consent; however, examination of the file suggests that the restrictions were imposed in order to protect land



allocated for employment purposes for such use, in conformity with Policy ED3 of the adopted Local Plan.

The provisions of the S106 agreement appear to primarily have had the objective of protecting the primary employment use of the site by imposing restrictions which would limit retail activity and ensuring the provision of adequately controlled parking.

In terms of the protection of employment land, it is clear that the proposal introduced an element retail floorspace into an area of the Rayleigh Weir Trading Estate where there was a clear presumption against retail activity, as demonstrated by the clear distinction drawn on the Proposals Map to the adopted Local Plan, between those buildings located to the west of the application site, which were allocated primarily for shopping purposes and those in the vicinity and to the east of the application site which were allocated for employment purposes.

The requirement of paras (a) and (b) of condition 2 attached to the obligation did not prevent retail activity taking place on the site, albeit under the guise of a retail 'Club'. Such activity was, in policy terms unacceptable and the S106, whilst seeking to control the type and number of customers, could not overcome this policy objection. As a consequence it is not considered that the S106 was, as a matter of principle, capable of making the proposed development acceptable in planning terms and that its imposition was therefore misguided. As such it is not considered that this element of the S106 Agreement served a useful purpose.

There can therefore be no objection to the discharge of this element of the S106 Agreement.

The retail element of the proposal was stated to be ancillary to the other uses on the site. The discharge of this element of the Agreement does not alter the status or extent of the area used for retail purposes which, to accord with the provisions of the original consent must remain an ancillary element of the operations on this site.

Para (c) of Condition 2 is concerned with advertising of the retail activities on the site. It is considered that the primary purpose of this paragraph was to 'hide' the retail activity on the site by suppressing localised advertisement of the fact.

Given the location of the unit within an Industrial area it is considered unlikely that the operation of the site would rely on such localised advertising for trade, or seek to support itself from passing footfall. Attendance at the site is considered more likely to arise from advertising by other means and in this context the lack of onsite advertising or window display is considered unlikely to have a significant effect on the number of persons visiting the site. Consequently, it is not considered that this element of the S106 agreement would have been particularly effective in limiting retail activity on the site and it cannot therefore be concluded that this element of the agreement serves a useful purpose. It may therefore be discharged.

Para (d) of Condition 2 seeks to control the use of the car park.

The initial report for the development indicated that some 42 car parking spaces were required to serve the mixed use. Under the current standards a maximum of 44 spaces would be required.

Only 23 spaces were provided. This was significantly below the requirement, however the view was taken that limiting parking provision to staff and members of the Club and excluding the Public would significantly reduce the demand for parking on the site and that 23 spaces would consequently be adequate.

A condition requiring the provision and retention of 23 parking spaces was attached to the grant of consent.

The applicant has indicated that use of the car park has never been demarcated or restricted in the manner sought in the S106 and that this has never resulted in parking issues on the site.

Whilst no evidence to support this statement has been submitted, the Planning Authority is not aware of any difficulties arising from the uncontrolled use of the car park.

As such it is not considered that it can be demonstrated that para (d) serves a useful purpose and may therefore be discharged.

### **Directly related to the proposed development**

It is clear that the requirements of the S106 Agreement are specifically focused on the use of the premises for warehousing with ancillary retail and office floorspace. The requirements are therefore directly related to the proposed development and the Agreement is therefore consistent with Government guidance.

### **Fairly and reasonably related in scale and kind to the proposed development**

The proposed development represented a departure from the Development Plan. The Council considered that the restriction on the type of retail activity undertaken was fair and reasonable given the presumption against retail uses within the employment area. This element of the Agreement is therefore consistent with Government guidance.

### **Conclusion**

For the reasons identified above it is considered that the restrictions imposed in respect of:

- (a) the operation of a system at the said property requiring Members of the public to sign in before they could view the Store and not to allow any goods to be purchased other than by members of the Club
- (b) the operation of a membership scheme at the above property requiring an annual membership fee of £20
- (c) not to advertise at the said property inviting the public to enter or have a window display at the premises, and
- (d) to ensure that car parking bays at the said property are marked either for staff or members of the Club and not for members of the public,

be discharged, as serving no useful purpose within the context of the guidance provided in respect of the drafting of S106 Agreements as set out in the Community Infrastructure Regulations 2010 and the National Planning Practice Guidance.

### **Recommendation**

That the Obligation imposed on Planning Permission CPT/75/01/FUL dated 25<sup>th</sup> September 1992 be modified so as to discharge the restrictions imposed under Condition 2.

## **NOTE**

It should be noted that the discharge of this obligation does not change the description of development as permitted. The permitted use of the premises therefore remains warehousing, ancillary office and ancillary retail sales.

### **My Recommendation is Approval with the following conditions**

- 1 That the Obligation imposed on Planning Permission CPT/75/01/FUL dated 25th September 1992 be modified so as to discharge the restrictions imposed under Condition 2.

### ITEM 3

<b>Application Number:</b>	<b>CPT/327/11/FUL</b>
<b>Address:</b>	<b>4-12 Park Chase Hadleigh Benfleet Essex SS7 2BZ (St James' Ward)</b>
<b>Description of Development:</b>	<b>Erection Of Part 3/Part 4 Storey Block Of 25 Flats With Parking And Refuse Storage</b>
<b>Applicant:</b>	<b>Trinity View Homes</b>
<b>Case Officer</b>	<b>Mr Keith Zammit</b>

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### **Purpose of Report**

To advise on progress since the Committee resolution to grant planning permission subject to a Planning Obligation (Section 106 Agreement) in September 2011.

### **Planning Application update**

At its meeting on 6<sup>th</sup> September 2011, the Committee considered a report on planning application reference CPT/327/11/FUL, which proposed to construct a block of 25 flats with associated parking and amenity space provision on land at 4-12 Park Chase, Hadleigh.

This application followed the submission of an earlier application for the provision of 29 flats on this site, subject to the applicant providing eight affordable housing units on a site at the junction of London Road and Wensley Road. These units were provided but the enabling development was not commenced.

The Committee resolved that in respect of the application for 24 units, outline planning permission should be granted subject to a Section 106 Agreement covering the following Heads of Terms:

- contribution of £20,000 towards public transport infrastructure improvements along the A13 adjacent to the site, improvements to include Real Time information and appropriate bus stop infrastructure considered necessary by the Engineer.

In view of the contribution made towards affordable housing provision under the previous consent for this site no further affordable housing contribution was required in respect of the current scheme.

Since the resolution the developer has shown limited interest in completing the Agreement. As it is not good practice to leave cases undetermined pending the completion of legal agreements, the planning authority wrote to the developer in August 2014 to seek advice on whether the developer wanted to progress the scheme.

The developer has responded via solicitors stating that they would now like to progress the scheme and complete the Agreement. Given the length of time that has now passed since the original resolution of the Committee it is necessary to consider whether any policy or guidance changes have occurred since the initial resolution which might influence development of the site and seek fresh instructions from the Committee in respect of the legal agreement.

In terms of the impact of policy or guidance changes on the proposed development, Members will be aware that the National Planning Policy Framework (NPPF) was published in March 2012, replacing a series of Planning Policy Statements and Planning Policy Guidance Notes. The Local Plan policies against which this application was originally assessed demonstrate a degree of resonance with the NPPF and detailed re-assessment of the proposal in the light of the NPPF is therefore considered unnecessary.

Members will also be aware that the Council adopted Residential Design Guidance (RDG) as Supplementary Planning Document in January 2013, replacing the guidance found at Appendix 12 of the Local Plan. An assessment of the proposal against the RDG has not revealed any deficiencies in the scheme which would lead to a recommendation of refusal. The scheme therefore remains acceptable and the recommendation therefore remains favourable. However, the planning conditions that were originally recommended are in need of updating, in particular the condition that no construction work takes place during or prior to the Olympic Mountain Bike Event is no longer necessary and this particular condition should be deleted.

In terms of the continuing validity of the S106 Agreement, Members will be aware that Government advice regarding planning obligations is contained in the National Planning Policy Framework (NPPF). Paragraphs 203 to 205 state:

*203 Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.*

*204 Planning obligations should only be sought where they meet all of the following tests:*

- necessary to make the development acceptable in planning terms;*
- directly related to the development; and*
- fairly and reasonably related in scale and kind to the development.*

*205. Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.*

Following a review it is considered that the Agreement as originally drafted remains consistent with Government advice.

It is also in accordance with Essex County Council's "Developers' Guide to Infrastructure Contributions 2010".

The County Council, as the Highway Authority for the area, originally requested payment of the sum of £20,000 for public transport improvement. The Highway Authority has been reconsulted to ascertain whether this requirement remains and whether the sum requested is still appropriate. The comments of the Highway Authority are anticipated prior to the meeting. The response may require an amendment to the S106 Agreement to reflect current requirements.

The County Council also commented on the original planning application as Local Education Authority, stating that a contribution towards education provision in the area was not required. The Local Education Authority has recently advised that this remains the position.

## Conclusion

The proposed development remains appropriate in policy terms and would make a valuable contribution to housing provision within the urban area. There is therefore no objection to this proposal being brought forward subject to the applicant being willing to complete a varied S106 Agreement and subject to amended conditions as set out below.

I have taken all other matters raised by interested parties into consideration, but none are sufficient to outweigh the considerations that led to the recommendation.

### **My Recommendation is:**

#### **Subject to the completion of a satisfactory S106 Agreement covering the following Heads of Terms:**

- Contribution of £20,000 towards public transport infrastructure improvements along the A13 adjacent to the site, improvements to include real time information and appropriate bus stop infrastructure, considered necessary by the Engineer,

Then the Head of Regeneration and Neighbourhoods be authorised to GRANT PERMISSION with the following conditions:

- 1 This permission should be read in conjunction with the Agreement entered into between the land owners, the applicant and the Council under Section 106 of the Town and Country Planning Act 1990 and dated contemporaneously with this permission.
- 2 The development hereby permitted shall be begun on or before the expiration of five years beginning with the date of this permission.

REASON: This condition is imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

- 3 Prior to commencement of development, details or samples of all materials to be used on the exterior surfaces of any building or hard surface or in the construction of any perimeter wall or fence (except temporary fencing erected during development) shall be submitted to and formally approved by the Local Planning Authority.

REASON: In the interest of visual amenity pursuant to Policy EC2 of the Adopted Local Plan.

- 4 The development hereby approved shall be built wholly in accordance with the approved materials.

REASON: To ensure a satisfactory form of development in sympathy with the existing development and the character of the surrounding area.

- 5 The window(s) created above ground floor level in a wall or roof slope forming a side elevation shall be obscure glazed to at least Level 3 on the Pilkington Scale and non-opening to a height of 1.7m above the finished floor level of the room in which the window(s) is installed and permanently retained as such thereafter.

REASON: In order to protect the privacy of the occupiers of the adjoining properties.

- 6 Prior to commencement of development, a Site Waste Management Plan shall be submitted to and formally approved by the Local Planning Authority.

REASON: To minimise waste from the development in accordance with the Site Waste Management Plan Regulations 2008.

- 7 Construction shall only be carried out in accordance with the plan approved in relation to condition 6.

REASON: To minimise waste from the development in accordance with the Site Waste Management Plan Regulations 2008.

- 8 No loading/unloading or storage of materials shall take place outside the application site.

REASON: In the interest of visual amenity and not to obstruct traffic.

- 9 Prior to its installation, details of the proposed surface water retention tank, including its location, its discharge rate, the method(s) by which surface water is channelled to it and demonstration that it can cope with the volumes of water that it is likely to receive, shall be submitted to and formally approved by the Local Planning Authority.

REASON: In the interest of sustainable drainage.

- 10 The approved surface water retention tank shall be installed in accordance with the approved details prior to first use of the parking area. Should it require replacement or become non-operational it shall be replaced with a tank of equal or greater capacity, or such other tank as may be formally approved by the Local Planning Authority.

REASON: In the interest of sustainable drainage.

- 11 The approved car parking areas shall be provided prior to first occupation of the building and thereafter retained at all times for the parking of vehicles of occupiers of and callers to the building and used for no other purpose.

REASON: To retain satisfactory provision for off-street parking pursuant to Policy T8 of the Borough Local Plan.

- 12 Prior to first occupation of the building, cycle storage facilities of a size adequate for all flats within the building shall be provided in accordance with details which shall first have been submitted to and formally approved by the Local Planning Authority.

REASON: To ensure the provision of adequate cycle storage facilities.

- 13 No development shall take place until a survey has been undertaken of the extent of Japanese Knotweed on the site and a copy of this survey submitted to the local planning authority. If Japanese Knotweed is confirmed, full details of a scheme for its eradication and/or control shall be submitted to and approved in writing by the local planning authority prior to the commencement of development and the approved scheme shall be implemented in accordance with an agreed timescale.

REASON: To protect the natural environment pursuant to Policy EC13 of the Borough Local Plan.

- 14 There shall be no obstruction above ground level within a 2.4m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.

REASON: In the interest of highway safety pursuant to Policy EC2 of the Borough Local Plan.

- 15 Any gates provided to the vehicular access shall be set a minimum of 6m from the carriageway edge and shall only be inward opening.

REASON: In the interest of highway safety pursuant to Policy EC2 of the Borough Local Plan.

- 16 Prior to first occupation of the proposed development, the developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include 10 (ten) No. All Essex Scratch cards per unit.

REASON: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policy in F.32 in the Essex Road Passenger Transport Strategy 2006/11

- 17 Prior to the commencement of development details of a suitably located refuse storage area capable of accommodating 4 x 1100 litre refuse bins, 4 x 1100 litre recycling bins, 2x 240 litre glass bins and 1x 770 litre food waste bin, shall be submitted to, and approved by, the Local Planning Authority.

REASON: In order to ensure the provision of an appropriately located and adequately sized refuse storage facility within the site.

- 18 Prior to the first occupation of the development hereby approved, the refuse storage area approved pursuant to condition 17 above shall be provided, made available for use and thereafter retained at all times.

REASON: In the interests of the amenity of future occupiers of the site.

## **Informatives**

- 1 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.