

Reference:	14/00914/FULM
Ward:	Milton
Proposal:	Demolish parts of existing building and carry out various extensions to form 3 storey block of 22 self-contained flats with associated car parking, amenity space and cycle store to 30 - 36 Valkyrie Road
Address:	Balmoral Hotel, 32-34 Valkyrie Road, Westcliff-on-Sea, Essex
Applicant:	Mr James Nyman
Agent:	Collins & Coward Ltd
Consultation Expiry:	31.07.2014
Expiry Date:	22.09.2014
Case Officer:	Amanda Rogers
Plan Nos:	Location Plan; 04; 05; 06; 08
Recommendation:	REFUSE AMENDMENT OF PLANNING OBLIGATION AND REVERT TO PREVIOUS RESOLUTION



1 Proposed revisions to Section 106 agreement

- 1.1 On 10th September 2014 DC Committee resolved to grant conditional planning permission; and the minutes of the committee meeting state the following with respect to planning obligations:

(a) DELEGATED to the Corporate Director for Place, the Head of Planning & Transport or the or Group Manager Development and Building Control to GRANT PLANNING PERMISSION subject to completion of a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) and all appropriate legislation to seek the following ;

- Affordable housing, made up of 1 No. one bed flats, 2 No. two bed flats and 1 No. three bed flat.
- Education contribution of £21,634.70.
- Public Art contribution.
- Monitoring fee in accordance with SPD2 criteria.
- In the event that all twenty-two (22) of the units are affordable housing the Education Contribution will not be payable and the Monitoring Fee reduced to £750

- 1.2 Since committee, officers have endeavoured to complete the S106 agreement in accordance with the above resolution. However, an untypical scenario in terms of affordable housing delivery has been proposed by the applicant, who has consequently requested revisions to the terms of the S106 agreement agreed by Members. The applicant is unwilling to sign a S106 agreement, which would require 4 units (20% as required by local planning policy) retained as affordable housing in perpetuity for the reasons set out below. An alternative option of providing for affordable housing as a commuted sum (in lieu of on-site provision), after a 14 year lease period of all 22 of the units to the Council as affordable units, has also been declined by the applicant.
- 1.3 Unlike most developments with affordable housing, where the Core Strategy policy compliant number of units (which in this case is four) are transferred to a Registered Provider for affordable rent or shared ownership, on completion of a development; in this instance 100% affordable housing is proposed and the applicant is seeking to secure a lease arrangement with the Council. Initially this would be for a 7 year period and the Council would let all of the flats from the owner of the new development to be rented to individuals on the Housing Register. A rolling 7 year lease arrangement would exist until such time that circumstances dictate otherwise, which could include financial or political changes affecting either party.
- 1.4 Although, the definition of 'perpetuity' is disputed between the applicant and the Council (as explained below), the applicant has stated that the cost to them of providing the 22 affordable rent units compared to the open market is £267,400 for seven years and £534,800 for 14 years without taking account of inflation; and this is considered to represent £133,700 per unit (4 units) in perpetuity which far exceeds the cost of transfer to a Registered Provider. The benefit to the applicant is stated as being the Council's covenant strength and efficiencies in managing all the units. Therefore, to reflect the financial implications for the developer in not renting or selling a substantial proportion of the new dwellings on the open market, the

applicant has requested that after 7 years of leasing all units to the Council as affordable housing, the number of units secured by S106 be reduced from four to two. Subsequently, after 14 years, the applicant has requested that the number of units secured by S106 be reduced from two to zero i.e. after 14 years all 22 residential units approved by this permission would be allowed to be rented or sold on the open market and the affordable housing would be lost.

- 1.5 In respect of delivering affordable housing through planning policy, the National Planning Policy Framework (NPPF) states the following at paragraph 50:

...planning authorities should:

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

And within the NPPF glossary (underlining added) states:

Affordable housing: *Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.*

- 1.6 Planning's role is to create sustainable development, which is about meeting the needs of current and future generations; and in relation to this, NPPF paragraph 7 states the following:

“There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being;”*

- 1.7 Locally, planning policy CP8 of the Core Strategy states that:

“all residential proposals of 10-49 dwellings or 0.3hectares up to 1.99 hectares makes an affordable housing or key worker provision of not less than 20% of the total number of units on site”

Although neither national or local planning policy define 'perpetuity' it is inferred, as the policies do not state otherwise, that if affordable housing is required in a development to comply with this policy then this should be retained forever in accordance with the Oxford English Dictionary definition of 'perpetuity':- *“The state*

or quality of lasting forever”.

- 1.8 In the long term and based on the applicant’s proposal, there is potential that after 7 years two affordable housing units will be lost to open market housing, and after 14 years all affordable housing will be lost from this site. The critical consideration is whether it is more important to accommodate more people in the short term or less people but for a longer period.
- 1.9 In support of their proposal, the applicant has presented a case whereby the life expectancy of a residential property is deemed to be 60 years based on criteria used by the Homes and Communities Agency (HCA) to assess minimum build quality before they are willing to offer grant funding (see below for further details). Hence, calculations such as the following are relevant to the applicant’s case:

22 households in accommodation for 7 years *equivalent to* 154 years
22 households in accommodation for 14 years *equivalent to* 308 years
4 households in accommodation for 60 years *equivalent to* 240 years
4 households in accommodation for 77 years *equivalent to* 308 years

It is the applicant’s argument that by offering an over-provision of affordable housing, beyond the 4 units required by Core Strategy policy CP8, 22 units for a 14 year period will equate to more households in accommodation than 4 units for 60 years. However, whilst the applicant has equated ‘perpetuity’ to the life expectancy of a property (i.e. its build quality) this is not a definition used in the context of planning policy. It is reasonable to expect that buildings will last for longer than 77 years, which is equivalent in affordable years to providing 22 units for 14 years (as shown above).

- 1.10 On a general point of principle, given that there is no HCA grant funding available for S106 related affordable housing, any reference to it in the context of a planning permission is irrelevant as it does not apply. Notwithstanding this fact, the HCA have confirmed that there is no reference to a perpetuity period in their Capital Funding Guide in terms of how long a property (with HCA grant funding) should remain as affordable housing. The HCA does, however, refer to 60 years in terms of a longevity requirement in their Capital Funding Guide – see http://cfg.homesandcommunities.co.uk/cfg?page_id=5567&page=31, which states at paragraph 3.2.1 that “*These properties must have a life expectancy of at least 60 years*”. This criteria is a reflection of the build standard required of affordable housing properties and not how long they should remain as affordable housing. In addition, the HCA have confirmed that if grant funding was used to bring the affordable housing units forward, this grant would be repayable in the event that any/all of them were sold at any point in the future (or recycled to provide replacement affordable homes). This is consistent with standard S106 clauses relating to ‘staircasing’, which allow occupiers to buy equity from Registered Providers but that money is later recycled into providing affordable housing elsewhere, so effectively the affordable housing is still being provided in perpetuity albeit not on the original site.
- 1.11 Officers have sought Counsel advice in respect of the disagreement over the definition of “perpetuity” between the Council and the applicant. The barrister has confirmed the Council’s position as follows:

- i. The NPPF (para.50 and Glossary definition of Affordable Housing) infers that affordable housing (whether dwellings or subsidies) should be provided in perpetuity. There is nothing in the wording to suggest otherwise. Furthermore, it would be wholly contrary to long-established policy for the provision of “social housing” to be otherwise. Counsel is unaware of any Ministerial Statement that would otherwise suggest.
- ii. Although Policy CP8 (Dwelling Provision) of the Southend Core Strategy does not refer to perpetuity or any such timeframes in respect of the provision and retention of units as affordable units it is correct to adopt the position that the policy assumes provision in perpetuity. It is based on long-standing national policy assumption (going back to PPG3/PPS3 etc. as well as the RPG/RSS) of this public benefit, which was (a) to replace council housing and (b) to assist those who could not afford market housing via Housing Associations/RSPs with longer-term home ownership through tenures like shared equity etc. Furthermore, for the purposes of s.38(6) of the PCPA 2004, being the statutory development starting point, the decision-maker must start with CS Policy CP8.
- iii. The applicant’s argument that a period of 60 years can be considered to equate to “perpetuity” on the basis of a build quality requirement runs contrary to the NPPF policies on design quality and sustainability principles and gives too much credit to the shelf-life of the volume house builders’ “products”. This approach has not been accepted elsewhere. The correct starting point should be that the provision must continue for the life of the development. Tested another way, so long as the development remains in residential use, the provision of market homes in units earmarked for affordable provision would have a negative policy impact. That impact/harm can only be avoided by continuing the affordable provision so long as the development remains in existence and in residential use.
- iv. Although neither national or local planning policy define ‘perpetuity’, it is presumed that if affordable housing is required as part of a development in order to comply with local policy, then this should be retained forever in accordance with the Oxford English Dictionary definition of ‘perpetuity’:- “The state or quality of lasting forever”. There never has been a timescale set in national policy or in any decision letter, as far we are aware, so perpetuity is presumed.

1.12 In response to the above points the applicant has made the following statement:

- i. *The starting point for a planning decision is the Development Plan (Section 38(6) of the PCPA 2004). As you rightly confirm policy CP8 does not refer to “perpetuity” rightly because it would not be in accordance with the NPPF. Therefore the proposal for 22 affordable units is in accordance with Policy CP8. Accordingly, there is a presumption in favour of development unless material considerations indicate otherwise;*
- ii. *The NPPF is the most up to date policy material consideration. The Glossary does not refer to “perpetuity” for affordable housing but does for Rural Exception Affordable Housing. Therefore, Government policy does not refer to perpetuity but to “future eligible households”. This is not the same as*

“perpetuity”. On average people change houses 8 times in their life or roughly once every 10 years. The present deal with your Council for 7 and/or 14 year leases would represent not 60 years but 77 years each or the equivalent of 7/8 different households for each of the 4 permanent units equivalent...Therefore, the occupation of 22 units for 7 and/or 14 years is affordable housing in accordance with the NPPF and Policy CP8;

- iii. As you are aware policy cannot be interpreted on the basis on an “inference”. It must be read on the face of it. I’m surprised Counsel is suggesting such an approach which has not been my experience over the last 40 years, particularly at public inquiry. I would be pleased if Counsel could provide the relevant case law he/she is relying upon to use inference as a policy approach;*
- iv. There is no basis to assume the “life of the development”. This is not in Policy CP8 or the NPPF or other Policy Guidance;*
- v. Reference to the Oxford English Dictionary to “perpetuity” is not relevant as it does not appear in policy or the NPPF.*

1.13 Officers disagree with the statement made by the applicant in paragraph 1.12 above and reiterate that the proposal is considered to be contrary to NPPF and Core Strategy objectives.

1.14 In addition to the considerations about long term loss of the units, consideration needs to be given to the proposed tenancy arrangements if leased by the Council. Unless the units are rented on as accommodation for homeless persons or for such other limited purposes as set out in Schedule 1 of the Housing Act, then any residents who are accommodated in the units are likely to benefit from secure tenancies should the lease arrangements with the Council cease. This could cause a problem for the Council should the lease arrangements cease as it legally could be difficult to remove/rehouse tenants and give vacant possession back to the developer.

1.15 To address this issue, The Council’s Housing Department have advised that this is the reason the Council is looking to set up a Local Housing Company approach to offer different sorts of tenancies in appropriate cases. The legal power to do this and the circumstances when it would be legitimate to do so is currently under review by the Council’s legal department and no such arrangements are currently in place. In this instance, if legally permitted, it is proposed to give tenants a 2 year short-hold protected tenancy as this would achieve settled accommodation under the homelessness legislation.

1.16 If the above cannot be achieved in the coming months then Housing propose to use the flats as accommodation for the homeless which is needed but wouldn’t be ideal for new build flats. Whilst, the pressing need to provide accommodation is acknowledged it is considered that in this instance the proposed tenancy arrangements would fail the NPPF paragraph 50 objective of creating “mixed and balanced communities”.

1.17 DCC’s previous resolution did not specify the value of the public art to be provided in association with the development. The applicant has offered public art to the

value of £750 or an equivalent contribution. Although this is a relatively modest sum it is considered acceptable in the context of recent planning policy changes and based on the other benefits of the scheme.

2 Other Considerations

2.1 **Community Infrastructure Levy:** The Council intends to commence charging the Community Infrastructure Levy (CIL) on Monday 27th July 2015. Any planning decisions issued after adoption of a CIL Charging Schedule will be CIL liable; and should this application not be determined (including completion of any S106 agreement) before Friday 25th July 2015 the scheme would have to be re-evaluated in the context of CIL.

2.2 **Development Management DPD2:** The Development Management DPD2 has been found sound by the Planning Inspectorate. It is therefore considered that these policies, although not yet adopted, should carry significant weight in the determination of planning applications. This is supported by paragraph 216 of the NPPF which states that, in relation to the stage of preparation of the emerging plan, *“the more advanced the preparation, the greater the weight that may be given.”* The relevant NPPF section in full can be found at: <http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/annex-1-implementation/>

Hence, regard has been had to the emerging DPD in this report although in terms of this proposed scheme the DPD is considered to have limited impact except for the fact that the conditions previously recommended (as outlined in Appendix 1) would need to be updated as follows to reflect the emerging DM DPD policies should permission be granted either by means of a revised application or at appeal:

- Condition 4 – add DM15
- Condition 5 – add DM15
- Condition 9 – add DM2

2.3 **S106 admin & monitoring fee:** Since 10th September 2014 DC Committee there has been a High Court decision dated 3rd February 2015 (*Oxfordshire CC v Secretary of State for Communities and Local Government & Ors* [2015] EWHC 186 (Admin)) in which it was held that monitoring fees routinely added to section 106 costs will not generally meet the test of ‘necessity’ required by the CIL Regulations 2010 (as amended). Therefore, as this agreement is not considered to be unduly complex it is recommended that this requirement be removed from the Heads of Terms of the S106 agreement.

3 Conclusion

3.1 Whilst the short term benefits of an initial over-provision of affordable housing that is being proposed in the context of Core Strategy policy CP8 are acknowledged, it is considered that local planning policy and the NPPF require that affordable housing secured by S106 is retained in perpetuity. Perpetuity in the context of a planning application is deemed to be a provision that must continue for the life of the development to meet the needs of present and future generations.

3.2 On the basis of the above comments, the proposed terms of the S106 agreement

whereby 100% affordable housing be provided for a limited lease period, after which all the units revert to open market housing, is considered unacceptable. With these terms in the S106 agreement, the development would not be sustainable by contributing to mixed and balanced communities, or meet the needs of present and future generations.

4 Planning Policy Summary

- 4.1 The National Planning Policy Framework
- 4.2 Development Plan Document 1: Core Strategy Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP4 (The Environment and Urban Renaissance), CP6 (Community Infrastructure) and CP8 (Dwelling Provision)
- 4.3 Emerging Development Management DPD
- 4.4 Supplementary Planning Document 1: Design & Townscape Guide
- 4.5 Borough Local Plan Policies C11 (New Buildings, Extensions and Alterations), H5 (Residential Design and Layout Considerations), H7 (Formation of Self-contained Flats), L7 (Retention of Hotel and Guest House Uses), T8 (Highway Safety) and T11 (Parking Standards)
- 4.6 EPOA adopted Vehicle Parking Standards

5 Representation Summary

- 5.1 **Housing Comments:** *“Housing Officers have been in discussion with the owner of the former Balmoral site and have been looking at alternative ways of securing all of the flats within the scheme for affordable housing, which would be let at affordable rents to local people within Local Housing Allowance levels. There is an acute shortage of affordable housing for rent in the Private Rented sector at Local Housing Allowance levels at £650 or less in the Borough which means that anyone on a low income or can't work won't be able to find anything which would enable them to rely on Housing Benefit to meet their rent.*

The proposals is to enter into a 7 year lease as this is the longest length of lease the Council can enter into without it becoming a long term leaseholder interest in a property. The expectation would be that in 7 years' time the lease is renewed for a further 7 years on the existing terms and condition. This could either be the Council or through a Housing Association and the flats will still be available to local people at affordable rents. It is anticipated that the Local Housing Company will be in place as this would enable assured shorthold tenancies to be entered into which could avoid the Right to Buy. Within the proposals which have been negotiated with the landowner is that the net lease payments will reflect the strength of the Council's guarantee to manage the properties. There will be additional income between the gross rents and the net rent paid to the landowner, which will cover the management and maintenance costs, and this would cover any void costs too. In some respects this will enable local housing needs to be met and subject to good housing management performance a small surplus to be generated too.

It is appreciated that this scheme presents an unusual approach to deliver

affordable housing and that it comes with a degree of risk in that it does not appear to fully comply with the Council's housing and planning policies. In summary, this will provide a short term benefit to the town by providing affordable housing but there is no guarantee that this benefit will remain in the medium to long term."

6 Recommendation

6.1 (a) Members are recommended to **REFUSE THE AMENDED PLANNING OBLIGATION** and revert back to the resolution of 10th September 2014

(b) The Corporate Director of Place, Head of Planning and Transport or the Group Manager of Planning and Building Control be authorised to determine the application upon completion of the above obligation when executed, accord with the details set out in this report and conditions agreed on 10th September 2014

(c) In the event that the planning obligation referred to in part (a) above has not been completed before or on the 23rd July 2015 the Head of Planning & Transport or the Corporate Director of Place, Group Manager of Development Control and Building Control be authorised to refuse planning permission for the application on the grounds of failure to comply with policies contained within the Development Plan as identified above, and the NPPF.

APPENDIX 1: Report to DC Committee 10th September 2014

Reference:	14/00914/FULM
Ward:	Milton
Proposal:	Demolish parts of existing building and carry out various extensions to form 3 storey block of 22 self-contained flats with associated car parking, amenity space and cycle store to 30 - 36 Valkyrie Road
Address:	Balmoral Hotel, 32-34 Valkyrie Road, Westcliff-on-Sea, Essex
Applicant:	Mr James Nyman
Agent:	Collins & Coward Ltd
Consultation Expiry:	31.07.2014
Expiry Date:	22.09.2014
Case Officer:	Janine Rowley
Plan Nos:	Location Plan; 04; 05; 06; 08
Recommendation:	DELEGATE TO the Head of Planning and Transport, Group Manager for Development & Building Control, or the Corporate Director for Place to GRANT PLANNING PERMISSION SUBJECT TO THE COMPLETION OF A S106 AGREEMENT.



1 The Proposal

- 1.1 Planning permission is sought to demolish parts of existing building and carry out various extensions to form 3 storey block of 22 self-contained flats with associated car parking, amenity space and cycle store at 30 - 36 Valkyrie Road.
- 1.2 The proposed building would be 37m wide x 11.4m high x 19.7m depth. The unit mix would include 4 x 1 bed flats, 17 x 2 bed flats and 1 x 3 bed units (22 units in total). The amenity area proposed to the rear is 250sqm equating to 11.3sqm per unit.
- 1.3 It should be noted that the Development Control Committee resolved to grant outline planning permission for the redevelopment of this site under application 13/00018/OUTM on the 10th April 2013. Permission was granted to demolish the existing building and erect a three storey building comprising of 25 self-contained flat, layout parking and cycle spaces to the rear.
- 1.4 The main differences from application 13/00018/OUTM to this proposal include the following:
 - This application is a full planning application therefore no matters are reserved for future consideration;
 - The number of units has reduced from 25-22;
 - Building height has increased from 10m to 11.4m;
 - Building depth has increased from 18m to 19.7m;
 - The layout has altered whereby the vehicle access to the rear car park has moved from being adjacent to no. 38 Valkyrie Road on the edge of the site to the south within the site;
 - Appearance has altered in terms of materials whereby greater render was used to the front of the site;
 - Greater amenity space previously 226sqm now 250sqm with less units;
 - Parking layout to the rear has altered.

2 Site and Surroundings

- 2.1 The site is located on the eastern side of Valkyrie Road southeast of its junction with Genesta Road. The site is occupied by a three storey detached property, which is currently vacant. The lawful use of the building is as a hotel with ancillary services, including bar and restaurant.
- 2.2 The character of Valkyrie Road is predominately made up of two storey semi-detached properties.

3 Planning Considerations

- 3.1 The main considerations of this application are the principle of the development, impact on the character of the area, traffic and transportation issues, impact on residential amenity, sustainable construction and planning contributions. The planning history of the site is also a material consideration.

4 Appraisal

Principle of the Development:

The National Planning Policy Framework; DPD1 (Core Strategy) policies KP2, CP4 and CP8; BLP policies L7, C11, H5, H7 T8 and T11.

- 4.1 The site previously consisted of a 27 bedroom hotel. Southend-on-Sea Borough Local Plan (BLP) Policy L7 states that development which would involve the loss of any hotel or guest house accommodation in excess of 20 bed spaces will not be permitted unless there is an overriding need for the development which cannot be met elsewhere, it will enhance the quality and viability of the hotel or guest house or there are overriding environmental reasons for the development. Strategically the Council aims to deliver more accommodation provision to encourage visitors for longer periods; which would therefore increase the value to the visitor economy.
- 4.2 Whilst it is accepted that the existing hotel has ceased trading the principle of the loss of the hotel is a material consideration in policy terms. It is considered if planning permission for residential accommodation is granted on site the chances of the site returning to a hotel use are minimal.
- 4.3 Policy DM12 Visitor Accommodation of the Southend Development Management Development Plan Document (submission version) states that within key areas (including the seafront) visitor accommodation will be retained. However, this document has limited weight.
- 4.4 The Southend-on-Sea Hotel Futures Study (2010) encourages the retention of the existing hotel provision within the borough. However, this locality has not been highlighted as an area for the main focus of regeneration or encouragement for the provision of new hotels. The applicant has previously provided a market assessment stating a hotel in this location is not viable. On this basis, the loss of the hotel was not objected to at the time of the previous application, and this is a material consideration.
- 4.5 Government policy seeks to maximise the use of urban land. The proposed development would be constructed on a site which has been used as a hotel and so is considered to be previously developed land. Therefore, no objection is raised to the principle of the use of the site for residential accommodation.
- 4.6 To deliver sustainable communities, the Council seeks to ensure that new housing reflects the needs and demand of Southend-on-Sea's existing and future communities and improves the quality and mix of housing within the Borough. In order to develop sustainable communities it is considered that a mix of housing (tenure, size, etc.) is required within each development and the mix should reflect the demand for housing within the Borough.
- 4.7 A Strategic Market Housing Assessment (SHMA) for Thames Gateway South Essex was completed in September 2008. The Thames Gateway South Essex Group (sub-region) consists of 5 local authorities being Basildon, Castle Point, Rochford, Southend-on-Sea and Thurrock. The report assesses the housing market for the sub-region while also identifying local need. It is important to note

that housing need identified in that report is relevant to both affordable and market housing. The Executive Summary states that Southend has the largest proportion of 1 and 2-bed properties of the above five local authorities and the highest level of vacancy. Demand is strongest for three and four bedroom properties rather than one or two bed properties. The South Essex Thames Gateway Strategic Housing Market Assessment identified a shortage of family accommodation in Southend-on-Sea despite an acute demand for this type of dwelling.

- 4.8 The proposed development would provide accommodation in a mix of one, two and three bedroom flats which is considered to meet the housing demands of the borough.
- 4.9 Furthermore, the principle of redeveloping this site for residential purposes has been previously accepted under application 13/00018/OUTM, whereby outline planning permission was granted planning permission for the erection of a three storey building comprising of 25 self-contained flats at Development Control Committee 10th April 2013.
- 4.10 The principle of redeveloping the site to provide residential accommodation is considered acceptable. Other material planning considerations are discussed below.

Design and Impact on the Character of the Area:

The National Planning Policy Framework; DPD1 (Core Strategy) policies KP2 and CP4; BLP policies C11, H5 and H7 and the Design and Townscape Guide.

- 4.11 Good design is fundamentally important to new development and this is reflected in the NPPF as well as Policies C11 and H5 of the Local Plan, policies KP2 and CP4 of the Core Strategy, and the Design and Townscape Guide.
- 4.12 The NPPF states that:
- “The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people”.*
- 4.13 The Design and Townscape Guide (SPD1) states that:
- “The character of all immediate neighbours and the wider townscape should inform they layout, scale and design of any new development”*
- “The successful integration of any new development is dependent upon the appropriate scale, height and massing in relation to the existing built fabric. Buildings that are over scaled will appear dominant... the easiest option is to draw reference from the surrounding buildings.”*
- 4.14 This is a prominent site on Valkyrie Road, and is particularly visible from Genesta Road. Any development therefore needs to respect local character and scale, ensuring that the quality of the streetscene is enhanced with a good quality design. The character of Valkyrie Road is varied but is predominately residential and there are a number of recurring features within the streetscene such as gabled bays, the

use of vertical proportions and materials such as red brick, clay tiles, timber balustrades and white render. The buildings are generally well spaced and there is a strong building line, with properties set well back from the street.

- 4.15 The general design and scale of this proposal is similar to that previously approved at outline under 13/00018/OUTM. Although it is noted the scale of the development in terms of its overall height has increased from 10m to 11.4m the development will still be set down from the adjacent property at no. 38 Valkyrie Road to the north and the overall height of the roof has been dropped to the south to ensure the development is set below no. 28 Valkyrie Road. The increase in height is not considered to have a harmful impact on the character and appearance of the streetscene. Furthermore, the character of properties in this part of Valkyrie Road is of staggered roof heights due to the topography of the road which slopes down from north to south, which has been incorporated into the proposed design and scale of the development. The scale of development in the area is two storeys with accommodation in the roof space. The design of the proposed development has respected this height and scale. The massing of the development relates satisfactorily to the topography of the site and the proposal is considered to be an appropriately scaled development respecting the urban grain of the area. The various extensions proposed are considered acceptable in terms of their design and scale relating satisfactorily to the proposed development.
- 4.16 The appearance is similar to that indicatively shown on application 13/00018/OUTM although the front section of the development will include the large bays and rebuild and extend to the rear. There is no objection to this in principle and maintaining the rhythm of the bays in the streetscene is welcomed which helps to relate the scheme to the surrounding streetscape.
- 4.17 It is noted that the roof is a mix of pitched to the front masking a large flat roof to the rear of the building and whilst this is not considered to be an ideal or recommended solution it is noted that it is similar in principle to the approved scheme and that the tight grain of the street should screen views of the side profile of the building maintaining the illusion of a pitched roof to the front. Its success will rely on it being well detailed to ensure that the change in design is not apparent in the streetscene.
- 4.18 With respect to the overall detailing of the scheme, in terms of materials whilst there is an opportunity for the uses of some modern materials the proposal should also draw reference to the local area which is characterised by red brick, red brown tiles and white render some with black timber boarding. The materials used for the detailing of the proposal such as the balconies, gable fascia/barge boards, porch canopy and detailing to the upper floors will also be important to successfully integrate the development with the wider streetscene. There is some concern that the proposed powder coated panels would not be appropriate in this location, however this can be dealt with by condition and reference can be drawn to the new flatted block on the corner of Genesta Road which uses render with panel detailing to good effect. It should also be noted that the windows, whilst proposed as upvc, would be more appropriate in aluminium, which again could be dealt with under condition. There are also a number of materials which have not been specified and therefore it is considered that all materials on the external elevations should be conditioned including balconies, fascia/barge boards and the roof/ridge detailing. On balance, subject to conditions the proposal in terms of its overall design is in

accordance with the NPPF, policies KP2 and CP4 of the Core Strategy and policies C11 and H5 of the Borough Local Plan.

- 4.19 The siting of the vehicular entrance appears more resolved compared to the previous application 13/00018/OUTM and the overall impact on the frontage has been reduced.
- 4.20 The landscaping to the front is welcomed and will contribute to improving the overall townscape of the area in accordance with Policy C14 of the Borough Local Plan. Whilst the majority of the frontage is proposed to be hard-surfaced it is not considered that an objection to this aspect of the development can be raised, given the current level of hard surfacing and this has not been objected to previously under application 13/00018/OUTM.

Standard of accommodation for future occupiers

National Planning Policy Framework; DPD1 (Core Strategy) Policies KP2 and CP4; Borough Local Plan Policies H5, H7 and U2; and the Design and Townscape Guide, 2009 (SPD1).

- 4.21 The proposed flats vary from 51m² to 75m² in size which is acceptable. The units are considered to all have an acceptable outlook.
- 4.22 Amenity space will include patio areas and soft landscaping to the rear of the site whereby the 22 residential units will have access to 250sqm of amenity space equating to approximately 11sqm per unit whereas previously under application 13/00018/OUTM only 9sqm per unit was proposed and this was previously accepted. In light of this the increased amenity space is welcomed. Taken into account the level of amenity space proposed together with the soft landscaping to the front on balance the provision provided is acceptable.
- 4.23 The Design and Townscape Guide advocates that amenity space must be accessible and usable. The layout is such that the development will provide adequate access for residents of all blocks to either a private or communal area of useable amenity space. On balance, the proposed amenity space is sufficient for potential future occupiers.

Traffic and Transportation Issues:

The National Planning Policy Framework; DPD1 (Core Strategy) policies KP2, CP4; BLP policies T8 and T11.

- 4.24 Policy T11 requires the provision of adequate parking and servicing facilities. The Essex Planning Officers Association (EPOA) set out the requirements for each use. The Parking Standards are expressed as maximum standards and requires a maximum of 1.5 spaces per residential dwelling. It is also noted that public transport is available in the locality.
- 4.25 The proposed scheme would provide one car parking space per flat through a mixture of external car parking spaces to the front and rear of the site. It is considered that this would meet the parking requirements of the development and the same provision was considered acceptable as in 1 space per unit under

application 13/00018/OUTM.

- 4.26 The proposed access to the car park to the rear of the site is through an undercroft access. The width of the access to the front of the building would allow for two cars to pass at the same time which would mitigate the potential to cause vehicular conflict when vehicles are entering and exiting the site. No objections have been raised by the Councils Highway Officer in relation to the proposed development.
- 4.27 The plans have indicated the provision of a secure cycle storage area within the ground floor of the development which is considered acceptable.

Impact on Residential Amenity:

The National Planning Policy Framework; Policy CP4 of the Core Strategy; BLP policies C11, H5 and the Design and Townscape Guide.

- 4.28 The proposed development is set over three storeys. The three storey rear projection would be in excess of 15m from the rear boundary of the site and a further 17m to the rear of properties in Ditton Court Road; 32m separation distance in this urban area is considered sufficient distance to mitigate against any potential harm from overlooking or loss of privacy. Furthermore, it is not considered the proposal will cause an unreasonable sense of enclosure or access to daylight and sunlight.
- 4.29 With respect to the impact on no. 38 to the north, the design of the development has included the rearward projection beyond the existing building line of no. 38 being single storey with an overall height of 3.4m. The single storey extension is set 2.7m from the flank elevation of no. 38 and the windows are secondary therefore on balance, it is not considered the proposed development will have a material, adverse impact on residential amenity of existing occupiers at no. 38 Valkyrie Road.
- 4.30 In terms of impact on the occupiers of no. 28 to the south of the site, the first and second floors have been designed in a way to mitigate against any potential harm to the adjacent occupiers and only the single storey element will project out approximately 3.3m beyond the rear wall of no.28. It is not considered the proposed development will be overbearing or result in overlooking or loss of privacy.
- 4.31 The development would provide car parking to the rear of the Valkyrie Road aspect of the site. Whilst it is noted that this is in relatively close proximity to the boundary of the adjoining residents the sites currently provides a car park to the rear of the hotel and it is not considered that a reason for refusal in respect of this could be sustained relating to this matter.

Sustainable Construction:

The National Planning Policy Framework; DPD1 (Core Strategy) Policy KP2; BLP policies C11, H5 and the Design and Townscape Guide.

- 4.32 Policy KP2 of the Core Strategy states:

“All development proposals should demonstrate how they will maximise the use of renewable and recycled energy, water and other resources. This applies during both construction and the subsequent operation of the development. At least 10% of the energy needs of new development should come from on-site renewable options (and/or decentralised renewable or low carbon energy sources), such as those set out in SPD 1 Design and Townscape Guide”.

- 4.33 The proposed development involves the redevelopment of the entire site and it is considered reasonable to require the provision of at least 10% of the energy needs of new development from on-site renewable resources. Whilst the provision of renewable energy resources should be considered at the earliest opportunity to ensure an intrinsic design, the application is outline in nature. The applicant has indicated that the development will include photovoltaic cells on the roof but has not provided any details. It is therefore considered reasonable and appropriate to impose a condition on any approval requiring details of renewable options (and/or decentralised renewable or low carbon energy sources) to meet 10% of the developments energy needs to be submitted in accordance with Policy KP2 and Government guidance.

Other Matters:

DPD1 (Core Strategy) policies KP2 and CP4 and BLP policies C11, H5 and H8.

- 4.34 The refuse store is proposed as being integral to the building, and its implementation can be secured by condition.

Developer Contributions:

The National Planning Policy Statement; DPD1 (Core Strategy) policies CP4, CP6 and CP8; BLP policies C11, H5 and H7 and the Design and Townscape Guide.

- 4.35 The Community Infrastructure Levy Regulations (CIL Regs) 2010 came into force on the 6th April 2010 and under regulation 122 planning obligations must meet the following tests:

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

- 4.36 SPD2 adheres to the fundamental principle that planning obligations may not be bought or sold and that planning obligations must only be sought to make acceptable development which would otherwise be unacceptable in planning terms

- 4.37 It should be noted that Policy CP8 of the Core Strategy states that:

“all residential proposals of 10-49 dwellings or 0.3hectares up to 1.99 hectares makes an affordable housing or key worker provision of not less than 20% of the total number of units on site”

- 4.38 The applicant has indicated that they are willing to enter into a S.106 agreement to provide affordable housing on-site. The Housing Department has requested 1 no. one bedroom flat, 2 no. two bedroom flats and 1 no. three bedroom flat in accordance with policy.
- 4.38 The development is anticipated to impact upon local education capacity as the development is within an area of the town that is already short of primary places. An education contribution of £21,634.70 is required whereby £11,362.24 for primary and £10,272.46 for secondary school places. A contribution towards providing places for post-16 pupils are not required as there are sufficient spaces within the borough colleges and 6th forms. The applicant has indicated that they are willing to enter into an agreement in respect of this.
- 4.39 Policy CP4 seeks imaginative design and elements of public art within new development. The Design & Townscape Guide further elaborates on the positive role public art can have within the public realm.
- 4.40 A scheme of this nature would be expected to make a contribution Public Art on or within the vicinity of the site. The applicant has confirmed that they are willing to provide a contribution to public art in accordance with the guidance in SPD2 which is approximately 1% of build costs.
- 4.41 It is considered that the requirements of affordable housing, the education contribution and Public Art discussed above are in accordance with the CIL Regulations.

5 Conclusion

- 5.1 The principle of the redevelopment of the site is acceptable. It is therefore considered subject to the completion of a S.106 agreement that the application is in accordance with the Development Plan.

6 Planning Policy Summary

- 6.1 The National Planning Policy Framework.
- 6.2 Development Plan Document 1: Core Strategy Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP4 (The Environment and Urban Renaissance), CP6 (Community Infrastructure) and CP8 (Dwelling Provision).
- 6.3 Supplementary Planning Document 1: Design & Townscape Guide
- 6.4 Borough Local Plan Policies C11 (New Buildings, Extensions and Alterations), H5 (Residential Design and Layout Considerations), H7 (Formation of Self-contained Flats), L7 (Retention of Hotel and Guest House Uses), T8 (Highway Safety) and T11 (Parking Standards).
- 6.5 EPOA adopted Vehicle Parking Standards.

7 Representation Summary

Highway Authority

- 7.1 No objections.

Strategic Planning

- 7.2 At the time of writing the report no comments had been received.

Design and Regeneration

- 7.3 The general design and scale of this proposal is similar to that previously approved although it is noted that the intention now is to retain the front section of the building including the large bays and rebuild and extend to the rear. There is no objection to this in principle and maintaining the rhythm of the bays in the streetscene which should help to tie the scheme into the surrounding streetscape. It is noted that the roof is a mix of pitched to the front masking a large flat roof to the rear of the building and whilst this is not considered to be an ideal or recommended solution it is noted that it is similar in principle to the approved scheme and that the tight grain of the street should help to screen views of the side profile.

It is also noted that the pedestrian entrance is much simpler and this is welcomed although it will be important to ensure a well detailed canopy and good quality landscaping to help highlight it in the streetscene.

The vehicular entrance is also better resolved and should now have a reduced impact on the frontage and this is welcomed. The creation of a lightwell above this element enables upper floor windows to secondary habitable rooms to have access to daylight and a limited outlook (not ideal) It is a little unclear why a small section of roof and an obscure glazed screen now links the two elements at the front and this does seem rather obsolete and consideration should be given to omitting this from the design altogether and having a break in the building to the front which would help to break up the mass of the proposal and improve outlook for the residents.

To the rear the design is much simpler although it is considered that the southern end of the proposal where a dormer runs into a rear projection is a little awkward in its detailing.

Overall the success of this scheme will rely on good quality detailing and materials. There are some issues which therefore should be conditioned to ensure that they are well resolved on the street elevation in particular and these are: Materials; Detailing of key components including Balconies; Facia/barge boards; Roof/ ridge details.

Sustainability

It is noted that pvs are proposed to provide the required 10% renewables. This is considered to be acceptable in principle although will need to be conditioned to ensure the requirement is fully met.

Park and Open Space

7.4 At the time of writing the report no comments had been received.

Housing

7.5 20% affordable housing provision is required including a mix of 60:40 between social and/or affordable rented accommodation and intermediate housing but obviously a 50:50 is the only option on this site. 1 x 1 bed, 2 x 2 bed units, 1 x 3 bed unit.

Education

7.6 This application falls within the Milton Hall/Barons Court Primary Schools catchment area and Belfairs Academy secondary catchment. All three schools are full with waiting lists and a contribution for both education stages is requested. A sum of £21,634.70 is therefore requested.

Essex County Fire and Rescue Service

7.7 Access for fire service is considered satisfactory. The applicant is advised to liaise with the fire service and building regulations in relation to the building work, water supplies and sprinkler systems.

Public Consultation

7.8 Site notice displayed on the 10th July 2014 and 74 neighbours notified of the proposal. 3 letters of representation have been received stating:

- The submitted details do not include a transport statement and a contribution should be sought to provide monies towards providing traffic calming measures to reduce the problem of vehicles up Valkyrie Road and also include pedestrian accesses **[Officer Comment: The principle of having 25 flats and 25 parking spaces and a similar layout has been previously accepted by the highways officer under application 13/00018/OUTM, therefore in light of this proposal reduces the number of parking spaces on site].**
- Consultation not occurred with all neighbours **[Officer Comment: A site notice was displayed on the 10th July 2014 and 74 neighbours notified as per the previous application 13/00018/OUTM].**
- Parking not acceptable **[Officer Comment: Principle of one parking space per flat given the location of the site has been previously accepted on the extant permission under reference 13/00018/OUTM].**
- The proposed extensions nearest no. 38 to the north have been reduced whereby its now single storey which is welcomed but rather than brick render should be used.
- The proposal is an improvement from the dilapidated buildings on site.
- The existing extensions on the building should not be taken as the building line.

8 Relevant Planning History

- 8.1 2013- Demolish existing building and erect three storey building comprising of 25 self-contained flats, layout parking and cycle/refuse stores and form vehicular access onto Valkyrie Road (Outline) (Amended Proposal) (13/00018/OUTM)
- 8.2 2010 – A planning application (SOS/09/01551/FUL) to demolish existing buildings and to erect a 2 storey building comprising of 10 bedrooms and associated facilities for ancillary use to Balmoral Hotel, a covered walkway and refuse and cycle store, the layout of 10 car parking spaces and two access ramps to front.
- 8.3 2010 - An enforcement notice was served on the 17th November 2011 in relation to the unauthorised use of the site as a HMO and an independent restaurant/bar.
- 8.4 2011 – A retrospective planning application (10/02133/FUL) to convert Hotel (Class C1) to House in Multiple Occupation (Class C4) was refused planning permission.
- 8.5 2011 – An outline application to demolish the existing buildings and erect a part 2 storey and part four storey 85 bed nursing home was submitted for the Balmoral Hotel and 34 Ditton Court Road. The application was refused and a subsequent appeal was dismissed.
- 8.6 2011 – A planning application (11/01375/FUL) for a change of use of the Balmoral Hotel (Class C1) to a residential institution (sui generis) was refused planning permission.
- 8.7 2013 – An outline application (12/01095/OUTM) seeking permission to demolish the existing buildings and redevelop the site with a three storey building with accommodation within the roof and provide accommodation in the form of 12 no. one bedroom flats, 20 no. two bedroom flats and 4 no. three bedroom flats was withdrawn.

9 Recommendation

- 9.1 **Members are recommended TO GRANT PLANNING PERMISSION subject to the following:**
- (A) Consideration of the application be delegated to the Head of Planning & Transport or to the Corporate Director of Enterprise, Tourism & the Environment subject to completion of a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) and all appropriate legislation to seek the following ;**
- **Affordable housing, made up of 1 No. one bed flats, 2 No. two bed flats and 1 No. three bed flat.**
 - **Education contribution of £21,634.70.**
 - **Public Art contribution.**
 - **Monitoring fee in accordance with SPD2 criteria.**
- (B) The Corporate Director of Place, Head of Planning and Transport or the Group Manager of Development Control and Building Control be authorised to determine the application upon completion of the above obligation when executed, accord with the details set out in this report**

and conditions listed below:

- 01 The development hereby permitted shall be begun not later than 3 years beginning with the date of this permission.**

Reason:

Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

- 02 The development hereby permitted shall be carried out in accordance with the approved plans Location Plan; 04; 05; 06; 08.**

Reason:

To ensure that the development is carried out in accordance with the policies outlined in the Reason for Approval.

- 03 No development shall take place until samples of the materials to be used on the external elevations including walls, roof/ridge detailing, balconies, fascia/barge boards, windows, doors, hard surfacing and boundary treatments shall be submitted to and approved in writing by the local planning authority. The works must then be carried out in accordance with the approved materials unless otherwise agreed in writing by the local planning authority.**

Reason:

In the interests of visual amenity and to ensure that the appearance of the building makes a positive contribution to the character and appearance of the area. This is as set out in National Planning Policy Framework, DPD1 (Core Strategy) 2007 policy KP2 and CP4, Borough Local Plan 1994 policy C11, and SPD1 (Design and Townscape Guide).

- 04 The car parking spaces shall be carried out in accordance with plan no. 04 prior to occupation of the flats hereby approved and shall thereafter be permanently retained unless otherwise agreed in writing by the local planning authority.**

Reason:

To ensure that satisfactory off-street car parking is provided for proposed flats and in the interests of residential amenity and highway efficiency and safety, in accordance with the National Planning Policy Framework, policy T8, DPD1 (Core Strategy) 2007 policy KP2, Borough Local Plan 1994 policy T8 and T11, and SPD1 (Design and Townscape Guide).

- 05 Details of the cycle parking spaces, including the number and details, shall be submitted to and agreed in writing by the Local Planning Authority and the development shall be carried only in accordance with the agreed details. The cycle parking spaces agreed shall be provided prior to the first occupation of any dwelling hereby approved and shall be retained in perpetuity unless otherwise agreed in writing by the Local Planning Authority.**

Reason: In order to ensure that sufficient and satisfactory cycle parking is available to meet the needs of occupiers and users of the development in accordance with DPD1 (Core Strategy) 2007 policy KP2 and CP3, Borough Local Plan 1994 policy T13, and SPD1 (Design and Townscape Guide).

- 06** No dwellings hereby approved shall be occupied until refuse storage has been provided in accordance with the approved plans, unless otherwise agreed in writing by the Local Planning Authority. The refuse storage hereby approved shall be retained in perpetuity unless otherwise agreed in writing with the Local Planning Authority.

Reason: In order to ensure that sufficient refuse storage is available to meet the needs of occupiers and users of the development in accordance with DPD1 (Core Strategy) 2007 policy KP2 Borough Local Plan 1994 policy U2 and SPD1 (Design and Townscape Guide).

- 07** Prior to commencement of the development full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved unless otherwise agreed in writing by the local planning authority. Permeable paving shall be used for the hardstanding area to the rear unless otherwise agreed by the Local Planning Authority.

Reason:

To ensure that the development is satisfactory in terms of its appearance and that it makes a positive contribution to the local environment and biodiversity in accordance with the National Planning Policy Framework, DPD1 (Core Strategy) policy KP2 and CP4, Borough Local Plan 1994 policy C11 and C14, and SPD1 (Design and Townscape Guide).

- 08** Details of energy efficiency and other sustainability measures, including the provision of at least 10% of the development hereby approved's energy needs being provided from renewable sources, shall be submitted to and agreed in writing by the Local Planning Authority and the development shall be carried only in accordance with the agreed details. The energy efficiency and other sustainability measures agreed shall be fully installed prior to the first occupation of any dwelling hereby approved and shall be retained in perpetuity unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of sustainable development and accordance with Policy KP2 of the Southend on Sea Borough Core Strategy.

- 09** Details of the sustainable urban drainage scheme including porous hard surface materials, shall be submitted to and agreed in writing by the Local Planning Authority as part of the Reserved Matters and the development shall be carried only in accordance with the agreed details. The scheme agreed, shall be fully implemented prior to the first occupation of any dwelling hereby approved and shall be retained in perpetuity unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of sustainable development and accordance with Policy KP2 of the Southend on Sea Borough Core Strategy.

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework. The detailed analysis is set out in a report on the application prepared by officers.

- (C) In the event that the planning obligation referred to in part (a) above has not been completed before or on the 22nd September 2014 the Head of Planning & Transport or the Corporate Director of Place, Group Manager of Development Control and Building Control be authorised to refuse planning permission for the application on the grounds of failure to comply with policies contained within the Development Plan as identified in Section 6 of the report and the NPPF.**