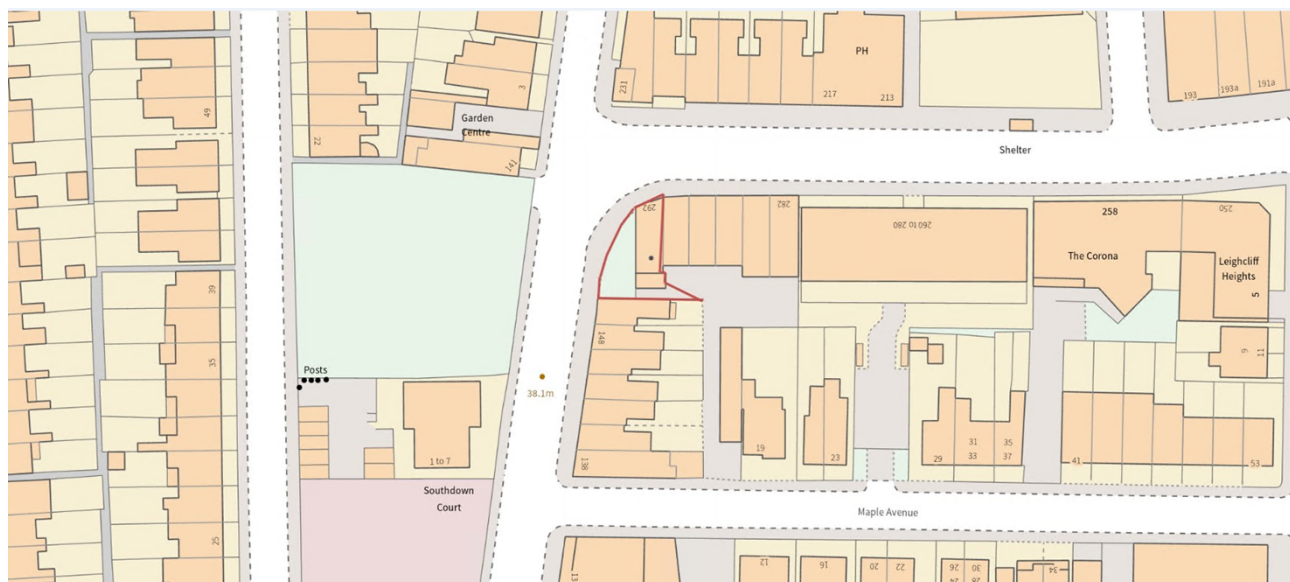


Reference:	22/01496/FUL	
Application Type:	Full Application	
Ward:	Leigh	
Proposal:	Demolish existing storeroom and erect two storey building with basement for use as a restaurant (Class E) and use existing basement at 292 Leigh Rd as associated restaurant floorspace.	
Address:	Land adjacent to 292 Leigh Road and 152 Broadway Leigh-on-sea, Essex	
Applicant:	Capability Ltd	
Agent:	Mr Dwight Breley of Breley Design Ltd	
Consultation Expiry:	12.05.2023	
Expiry Date:	02.06.2023	
Case Officer:	Scott Davison	
Plan Nos:	1447- 01 Rev A, 1447 - 02 Rev F, 1447 - 03 Rev G, 1447-04 Rev D & 1447 – 05 Rev B	
Additional information:	Planning, Design and Access Statement, Appendix A (Daylight and Sunlight Report – Right to Light Chartered Surveyors 16.11.2022), Appendix B Extract Design Information, CGI Images 1f & 2c, Acoustic Assessment by Ned Johnson Acoustic Consultants Limited dated 26.02.2023, reference 572223, Email from Agent dated 20 March 2023 RE BREAAAM & Materials, Email from Consultant dated 26/04/2023, Email from Daylight and Sunlight Consultant dated 11/04/2023.	
Recommendation:	GRANT PLANNING PERMISSION, subject to conditions	



## **1 Site and Surroundings**

- 1.1 The application site is an irregular shaped plot of land at the western end of a terrace in Leigh Road and to the north of a parade of shops in the Broadway. It is known locally as both Moon Corner and Blind Corner. The site is covered in a hard surfaced material and there is a mosaic on the flank wall and on the ground. There is a gradient across the site reducing from north to south.
- 1.2 The site is bounded to the east by No.292 Leigh Road, a 2.5-storey building with mainly commercial use at ground floor plus a ground floor entrance hall and stairs to the residential uses above which comprise a first floor one-bedroom flat and a one-bedroom duplex flat at first and second storey levels and by No.150 Broadway, a two-storey end of terrace building with a vacant retail use (at the time of a site visit in December 2022) with a first floor residential flat. There is a two-storey commercial parade to the south of the site and a mix of three and four storey buildings to the east in Leigh Road which comprise retail, commercial and residential uses. On the opposite side of Broadway, a flats development is under construction to the north of Sandown Court (No.133 Broadway) and the Grand Hotel, which itself is being extended. To the south-east of the site are the service access and yards for the Leigh Road and Broadway premises and beyond that are residential properties in Maple Avenue.
- 1.3 The site is within flood zone 1 and some 35m north of the boundary of the Leigh Cliff Conservation Area. The site is within the Leigh District Centre and is within a Secondary Shopping Frontage. It is not subject to any other site-specific planning policies.

## **2 The Proposal**

- 2.1 The proposal seeks permission to erect a two-storey building with a basement and to demolish a storeroom to the rear of the site. The building would be used as a restaurant (Use Class E).
- 2.2 The proposed building would be two storeys with a flat roof and would be located on the land between No.292 Leigh Road and No.150 Broadway. The restaurant use would be set over three levels comprising a lower ground floor, upper ground floor and a first floor. Its lower ground floor would continue the proposed use into the existing basement at 292 Leigh Road. The new building would be accessed from an entrance to the upper ground floor level at the Leigh Road end of the building. To the rear, the lower ground floor would be level with existing rear servicing areas and service access.
- 2.3 The building would have an irregular shaped footprint and a curved frontage. It would be a maximum of some 16.2m wide and some 13.1m deep, some 6.8m high where it abuts the side of No.292 Leigh Road and some 7.6m high where it abuts the side of No.150 Broadway, due to differences in land levels across the site. The building would have a contemporary design with a glazed ground floor level. The first floor would also be largely glazed but interspersed with aluminium fins breaking up the extent of glass creating a brises soleil (i.e. solar screen) effect. Other external materials to the site frontage include brick and tiles. Brick would be used to the rear of the site. A small section of living wall is proposed on the western elevation.
- 2.4 No parking or cycle storage is proposed for the development. Waste storage facilities would be located to the rear of the building accessed from an existing service access off Maple Avenue. Extract ventilation would be located to the rear of the building and solar panels are proposed on the flat roof.
- 2.5 Revised plans and additional information including a daylight and sunlight survey,

acoustic assessment and details of extract ventilation equipment and materials have been submitted during the course of the application. A further revised plan has been submitted since deferral of this application from 5 April 2023 Development Control Committee for clarification of neighbouring rooms' use. Those plans now accurately reflect the roof profile of No.150 Broadway showing chimneys and a flat roof section. The application form states that the proposed development could provide work for approximately 30 people (10 full time equivalent). The applicant has estimated that there would be an average of 20 covers during the weekday lunch time and evenings. On weekends including Friday evenings, up to 40 covers during lunchtime and 60 covers on the weekend evening are estimated.

### 3 Relevant Planning History

Reference	Description	Outcome
07/00149/FUL	Erect two storey building with basement (268 m2) for use as restaurant (Class A3).	Refused.
87/0737	Erect 2 storey building to provide shop on ground floor and 1 self-contained flat on first floor.  <b>*Officer Comment - This is an historic appeal decision made under a materially different planning policy framework and is not considered to hold any material weight in the assessment of the current application.</b>	Refused - Allowed on appeal*

### 4 Representation Summary

#### Call-in

- 4.1 The application has been called in to Development Control Committee by Councillor Carole Mulroney.

#### Public Consultation

- 4.2 A site notice was displayed, and eighteen (18) neighbours were notified of the application including following the receipt of a revised plan showing a corrected existing flank of No.150 Broadway. Nineteen (19) letters of objection have been received including five (5) from one address and two (2) from another address together with four (4) letters of support. The overall comments received are summarised below.

#### Objection

- Amenity concerns: Loss of daylight, noise and disturbance, sense of enclosure, intrusive and loss of privacy and views.
- Highways safety concerns due to location at a blind corner.
- Increase in noise, rubbish and vermin.
- Site not suitable for size and scale of development.
- Floorplan and layout concerns.
- Size and impact of the development.
- Design, out of keeping with prevailing built form and character and no space or setting for the development.
- Loss of a site which is of local historic and religious significance to pagan communities and loss of mosaics. Representations state that women were tortured and murdered during the witch trials and the site is a memorial ground.
- Concerns regarding maintenance and waste storage to the rear. Should remain a community area.
- The site is unsuitable for development.

- Impact on neighbouring habitable room windows and correction to report description of No.292 ground floor configuration.
- Clarification of flats being constructed on west side of Broadway.
- Leigh is already provided for in terms of restaurants and fine dining has not been successful.
- Loss of light and ventilation to adjoining shop's staff room.
- Queries relating to fire escape, ventilation, bin storage and disabled access.

[Officer Comment: The concerns within the representations are noted, and where relevant to planning have been considered in the assessment of the application but are not found to constitute justifiable reasons for refusal in the specific circumstances of this case.]

### **Support**

- Good use of an awkward site.
- Would provide a modern approach/gateway to shopping area.

### **Leigh Town Council**

- 4.3 Objection. The proposed development by its design, size, bulk and mass, represents a cramped form of development and an overdevelopment of the land, which is out of keeping with and detrimental to the character and appearance of the application site and the area more widely. It certainly does not respond positively to local character and will not successfully integrate itself in a positive relationship with the surroundings.

The location of the proposed development is on an area of the highway which is a blind corner and extremely narrow. The proposed design could also be a significant distraction for drivers and highway safety is therefore an issue.

Additionally, delivery access proposed is very restrictive. The narrow entrance to the rear of the property adjacent to residential properties presents both safety and noise concerns. Vehicles would have to reverse from the private access on to a busy thoroughfare which is in constant use by residents and local businesses, particularly a dance school with children using the facility.

The siting of the refuse storage also means that the development will cause noise disturbance for residents with disposal of bottles etc late in to the evening after the business closes. The proposal is therefore unacceptable and contrary to National and Local Planning Policy and guidance.

### **Leigh Society**

- 4.4 Objection. Lack of parking, highway safety concerns including from cars dropping customers off at this corner and overdevelopment of this small site.

### **Environmental Health**

- 4.5 A noise impact assessment was submitted in response to initial Environmental Health comments. On reviewing the Acoustic Assessment submitted by Ned Johnson Consultants dated 26 February 2023, noting that neighbouring rooms could be bedrooms, Environmental Health have raised no objections subject to conditions for noise mitigation measures concerning kitchen extraction ventilation system(s) and soundproofing party walls, refuse and recycling construction/demolition management.

### **Highways**

- 4.6 No objection. Directly outside the site there are double yellow lines to prevent pick up and drop off. Any contravention of this Traffic Regulation Order will be enforced. The

applicant should provide a construction method statement for the construction phase of the scheme.

#### **Essex Fire**

- 4.7 No objection.

#### **Design and Conservation Officer**

- 4.8 No objection to the scale, form and design concept. The amended design and large-scale cross sections now provided have addressed concerns initially raised in regard to the detailing and materials of the scheme and how it will relate to the surrounding context. This proposal will now provide an interesting and positive addition to this corner which at present is a rather a negative void in the streetscene. A modern design is appropriate given the unusual shape of the site and varied townscape in this location and the scale and form of the development provides an acceptable transition between the existing buildings.

The success of this proposal will rely on the use of high quality materials and detailing to ensure that all the features work together to provide an elegant and finessed design. Details of the materials should be conditioned along with signage and lighting, which will need to be bespoke and will need to complement the overall design, and it will be important that a clear and active frontage is maintained with no pipes, gutters, plant or vinyl to the frontage. It will also be necessary to ensure that the living wall is properly installed and maintained and that plant is hidden from public view including any ventilation which may be required given that there are no opening windows in the frontage.

### **5 Planning Policy Summary**

- 5.1 The National Planning Policy Framework (NPPF) (2021)
- 5.2 Planning Practice Guidance (PPG) – National Design Guide (NDG) (2021)
- 5.3 Core Strategy (2007): Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP3 (Transport), CP4 (The Environment and Urban Renaissance)
- 5.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (The Efficient and Effective Use of Land), DM5 (Southend-on-Sea's Historic Environment), DM10 (Employment Sectors), DM13 (Shopping Frontage Management outside the Town Centre) and DM15 (Sustainable Transport Management).
- 5.5 The Southend-on-Sea Design and Townscape Guide (2009)
- 5.6 Southend-on-Sea Waste Storage, Collection and Management Guide for New Developments (2019)
- 5.7 Southend-on-Sea Vehicle Crossing Policy & Application Guidance (2021)
- 5.8 Community Infrastructure Levy (CIL) (2015)

### **6 Planning Considerations**

- 6.1 The main considerations in relation to this application are the principle of the development, the design and impact on the character and appearance of the area, including the nearby conservation area, residential amenity, traffic, highway safety and parking implications, sustainability, refuse and recycling storage and CIL liability.

## **7 Appraisal**

### **Principle of Development**

- 7.1 Policy CP1 states that the Council will aim to “improve the vitality and viability of Southend town centre, the district centres of Leigh and...smaller local centres.” Similarly, policy CP3 states that “the centres of....Leigh will be supported as District Centres providing a range of local comparison shopping, convenience shopping and services to the neighbouring communities.”
- 7.2 Policy DM13(3) states “All developments in the secondary shopping frontage, as defined on the Policies Map, must maintain or provide an active frontage with a display function for goods and services rendered and the proposed use will provide a direct service to visiting members of the general public.”
- 7.3 The site is within a secondary shopping frontage and within the Leigh District Centre. The development proposed would create a new commercial building within the District Centre incorporating an active frontage and providing a direct service for members of the general public, in accordance with Policy DM13. The proposal would also support the local economy as a facility that serves shoppers and visitors to this District Centre and the proposed development would contribute to the promotion of sustainable economic growth through the provision of additional jobs compliant with the aims of Policy DM10.
- 7.4 No objection is raised to the broad principle of development of the site for commercial purposes. Other material planning considerations are discussed below.

### **Design and Impact on the Character of the Area including the Conservation Area**

- 7.5 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.
- 7.6 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.
- 7.7 Policy DM3 (2) states: “All development on land that constitutes backland and infill development will be considered on a site-by-site basis. Development within these locations will be resisted where proposals:
- (i) Create a detrimental impact upon the living conditions and amenity of existing and future residents or neighbouring residents; or
  - (ii) Conflict with the character and grain of the local area; or
  - (iii) Result in unusable garden space for the existing and proposed dwellings in line with policy DM8; or
  - (iv) Result in the loss of local ecological assets including wildlife habitats and significant or protected trees.
- 7.8 Section 72(1) of the Planning and Listed Buildings and Conservation Areas Act 1990

states that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Policy DM5 of the Development Management Document states that the Council has a statutory duty to preserve or enhance their character and appearance.

- 7.9 The application site is a modest, curved section of what appears to be leftover land on a tight bend between two existing buildings at the transition between Broadway and Leigh Road. The area is considered to be a negative space in the streetscene in terms of built form. Whilst property and access considerations, as they arise here, fall outside of the planning system, in the past third parties appear to have tried occasionally to enhance the setting of this land with elements of hard landscaping but the landowner(s) appear to have reinforced through signage that there are no public access rights onto the land. The planning application is accompanied by ownership certification rendering it valid for consideration in all relevant regards. It is considered that the proposal would not conflict with the grain of the area in which adjacent and nearby development is typically set close to, or onto the back edge of the public highway providing a strong sense of enclosure to the public realm. Given its irregular shape, the proposal for a modern building two storeys above ground level and of a relatively simple design which follows the curve of the site is appropriate in principle and enables the developable area to be reasonably maximised. It also enables the building to achieve strong enclosure to the street, continuing that theme of development either side and which would not be so achievable with a more formal traditional design. Staff are of the view that the proposal's scale, form and design are acceptable and that the development would be a positive contributor in streetscene and character terms. The proposal would not result in the loss of ecological assets.
- 7.10 In terms of the detailed design, the proposed development would abut the flank of No.292 Leigh Road, which is a traditional terrace and it would have a small set back from its frontage. The highest point of the proposed building would meet the eaves of No.292. It is considered this would ensure that there is a clear vertical division between the different scales and typologies of buildings respecting how adjoining Leigh Road building heights successively increase eastward away from this corner.
- 7.11 The frontage of the proposed building would meet the side of No.150 Broadway, adjoining that traditional end of terrace building with a small set back which is considered appropriate in providing a clear vertical division between the different building scales and typologies. This is considered to sufficiently assist in reducing the perception of the difference in height between the proposal and No.150 Broadway and the terrace to the south which is set at a lower land level resulting in the proposed building partially extending above the ridge. This would be visible from the south and subject to conditions requiring details of materials and design elements to ensure that this is well resolved, the scale of the development generally is considered to sit comfortably in the streetscene. The applicant has provided detailed information of the proposed materials. These can be conditioned along with signage and lighting to seek that they are suitably bespoke to complement the overall design. A living wall feature within the entrance overhang is considered to be an acceptable, albeit not essential, design element and its details can be controlled by condition.
- 7.12 Waste storage is proposed to the rear of the site adjacent to the rear of the building and to the side of No.150. It is considered that this would not appear out of character in the prevailing rear service environment of the Broadway and Leigh Road where external storage is provided for existing commercial uses.
- 7.13 It is not considered that the development would have a materially harmful impact on the character of the neighbouring buildings or streetscene or the visual amenities of the

wider area and due to its scale, position and form would have a neutral and thereby acceptable impact on the character and appearance of Leigh Cliff Conservation Area, the nearest boundary of which is some 35m to the south. Representations state that this site has religious and historic significance, but the site is not afforded any special protection such as that for a listed building or conservation area and is not understood to be registered as an asset of community value (ACV) which may otherwise potentially afford protection to a site with such characteristics.

- 7.14 In summary, staff are of the view that the proposal is acceptably designed and detailed and appropriately scaled. Subject to the described conditions staff consider the proposal to be a positive contributor in character and streetscene terms and so to be acceptable and policy compliant in the above regards.

### **Amenity Impacts**

- 7.15 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.
- 7.16 The application site is bounded to the east and south by properties with commercial uses at ground floor (noting that No.292 Leigh Road has a ground floor access, hallway and staircase serving the two flats above at ground floor level) and residential uses above including a flat above No.150 Broadway and two flats above No.292 Leigh Road. No.150 has a blank north side elevation with front and rear facing windows. No.150 is accessed via an external staircase to the rear of the site. At No.292, the commercial ground floor unit was noted as vacant and above it, served by a ground floor entrance and stairs, are two flats, No.292A, a one bedroom flat which is set across the northern, front part of the first floor, and No.292B, a one bedroom maisonette, set over the southern, rear part of the first floor plus the second floor rooms in the roof. A first floor window in the southern rear elevation of that neighbouring building's outrigger serves the bedroom of No.292B. That maisonette's second floor has a rear facing dormer which serves its kitchen/living area and opens onto an external terrace oriented southwards and that would have views over the proposed development.
- 7.17 The proposed development would infill the gap on the corner and would have a rear projection into the site. This would not project significantly (some 0.9m) beyond the rear elevation of the first floor flat at No.150 Broadway and is not considered to result in an undue sense of enclosure, dominant or overbearing impacts or any harmful loss of privacy, outlook or daylight for that neighbouring property in any relevant regards. In regard to the relationship with No.292 at ground level, the neighbouring window serves a non-residential unit and an existing single storey building would be removed and the new building erected. The new building would result in the loss of the ground floor rear window at No.292 Leigh Road, but this serves a staff room which is understood to also benefit from a side window so it is considered that the development would not result in any significant harm in this respect. Given the location of the rear window and the internal layout of the ground floor it is considered that the loss of this rear window would not result in any significant harm in terms of loss of light or outlook to the ground floor, non-habitable hallway and stairs serving the upper storey flats.
- 7.18 The rear of No.292 already sits close to the side of the existing storeroom building and close to the northern flank wall of No.150 Broadway, the latter at a distance of some 4m.



The applicant has submitted a daylight and sunlight report and on site inspection by planning staff confirms that the window identified as No.4 in the daylight and sunlight report serves the bedroom of No.292B and window No.5 serves an en-suite shower/WC room for No.292B. The window shown as No.6 is a shower/WC for No.292A and window No.7 serves the bedroom of No.292A. An extract from the Daylight and Sunlight report is included in Figure 1 below showing these window numberings. .

#### Neighbouring Windows



292 Leigh Road



292 Leigh Road

Figure 1: Extract from Daylight and Sunlight Report showing neighbouring windows.

- 7.19 The outlook from No.292B's bedroom window (No.4 in the daylight/sunlight report) is due south towards the two-storey outrigger of No.150 Broadway some 4m away and of the sky above that. A person standing directly within the window would have views to the south east of the site and views to the south west towards Broadway but this outlook is constrained to an extent because of the gabled elevation of No.150. In regard to the rear facing dormer and external terrace at second floor level, the outlook is over and

above the side elevation of No.150 offering views of the roofscape of properties to the south and over the Estuary in the distance. In regard to windows 5, 6 & 7 identified in the daylight and sunlight report shown in Figure 1, it is considered that their outlook would remain unchanged, therefore the outlook to the flat at No.292A Leigh Road remains unchanged as a result of the development. The proposal due to its scale, form and position would increase the sense of enclosure at first floor and second floor level for No.292B to a certain degree but in a situation where outlook from the first-floor bedroom window is already materially constrained and the added sense of enclosure due to the proposed built form would be towards that window's south west side. Overall, it is considered that there would be some harmful effect on the outlook from the rear first floor bedroom window at No.292B and that this would be moderate in extent. Due to its more elevated position there would be less impact on the outlook from No 292B's second floor dormer window and not to a level that would be considered materially harmful. The material but moderate harm to No.292B's bedroom window outlook is considered in the round as part of an overall balanced assessment in which this moderate negative is weighed against the proposal's several public benefits as explained in subsequent sections of this report. In the circumstances outlined, it is not considered that the nature and extent of the outlook impacts identified would justify refusing planning permission for the development in the specific circumstances of this case.

- 7.20 The applicant has submitted a daylight and sunlight report specifically in regard to the impacts on neighbouring properties. This is based on BRE (Building Research Establishment) guidance for such studies. The report assesses the impact of the development on the light received by the neighbouring properties at No 150 Broadway and No's 286 to 292A and 292B Leigh Road including those in the "well" configuration between No's 292 & 290 Leigh Road. The submitted report demonstrates that the proposal would not adversely impact on neighbouring residential properties' daylight or sunlight and would meet relevant BRE (Building Research Establishment) tests. It states: "In summary, the numerical results in this assessment demonstrate that the proposed development will have a low impact on the light receivable by its neighbouring properties. In our opinion, the proposed development sufficiently safeguards the daylight and sunlight amenity of the neighbouring properties."
- 7.21 Following deferral of this application from the April Committee for clarification of No.292B rear windows' purpose, the applicant's consultant confirmed that the daylight and sunlight report's assessment methodology had in any event already been based on the assumption that window No.4 served a room in domestic use and was therefore likely to have a requirement for daylight and sunlight. The results of the Daylight and Sunlight report demonstrate that No.292B's first floor rear window, which faces due south, will retain levels of daylight and sunlight above the BRE recommended absolute figures for both tests, regardless of that room's use.
- 7.22 Having reviewed the submitted acoustic assessment, Environmental Health found that the information supplied on proposed kitchen extract ventilation demonstrates that, on balance, the levels will be acceptable. Environmental Health noted that the report states that there will be no external air conditioning condenser units and only background music will be played. The proposed development would abut the party walls with No.150 Broadway and the walls of No.292 and both flats at No's 292A & 292B Leigh Road. The submitted acoustic report states that the existing construction would be sufficient along with additional soundbloc plasterboard to provide added soundproofing. Whilst the properties of the wall of No.150 were unknown at the initial point of assessment and it was clarified through the deferral that No 292B's adjoining first floor room is a bedroom it was in any event assumed by the acoustic assessor that there was a bedroom on the opposite side of the wall of No.150 Broadway and a habitable room on the other side of

the wall shared with No 292B. Based on that position Environmental Health have not objected to the proposed development subject to the imposition of conditions for noise mitigation measures concerning kitchen extraction ventilation system(s) and soundproofing party walls, refuse and recycling construction/demolition management.

- 7.23 The applicant's acoustic consultant has confirmed that neighbouring rooms adjoining the proposed restaurant walls, were all assessed on the basis they were or may be habitable rooms. The consultant's report confirms that with the existing structure of the separating walls plus the extra insulation of the Soundbloc plasterboard, the sound generated inside the restaurant will not be audible in comparison to normal sound levels in residential flats. A condition is recommended to require a scheme of soundproofing to be implemented as required. It is not considered that using the existing basement at No 292 as an extension of the proposed lower ground floor restaurant use building would have any adverse amenity impacts in any relevant regards.
- 7.24 As the premises would serve alcohol, it would be subject to Licensing controls which are separately enforced by this Council and cover matters of detailed licensing control which are not for the Local Planning Authority to take into account in the determination of this planning application. It is relevant for the Committee to know that under licensing provisions the playing of music in premises between the hours of 8am to 11pm would not require a Music/Events license where those premises have an alcohol license for consumption on the premises and it would be in use. This is consistent with the Government's desire to allow for reasonable diversification of business uses in the interests of the economy. It is considered that the type of music-related entertainment proposed here which, within the planning application is described as background music only, would be incidental in nature. It is considered that this incidental activity would not be significantly harmful to the amenity of the adjoining and nearby residents, subject to a condition requiring a Noise Management Strategy to be submitted to and approved by the Local Planning Authority prior to the first use of the development.
- 7.25 The proposed use would potentially generate a degree of noise and activity during daytime and evening hours of operation; however, the immediate surroundings of the site include other commercial uses which are diverse and mainly fall within 'town centre' type uses. The site is within the District Centre and within a secondary shopping frontage. There is already a level of footfall from visitors to existing uses in the neighbouring parades and on their way passing through to the centre of Leigh including during evening hours. Given the existing and established activity levels, and the nature of the location, it is considered that the proposed development would, subject to the described restrictions and requirements, integrate satisfactorily with the existing uses in the vicinity. In light of the proximity to residential properties, it is considered appropriate that the use's hours of operation, delivery and servicing arrangements be controlled by planning conditions in the interests of neighbour amenities.
- 7.26 In summary, subject to the described conditions, and allowing for the balance involved in assessing the moderate impact of the development on the outlook from the first floor rear bedroom window at No.292B Leigh Road staff consider the proposal overall and on balance to be acceptable in the above regards.

### **Traffic and Transportation Issues**

- 7.27 The NPPF states (paragraph 111) states 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."
- 7.28 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. Maximum parking standards are set out in relation to the proposed use.

- 7.29 The proposal would not provide any off-street parking for customers or staff. Development Management Policy DM15 recommends a *maximum* of 1 space per 5 sqm for restaurants (former A3 uses – now class E (b)). Policy DM15 does not take account of changes to the Use Classes Order. Nor is cycle parking proposed for the development and it is unlikely that a secure cycle storage facility could realistically be provided to the rear of the site. This is a less positive aspect of the proposal to be weighed in the overall balanced assessment but can be regarded as a consequence of the particular confines of this specific site's configuration and the balanced approach called for in enabling a beneficial new commercial use when considered matters in the round.
- 7.30 It is considered that the site is within a sustainable location in relation to public transportation frequency and links. On street parking and public car parks are located within Leigh. The site is within reasonable walking distance of Chalkwell Train Station. Staff have not identified any justified parking-based reason for objection to this proposal. Highways have not objected.
- 7.31 In relation to third party concerns about highway safety, whilst the site is a corner location, directly outside are double yellow lines to prevent pick up and drop off. Any contravention of this Traffic Regulation Order can be separately enforced under the Highways Acts as appropriate.
- 7.32 Servicing would be taken from the rear of the property using an existing access road off Maple Avenue. This access is already in use by other commercial premises and no objection is raised to its use for this development.
- 7.33 Submission and approval of a construction method statement (CMS) is proposed to be required by a planning condition subject to which it is not considered that the proposal will have a detrimental impact on the local highway network.
- 7.34 Subject to the described conditions, the proposal is on balance considered acceptable and policy compliant in the above regards attaching due weight to the objectives set out in NPPF paragraph 111 summarised in 7.27 above.

## **Sustainability**

- 7.35 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), such as those set out in the Design and Townscape Guide, wherever feasible. How the development will provide for the collection of re-usable and recyclable waste will also be a consideration.” Policy DM2 of the Development Management Document also states that “to ensure the delivery of sustainable development, all development proposals should contribute to minimising energy demand and carbon dioxide emissions.”
- 7.36 The plans show renewable energy (photovoltaic panels) on the roof of the proposed building which would be acceptable in principle, however further details are required in relation to these or other renewables on site. This matter can be covered by a planning condition.

- 7.37 Policy DM2 (iv) of the Development Management Document requires all new development to provide “water efficient design measures that limit internal water consumption to 105 litres per person per day (lpd) (110 lpd when including external water consumption). Such measures will include the use of water efficient fittings, appliances and water recycling systems such as grey water and rainwater harvesting.” No information has been submitted but this can be achieved by condition.
- 7.38 Policy DM2 (iii) requires all non-residential buildings to achieve a BREEAM ‘very good’ rating, and a move towards zero carbon by 2019. Applications should include Interim Code or BREEAM certificates based on the design stage assessment. Planning conditions will require submission of final Code certificates and post-construction BREEAM certificates, as appropriate.
- 7.39 The applicant has confirmed that the development will be designed to achieve BREEAM “very good” rating. No objections are therefore raised on this basis subject to a condition to secure this.
- 7.40 Subject to the described conditions it is considered that the development would be acceptable and policy compliant and in the above regards.

### **Refuse and Recycling**

- 7.41 Policy DM8 states that refuse stores should be located to limit the nuisance caused by noise and smells and should be provided with a means for cleaning, such as a water supply. The submitted plan 03G shows the location of refuse storage which would include 2 x 1100 litre bins for the proposed commercial use to the rear of the site and adjacent to No.150 Broadway. The collection of waste would be from the rear of the property using an existing access road off Maple Avenue. This access is already in use by other commercial premises. It is considered that there is scope within the application site for the provision of facilities for refuse storage for the development. Full and final details of the location of refuse and recycling facilities for the development as well as a limitation on the hours use that waste can be deposited in the evening period, to prevent harmful amenity impacts, can be secured by condition.
- 7.42 Subject to the described conditions, the proposal is acceptable and policy compliant in the above regards.

### **Flooding and surface water drainage**

- 7.43 National policy requires that any development be safe from flooding and does not increase the risk of flooding elsewhere. The proposal is for a new build development and adequate drainage should be installed to ensure that there is no increased risk of flooding on site or elsewhere. Details of drainage arrangements incorporating principles of Sustainable Drainage Systems can be secured by condition. Subject to such a condition, the development would be acceptable and policy compliant in these regards.

### **Community Infrastructure Levy (CIL)**

- 7.44 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 some 283 sqm, which may equate to a CIL charge of approximately £3,613.91 (subject to confirmation).

## **Equality and Diversity Issues**

- 7.45 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**

- 7.46 Having taken all material planning considerations into account, it is found that subject to compliance with the attached conditions, the proposed development would overall, and on balance in several key respects, be acceptable and compliant with the objectives of the relevant development plan policies and guidance. The principle of the development which introduces a new commercial unit bringing a beneficial land use which will contribute positively to the District Centre with associated public benefits is found to be acceptable. The proposal would have a moderate impact on the outlook enjoyed from the first floor rear bedroom window at No.292B Leigh Road but this is already constrained, albeit to a lesser degree, due to the relationship of this window to the two storey flank of the outrigger at No.150 Broadway, to its immediate south. The extent to which outlook would be moderately negatively impacted has been given careful consideration and found to be outweighed overall by the several public benefits of the proposed development. Subject to conditions the proposal would otherwise have an acceptable impact on the amenities of neighbouring occupiers. The absence of on site parking is found, on balance, to be acceptable in this sustainably located District Centre. The absence of any cycle parking is a negative factor similarly to be weighed in the balance noting the particular circumstances and configuration of this site. Staff judge overall that highway safety and parking conditions would not be materially harmed. The impact on the character and appearance of the application site, the street scene and the locality more widely are considered by staff to be acceptable and a positive contributor. The proposal would have a neutral and thereby acceptable impact on the character, appearance and setting of the nearby Leigh Cliff Conservation Area. The provision of additional employment is considered to be a public benefit of the scheme to be weighed in the balance. This scheme is recommended for approval subject to conditions.

## **8 Recommendation**

### **8.1 Members are recommended to:**

#### **GRANT PLANNING PERMISSION SUBJECT TO CONDITIONS**

- 01 The development hereby permitted shall begin no later than 3 (three) years from the date of this decision.**

**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 strictly in accordance with the approved plans: 1447- 01 Rev A, 1447 – 02 Rev F, 1447 – 03 Rev G, 1447-04 Rev D & 1447 – 05 Rev B.**

**Reason:** To ensure that the development is carried out in accordance with provisions of the Development Plan.

- 03** Prior to commencement of any drainage related works associated with the development hereby approved, a drainage scheme comprising details of drainage infrastructure (including any Sustainable Urban Drainage Systems (Suds), foul and surface water drainage infrastructure, connection points and discharge rates) and a drainage management plan shall be submitted to and approved in writing by the Local Planning Authority under the terms of this condition. The development shall only be constructed in accordance with the approved details.

**Reason:** This condition is required to prevent flooding, drainage, environmental and amenity problems arising from the development, in accordance with the National Planning Policy Framework (2021) and Policies KP1 and KP2 of the Core Strategy (2007).

- 04** Notwithstanding the details shown on the submitted plans otherwise hereby approved the development hereby permitted shall not commence other than for groundworks and site preparation works unless and until full details including section details as appropriate and full specifications of the materials to be used for all the external surfaces of the approved building at the site including for elevations, face and engineering brickwork, bath stone panels, curtain and all other glazing, aluminium fins, doors, windows, louvres, roofing materials, concealed gutters, rainwater goods, lighting and signage have been submitted to and approved in writing by the Local Planning Authority under the terms of this condition. The development hereby permitted shall be implemented and completed in full accordance with the details and/or samples approved under this condition before it is first occupied.

**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 this prominent corner site and its surroundings. This is as set out in the National Planning Policy Framework (2021), Core Strategy (2007) Policies KP2 and CP4, Development Management Document (2015) Policies DM1 and DM3, and the guidance contained within the National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009).

- 05** The development hereby approved shall not be first used unless and until a final Certificate has been issued certifying that a BREEAM (or any such equivalent national measure of sustainable building which replaces that scheme) rating of at least "Very Good" has been achieved for the development and a copy of this certification has been submitted to and approved in writing by the Local Planning Authority under the provisions of this condition.

**Reason:** To minimise the environmental impact of the development through efficient use of resources and better use of sustainable and renewable resources in accordance with the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Core Strategy (2007) and Policy DM2 of the Development Management Document (2015).

- 06** The development hereby approved shall not be open for customers outside the following hours: 09:00 hours to 23:00 hours Monday to Sunday.

**Reason:** To protect residential amenity and general environmental quality in

accordance with Core Strategy (2007) Policies KP2 and CP4, Development Management Document (2015) Policies DM1 and DM3 and the advice contained in the Southend-on-Sea Design and Townscape Guide (2009).

- 07 All deliveries to and collections from the site subject of this permission shall only be undertaken between 08:00 hours and 19:00 hours Monday to Friday and between 08:00 hours and 13:00 hours on Saturdays and not at any time on Sundays and Bank and Public Holidays.

Reason: To protect the environment of people in neighbouring properties and general environmental quality in accordance with the National Planning Policy Framework (2021), Core Strategy (2007) Policies KP2 and CP4, Development Management Document (2015) Policies DM1 and DM3 and the guidance in the Southend-on-Sea Design and Townscape Guide (2009).

- 08 The noise mitigation measures for the kitchen extraction ventilation system to serve the development hereby approved and as detailed in the report entitled Acoustic Assessment at 152 Broadway/292 Leigh Road Leigh-on-Sea Document Ref: 572223 Date: 26/02/2023 by Ned Johnson Acoustics shall be implemented and installed by competent persons at the site prior to the first use of the development hereby approved. Prior to the first use of the development hereby approved, a post completion noise survey shall be undertaken by a suitably qualified acoustic consultant, and a report submitted to and approved in writing by the Local Planning Authority under the terms of this condition. The post completion testing shall assess performance of the noise mitigation measures against the noise levels as set out in the report.

If the mitigation measures tested in the post-completion report prove to be insufficient, additional noise mitigation measures (where necessary to ensure the appropriate noise levels can be met), shall be submitted to and approved in writing by the Local Authority under the terms of this condition and fully installed and tested at the site prior to the first use of the development hereby approved.

The mitigation measures as approved shall be retained in good working order thereafter for the lifetime of the development.

Reason: To protect the environment of people in neighbouring properties and general environmental quality in accordance with the National Planning Policy Framework (2021), Core Strategy (2007) Policies KP2 and CP4, Development Management Document (2015) Policies DM1 and DM3 and advice in the Southend-on-Sea Design and Townscape Guide (2009).

- 09 Prior to the occupation of the development hereby approved a scheme demonstrating how noise transmission from the development through the party walls with No.150 Broadway and No's 292, 292A and 292B Leigh Road, Leigh-on-Sea, Essex will be controlled from within the proposed development, such scheme to be undertaken by a suitably competent person, shall be submitted to and approved in writing by the Local Planning Authority under the terms of this condition. The approved scheme shall thereafter be implemented and installed at the site by suitably competent persons prior to the first use of the development hereby approved. Prior to first use of the development hereby approved, a post completion noise survey must be undertaken by a suitably qualified acoustic consultant, and a report on this must be submitted to and approved in writing by the Local Planning Authority under the terms of this condition. The post completion testing shall assess the performance of the noise mitigation measures



against the noise levels as set out in the scheme.

If the mitigation measures tested in the post-completion report prove to be insufficient, additional noise mitigation measures (where necessary to ensure the appropriate noise levels can be met), shall be submitted to and approved in writing by the Local Authority under the terms of this condition. The mitigation measures as approved shall be fully installed at the site prior to first use of the approved development and retained in good working order thereafter for the lifetime of the development.

Reason: To protect the environment of people in neighbouring properties and general environmental quality in accordance with Core Strategy (2007) Policies KP2 and CP4, Development Management Document (2015) Policies DM1 and DM3 and advice in the Southend-on-Sea Design and Townscape Guide (2009).

- 10 Prior to the first use of the development hereby approved for restaurant purposes details of the means of ventilation for the extraction and dispersal of cooking smells/fumes, including full specification of any installation of odour control measures, noise levels, noise mitigation measures and anti-vibration measures, air conditioning units and other plant and equipment, its location, appearance and finish shall have been submitted to and approved in writing by the Local Planning Authority under the terms of this condition. The approved scheme shall be installed at the site in full accordance with the approved details before the development hereby approved is brought into first use and thereafter shall be permanently retained as such in good working order for the lifetime of the development.

Reason: To protect the environment of people in neighbouring properties and general environmental quality in accordance with National Planning Policy Framework (2021), Core Strategy (2007) Policies KP2 and CP4, Development Management Document (2015) Policies DM1 and DM3 and advice in the Southend-on-Sea Design and Townscape Guide (2009).

- 11 Prior to the first occupation of the development hereby approved details of the design and materials of the proposed commercial waste storage and an associated waste management plan which shall include full details of the timings that waste can be deposited to the outside refuse and recycling stores, shall be submitted to and approved in writing by the Local Planning Authority under the terms of this condition. The development shall be implemented in full accordance with the approved details from first occupation for the proposed use and shall be maintained and managed as such for the lifetime of the development.

Reason: To ensure that the development is satisfactorily serviced and that satisfactory waste management is undertaken in the interests of highway safety, residential amenity and visual amenity and to protect the character of the surrounding area, in accordance with National Planning Policy Framework (2021), Policies KP2, CP3 and CP4 of the Core Strategy (2007) and Policies DM1 and DM15 of the Development Management Document (2015).

- 12 No development shall take place, including any works of demolition, until and unless a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority under the terms of this condition. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors,
- ii. loading and unloading of plant and materials,
- iii. storage of plant and materials used in constructing the development,
- iv. the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate,
- v. wheel washing facilities,
- vi. measures to control the emission of dust and dirt during construction,
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works,
- viii details of the duration and location of any noisy activities.

**Reason:** This pre-commencement condition is required to minimise the environmental impact and disturbance to existing residents and businesses during construction of the development in accordance with the National Planning Policy Framework (2021), Core Strategy (2007) Policies KP2 and CP4 and Development Management Document (2015) Policies DM1 and DM3.

- 13** The roofs of the building hereby approved shall not be used as a balcony, roof garden amenity area or for any other similar purpose unless express planning permission has previously been obtained. The roofs can however be used for the purposes of maintenance or to escape in an emergency.

**Reason:** To protect the privacy and environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2021), 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).

- 14** Notwithstanding the provisions of the Use Class Order, as amended or the General Permitted Development Order (2015), as amended, the development hereby approved shall be used for purposes as a restaurant (Use Class E(b)) with the sale of drink wholly ancillary to consumption of food on the premises and with no take away facilities and shall be used for no other purposes including any change of use permitted under the Town and Country Planning (General Permitted Development) Order 2015 (as amended) or any revocation, amendment or re-enactment of that order aside from Use Class E(a), (c), (g)(i).

**Reason:** To ensure the development is implemented in accordance with the permission sought and to enable the Local Planning Authority to control the impact of the use of the premises within the Use Class specified in the interests of residential amenity and highway safety in accordance with the National Planning Policy Framework (2021), Policies KP2, CP3 and CP4 of the Core Strategy (2007), Policies DM1, DM3 and DM15 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).

- 15** A scheme detailing how at least 10% of the total energy needs of the development hereby approved will be supplied using on site renewable sources must be submitted to and agreed in writing by the Local Planning Authority and implemented in full prior to the first occupation of the development. This provision shall be made for the lifetime of the development.

**Reason:** In the interests of providing sustainable development in accordance with Policy KP2 of the Core Strategy (2007) and in the interests of general environmental quality in accordance with Core Strategy (2007) Policies KP2 and

**CP4, Development Management Document (2015) Policies DM1 and DM3 and advice in the Southend-on-Sea Design and Townscape Guide (2009).**

- 16 Water efficient design measures as set out in Policy DM2 (iv) of the Development Management Document to limit internal water consumption to 105 litres per person per day (lpd) (110 lpd when including external water consumption), including measures of water efficient fittings, appliances and water recycling systems shall be installed and made available for use prior to the first occupation of the development hereby approved and retained in perpetuity.**

**Reason: To minimise the environmental impact of the development through efficient use of water in accordance with the National Planning Policy Framework (2021), Core Strategy (2007) Policy KP2, Development Management Document (2015) Policy DM2 and the guidance within the Southend-on-Sea Design and Townscape Guide (2009).**

- 17 Notwithstanding the details shown on the documents submitted and otherwise hereby approved, with reference to British Standard 7445:2003, the noise rating level arising from activities associated with the use hereby approved (including amplified music and human voices) shall be at least 10dB (A) below the background noise level as measured at 1m from the facades of the neighbouring noise sensitive premises.**

**Reason: In the interest of the residential amenity of nearby occupiers in accordance with the National Planning Policy Framework (2021), 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 National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009).**

- 18 Prior to the first use of the development hereby approved, full details of hard landscape works, the soft landscaped living wall and any rooftop planting to be carried out at the site shall be submitted to and approved in writing by the Local Planning Authority under the terms of this condition. The approved hard and soft landscaping works shall be carried out in accordance with the approved details prior to first use of the development hereby approved. The details submitted shall include, but not be limited to:-**

- i. any means of enclosure of the site including any gates or boundary fencing;**
- ii. any other vehicle and pedestrian access and circulation areas;**
- iii. hard surfacing materials;**
- iv. details of planting to the living wall area together with supporting framework and drainage where necessary, with inspection and management proposals, to ensure its successful establishment and maintenance.**

**Reason: In the interests of visual amenity and to ensure a satisfactory standard of landscaping pursuant to Policy DM1 of the Development Management Document (2015) and Policy CP4 of the Core Strategy (2007).**

- 19. Notwithstanding the information submitted and otherwise hereby approved, the development hereby approved shall not be brought into first use unless and until a Noise Management Strategy has been submitted to and approved in writing by the Local Planning Authority under the terms of this condition. Before the development hereby approved is brought into first use, the development shall be completed and thereafter operated in accordance with the findings and recommendations of the approved Noise Management Strategy and shall be**

retained as such thereafter for the lifetime of the development.

**Reason:** In order to protect the amenities of occupiers of adjoining and nearby occupiers in accordance with Policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015).

**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**

**01** 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](mailto: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 or the Council's website ([www.southend.gov.uk/cil](http://www.southend.gov.uk/cil)).

**02** 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.

**03** The applicant is reminded that the proposed materials as set out in the submitted plans and email dated 20<sup>th</sup> March 2023 are expected to accord with the nature and quality of materials for which design cues are shown in their submitted documents including the CGI representations and the email from Breley Design dated 24<sup>th</sup> November 2022 including its enclosed document entitled "Response to Council comments."

**04** This permission does not convey any form of consent for external advertisement signs, consent for which will separately be required under the

provisions of the Town and Country Planning Advertisement Regulations.

**05 Essex County Fire and Rescue Service (ECFRS) advise that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. ECFRS therefore uses every occasion to urge building owners and developers to consider the installation of AWSS.**