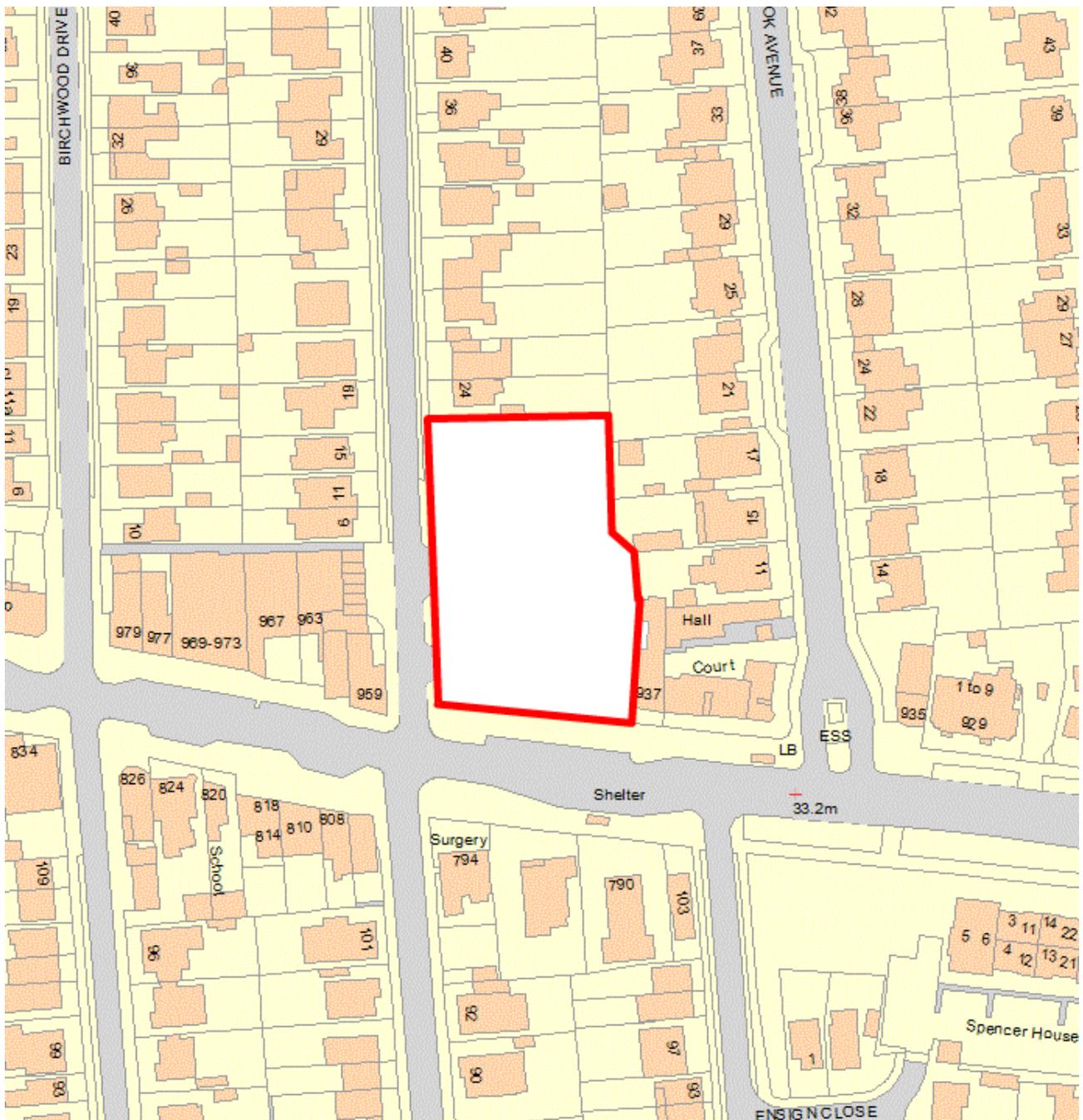


Reference:	A. 19/02377/DOV5 B. 21/00783/AMDT	
Application Type:	A. Deed of Variation B. Minor Material Amendment	
Ward:	Blenheim Park	
Proposal:	<p>A. Modification of planning obligation to provide affordable housing (Section 106 agreement) dated 26.10.2017 pursuant to application 17/00563/OUTM as amended by Deed of Variation dated 06.11.2020 pursuant to application 20/00633/AMDT.</p> <p>B. Application to vary condition number 01 (approved plans) to alter fenestrations and layout to comply with Building Regulations (Minor Material Amendment of planning permission 17/02183/RESM dated 06.06.2018) and modification of planning obligation to provide affordable housing (Section 106 agreement) dated 26.10.2017 pursuant to application 17/00563/OUTM as amended by Deed of Variation dated 06.11.2020 pursuant to application 20/00633/AMDT.</p>	
Address:	939 - 953 London Road, Leigh-On-Sea, Essex	
Applicant:	Mr Horban	
Agent:	DAP Architecture	
Consultation Expiry:	A. N/A B. 27th May 2021	
Expiry Date:	7 December 2022	
Case Officer:	A. Amanda Rogers B. Spyros Mouratidis	
Plan Nos:	100; 350.01; 351.00; 352.00; 353.00; 354.00; 355.00; 356.00; 357.00; 358.00; 359.00; 360.00.	
Additional information:	Amendment Statement dated 12 April 2021; Accommodation Schedule 1326.500.00; Financial Viability Appraisal by 106 Management	
Recommendation:	AGREE MODIFICATION OF S106 AGREEMENT and the Executive Director (Growth and Housing), Director of Planning or Service Manager - Development Control be DELEGATED TO GRANT PLANNING PERMISSION subject to conditions and the completion of a deed of variation under Section 106 of the Town and Country Planning Act 1990 (as amended)	



1 Procedural Matters

- 1.1 The applications need to be determined by the Council's Development Control Committee in line with the Council's constitution as it comprises significant development.

2 Site and Surroundings

- 2.1 The application site is on the northern side of London Road, at its junction with Darlinghurst Grove. It is currently vacant following the commencement of demolition works originally permitted under planning permission 17/00563/OUTM (the "Outline Permission") as amended with planning permission 20/00633/AMDT (the "2020 Permission") and the Reserved Matters Approval 17/02183/RESM (the "RMA") which also permitted the erection of two part 2, part 3, part 4 storey blocks comprising 30 flats and 1 commercial unit on the ground floor with associated basement parking.

- 2.2 The site was previously occupied by a two-storey commercial building. London Road in this area has a mixture of uses. Darlington Grove is a residential street. There are no site-specific planning policy designations that affect the site or the immediate area.

3 The Proposal

- 3.1 Planning permission is sought for the variation of condition 01 (Approved Plans) of the RMA. The application has been submitted under the provisions of Section 73 of the Town and County Planning Act 1990 (the “1990 Act”) as amended. Condition 1 of the RMA states:

“01 The development hereby permitted shall be carried out in accordance with plans 100, 200A, 201C, 250B, 251B, 252A First Floor, 252B Second Floor, 254 Third Floor, 255B, 256B; 257B, 258, 259, 601A, 262A, 260, 261, 263, 264, 265, 266.”

- 3.2 The proposal seeks to amend the external appearance and internal layout of the approved buildings in order to achieve compliance with Building Regulations. In the submitted Amendment Statement, it is stated that the originally permitted development was not designed with the correct existing site levels. Whilst extensive internal changes are proposed, the overall housing mix would not be altered from that previously approved. Table 1 below shows a comparison between the previously approved and currently proposed development:

Table 1: Comparison of the previously approved and currently proposed development

	Previously Approved	Currently Proposed
1 Bed Units	5	5
2 Bed Units	7	7
3 Bed Units	12	12
4 Bed Units	6	6
Total Residential	30	30
Commercial Unit (sqm)	330.7	296.9
Car Parking	58	54

- 3.3 The upper floor on the larger approved building, Block B, which would be facing London Road, is proposed to be enlarged by some 3.3m in width, from 34.9m to 38.2m, increasing by some 2.2m in width towards the east and 1.1m towards the west. The south-eastern corner of the upper floor would be recessed. The overall width of that building would be reduced by some 1.5m away from the shared boundary with No.937 London Road.
- 3.4 The physical changes proposed to the buildings would result in the overall height above ground level being altered compared to what was approved with the previous permissions. At the north-western side of the site, nearest to No.24 Darlington Grove, the height of Block A would increase by some 0.1m, from some 6.2m to 6.3m. On the London Road frontage the degree of change in height would be between 0.4m, from some 12.1m to 12.5m, near the junction with Darlington Grove to no difference in maximum height near the eastern boundary of the site. The greatest increase in height would be at the northern end of Block B, where the height would increase by some 1.4m, from 9.7m to 11.1m. This also would result in a larger space between ground floor and first floor levels.
- 3.5 As part of the internal changes, the layout of the basement would be altered and the approved parking would be reconfigured. This would result in the reduction of four (4no.) car parking spaces, from 58 to 54.

3.6 In addition to the physical changes proposed to the approved scheme, the applications include a request for the modification of the affordable housing obligation. It is proposed that no on-site affordable housing is provided, a payment of £100,000.00 is made to the Council in lieu of such provision and a late-stage viability review mechanism is agreed to ensure that the Council will be given an additional financial contribution should there be an uplift in the market.

4 Relevant Planning History

4.1 The most relevant planning history for the determination of this application is shown on Table 1 below:

Table 2: Relevant Planning History of the Application Site

Reference	Description	Outcome [Date]
20/00633/AMDT	Application to vary condition 04 (Scheme of Highways Works) remove items of contract details and highways approvals and to be re-introduced at a later stage of the development or introduced as a pre-occupation item (Minor Material Amendment of planning permission 17/00563/OUTM dated 26 Oct 2017 and 19/02346/AD dated 19 March 2020)	Permission Granted and S106 Modified [06.11.2020]
19/02346/AD	Application for approval of details pursuant to condition 04 (Highways Scheme), 09 (SUDs), 10 (Water Efficiency), 11 (Construction Method Statement) and 19 (Land Contamination Investigation) of planning application 17/00563/OUTM dated 26.10.2017	Part approved, part refused [19.03.2020]
17/02183/RESM	Approval of reserved matters including details of appearance, landscaping pursuant to outline planning permission 17/00563/OUTM dated 26.10.2017 to demolish existing building and erect two blocks part 2, part 3, part 4 storey comprising of 30 flats, 1 commercial unit on ground floor lay out parking, refuse and cycle stores	Permission granted [07.06.2018]
17/00563/OUTM	Demolish existing building and erect two blocks part 2, part 3, part 4 storey comprising of 30 flats, 1 commercial unit on ground floor lay out parking, refuse and cycle stores (Outline Application) (Amended Proposal)	Permission granted [26.10.2017]

5 Representation Summary

Public Consultation

5.1 Fifty (50) neighbouring properties were consulted, a site notice was displayed, and a press notice was published. Representations from two interested parties have been received raising the following objections:

- Impact on residential amenity.
- Loss of privacy.

The comments have been taken into consideration and the relevant planning matters raised are discussed in the following sections of the report. The objecting points raised by the representations are not found to form a reasonable basis for refusing the applications in the circumstances of this case.

Parks

5.2 No comments.

Environmental Health

5.3 No comments.

London Southend Airport

5.4 No objections.

Fire Safety Officer

5.5 No objections.

Housing

5.6 No objections.

Highways

5.7 No objections.

6 Planning Policy Summary

6.1 The National Planning Policy Framework (NPPF) (2021)

6.2 Planning Practice Guidance (PPG) – National Design Guide (NDG) (2021)

6.3 Technical Housing Standards – Nationally Described Space Standards (2015)

6.4 Core Strategy (2007): Policies KP1 (Spatial Strategy), KP2 (Development Principles), KP3 (Implementation and Resources), CP1 (Commercial Development) CP3 (Transport and Accessibility) CP4 (The Environment and Urban Renaissance), CP8 (Dwelling Provision).

6.5 Development Management Document (2015): Policies DM1 (Design Quality), DM2 (Low Carbon Development and Efficient Use of Resources), DM3 (Efficient and Effective Use of Land), DM7 (Dwelling Mix, size and type), DM8 (Residential Standards), DM11 (Employment Areas), DM14 (Environmental Management), DM15 (Sustainable Transport Management).

6.6 Southend-on-Sea Design and Townscape Guide (2009)

6.7 Technical Housing Standards Policy Transition Statement (2015)

6.8 Waste Storage, Collection and Management Guide for New Developments (2019)

6.9 Electric Vehicle Charging Infrastructure for new development Supplementary Planning Document (2021)

6.10 Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) (2020)

6.11 Planning Obligations: A Guide to Section 106 and Developer Contributions (2015)

- 6.12 Interim Affordable Housing Policy (2016)
- 6.13 Community Infrastructure Levy (CIL) Charging Schedule (2015)
- 6.14 Southend-on-Sea Vehicle Crossing Policy & Application Guidance (2021)

7 Planning Considerations

- 7.1 The applications seek to amend a condition attached to the Reserved Matters Approval (RMA) and to modify the S106 Agreement. The main considerations in relation to the variation of the RMA are the principle of development and whether the variation is lawful within the provisions of S73 of the Town and Country Planning Act 1990, whether the proposed dwelling mix complies with the terms of the Outline Permission and the impact of the proposal on the appearance of the development. It will also need to be considered the impact of the proposed scheme's variations on the residential amenity for future and neighbouring occupiers, traffic and parking implications, energy and water use sustainability, refuse and recycling storage, flooding and drainage, ecology and mitigation for impact on designated sites and CIL liability. The main consideration in relation to the modification of the S106 agreement is whether the modified obligation should be accepted in accordance with the three tests for planning obligations set out in national planning guidance as explained further below.

8 Appraisal

Principle of Development

- 8.1 The principle of the development has already been established with the grant of the Outline Permission and the subsequent amended 2020 Permission. According to the case of *Pressland*¹, conditions imposed under Reserved Matters Approvals, form part of the planning permission and as such they can be amended or removed through the provisions of Section 73 of the 1990 Act. The site edged red for the application is the same as the RMA and Outline Permission. The proposed variation of Condition 1 of the RMA relating to the approved plans for the development on site are minor in nature and do not alter whether this development is acceptable in principle. Other material planning considerations are discussed in the following sections of the report.

Dwelling Mix – Affordable Housing

- 8.2 The proposed dwelling mix, in terms of dwelling size and provision of bed spaces, remains the same as previously approved. When determining previous applications the resulting dwelling mix was found to be acceptable. This position remains unaltered and the same mix remains acceptable.
- 8.3 The proposal is required through the S106 obligation to provide at least 20% (i.e. six) of its units in an affordable housing tenure. The clear preference in terms of affordable housing provision is for on-site provision. National and local planning policy requires this to be adjusted, if necessary, on viability and deliverability grounds.
- 8.4 The applicant has approached registered providers in order to offer opportunities for on-site affordable housing provision. Despite the initial interest from a registered provider, no formal offer has come forward within a reasonable timeframe, since 2019 when discussions around this matter began. The Council's officers in liaison with the Council's

¹ *Pressland v The Council of the London Borough of Hammersmith and Fulham* [2016] EWHC 1763 (Admin)

Housing team approached registered providers independently but this did not result in any tangible interest materialising in an offer to the developer. Hence on-site provision of affordable housing would be unrealistic and not deliverable due to the lack of interest from registered providers.

- 8.5 In such an instance it is reasonable for this Local Planning Authority to consider a financial contribution towards off-site provision of affordable housing secured with a planning obligation subject to viability. This is discussed in more detail in the relevant section of the report. In the round, the proposal is acceptable and policy compliant in the above regard.

Design and Impact on the Character of the Area

- 8.6 Local and national planning policies and guidance seek to ensure that new development is well designed. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 8.7 Local development plan policies seek to ensure that new development is designed so that it adds to the overall quality of the area and respects the character of the site, its local context and surroundings, provides appropriate detailing that contributes to and enhances the distinctiveness of place; and contribute positively to the space between buildings and their relationship to the public realm. Policy DM1 and the Council's Design and Townscape Guide provide further details on how this can be achieved.
- 8.8 The proposed buildings are in the same position as previously approved and with a comparable footprint and built form. The main block is proposed to be detached from the neighbouring building at No.937. The development would respect the urban grain of the area. The proposed scale has already been found to be acceptable through the grant of the Outline Permission and the proposed changes to height are not considered to result in a significantly different visual impact. The upper floor would lack an offset from the side elevation of the lower floors which is a less positive aspect of the scheme, but the corner would be recessed to mitigate for this. The proposed form has also been found to be acceptable previously. In terms of appearance, the proposed changes to the approved scheme would generally respect the design ethos of the extant permissions. The bigger gap between ground and first floor level on the northern part of proposed Block B, facing Darlinghurst Grove, is a less positive aspect of the proposed appearance but weighed in the balance is the fact that the design had to respond to the reality of on-site levels. The proposed palette of materials would be sympathetic to the character of the area. No changes are proposed to the approved landscaping.
- 8.9 It is considered that the design, size, siting and scale of the development proposed are such that it would not result in any significant harm to the character and appearance of the site, the streetscene and the area more widely. The proposal is therefore considered to be acceptable and policy compliant in terms of its impact on the character and appearance of the site, the streetscene and the area more widely.

Amenity Impacts

- 8.10 Local and national planning policies and guidance seek to secure high quality development which protects amenity. Policy DM1 of the Development Management Document specifically identifies that development should protect the amenity of the site, immediate neighbours, and surrounding area, having regard to privacy, overlooking, outlook, noise and disturbance, visual enclosure, pollution, and daylight and sunlight.

Further advice on how to achieve this is set out in the Council's Design and Townscape Guide.

- 8.11 The impact of the proposal on the residential amenity of neighbouring occupiers was previously found to be acceptable. The proposed variation of the development would not result in significantly more harmful relationships with the neighbouring properties that would be unacceptable in their own right or which would warrant the refusal of the application on amenity grounds. The additional height of 0.1m adjacent to No.24 Darlinghurst Grove, would not result in significant harm to the residential amenity of neighbouring occupiers at this property in any relevant regards. The relationship with No.937 London Road would be better than the current proposal as it would have a comparatively lesser impact on the residential amenity of occupiers of this property.
- 8.12 It is considered that the design, size, siting and scale of the development proposed are such that it would not result in any significant harm to the amenities of the site, neighbouring occupiers or wider area in any regard. Conditions previously imposed to safeguard the residential amenity of neighbours remain in force. The proposal is therefore considered to be acceptable and policy compliant in terms of its amenity impacts.

Standard of Accommodation

- 8.13 Delivering high quality homes is a key objective of the NPPF. Policy DM3 of the Development Management Document states that proposals should be resisted where they create a detrimental impact upon the living conditions and amenity of existing and future residents or neighbouring residents.
- 8.14 The proposed variation of the scheme would continue to make provision of units that would meet the minimum Technical Housing Standards in terms of overall area, bedroom area, minimum bedroom width and internal storage area. All habitable rooms would benefit from satisfactory outlook and receipt of light. All units would comply at least with the accessibility standards of Building Regulation M4(2) with at least 10% of the units complying with the wheelchair user standard of Building Regulation M4(3). Sufficient amenity space would be provided in similar arrangements to the previous permissions.
- 8.15 The proposal was previously found to be acceptable in terms of living conditions for future occupiers. The varied proposal is also considered to offer an acceptable standard of accommodation for future occupiers. It is therefore acceptable and policy compliant in the above regards.

Traffic and Transportation Issues

- 8.16 The NPPF states (para 111) that "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or, the residual cumulative impacts on the road network would be severe."
- 8.17 Policy CP3 of the Core Strategy and Policy DM15 of the Development Management Document aim to improve road safety, quality of life and equality of access for all. Policy DM15 of the Development Management Document states that development will be allowed where there is, or it can be demonstrated that there will be physical and environmental capacity to accommodate the type and amount of traffic generated in a safe and sustainable manner. Parking standards are set out in relation to the proposed uses.

- 8.18 The minimum parking requirement for the proposed flats is 30 spaces, one space per flat. The maximum standard for commercial uses within Use Class E ranges from 1 space per 5sqm to 1 space per 30sqm, namely a maximum requirement between 60 and 10 spaces. The proposed parking exceeds the minimum policy requirement for the residential units and is compliant with the maximum requirement for commercial floorspace. The reduction by four spaces compared to the approved scheme's provision would not be detrimental to the highway safety and parking conditions of the area. Originally the approved scheme would offer 30 spaces for the residential units, 14 for the commercial unit and 14 for visitors, including 4 disabled user spaces. The proposed scheme would result in the reduction of the visitor spaces by four and would not affect compliance with policy requirements. Cycle parking remains in excess of minimum policy requirements. Highways raised no objection.
- 8.19 Since the determination of the latest application, the Council has adopted the Electric Vehicle Charging Infrastructure for new development Supplementary Planning Document (2021). It is considered to be reasonable and justified that a new condition be imposed to secure compliance with the requirements of this document thereby reflecting the updated policy position in this regard.

Sustainability

- 8.20 Policy KP2 of the Core Strategy requires that: "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)". Policy DM2 of the Development Management Document states that: "to ensure the delivery of sustainable development, all development proposals should contribute to minimising energy demand and carbon dioxide emissions". This includes energy efficient design and the use of water efficient fittings, appliances and water recycling systems such as grey water and rainwater harvesting.
- 8.21 Subject to conditions, the current proposal would be acceptable and policy compliant in the above regards in line with previous findings for the same development.

Ecology, Biodiversity, HRA and RAMS

- 8.22 The site falls within the Zone of Influence for one or more European designated sites scoped into the adopted Essex Coast RAMS. It is the Council's duty as a competent authority to undertake a Habitats Regulations Assessment (HRA) to secure any necessary mitigation and record this decision within the planning documentation. Any new residential development has the potential to cause disturbance to European designated sites and therefore the development must provide appropriate mitigation. This is necessary to meet the requirements of the Conservation of Habitats and Species Regulations 2017. The Essex Coast RAMS SPD, which was adopted by Full Council on 29 October 2020, requires that a tariff per dwelling unit is paid. This will be transferred to the RAMS accountable body in accordance with the RAMS Partnership Agreement.
- 8.23 Whilst a payment to mitigate the impact of residential development would normally be sought, this development was granted permission prior to the adoption of the Essex Coast RAMS SPD and the current variation would not create any additional dwellings over the previous permissions. A payment cannot reasonably be sought in the circumstances of this case. The development is acceptable and in line with policies in this regard.

Other Matters

- 8.24 Considerations regarding land contamination, refuse and recycling or flooding and drainage were taken into account and found acceptable subject to conditions when the Outline Permission was granted on the site. The proposed variation of the development would not alter matters in these regards hence remains acceptable and policy compliant.

Planning Obligations

- 8.25 Paragraph 57 of the NPPF states that: “Planning obligations must only be sought where they meet all of the following tests:
a) necessary to make the development acceptable in planning terms
b) directly related to the development; and
c) fairly and reasonably related in scale and kind to the development.”
- 8.26 Core Strategy Policy KP3 states that in order to help the delivery of the Plan’s provisions the Council will, among other, enter into planning obligations with developers to ensure the provision of infrastructure and transportation measures required as a consequence of the development proposed. This includes provisions such as affordable housing and educational facilities.
- 8.27 Similarly, Policy CP6 of the same document states that development proposals must mitigate their impact on community infrastructure by contributing appropriately to services and facilities that would be adversely affected.
- 8.28 Paragraph 57 of the NPPF states that: “Where up to date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment... the weight given to a viability assessment is a matter for the decision maker having regards to all the circumstances in the case, including... any change in site circumstances since the plan was brought into force.”

Affordable Housing

- 8.29 Paragraph 62 of the NPPF states that where a need for affordable housing is identified, it should be expected it to be met on-site unless: a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and b) the agreed approach contributes to the objective of creating mixed and balanced communities.
- 8.30 The need for negotiation with developers, and a degree of flexibility in applying affordable housing policy, is echoed in Core Strategy Policy CP8 which states that the Council will enter into negotiations with developers to ensure that all residential proposals of 10-49 dwellings or 0.3 hectares up to 1.99 hectares make an affordable housing or key worker provision of not less than 20% of the total number of units on site.
- 8.31 As already discussed in paragraphs 8.2 to 8.5, on-site provision of affordable housing, here, is not an option with realistic prospect. This is due to the demonstrable lack of any tangible interest by any registered provider to take on any units on site.
- 8.32 In lieu of on-site affordable housing provision, the Council’s Interim Affordable Housing Policy provides a mechanism to calculate the amount required for a financial contribution towards off-site provision. In line with this policy and as per the table below, in circumstances when a surplus is expected to be generated, a scheme of this nature and composition would be expected to make a financial contribution of £773,311.97.

8.33 The derived figure is shown in Table 3 below.

Table 3: Financial contribution for affordable housing

Plot No:	Floor	Bedroom	Bed spaces	m2	AH Min (based on National Technical Housing Standards)	Open Market Value (OMV)	Residual land value percentage 30%	Payment in lieu (based on 20% AH)
A1		4	5	92	90	£473,616.00	£152,895.60	£30,579.12
A2		2	3	61.2	61	£315,057.60	£103,629.24	£20,725.85
A3		1	2	50.4	50	£259,459.20	£84,942.00	£16,988.40
A4		3	5	86.7	86	£446,331.60	£146,100.24	£29,220.05
A5		2	3	64.9	61	£334,105.20	£103,629.24	£20,725.85
A6		1	2	50.4	50	£259,459.20	£84,942.00	£16,988.40
A7		2	3	64.9	61	£334,105.20	£103,629.24	£20,725.85
A8		1	2	50.4	50	£259,459.20	£84,942.00	£16,988.40
B1		1	2	62.9	50	£323,809.20	£84,942.00	£16,988.40
B2		1	2	61.8	50	£318,146.40	£84,942.00	£16,988.40
B3		4	6	112.1	99	£577,090.80	£168,185.16	£33,637.03
B4		4	6	108.8	99	£560,102.40	£168,185.16	£33,637.03
B5		2	3	62.9	61	£323,809.20	£103,629.24	£20,725.85
B6		2	3	61.8	61	£318,146.40	£103,629.24	£20,725.85
B7		3	5	93.3	86	£480,308.40	£146,100.24	£29,220.05
B8		3	4	83.4	74	£429,343.20	£125,714.16	£25,142.83
B9		4	5	92.3	90	£475,160.40	£152,895.60	£30,579.12
B10		3	6	105.9	95	£545,173.20	£161,389.80	£32,277.96
B11		3	6	103.2	95	£531,273.60	£161,389.80	£32,277.96
B12		2	3	62.9	61	£323,809.20	£103,629.24	£20,725.85
B13		2	3	61.8	61	£318,146.40	£103,629.24	£20,725.85
B14		3	5	93.3	86	£480,308.40	£146,100.24	£29,220.05
B15		3	4	83.4	74	£429,343.20	£125,714.16	£25,142.83
B16		4	5	92.3	90	£475,160.40	£152,895.60	£30,579.12
B17		3	6	105.9	95	£545,173.20	£161,389.80	£32,277.96
B18		3	6	103.2	95	£531,273.60	£161,389.80	£32,277.96
B19		3	4	75	74	£386,100.00	£125,714.16	£25,142.83
B20		3	5	87.4	86	£449,935.20	£146,100.24	£29,220.05
B21		4	6	100.1	99	£515,314.80	£168,185.16	£33,637.03
B22		3	5	90.3	86	£464,864.40	£146,100.24	£29,220.05
			Totals	2424.9	2276	£12,483,385.20	£3,866,559.84	£773,311.97

8.34 Discussions regarding the S106 requirements of the development, particularly with reference to the affordable housing contributions have been ongoing during the course of these applications since 2019. After robustly establishing that on-site provision of affordable housing is not a deliverable option on this site (as discussed in paragraphs 8.2 to 8.5), the LPA, with the professional advice of an independently appointed assessor (BNP Paribas Real Estate), has tested the viability assessment of the proposed scheme and concludes that a contribution for the above or any other amount cannot viably be secured towards off-site affordable housing provision in this instance. The Gross Development Value for this project generates a significant deficit.

- 8.35 This position is reached despite the applicant accepting the officers' and the Council's assessor's position that the Benchmark Land Value of the site is a nominal figure of £1 and mainly due to the substantial increase in the construction costs by 5.57% within 2022. Noting the time elapsed since the original permission was granted this current viability position is not unexpected in this instance if due weight is given to causal factors including the disruption in the supply chains initiated by Covid-19 and the current international geo-political events.
- 8.36 The applicant has offered to contribute a sum of £100,000.00 and agreed to enter into a S.106 legal agreement to secure the financial contribution. They have made this offer notwithstanding the viability position of the scheme. This is not uncommon nor unreasonable as a developer may consider the wider merits of accommodating a smaller profit or a loss on a site in order to avoid incurring other costs associated with undeveloped land.
- 8.37 Following the presentation of these applications to the Development Control Committee on 2 November 2022 and the concerns expressed by members during the meeting, officers negotiated and agreed with the applicant the imposition of a late-stage viability review mechanism. Such a mechanism would allow the Council to review the financial position of the project during a late stage of delivery when construction costs and sale values would be known or estimated with much greater certainty. If there is an uplift in the Gross Development Value of the project that would allow an additional financial contribution to be made towards affordable housing, with this mechanism the Council can secure it. The late-stage viability review mechanism will form part of the S.106 legal agreement if planning permission is granted.
- 8.38 Subject to the completion of such a legal agreement the proposal would be acceptable in this regard.

Education

- 8.39 No change is proposed to the agreed financial contribution towards education provision of £88,728.77.

Community Infrastructure Levy (CIL)

- 8.40 This application is CIL liable and there will be a CIL charge payable. In accordance with Section 70 of the Town and Country Planning Act 1990 (as amended by Section 143 of the Localism Act 2011) and Section 155 of the Housing and Planning Act 2016, CIL is being reported as a material 'local finance consideration' for the purpose of planning decisions. The proposed development includes a gross internal area of 1,214.3m², which may equate to a CIL charge of approximately between £65,917.75 and £88,732.98 (subject to confirmation and depending on the use of the commercial unit). As the development permitted with the Outline Permission commenced, it may be possible to claim a rebate for any CIL already paid.

Equality and Diversity Issues

- 8.41 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 and 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

8.42 Having taken all material planning considerations into account, it is found that subject to compliance with the attached conditions and the associated modification of the S106 agreement, the proposed development would be acceptable and compliant with the objectives of the relevant local and national policies and guidance. The proposal is acceptable in principle and provides an appropriate dwelling mix. Subject to conditions and planning obligations, it would have an acceptable impact on the character and appearance of the area, the living conditions of future occupiers and the amenities of neighbouring occupiers. It would also have an acceptable impact on the highway and, notwithstanding a modest decrease in on-site parking compared with the original approval, parking conditions in the area subject to conditions and would be acceptable in relation to waste management. The proposed development would provide an acceptable drainage strategy on site and energy and water sustainability, and impact on education. It should be noted that the main bulk of conditions was imposed at the outline stage. As this application only seeks to vary the RMA, only the relevant conditions are repeated and where necessary amended. The conditions attached to the Outline Permission as amended with the 2020 Permission remain in force. This application is recommended for approval subject to conditions and the completion of the modification of the S106 legal agreement.

9 Recommendation

Members are recommended that:

- (a) **The Council AGREE A MODIFICATION of the Section 106 agreement dated 26.10.2017 pursuant to application 17/00563/OUTM as amended by Deed of Variation dated 06.11.2020 pursuant to application 20/00633/AMDT to allow:**
- i. The removal of the obligation that the developer provides affordable housing on site.**
 - ii. The securing of a financial contribution of £100,000.00 for the provision of affordable housing off site to be paid prior to first commencement of construction works, other than demolition, above ground floor level.**
 - iii. The inclusion of a Late-Stage Viability Review Mechanism that would allow an additional contribution towards affordable housing**
- (b) **The Executive Director (Growth and Housing), Director of Planning or Service Manager - Development Control be DELEGATED to GRANT PLANNING PERMISSION subject to the completion of the modification of the section 106 agreement referred to (a) above and subject to the conditions set out below:**
- 01 **The development hereby permitted shall be carried out in accordance with plans 100; 350.01; 351.00; 352.00; 353.00; 354.00; 355.00; 356.00; 357.00; 358.00; 359.00; 360.00.**

Reason: To ensure that the development is carried out in accordance with the policies outlined in the Development Plan.

- 02** The development shall be carried out solely in accordance with the details of external materials shown on the approved plans 350.01, 351.00, 352.00, 353.00, 354.00 and 355.00 prior to first occupation of any development hereby approved.

Reason: To safeguard the character and appearance of the area in accordance with Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1 and DM3 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).

- 03** The hard and soft landscaping shall be undertaken in accordance with the approved details of application 17/02183/RESM and as shown on drawing 601a submitted and approved with that application. The approved hard landscaping works shall be fully completed prior to first occupation of the development hereby approved and the soft landscaping works shall be completed within the first planting season following first occupation of the development and maintained in perpetuity thereafter.

Reason: To safeguard the character and appearance of the area in accordance with Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1 and DM3 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).

- 04** A 1.5m high obscure glazed (the glass to be obscure to at least Level 4 on the Pilkington Levels of Privacy) privacy screen to the northern edge of the communal amenity deck shown on drawing 359 shall be installed prior to the first occupation of the residential flats hereby approved. The privacy screen shall be permanently retained thereafter.

Reason: To safeguard the character and amenities of the area and in particular to protect the amenities of nearby residential occupiers of the development in accordance with Policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015).

- 05** One car parking space per residential and per commercial unit shall be provided with active electric vehicle charging facilities. Every car parking space shall be future proofed with passive electric vehicle charging point provision, with measures such as, but not exclusively, four-way duct and draw pits to all parking bays, so that electric charging points can be installed when demand requires. The charging infrastructure shall be permanently maintained for use by occupiers/users/visitors of the relevant dwelling and commercial units.

Reason: In the interests of providing sustainable transport choices, including electric vehicles, in accordance with the National Planning Policy Framework (2021), Policies KP2 and CP3 of the Core Strategy (2007), Policies DM3 and DM15 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Electric Vehicle Charging Infrastructure for New Development Supplementary Planning Document (2021).

- (c)** In the event that the planning obligation referred to in part (a) above has not been completed before 7 December 2022 or an extension of this time as may be agreed by the Director of Planning or Service Manager - Development Control, authority is delegated to the Executive Director (Growth and Housing), Director of Planning or Service Manager - Development Control to refuse planning permission for the application on grounds that the development will not secure the necessary contributions to provide affordable housing off-site and would not provide any

secondary education contributions to mitigate the impact of the development. As such, the proposal would be contrary to national and local planning policy.

Positive and Proactive Statement:

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.

Informatives:

- 1 Please note that the development the subject of this application is liable for a charge under the Community Infrastructure Levy (CIL) Regulations 2010 (as amended), and it is the responsibility of the landowner(s) to ensure they have fully complied with the requirements of these regulations. A failure to comply with the CIL regulations in full can result in a range of penalties. For full planning permissions, a CIL Liability Notice will be issued by the Council as soon as practicable following this decision notice. For general consents, you are required to submit a Notice of Chargeable Development (Form 5) before commencement; and upon receipt of this, the Council will issue a CIL Liability Notice including details of the chargeable amount and when this is payable. If you have not received a CIL Liability Notice by the time you intend to commence development, it is imperative that you contact S106andCILAdministration@southend.gov.uk to avoid financial penalties for potential failure to comply with the CIL Regulations 2010 (as amended). If the chargeable development has already commenced, no exemption or relief can be sought in relation to the charge and a CIL Demand Notice will be issued requiring immediate payment. Further details on CIL matters can be found on the Planning Portal (www.planningportal.co.uk/info/200136/policy_and_legislation/70/community_infrastructure_levy) or the Council's website (www.southend.gov.uk/cil).
- 2 You should be aware that in cases where damage occurs during construction works to the highway in implementing this permission that Council will seek to recover the cost of repairing public highways and footpaths from any party responsible for damaging them. This includes damage carried out when implementing a planning permission or other works to buildings or land. Please take care when carrying out works on or near the public highways and footpaths in the city.