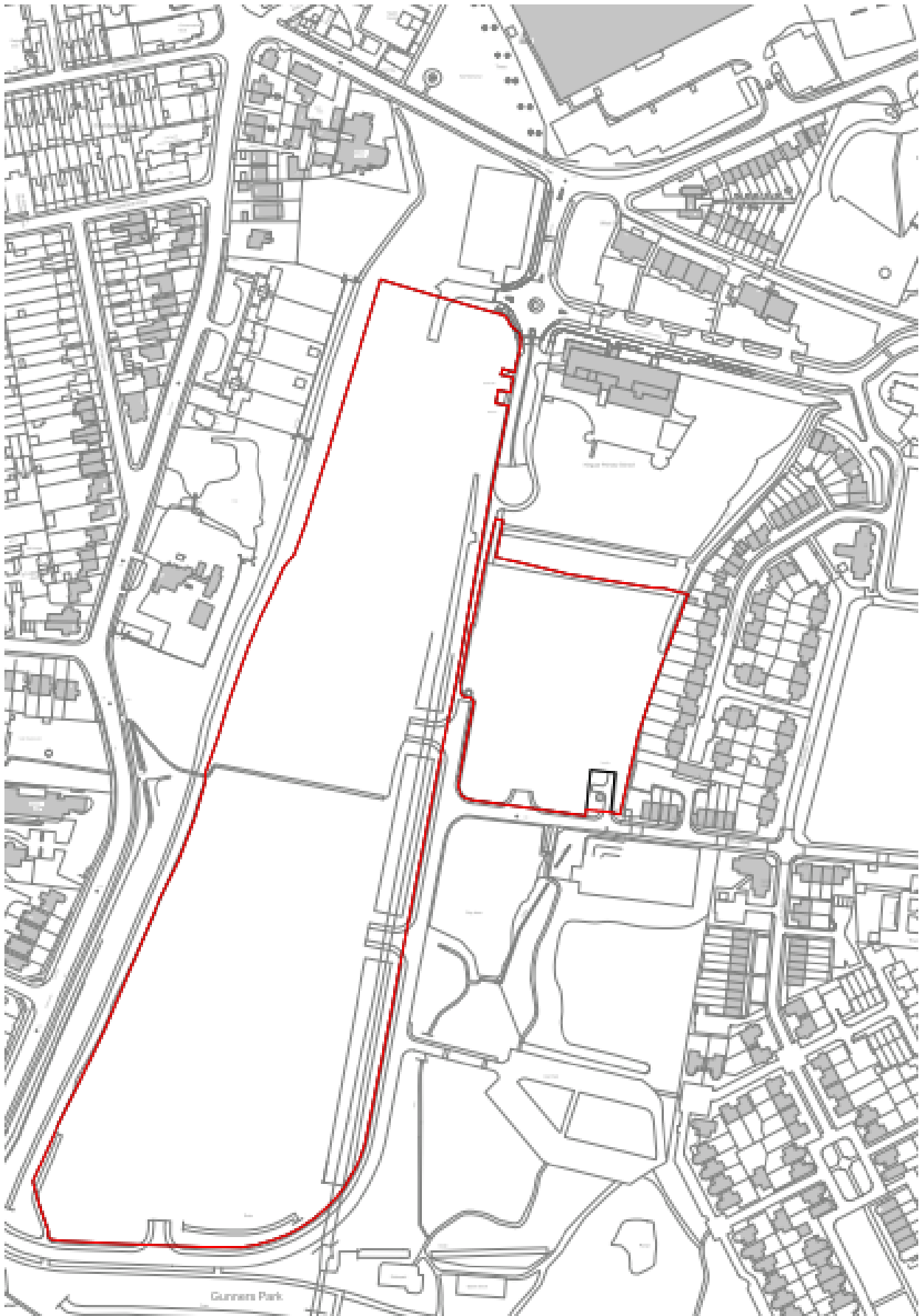


<b>Reference:</b>	24/00420/DOV	
<b>Application Type:</b>	Deed of Variation	
<b>Ward:</b>	Shoeburyness	
<b>Proposal:</b>	Modification of planning obligation (Section 106 agreement) dated 26th February 2021 pursuant to application 20/01227/OUTM dated 26.02.2021 (as amended by 21/01887/DOV5) to modify the affordable housing obligations	
<b>Address:</b>	Land Between Barge Pier Road and Ness Road Shoeburyness Southend-on-Sea Essex	
<b>Applicant:</b>	Bellway Homes Limited (Essex)	
<b>Agent:</b>	Giuseppe Cifaldi of Savills	
<b>Consultation Expiry:</b>	08.08.2024	
<b>Expiry Date:</b>	23.08.2024	
<b>Case Officer:</b>	Abbie Greenwood	
<b>Supporting information:</b>	<b>Application Form dated 11.03.2024</b> <b>Cover Letter from Savills dated 11<sup>th</sup> March 2024</b> <b>Financial Viability Assessment by Arebray reference FV2 dated January 2024</b>	
<b>Recommendation:</b>	<p>a) That the Council enters into a Legal Agreement by Deed of Variation under Section 106A of the Town and Country Planning Act 1990 (as amended) to allow the following modifications to the Legal Agreement dated 26th February 2021 pursuant to planning permission 20/01227/OUTM (as amended by 21/01887/DOV5) to allow:</p> <ul style="list-style-type: none"> <li>i. The affordable housing contribution to be amended from 30% units of affordable housing on site (65 units) – with a 60/40 tenure split (39 social/affordable rent and 26 intermediate units) to 21 units all of which are affordable rented.</li> <li>ii. The inclusion of a Late-Stage Viability Review Mechanism in regard to Affordable Housing Provision (60% of any surplus).</li> </ul> <p>b) In the event that a deed of variation as outlined in recommendation a) above has not been completed by 23 August 2024 or an extension of this time as may be</p>	

	<p><b>agreed by the Executive Director (Environment and Place), Director of Planning and Economy or Service Manager - Development Management and Enforcement, authority is delegated to the Director of Planning and Economy or Service Manager - Development Management and Enforcement, to refuse planning permission for the application on grounds that the development will not secure the necessary contribution for affordable housing, secondary education, highways works and RAMS and that, as such, the proposal would be unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP2, KP3, CP3, CP6 and CP8 of the Core Strategy (2007) and Policies DM1, DM3, DM7 of the Development Management Document (2015) and the Essex Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS) Supplementary Planning Document (2020).</b></p>
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## 1 Site and Surroundings

- 1.1 The application site consists of 2 parcels of land totalling some 8.5 hectares (ha); the larger of the two, to the west of New Barge Pier Road, is some 7.1 ha; the smaller site to the east of New Barge Pier Road is some 1.4 ha. The site is undeveloped, but access points into the site have been previously constructed. The site is relatively flat lying at 1-3m AOD (Above Ordnance Datum). The larger part of the site is roughly rectangular and is to the south of the Lidl store and to the east of dwellings in Ness Road. The smaller part of the application site is to the east of the larger site. This area is directly south of Hinguar School, to the north of the Gunners Park play area and adjacent to the rear gardens of dwellings in Ashes Road. Gunners Park is to the southeast and south of the application site and is allocated as 'Protected Green Space'. The land to the immediate south of the main part of the site is also designated as a Local Wildlife Site (LWS), Site of Special Scientific Interest (SSSI) and Local Nature Reserve. Further south, this part of the Estuary constitutes a SSSI, Special Protection Area (SPA), RAMSAR and Local Nature Reserve. The site is mainly open scrub land with a few trees mostly along the western boundary. There are no Tree Preservation Orders (TPOs) on the site.
- 1.2 The wider surrounding area is mixed. To the east and west of the site is predominately residential. To the north of the site are commercial uses and a school and the land to the south is undeveloped open space with the estuary beyond.
- 1.3 Shoebury Garrison Conservation Area is some 120m to the east of the site; with the boundary running along Boundary Way, Magazine Road and St George's Lane. There are listed buildings within the Conservation Area. The nearest listed buildings to the east of the application site include the Grade II listed buildings Blocks A to G at The Terraces and the Garrison Church of St Peter and St Paul. To the west, the closest listed buildings include the Grade II Listed South Shoebury Hall Farmhouse and Garden House, with the Grade II\* Church of St Andrew beyond. There are also locally listed buildings to the west, including Nos 135 Ness Road and 109 Ness Road. To the north of the site is the Grade II listed Shoeburyness War Memorial. The 'Danish Camp' prehistoric settlement Scheduled Monument is some 300m to the east.
- 1.4 The larger, western part of the site is bounded by Barge Pier Ditch to the east (within the application site boundary) and New Barge Pier Road to the south and by the River Shoe/flood alleviation ditch (C-X Ditch) to the west (outside the site boundary). There are no public rights of way on the site, however, two footpaths run through the site, one north-south from New Barge Pier Road to Campfield Road along the western site boundary, which largely falls outside the site, the other east-west between Ness Road and Magazine Road.
- 1.5 The application site has no specific allocation within the Development Management Document Proposals Map. Within the Core Strategy Key Diagram the general location of the site is allocated as an Industrial/Employment Area. The Key Diagram also allocates the site to provide a primary care centre. According to the Environment Agency Flood Maps, the entire site is located within Flood Zone 3.

## 2 The Proposal

- 2.1 As resolved by Development Control Committee at its meeting on 9<sup>th</sup> December 2020, planning permission was granted on 26<sup>th</sup> February 2021 (reference 20/01227/OUTM) to *'Erect up to 214 residential units (Use Class C3), provision of a new health centre up to 1000sqm (Use Class D1), up to 400sqm of retail floorspace (Use Class A1-A3), land raising, all associated car parking, new foot and cycle paths, public open space,*

*landscaping and ancillary works and infrastructure, install vehicular access off Barge Pier Road, New Garrison Road and Magazine Road (Outline Application)*

2.2 Subsequent to this the S106 agreement dated 26<sup>th</sup> February 2021 linked to this permission was amended by a deed of variation under application reference 21/01887/DOV5 dated 13<sup>th</sup> October 2023. This changed the definition of the Chargee at Paragraph 1.4 of Schedule 2 of the agreement. Briefly, that was to fall in line with Greater London Authority standard Mortgagee in Possession clauses (“GLA Clauses”), as supported by the National Housing Federation (NHF). The amended legal agreement currently secures the following contributions:

**Table 1: Previously agreed contributions (planning obligations)**

	<b>Proposed Head of Term</b>	<b>Details</b>
1	On Site Affordable Housing	30% units of affordable housing on site (65 units) – with a 60/40 tenure split (39 social/affordable rent and 26 intermediate units).
2	Education	Secondary education contribution of <b>£493,000.40</b>
3	Highways	<b>£30,000</b> highways contribution towards Campfield Road/Ness Road junction improvements.
4	RAMS Ecology mitigation	<b>£26,874.12</b> to mitigate the potential disturbance to European designated sites.
5	S106 Monitoring Fee	<b>£10,000</b>

2.3 The current proposal is only seeking to vary the terms of the Affordable Housing contribution of this agreement.

2.4 Part 1 (Definitions) of the S106 Agreement sets out the definition of ‘Affordable Housing Units’ which was based on the upper development amount of 214 residential units within the outline planning permission. This states:

*‘65 (equivalent to 30%) no of the Dwellings to be provided on the Site pursuant to the Planning Permission and made available for Affordable Housing of which 39 no (equivalent to 60%) of the dwellings shall be for Affordable Rent and Social Rent and 26 no (equivalent to 40%) shall comprise Shared Ownership Dwellings and in respect of each tenure the actual mix shall be*

*Dwelling Tenure*

*12 x 1 bedroom flats  
14 x 2 bedroom flats  
9 x 3 bedroom flats  
17 x 2 bedroom dwelling houses  
11 x 3 bedroom dwelling houses  
2 x 4 bedroom dwelling houses*

*(The specific numbers are based upon 214 Dwellings in the Application but will be adjusted by the Council in accordance with the number and make up of Dwellings approved in the Reserved Matters Application).’*

2.5 This deed of variation application is seeking to amend the affordable housing provision at the site to 21 affordable rented units (10%) consisting of the following mix:

- 8 x 1B2P Flats
- 5 x 2B4P Flats
- 3 x 2B4P Wheel Chair Accessible (M4(3)) Flats

- 5 x 3B5P Flats

2.6 The 21 affordable units are to be located within Block A (HZ4) and Block C (HZ1).

2.7 The reason given for this change is as follows:

*'Since the signing of the S106 in February 2021 there has been a well-documented and significant downwards shift in the housing market and economy generally. In addition, there has been additional cost burdens that were not known when the site was acquired by Bellway Homes which has materially affected the full delivery of affordable housing required by the original s106 Agreement.'*

*The supporting FVA [Financial Viability Assessment] outlines that a number of economic and technical factors have combined to have a significant and material negative impact on the viability and deliverability of the proposed scheme. This includes a substantial downturn in the housing market which has suppressed sales revenues; an increase in build and material costs; and a significant downturn in the value of affordable housing. Alongside the current economic situation, there are a number of cost burdens that were either unknown or require additional costs to resolve, including the work associated with the preparation of the development platform[s] before any development can commence on the site. All of the factors are having a significant impact on the viability of the development to the point that unless improvements are made then it will not be delivered and the site will remain vacant.*

2.8 *The FVA has tested a number of affordable housing scenarios including: a 30% affordable housing in accordance with the s106 agreement, a reduced affordable provision of 10% which would all be affordable rented accommodation; and 0% affordable housing provision. The analysis shows that:*

- *the provision of any affordable housing at the site is unviable. If no affordable housing contribution is made then the scheme would generate a profit of 11.5% (which is significantly below the assumed profit margin of 18%).*
- *the provision of 10% affordable housing would reduce the developers margin to 8.92%. Whilst this level is not ideal, it is within a range where it could be possible to be delivered during the life of the planning permission in favourable market conditions.*
- *the provision of 30% affordable would reduce the developers margin to -0.69% which results in a financial loss and therefore the construction of the scheme would not be progressed on this basis.*

*The recommendation within the FVA is for Bellway to reduce the provision of affordable housing to 0% and include a late stage review mechanism that would capture any additional value should the viability improve during the life of the construction programme. Notwithstanding this recommendation, Bellway recognises the importance of delivering affordable housing to achieve a mixed and balanced community and is therefore proposing an ex gratia offer of 10% affordable housing in anticipation of improved market conditions.*

*The revised affordable housing provision therefore comprises 21 affordable rented units (10%).*

*The provision of all affordable rented units is a significant improvement from the policy position within the Council's Development Management Document which seeks a 60:40 split in favour of affordable / social rent.*

*It is therefore proposed for the definition within the S106 to be amended to the following:*

2.9 *21 (equivalent to 10%) no. of the dwellings to be provided on the site pursuant to the planning permission and made available for Affordable Housing of which 100% shall be for Affordable Rent and in respect of this tenure the actual mix of dwellings shall be:*

- 8 x 1B2P Flats
- 5 x 2B4P Flats
- 3 x 2B4P Wheelchair Unit (M4(3)) Flats
- 5 x 3B5P Flats'

2.10 Schedule 2 Clause 1.1 – 1.3 of the existing Sn106 agreement outlines the owner's covenants with the Council with regard to the timescales for delivery and transfer of affordable housing. These sections do not require amending.

### **3 Relevant Planning History**

3.1 The most relevant planning history for the determination of this application is shown on Table 2 below:

**Table 2: Relevant Planning History of the Application Site**

<b>Reference</b>	<b>Description</b>	<b>Outcome</b>
24/00311/RESM	Approval of Reserved Matters including details of appearance, layout, and scale relating to the development of the site, comprising of 210 residential dwellings (Class C3) with associated infrastructure, cycle and car parking, public open space, play and refuse recycling details, submission of details for discharge of conditions 2 (Phasing Plan), 8 (Existing and Proposed Site Levels), part discharge of condition 11 (Landscaped Areas and Play Space), 13 (Timetable for Implementation of Biodiversity Mitigation Measures), 16 (Timetable for Implementation of Ecology Enhancement Measures), 20 (Cycle Parking Details), 25 (Refuse and Recycling Details), 28 (Flood Risk and Drainage Strategy), 34 (Part M4(2) and (3) details) (Approval of reserved matters following outline permission 20/01227/OUTM dated 26/02/2021).	Pending Consideration.
24/00237/AMDT	Application to vary condition 03 (approved parameter plans and landscape plan) to state - The development shall be carried out in accordance with the approved parameter plans which set out the parameters for the heights and levels of the development, the locations of the different uses across the site, the landscaping and the access and movement arrangements for the site BA9923-1600 Rev 06 - Land Use Parameter Plan; BA9923-1601 Rev	Pending Consideration.

	05 - Heights and Levels Parameter Plan; BA9923-1602 Rev 04 - Access and Movement Parameter Plan; PR243-01 Rev L -Landscape Master Plan, so replacing approved parameter plans and landscape plan, 032-S2-P401-D-Land Use, 032-S2-P402-E - Heights and Levels, 032-S2-P403-E-Access and Movement and 2166-00-20-B-Landscaping with amended drawings: BA9923-1600 Rev 06-Land Use Parameter Plan, BA9923-1601 Rev 04-Heights and Levels Parameter Plan, BA9923-1602 Rev 4 -Access and Movement Parameter Plan, PR243-01 Rev G-Landscaping Plan (Material Amendment of Planning Permission 20/01227/OUTM dated 26/02/2021)).	
24/00153/AD	Application for approval of details pursuant to condition 7 (archaeological recording and analysis) of planning permission 20/01227/OUTM dated 26/02/2021.	Details Agreed.
23/01387/AD	Application for approval of details pursuant to condition 09 (demolition and construction management plan and strategy) of planning permission 20/01227/OUTM dated 26.02.2021.	Withdrawn.
23/01338/AD	Application for approval of details pursuant to condition 03 (strategy for lorry movements) of planning permission 22/01602/RES dated 02.12.2022	Details Agreed.
23/01084/NON	Application to vary and amend condition 41 (assessment of the nature and extent of contamination) - to modify trigger points for parts 1 and 2 of condition to allow for land raising works to take place - (Non-Material Amendment of planning application 20/01227/OUTM dated 26.02.2021).	Non-material amendment allowed.
23/00804/AD	Application for approval of details pursuant to condition 02 (ditch survey and maintenance plan) of planning permission 22/01602/RES dated 02.12.2022.	Details Agreed.
22/01602/RES	Approval of Reserved Matters (Appearance, layout and scale) for the engineering works required to raise the levels of the site to create the development platforms and associated infrastructure works. Submission of details for conditions 2 and part discharge of conditions 7, 8, 9, 13, 16 and 17, in relation to the engineering works of planning permission 20/01227/OUTM dated 26.02.2021 - Erect up to 214 residential units (Use Class C3), provision of a new health centre up to 1000sqm (Use Class D1), up to 400sqm of retail floorspace (Use Class A1-A3), land raising, all associated car parking, new foot and cycle paths, public open space, landscaping and ancillary works and infrastructure, Install vehicular access off Barge Pier Road, New Garrison Road and	Reserved Matters Approved.



	Magazine Road (Outline Application).	
21/01887/DOV5	Modification of planning obligation (Section 106 agreement) dated 26th February 2021 pursuant to application 20/01227/OUTM to amend the chargee provisions in relation to the affordable housing.	Modification Agreed.
20/01227/OUTM	Erect up to 214 residential units (Use Class C3), provision of a new health centre up to 1000sqm (Use Class D1), up to 400sqm of retail floorspace (Use Class A1-A3), land raising, all associated car parking, new foot and cycle paths, public open space, landscaping and ancillary works and infrastructure, install vehicular access off Barge Pier Road, New Garrison Road and Magazine Road (Outline Application).	Planning permission granted.
20/00823/BC3M	Temporary storage of soil at New Barge Pier Road.	Planning permission granted.
20/00740/RSO	Residential development of up to 250 dwellings and a health centre (class D1) vehicular access off Barge Pier Road and areas of open space and recreational areas and associated infrastructure. (Request for Scoping Opinion).	Scoping opinion issued.
20/00310/RSE	Residential development of up to 250 dwellings and a health centre, vehicular access off Barge Pier Road and associated new and enhanced open space comprising informal/natural greenspace. (Request for Screening Opinion) - Is EIA development and Environmental Statement required.	EIA development and Environmental Statement required.
18/01975/FULM	Re-grading and retention of existing on-site spoil heap, erect 9 Commercial Units (Use Class B1/B8) with ancillary Trade Counter, 1 Retail Unit (unit 8) (Use Class A1) and 1 Unit (Use Class Sui Generis) for use as Vets (unit 1), layout Car Parking Spaces and Cycle Parking, construction of vehicular and pedestrian accesses from existing roundabout and layout soft landscaping.	Planning permission granted.
14/01495/BC3M	Temporary storage of soil and install wheel cleaning apparatus at New Barge Pier Road.	Planning permission granted.
12/01198/BC3M	Temporary storage of soil and install wheel cleaning apparatus at New Barge Pier Road.	Planning permission granted.
15/02053/OUTM	Erect 172 dwellinghouses and 14,130sqm of Offices (Class B1(a) and Health Centre (Class D1) (outline application) (Amended Proposal).	Outline planning permission granted. <i>Reserved matters never submitted.</i>
14/00566/OUTM	Erect 172 dwellinghouses and 15000sqm of Offices (Class B1) (outline application).	Withdrawn.
10/01829/FULM	Erect three storey building for use as Primary Care Centre (Class D1) incorporating entrance ramp with steps and balustrade to north boundary, lay out associated parking for 171	Planning permission granted.

	cars, 78 cycle spaces, ambulance bay and service yard, hard and soft landscaping, erect sub-station to east elevation and erect 1.1m high mesh fencing to boundary on land adjacent to Barge Pier Road.	
07/00366/FUL	Form access road from south of roundabout on Barge Pier Road; form flood alleviation ditch to east of Ness Road between Campfield Road and New Ness Road access.	Planning permission Refused.
13/01743/RESM	Details of New Gunners Park infrastructure/facilities including children's play area, toddlers play area, wheeled sports and multi-use games area, tennis courts, car parks, footpaths/cycleways and historic military structures. (Approval of reserved matters following outline permission 00/00777/OUT granted on 06/02/2004).	Reserved matters approved.
00/00777/OUT	Mixed use development comprising conversion of existing buildings and erection of new buildings for: parkland and open space; up to a total of 465 dwellings; up to 23,750sq.m of business floorspace (Class B1(a) and (B)); up to 1625sq.m of non-residential (Class D1) uses, including A. a health centre within the mixed use area, B. the former Garrison Church as a community hall, and C. the former battery gun store as a heritage centre; up to 5,900sq.m of leisure (Class D2) uses; up to 800sq.m of retail (Class A1); up to 600sq.m of financial services (Class A2) use; formation of hotel (Class C1) with approximately 40 bedrooms; land for a new school; erection of landmark residential building; construction of new access roads; and associated works (Outline).	Planning permission granted.

## 4 Representation Summary

### Public Consultation

4.1 8 site notices were displayed. 20 representations were received and their contents are summarised as follows:

- Concern over the reduction in the total amount of affordable housing. There is a need for affordable housing in this area. The provision of affordable housing was the most important aspect of the original permission and should not be reduced. If this developer cannot deliver 30% affordable housing, then the land should be sold to another developer or left as it is. The reduction in affordable housing is against policy. The initial agreement on affordable housing should not be changed. Is the cost of making the land suitable for building the determining factor? Building elsewhere would be cheaper.
- Concern over the loss of family sized units of affordable housing.
- Social housing is more important than market housing in this area.
- The scheme is unviable because of the flood plain constraints. The proposal for raised platforms is irrational and unsafe.

- Concern it is over development on a flood plain. Concern over surface water flooding.
- This area should be retained as green space or a nature reserve. Environmental concerns.
- Concern over the impacts of housing on jobs, infrastructure and local services including health and schools. The proposed health centre won't be built for some time. Concerns relating to the removal of retail.
- Concern that the land is unstable and contaminated and not suitable for house building.
- Campfield Road junction needs upgrading. Concern over traffic generation.
- Concern over disruption during construction and impact of lorry movements on the condition of surrounding roads. Environmental concerns and concern over impact on air quality and the movement of soil.
- Need homes for our young people and jobs for our local residents.
- Concerns about the number of changes being made.
- Other new housing in the area is not selling. If they are not affordable, who will buy the houses?

**Officer Comment:** These concerns are noted and those that represent material planning considerations relevant to the Deed of Variation application under consideration have been taken into account in the assessment of the application. However, they are not found to represent a reasonable basis to refuse this deed of variation in the circumstances of this case. The current application is only seeking to amend the terms of the previously agreed affordable housing provision at the site within the S106 agreement. Those comments which relate to other topics, including, impact on local services, green space, roads and construction and flood risk therefore fall outside the scope of this application.

### **Council's Strategic Housing Team**

- 4.2 The LPA's financial viability review supports the applicants FVA which indicates that the scheme cannot support affordable housing on site. Therefore, the Strategic Housing Team supports the applicant's proposal of 10% affordable housing provision, and where possible, the inclusion of a late stage viability review mechanism. The applicant has proposed 100% Affordable Rented tenure. Whilst this is a deviation from our policy, there is substantial demand for rented accommodation as demonstrated by our current Housing Register data with over 1000 households waiting for suitable accommodation, and therefore deviation from Policy is supported by the Strategic Housing Team.

### **Shoebury Residents Association**

- 4.3 Comments from the Shoebury Residents Association are summarised as follows:

- The proposal set out in the Section 73 application and the reserved matters application has changed beyond recognition from that of the initial outline planning permission.
- Concern that development has been raised up out of the flood plain.
- Concern about the lack of information about drainage, contamination and archaeology.
- Concerns that conditions are being removed.
- Concern that the affordable housing and health centre were only included to obtain the initial planning permission.
- The loss of affordable housing and employment is unacceptable.

- Concern over impact on local services and infrastructure including health services, schools, sewerage and roads.
- Other commitments in the S106 agreement for education, junction improvements and RAMs must be retained.
- Concerns regarding a late stage [viability] review.
- Shoebury is a cheaper area than the rest of Southend, so we need cheaper more affordable housing and more employment opportunities.

## **5 Procedural Matters**

- 5.1 This application is presented to the Development Control Committee because it was called in by former Councillor, Cllr Walker.

## **6 Planning Policy Summary**

- 6.1 The National Planning Policy Framework (NPPF) (2023)
- 6.2 Planning Practice Guidance (PPG) (2024)
- 6.3 Core Strategy (2007): Policies KP2 (Development Principles), KP3 (Implementation and Resources) and CP3 (Transport and Accessibility), CP6 (Community Infrastructure) and CP8 (Dwelling Provision).
- 6.4 Development Management Document (2105) Policy DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM7 (Dwelling Mix, Size and Type).
- 6.5 Southend-on-Sea Planning Obligations: A Guide to Section 106 and Developer Contributions (2015).
- 6.6 Southend-on-Sea Interim Affordable Housing Policy (2016).
- 6.7 Essex Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS) Supplementary Planning Document (2020)

## **7 Material Considerations**

- 7.1 Section 106A of the TCPA (Town and Country Planning Act) allows for an application to be made to a local authority to consider a proposed modification or discharge of a planning obligation.
- 7.2 Planning obligations can be renegotiated at any point, where the Local Planning Authority and developer wish to do so. A planning obligation is enforceable as a contract and whether it is varied or not is at the Local Authority's discretion. Where there is no agreement to voluntarily renegotiate, and the planning obligation is over 5 years old, an application may be made to the Local Planning Authority to change the obligation where it 'no longer serves a useful purpose' or 'if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications' (ref Section 106A of the TCPA).
- 7.3 The key material planning consideration in respect of this application is whether the proposed modification to the S106 from 30% affordable housing (60% affordable rent and 40% shared ownership) to 10% affordable housing (100% affordable rent) is acceptable.

## 8 Appraisal

8.1 In relation to the provision of affordable housing the NPPF at Paragraph 66 states:

*‘Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.’*

8.2 Policy CP8 seeks an affordable housing provision of 30% for major residential proposals of 50 dwellings and over which should be split 60:40 between affordable/social rented and shared ownership units which would constitute 38 affordable/social rented units and 25 shared ownership units.

8.3 The need for negotiation with developers, and a degree of flexibility in applying affordable housing policy, is covered in Core Strategy Policy CP8 which states: *‘The Borough Council will...enter into negotiations with developers to ensure that:*

*.... all residential proposals of 50 dwellings or 2 hectares or more make an affordable housing or key worker provision of not less than 30% of the total number of units on the site...’*

8.4 In relation to the mix of affordable housing, Policy DM7 states:

*‘All major residential development is expected to provide a dwelling mix that incorporates a range of dwelling types and bedroom sizes, including family housing where feasible, to reflect the Borough’s housing need and housing demand.*

*Where affordable housing is provided:*

- (i) The affordable dwelling mix set out in Policy Table 3 is sought; and*
- (ii) An indicative tenure mix of 60:40 between social and/ or affordable rented accommodation and intermediate housing is sought respectively.*

*Where it is considered that the affordable housing dwelling mix and/or tenure mix is not appropriate, applicants will be required to justify to the satisfaction of the Council, a more appropriate mix.’*

**Policy Table 3: Preferred Affordable Dwelling Mix**

Dwelling size: No. Bedrooms	1-bed	2-bed	3-bed	4-bed
Proportion of affordable housing total	16%	43%	37%*	4%**

*\*/\*\* - These percentages will seek to address the under supply of family accommodation that has been identified in the SHMA.*

Dwelling Size	1 bed	2 bed	3 bed	4 bed
Proposed Affordable Housing mix	8 units 38%	8 units 38%	5 units 24%	0 units

8.5 Furthermore, the responsibility for the Council to adopt a reasonable and balanced approach to affordable housing provision, which takes into account financial viability and how planning obligations affect the delivery of a development, is reiterated in the supporting text at paragraph 10.17 of the Core Strategy and paragraph 2.7 of “*Supplementary Planning Document: Planning Obligations*”.

8.6 A Financial Viability Appraisal (FVA) submitted with the application concludes that a policy compliant affordable housing contribution is unviable in this case. The submitted FVA has been reviewed for this Council by an independent consultant who concludes that if sales commence 12 months into the construction process, which would be typical for a conventional scheme of this scale, then the scheme would generate a surplus of c.£0.77m but if sales commence at 24 months into the construction process the scheme generates a deficit of -£2.58m so cannot support any affordable housing. To support this increase in the sales programme the applicant's statement comments that:

*'Given that the site needs to be made up by over 3m in places and a significant amount of retaining structures are needed we consider that our programme is optimistic but achievable if there are no issues. We do not consider the shorter programme is achievable in this instance and would ask that this point is re-considered.'*

8.7 The Council's independent consultant's response to this was as follows:

*'On the basis of the Applicant's statement, we have also modelled a scenario in which the sales commence 2 years into construction.'*

8.8 The exact date for the commencement of sales is not known at this time however, the applicant's response that the unique circumstances of this site is likely to lead to a significantly longer lead in time before sales can begin is reasonable in this case and this is supported by the Council's Housing Team. Notwithstanding this conclusion that the site is not viable to support any affordable housing, the applicant proposes to provide 10% affordable rented units on site within 2 flatted blocks. This offer has been carefully considered and is found to be reasonable given all the relevant factors for the site especially as the units will be provided as 100% affordable rented units for which the City has a significant need demonstrated by over 1000 households being on the housing register at this time. Within the above proposed affordable provision 5 x 3 bed flats will be suitable for families and 3 flats will be 2 bed wheelchair units. The results of the Housing Delivery Test (HDT) published by the Government show that there is underperformance of housing delivery in the City. Similarly, the Council's Five-Year Housing Land Supply (5YHLS) figure shows that there is a deficit in housing land supply in the City. These findings render Policy DM7 and the preferred mix of housing as out of date and confirm there is need for all dwelling types and sizes. The proposed mix is acceptable and the approach to housing provision including securing 21 affordable rented dwellings as a significant contribution to the City's rented housing stock is supported by the Council's Housing Team.

8.9 In addition to the proposal for 21 affordable rented units (10%) the applicant has agreed to include a late-stage viability review mechanism in the deed of variation to the S106 agreement. This requires that a second independent viability review is undertaken later in the construction process (after 75% of the units have been sold) to determine whether the viability position of the development has changed and which will capture any additional value should the viability improve during the life of the build. If the scheme is found to be viable at that later stage, 60% of any surplus would be paid to the Council as an additional affordable housing contribution for the scheme. This too is considered to be a positive element of the proposal and in line with the request made by the Council's Housing team within their consultation response.

8.10 Therefore, in this particular case, taking into consideration the specific circumstances of the site, it is considered in this instance that the case for variation of the legal agreement as set out above has been justified such that the proposal is acceptable

and policy compliant in this regard.

## **Equality and Diversity Issues**

- 8.11 The Equality Act 2010 (as amended) imposes important duties on public authorities in the exercise of their functions and specifically introduced a Public Sector Equality Duty. Under this duty, public organisations are required to have due regard for the need to eliminate unlawful discrimination, harassment and victimisation, and must advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. Officers have in considering this application noted the proposed inclusion of two wheelchair M4(3) units within the proposed affordable rented housing provision and in preparing this report had careful regard to the requirements of the Equalities Act 2010 (as amended). They have concluded that the decision recommended will not conflict with the Council's statutory duties under this legislation.

## **Conclusion**

- 8.12 Taking into account all material planning considerations and the specific circumstances of this case, it is concluded that it is appropriate and acceptable to modify the S106 agreement as set out below. The scheme is unable to support any affordable housing but the developer would provide 21 affordable housing units, all for affordable rent for which the City has a demonstrably significant need, together with a Late Stage Viability Review. In these specific circumstances the approach outlined is considered to provide a practical and acceptable solution that serves the community's best interests in this particular case.
- 8.13 It is considered that there is sufficient justification to allow the modifications to the Section 106 agreement dated 16th February 2021 pursuant to planning permission ref. 20/01227/OUTM (as amended by 21/01887/DOV5).
- 8.14 This application is recommended for approval subject to completion of a Deed of Variation to secure the modifications set out in the recommendation section below.

## **9 Recommendation**

9.1 Members authorise:

- a) That the Council enters into a Legal Agreement by Deed of Variation under Section 106A of the Town and Country Planning Act 1990 (as amended) to allow the following modifications to the Legal Agreement dated 26th February 2021 pursuant to planning permission 20/01227/OUTM (as amended by 21/01887/DOV5) to allow:**

**iii. The affordable housing contribution to be amended from 30% units of affordable housing on site (65 units) – with a 60/40 tenure split (39 social/affordable rent and 26 intermediate units) to 21 units all of which are affordable rented.**

**iv. The inclusion of a Late-Stage Viability Review Mechanism in regard to Affordable Housing Provision (60% of any surplus).**

**b) In the event that a deed of variation as outlined in recommendation a) above has not been completed by 23 August 2024 or an extension of this time as may be agreed by the Executive Director (Environment and Place), Director of Planning and Economy or Service Manager - Development Management and Enforcement,**

**authority is delegated to the Director of Planning and Economy or Service Manager - Development Management and Enforcement, to refuse planning permission for the application on grounds that the development will not secure the necessary contribution for affordable housing, secondary education, highways works and RAMS and that, as such, the proposal would be unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP2, KP3, CP3, CP6 and CP8 of the Core Strategy (2007) and Policies DM1, DM3, DM7 of the Development Management Document (2015) and the Essex Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS) Supplementary Planning Document (2020).**

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