

# PLANNING COMMITTEE AGENDA

**Tuesday 20th December 2022 at 7.15pm**

**Council Chamber, Braintree District Council, Causeway House, Bocking  
End, Braintree, CM7 9HB**

## **THIS MEETING IS OPEN TO THE PUBLIC**

*(Please note this meeting will be broadcast via the Council's YouTube Channel, webcast and audio recorded) [www.braintree.gov.uk](http://www.braintree.gov.uk)*

This is a decision making public meeting of the Planning Committee, which may be held as a hybrid meeting. Members of the Planning Committee and Officers will be in attendance in the Council Chamber, Causeway House, Braintree and members of the public may also choose to attend the meeting. Members of the public will also be able to view and listen to this meeting via YouTube.

*To access the meeting please use the following link: <http://www.braintree.gov.uk/youtube>*

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**Members of the Planning Committee are requested to attend this meeting to transact the business set out in the Agenda.**

### **Membership:-**

|   |   |
|---|---|
| Councillor J Abbott                     | Councillor F Ricci                      |
| Councillor Mrs J Beavis                 | Councillor Mrs W Scattergood (Chairman) |
| Councillor K Bowers                     | Councillor P Schwier                    |
| Councillor H Johnson                    | Councillor Mrs G Spray                  |
| Councillor D Mann                       | Councillor Mrs S Wilson                 |
| Councillor A Munday                     | Councillor J Wrench                     |
| Councillor Mrs I Parker (Vice-Chairman) |   |

Substitutes: Councillors T Cunningham, A Hensman, D Hume, Mrs A Kilmartin, P Thorogood, Vacancy *(Substitutes who wish to observe the meeting will be required to do so via the Council's YouTube Channel).*

Apologies: Members unable to attend the meeting are requested to forward their apologies for absence to the Governance and Members Team on 01376 552525 or email [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk) by 3pm on the day of the meeting.

Any Member who is unable to attend a meeting is able to appoint a Substitute. Written notice must be given to the Governance and Members Team no later than one hour before the start of the meeting.

**D GASCOYNE**  
Chief Executive

## **INFORMATION FOR MEMBERS - DECLARATIONS OF INTERESTS**

### **Declarations of Disclosable Pecuniary Interest (DPI), Other Pecuniary Interest (OPI) or Non-Pecuniary Interest (NPI)**

Any Member with a DPI, OPI or NPI must declare the nature of their interest in accordance with the Code of Conduct. Members must not participate in any discussion of the matter in which they have declared a DPI or OPI or participate in any vote, or further vote, taken on the matter at the meeting. In addition, the Member must withdraw from the Chamber where the meeting considering the business is being held unless the Member has received a dispensation from the Monitoring Officer.

### **Public Question Time – Registration to Speak on a Planning Application/Agenda**

**Item:** The Agenda allows for a period of up to 30 minutes for Public Question Time. Members of the public wishing to speak are requested to register by contacting the Governance and Members Team on 01376 552525 or email [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk) by **midday on the second working day** before the day of the Committee meeting. For example, if the Committee Meeting is on a Tuesday, the registration deadline is midday on Friday, (where there is a Bank Holiday Monday you will need to register by midday on the previous Thursday). The Council reserves the right to decline any requests to register to speak if they are received after this time.

**Members of the public who have registered to speak during Public Question Time are requested to indicate when registering if they wish to attend the Planning Committee meeting ‘in person’ at Causeway House, Bocking End, Braintree, or to participate remotely. People who choose to join the meeting remotely will be provided with the relevant link and joining instructions for the meeting.**

Members of the public may speak on any matter listed on the Agenda for this meeting. Registered speakers will be invited to speak immediately prior to the relevant application/item. All registered speakers will have three minutes each to make a statement.

The order in which registered speakers will be invited to speak is: members of the public, Parish Councillors/County Councillors/District Councillors/Applicant/Agent.

The Chairman of the Planning Committee has discretion to extend the time allocated to registered speakers and the order in which they may speak.

All registered speakers are requested to send a written version of their question/statement to the Governance and Members Team by E-Mail at [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk) by no later than 9.00am on the day of the meeting. In the event that a registered speaker is unable to connect to the virtual meeting, or if there are any technical issues, their question/statement will be read by a Council Officer.

**Public Attendance at Meeting:** The Council has reviewed its arrangements for this decision making meeting of the Planning Committee in light of the Covid pandemic. In order to protect the safety of people attending the meeting, Councillors and Officers will be in attendance at Causeway House, Bocking End, Braintree. Members of the public may also attend the meeting ‘in person’, but priority will be given to those people who have

registered to speak during Public Question Time. Members of the public will be able to view and listen to the meeting either as a live broadcast, or as a recording following the meeting, via the Council's YouTube channel at <http://www.braintree.gov.uk/youtube>

**Health and Safety/Covid:** Causeway House is a Covid secure building and arrangements are in place to ensure that all visitors are kept safe. Visitors are requested to follow all instructions displayed around the building or given by Officers during the course of their attendance. All visitors will be required to wear a face covering, unless an exemption applies.

Visitors are asked to make themselves aware of the nearest available fire exit. In the event of an alarm sounding visitors must evacuate the building immediately and follow all instructions provided by staff. Visitors will be directed to the nearest designated assembly point where they should stay until they are advised that it is safe to return to the building.

**Mobile Phones:** Please ensure that your mobile phone is switched to silent during the meeting in order to prevent disturbances.

**WiFi:** Public Wi-Fi (called BDC Visitor) is available in the Council Chamber at Causeway House; users are required to register when connecting.

**Substitute Members:** Only the named Substitutes on this Agenda may be appointed by a Member of the Committee to attend in their absence. The appointed Substitute becomes a full Member of the Committee with participation and voting rights.

**Documents:** Agendas, Reports and Minutes can be accessed via [www.braintree.gov.uk](http://www.braintree.gov.uk)

**Data Processing:** During the meeting the Council will be collecting performance data of participants' connectivity to the meeting. This will be used for reviewing the functionality of Zoom and YouTube as the Council's platform for virtual meetings and for monitoring compliance with the legal framework for Council meetings. Anonymised performance data may be shared with third parties.

For further information on how the Council processes data, please see the Council's Privacy Policy:

[https://www.braintree.gov.uk/info/200136/access\\_to\\_information/376/privacy\\_policy](https://www.braintree.gov.uk/info/200136/access_to_information/376/privacy_policy)

**Webcast and Audio Recording:** Please note that this meeting will be webcast and audio recorded. You may view webcasts for up to 6 months after the meeting using this link: <http://braintree.public-i.tv/core/portal/home>. The meeting will also be broadcast via the Council's YouTube Channel.

**Comments and Suggestions:** We welcome comments to make our services as efficient and effective as possible. If you have any suggestions regarding the meeting you have attended you may send these to [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk)

## **PUBLIC SESSION**

## **Page**

- 1 Apologies for Absence**
- 2 Declarations of Interest**  
To declare the existence and nature of any Disclosable Pecuniary Interest, Other Pecuniary Interest, or Non-Pecuniary Interest relating to Items on the Agenda having regard to the Code of Conduct for Members and having taken appropriate advice where necessary before the meeting.
- 3 Minutes of the Previous Meetings**  
To approve as a correct record the Minutes of the meetings of the Planning Committee held on 1st November 2022, 15th November 2022 and 29th November 2022 (copies to follow).
- 4 Public Question Time**  
(See paragraph above)
- 5 Planning Applications**  
To consider the following planning applications
- 5a App. No. 22 00787 REM – Land at The Airfield, EARLS COLNE** **6-30**
- 5b App. No. 22 02600 VAR – Appletree Farm, Polecat Road, CRESSING** **31-72**
- 5c App. No. 22 03086 PDEM – 4 Crittall Drive, BRAINTREE** **73-84**
- 6 Urgent Business - Public Session**  
To consider any matter which, in the opinion of the Chairman, should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.
- 7 Exclusion of the Public and Press**  
To agree the exclusion of the public and press for the consideration of any Items for the reasons set out in Part 1 of Schedule 12(A) of the Local Government Act 1972.  
*At the time of compiling this Agenda there were none.*

## **PRIVATE SESSION**

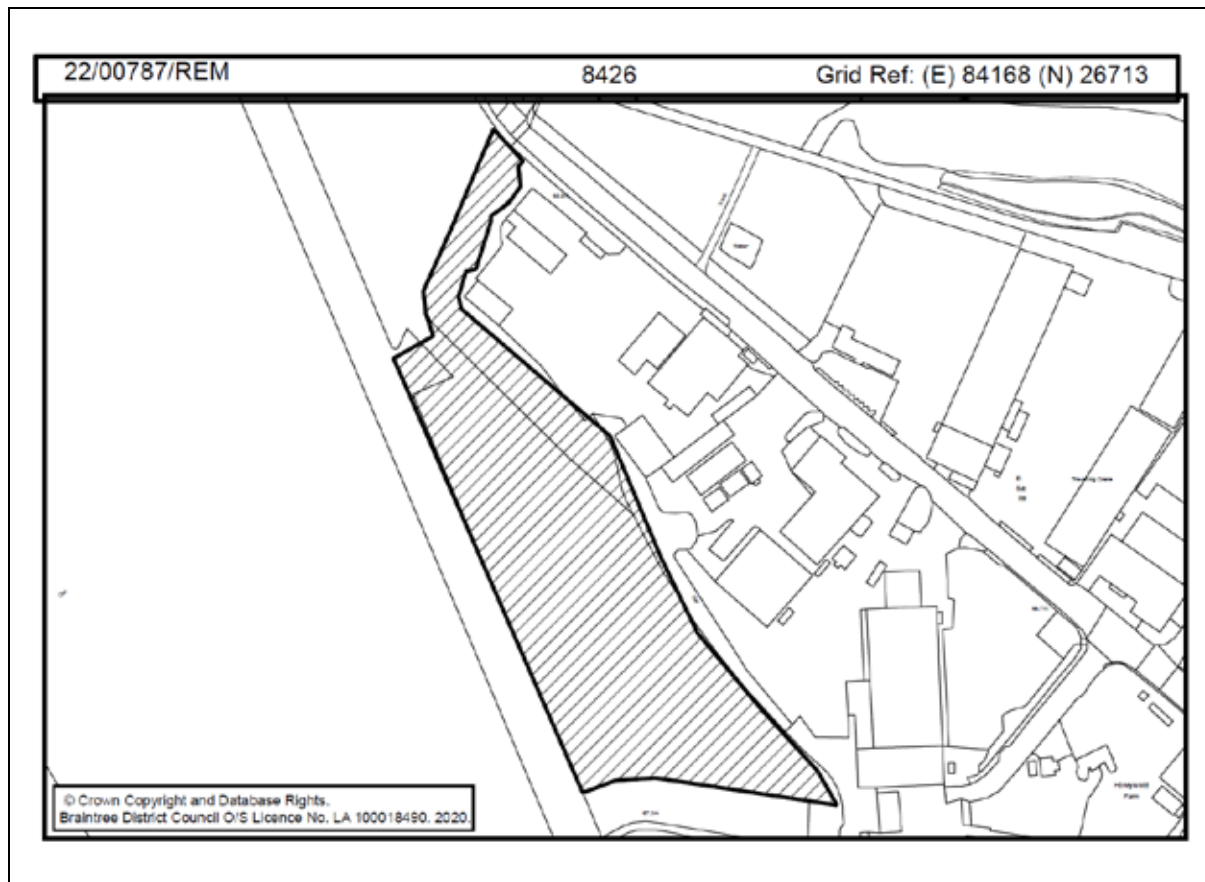
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**8 Urgent Business - Private Session**

To consider any matter which, in the opinion of the Chairman, should be considered in private by reason of special circumstances (to be specified) as a matter of urgency.

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| <b>Report to:</b> Planning Committee               |  |   |
| <b>Planning Committee Date:</b> 20th December 2022 |  |   |
| <b>For:</b> Decision                               |  |   |
| <b>Key Decision:</b> No                            |  | <b>Decision Planner Ref No:</b> N/A   |
| <b>Application No:</b>                             | 22/00787/REM   |   |
| <b>Description:</b>                                | Application for the Approval of Reserved Matters (in respect of layout, scale, appearance, access and landscaping) pursuant to application 21/03483/VAR removal of Condition 18 (Maximum finished height) of permission 17/01157/OUT granted on 25/11/2019 for: Outline Planning Application with all matters reserved for the erection of up to 10,220m <sup>2</sup> of B1, B2 and B8 employment floor space relating to the development of part of the southern parcel of the site for two buildings to provide B8 floorspace. |   |
| <b>Location:</b>                                   | Land At The Airfield, Earls Colne  |   |
| <b>Applicant:</b>                                  | Mr Ben Hobbs, Land at The Airfield, Earls Colne, CO6 2NS   |   |
| <b>Date Valid:</b>                                 | 24th March 2022  |   |
| <b>Recommendation:</b>                             | It is RECOMMENDED that the following decision be made:<br><br>§ Application GRANTED subject to the Condition(s) & Reason(s) and Informative(s) outlined within Appendix 1 of this Committee Report.  |   |
| <b>Options:</b>                                    | The Planning Committee can:<br><br>a) <b>Agree</b> the Recommendation<br>b) <b>Vary</b> the Recommendation<br>c) <b>Overturn</b> the Recommendation<br>d) <b>Defer</b> consideration of the Application for a specified reason(s)  |   |
| <b>Appendices:</b>                                 | <b>Appendix 1:</b>   | Approved Plan(s) & Document(s)<br>Condition(s) & Reason(s) and Informative(s) |
|  | <b>Appendix 2:</b>   | Policy Considerations   |
|  | <b>Appendix 3:</b>   | Site History  |
| <b>Case Officer:</b>                               | Janine Rowley<br>For more information about this Application please contact the above Officer on: 01376 551414 Extension: 2551, or by e-mail: <a href="mailto:janine.rowley@braintree.gov.uk">janine.rowley@braintree.gov.uk</a>   |   |

**Application Site Location:**



|  |   |
|--|---|
| <b>Purpose of the Report:</b>              | The Committee Report sets out the assessment and recommendation of the abovementioned application to the Council's Planning Committee. The report sets out all of the material planning considerations and the relevant national and local planning policies.   |
| <b>Financial Implications:</b>             | <p>The application was subject to the statutory application fee paid by the applicant for the determination of the application.</p> <p>There are no direct financial implications arising out of the decision, notwithstanding any costs that the Council may be required to pay from any legal proceedings. Financial implications may arise should the decision be subject to a planning appeal or challenged via the High Court.</p>   |
| <b>Legal Implications:</b>                 | <p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>Following the decision of the Planning Committee, a formal decision notice will be issued which will either set out the relevant Conditions &amp; Reasons and any Informatives, or the Reasons for Refusal if applicable.</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>   |
| <b>Other Implications:</b>                 | The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.  |
| <b>Equality and Diversity Implications</b> | <p>Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:</p> <ul style="list-style-type: none"> <li>a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act;</li> <li>b) Advance equality of opportunity between people who share a protected characteristic and those who do not;</li> <li>c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.</li> </ul> |



|                           |  |
|---------------------------|--|
|                           | <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> <p>The consideration of this application has not raised any equality issues.</p>  |
| <b>Background Papers:</b> | <p>The following background papers are relevant to this application include:</p> <p>§ Planning Application submission:</p> <ul style="list-style-type: none"> <li>§ Application Form</li> <li>§ All Plans and Supporting Documentation</li> <li>§ All Consultation Responses and Representations</li> </ul> <p>The application submission can be viewed online via the Council's Public Access website: <a href="http://www.braintree.gov.uk/pa">www.braintree.gov.uk/pa</a> by entering the Application Number: 22/00787/REM.</p> <p>§ Policy Documents:</p> <ul style="list-style-type: none"> <li>§ National Planning Policy Framework (NPPF)</li> <li>§ Braintree District Local Plan 2013 - 2033</li> <li>§ Neighbourhood Plan (if applicable)</li> <li>§ Supplementary Planning Documents (SPD's) (if applicable)</li> </ul> <p>The National Planning Policy Framework can be viewed on the GOV.UK website: <a href="http://www.gov.uk/">www.gov.uk/</a>.</p> <p>The other abovementioned policy documents can be viewed on the Council's website: <a href="http://www.braintree.gov.uk">www.braintree.gov.uk</a>.</p> |

1. EXECUTIVE SUMMARY

- 1.1 The application site is located within the Earls Colne Airfield Employment Area. This industrial estate is classified as an Employment Policy Area within the Adopted Local Plan.
- 1.2 The site subject to this application is made up of undeveloped land currently laid out with hardstanding and which has been previously granted outline planning permission, together with land to the north and south, for up to 10,220sq.m of B1, B2 and B8 employment floorspace under Application Reference 17/01157/OUT. This application was granted outline planning permission on the 25th November 2019.
- 1.3 The application is pursuant to Application Reference 21/03483/VAR which varied the original outline planning permission, through the removal of Condition 18 (maximum finished height) of permission 17/01157/OUT. This application was granted on 31st May 2022.
- 1.4 The Applicant now seeks approval of the reserved matters pursuant to the south of the site consisting of layout, scale, appearance, landscaping and access for the site for two buildings to provide B8 floorspace and ancillary parking. It is noted that previously the site has been granted consent under Application Reference 21/00396/REM for B8 external storage and ancillary parking.
- 1.5 Policies LPP2 and LPP3 of the Adopted Local Plan state that within defined Employment Policy Areas, proposals for uses other than those within Use Classes B1, B2 and B8 will be refused, this proposal is therefore policy compliant in employment terms.
- 1.6 The proposal would maintain a policy compliant industrial usage of the site, carrying an economic and social benefit to the local community consistent with the planning objectives contained within Paragraph 11 of the NPPF.
- 1.7 In terms of scale, appearance and layout, whilst concerns remain in respect of the layout of the development, specifically in respect of Unit 37 to the south of the application site area in respect of siting, layout and access, it is acknowledged that the Applicant has sought to respond to Officers concerns through the submission of revised plans which have improved the overall quality of the proposed development. In addition, measures and amendments have also been proposed to mitigate the concerns arising from the layout as far as possible, within the scope of the submitted proposals. No adverse impacts have been identified on highways grounds and the provision of the access is deemed acceptable. There would be no harm arising to neighbouring residential amenity, environmental health, ecology or flooding.
- 1.8 Accordingly, it is recommended that Reserved Matters are approved.

2. INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

- 2.1 This application is being reported to Planning Committee in accordance with Part A of the Council's Scheme of Delegation as the application is categorised as a Major planning application.

3. POLICY CONSIDERATIONS

§ See Appendix 2

4. SITE HISTORY

§ See Appendix 3

5. DESCRIPTION OF THE SITE AND SITE CONTEXT

- 5.1 The application site is located within the Earls Colne Airfield Employment Area. This industrial estate is classified as an Employment Policy Area within the Adopted Local Plan.
- 5.2 The site subject to this application is laid out with hardstanding which has been previously granted outline planning permission, together with land to the north and south, for up to 10,220sq.m of B1, B2 and B8 employment floorspace under Application Reference 17/01157/OUT. This application was granted outline planning permission on the 25th November 2019. Planning permission has been granted to vary the original outline planning permission under Application Reference 21/03483/VAR, whereby Condition 18 relating to maximum finished height was varied. Permission has also previously been granted for external storage on this southern part of the site (Use Class B8) under Application Reference 21/00396/REM.
- 5.3 The site is bounded to the west and south by a very substantial and well establish hedge line. To the east, the site is bounded by existing industrial units associated with the Earls Colne Business Park.
- 5.4 In terms of the wider context, further countryside lies to the west and south of the site and to the north planning permission has recently been granted under Application Reference 21/00411/FUL to erect a two storey modular building and haulage yard. The Earls Colne Airfield is located to the north of the haulage yard site.
6. PROPOSAL
- 6.1 This application seeks approval for reserved matters in respect of layout, scale, appearance, access and landscaping relating to the development of part of the southern parcel of the outline planning application site area for two buildings and associated parking pursuant to application 21/03483/VAR.

- 6.2 The development of the north of the site is covered by a separate full planning permission (Application Reference 21/00411/FUL) which has been granted planning permission to construct a two storey office building and haulage yard.
- 6.3 Part of the application site for this Reserved Matters application has previously been granted consent for external storage use (Use Class B8) pursuant to Application Reference 21/00396/REM dated 23.03.2022. The application site area for the previous Reserved Matters approval for external storage is not compatible with the current application. It should be noted, that if the current Reserved Matters application is approved, it would not be possible to implement both consents. Instead, it would be necessary to submit a new application for the remaining parcel of land, which is located between the two Units and associated plot boundaries proposed within this application.
- 6.4 The proposed development would comprise of two buildings: Unit 35, measuring 38m wide, 10m high and 44m deep; and Unit 37, measuring 37m wide, 72m deep and 10.7m high. Both buildings would be used for storage and distribution (Use Class B8) with associated ancillary parking. Both buildings would be constructed from profiled Goosewing Grey RAL 7038 with gutters and flashings in anthracite RAL 7016, profiled sheet Goosewing Grey RAL 7038, doors and windows aluminium frame finished in Anthracite RAL 7016, canopy supported in metal frames in Pantone Red 032C and loading doors finished in Pantone 716C.
- 6.5 The following drawing and documents have been submitted in support of the planning application:
- Application forms and certificates
  - Location Plan
  - Existing and Proposed Drawings
  - Arboricultural Report
  - Ecology Report
  - Noise Impact Assessment
  - Planning Statement
  - Travel Plan
  - Lighting Plan

## 7. SUMMARY OF CONSULTATION RESPONSES

### 7.1 Anglian Water

#### 7.1.1 No comments.

### 7.2 Essex Fire and Rescue Service

#### 7.2.1 Access for Fire Service purposes is considered satisfactory subject to access routes and hard standings being capable of sustaining a minimum carrying capacity of 15 tonnes. More detailed observations on access and

facilities for Fire Service will be considered at Building Regulations consultation stage.

### 7.3 ECC Highways

- 7.3.1 No objections subject to a condition in relation to the Travel Plan, to require the detail of this to be revised.

### 7.4 BDC Ecology

- 7.4.1 No objections, Reserved Matter 20 report (ACJ Ecology Ltd, March 2022), secured by Condition 20 of the outline application, specifies suitable precautionary mitigation measures to prevent disturbance to nesting birds. In terms of the soft landscaping no objections to the proposed scheme which includes native hedge planting and non-native shrub planting to create habitats and provide ecological enhancement of the site for the benefit of bats and other fauna.
- 7.4.2 In terms of protected species the Reserved Matter 21 report (ACJ Ecology Ltd, March 2022), details that the oak trees located on the eastern boundary of the southern section of the site have been surveyed and have a medium to high level bat roosting suitability. However, the report confirms that the trees are to be retained therefore no further survey works are required and mitigation in the form of a sensitive lighting scheme is recommended to avoid disturbance to bats.
- 7.4.3 The Lighting Strategy Drawing D43711/LC/M dated 22nd June 2022, as secured by Condition 7 of the outline application, demonstrates that the lighting of ecologically sensitive areas (woodland/trees adjacent to the western boundary and the oak trees on the eastern boundary of the southern section medium to high level bat roosting suitability) will be avoided and the use of timers will also limit light usage. Furthermore, lighting will be of a white spectrum within the application site and at 2700k will avoid a reduction in prey availability for some light sensitive bat species. Therefore, we are satisfied that proposals follow the Guidance Note 8 Bats and artificial lighting (The Institute of Lighting Professionals & Bat Conservation Trust, 2018) and that impact from lighting to, foraging and commuting bats will be avoided. The LPA can therefore demonstrate it has met its statutory requirements under the Conservation of Habitats and Species Regulations 2017 (as amended) and the Wildlife & Countryside Act 1981 (as amended) for this application.
- 7.4.4 A number of conditions have been recommended to be imposed to ensure ecological mitigation measures are employed.
- ### 7.5 ECC Historic Building Consultant
- 7.5.1 The proposed development lies on land that was formerly part of a WWII Airfield at Earls Colne. The removal of the structural remains of the airfield would have caused significant damage to any earlier archaeological

deposits and it is unlikely that any below ground remains associated with the military use of the site survive. Therefore, offer no objection to the reserved matters application.

- 7.5.2 The airfield is a non-designated heritage asset and there is a listed farmhouse west of the application site. Lodge Farm.

7.6 ECC Suds

- 7.6.1 No further comments on the proposed development, the overall surface water scheme has been agreed under application 21/00373/DAC applying to the whole site in respect of drainage.

8. PARISH / TOWN COUNCIL

8.1 Earls Colne Parish Council

- 8.1.1 No comments received.

8.2 Coggeshall Parish Council

- 8.2.1 No comments received.

9. REPRESENTATIONS

- 9.1 A site notice was displayed for a period of 21 days and the application was advertised in the press. No letters of representation have been received from nearby residents or adjoining businesses. A representation has been received from the Ramblers Association, which is summarised as follows:

9.2 Ramblers Association

- 9.2.1 1) The diversion of public footpath Coggeshall 31 [PROW 72\_31], confirmed in May 2021, diverted the footpath to run in the tree belt adjacent to the west side of the site and on the south side of the southern tree belt. On behalf of the Ramblers, it is requested that the public footpaths are shown on the plans.

Officer Comment: The footpath falls outside of the site boundary and have been previously assessed under outline consent 17/01157/OUT.

- 9.2.2 2) The majority of this site is in Coggeshall Parish, but Coggeshall are not included on the list of Consultees advised.

Officer Comment: Coggeshall Parish Council were formally consulted on 4th April 2022. No comments have been received.

- 9.2.3 3) The west side of the proposed southern B8 building - unit 37, Fortress House - is close to Coggeshall public footpath 31. The planning statement describes unit 37 as having a ridge height of 11.5 metres and in paragraph

5.11. "...variation and focus to the public elevation by the use of corner feature glazing to the entrance and first floor." However, the submitted plans 21094/103 & 21094/102A on the BDC planning website do not label the ridge height and other dimensions, have no compass rose / no labels for the west etc side and do not show a second floor and how this would be accessed. Labelled plans for Unit 37 would be appreciated.

Officer Comment: Updated plans have been received.

- 9.2.4 4) The soft landscaping plan proposes trees at intervals on the western and southern boundaries together with hedge planting. It is requested that a continuous tree line is provided particularly on the west side - like the existing tree belt on the east side. Such a continuous tree line would screen the views of the proposed B8 warehouse buildings and more nearly maintain the current countryside feel for users of the adjacent public footpath Coggeshall 31 / Earls Colne 1 [PROW 72\_31 / 75\_1].

Officer Comment: The approved bund will screen views of the proposed buildings. A continuous tree line would not be possible in this location.

## 10. PRINCIPLE OF DEVELOPMENT

### 10.1 National Planning Policy

- 10.1.1 As set out in Paragraph 7 of the NPPF, the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 of the NPPF explains that achieving sustainable development means that the planning system has three overarching objectives: economic; social; and environmental; which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).
- 10.1.2 Paragraph 9 of the NPPF outlines that planning decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area. In addition, Paragraph 38 of the NPPF prescribes that local planning authorities should approach decisions on proposed development in a positive and creative way and that decision makers at every level should seek to approve applications for sustainable development where possible.
- 10.1.3 Paragraph 12 of the NPPF sets out that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making. In addition, Paragraph 47 of the NPPF states that planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 10.1.4 Paragraph 82 of the NPPF outlines that planning policies should set out a clear economic vision and strategy which positively and proactively

encourages sustainable economic growth, having regard to Local Industrial Strategies and other local policies for economic development and regeneration. Paragraph 83 of the NPPF states that planning policies and decisions should recognise and address the specific locational requirements of different sectors.

## 10.2 Development Plan

- 10.2.1 Currently the Council's statutory Development Plan consists of the Braintree District Adopted Local Plan (2013-2033).
- 10.2.2 The application site is located within an Employment Policy Area as outlined on the Proposals Map contained within the Core Strategy. Policy LPP2 of Adopted Local Plan.
- 10.2.3 Policy LPP33 of the Adopted Local Plan states that within defined Employment Policy Areas proposals for uses other than those within Use Classes B1, B2, and B8 will be refused, which is reinforced by Policy LPP2 of the Adopted Local Plan states that all employment sites, including sites or buildings in current or recent use as an employment site, will be retained for such uses where they continue to offer a viable and sustainable location for such employment uses.
- 10.2.4 The principle of redevelopment of the site for employment and industrial uses has been previously considered acceptable and established under extant outline planning permission (Application Reference 17/01157/OUT) which granted permission with all matters reserved for the erection of up to 10,220sq.m of B1, B2 and B8 employment floor space. The original outline planning application was subsequently varied under application 21/03483/VAR to remove the maximum finished height condition and therefore this application seeks pursuant to planning permission granted on the 31.05.2022. In addition, to the north of the site planning permission has been granted for a haulage yard and modular building (Application Reference 21/00411/FUL). Part of the proposed application site, subject to this application, has been previously approved for external storage use (Use Class B8) under Application Reference 21/00396/REM.
- 10.2.5 The application has been submitted in accordance with the outline consent 17/00157/OUT. Therefore, the principle of this application for reserved matters is considered acceptable. The current Reserved Matters application seeks approval for the reserved matters pursuant to the outline permission. The reserved matters consist of: Appearance, Layout, Scale, Access, and Landscaping. These detailed matters are assessed below.



## 11. SITE ASSESSMENT

### Scale, Appearance, and Layout

- 11.1.1 Paragraph 126 of the NPPF states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Paragraph 134 makes reference to the requirement for good design, and how a failure to achieve good design can warrant refusal of a planning application, specifically where poor design fails to take the opportunities available for improving the character and quality of an area.
- 11.1.2 Policy LPP52 of the Adopted Local Plan seeks to secure the highest possible standards of design and layout in all new development.
- 11.1.3 The application site is contained by a tree bund perimeter on the southern and western boundaries. Beyond this is land owned by the Marks Hall Estate. To the east of the site is the Earls Colne Business Park.
- 11.1.4 The application site is surrounded by commercial premises to the east of the site. The surrounding buildings have a mixed appearance with a variety of styles and materials. The most notable buildings adjacent to the site include larger hanger buildings.

### ***Scale***

- 11.1.5 The proposed buildings would be located to the southern part of the site. Unit 35 to the north part of the site named 'Albemarle' and Unit 37 to the southern part of the site named 'Fortress House'. The scale of the proposed buildings relates satisfactorily to the existing industrial buildings adjacent to the site.
- 11.1.6 In relation to the overall heights, Unit 35 would have an eaves height of 8m, rising to 10.5m at the ridge. Unit 37 would have an eaves height of 9m rising to 11.5m at the ridge. The overall heights are in accordance with Condition 18 of Application Reference 21/03483/VAR. This application sought permission to vary the condition relating to heights on the site, to increase from 10m to 12m. This application was granted permission following consultation with relevant aviation consultees and users associated with the airfield to north of the site which retains an 8m about ordnance datum restriction where the haulage yard has recently been granted planning permission (21/00411/FUL) and directly adjacent to the airfield, a no development zone. The overall heights of the buildings satisfactorily relate to the existing buildings within the surrounding area and therefore no objection is raised.

### ***Appearance***

- 11.1.7 The appearance and layout of the building has been subject to extensive negotiation with Officers who have engaged with the Applicant during the application to seek amendments to the original design and layout following

concerns about the quality and appearance of the development, which in their original form, resembled utilitarian agricultural storage buildings.

- 11.1.8 The revised proposals have improved the design and appearance of the two buildings. The elevational treatment has been improved through greater articulation, increased glazing, and canopy detailing to the main entrances, and the use of more contemporary and a greater proportion of higher quality materials, which comprise a number of cladding variations and colours to break up the overall form and massing on the north and west elevations. This approach mirrors the contemporary design of the modular building granted planning permission under Application Reference 21/00411/FUL.
- 11.1.9 With the submission of revised plans, it has been clarified that the staff parking area would be accessed from the east, utilising the existing industrial estate roads. All buildings should have the same high quality of design for all facades. Notwithstanding the submission of revised plans, the eastern elevation (which would be the visible elevation at the staff entrance into the development) fails to benefit from a focal point, entrance, or an elevational treatment which breaks up the façade with the use of different materials to denote this elevation and provide a sense of place and arrival for members of staff. As such, the building fails to enhance the appearance of the development, particularly when viewed from the existing Earls Colne industrial estate to the east and therefore presents a poor sense of arrival. Conversely, the visitor parking area and the loading bays, which are located at the front of the site adjacent to the main access road which would be utilised by HGVs, has well-articulated and designed entrance feature.
- 11.1.10 As with the eastern elevation, the southern elevation also results in a blank façade, however this would face onto the existing mature tree bund to the south with the Marks Hall footpath and Marks Hall Estate. As there is established planting along this boundary, there would be limited views of this elevation. It is noted within the supporting information that the justification for the siting of this building in this location relates the need to protect Marks Hall Estate (from business activities, including noise) and that this has previously been agreed with Marks Hall Estate.
- 11.1.11 While Officers consider the appearance of the two buildings could be improved further, the Applicant was not minded to make further amendments to the scheme and therefore the application needs to be considered on this basis. Overall, it is considered on balance, that the external appearance of the development is acceptable.

### ***Layout***

- 11.1.12 The proposed layout of the site comprises Unit 35, 'Ablermarle House', to the north of the site with the entrance and lorry parking to the front of the site and car parking to the rear of the site for members of staff and visitors. Unit 37, 'Fortress House', is located to the south with associated visitor and

parking and loading bays to the north and west elevations and staff parking to the east side of the building. The main access to the site would be from the north east of the site as per the outline planning permission illustrative drawings.

- 11.1.13 Officers raised concern in respect of the proposed layout and siting of the units which results in Unit 37 'Fortress House' being sited along the southern boundary. As a consequence, the building would present blank façades to the southern and eastern elevations and gives rise to concerns in respect of secure by design by virtue of the location of the staff parking area. This is discussed in further detail below.
- 11.1.14 As highlighted above, the eastern elevation is adjacent to the staff car parking area. The original plans included a cramped and contrived parking area, with insufficient space to allow for vehicles to manoeuvre. In order to access the building, staff parking in this area would have to walk around the edge of the building on a relatively narrow unsurveilled footpath to the front of the building. Following discussions with Officers, revisions to the layout of the parking area have been submitted which increase the space between the parking spaces to allow safe manoeuvring. The footpath has also been increased in width (now 1.2m wide) and additional landscaping between parking spaces and to the southern boundary is also now proposed. While Officers remain concerned that members of staff would be required to walk along the footpath to the southern elevation to the main entrance on the northwest corner access the building, it is acknowledged that the Applicant has sought to mitigate these concerns by proposing additional external lighting. This would be controlled by condition, to ensure a safer walking route for staff between the building and parking area. The recommended condition would ensure that proposal complies with policy and safeguards ecology to the southern boundary of the site adjacent to Marks Hall Estate. This will improve the access arrangements for members of staff.
- 11.1.15 While Officers would have preferred to see a more significant change to the layout of this part of the development, involving the re-siting of the building further to the north, the Applicant was not minded to submit further revised plans. As such, the application needs to be determined on the basis of the revised plans that have been submitted. On balance, while the layout still gives rise to concern and in Officers view weighs against the proposal, it is acknowledged that measures have been proposed to mitigate some of these concerns as far as possible within the context of the proposed layout. Taking into account the other amendments to the application, including those to the elevational treatment of the two buildings, the proposed development is considered, on balance, to be acceptable.

## 11.2 Landscaping

- 11.2.1 The Applicant proposes a hard and soft landscaping scheme across the site which has been reviewed by the Council's Landscape Officer and is considered to be acceptable.

11.2.2 The soft landscaping proposals included seeded grass areas, 2m high native hedge to bund and infill planting areas and a maintenance plan to ensure the planting is maintained. Additional landscaping has been provided within the hardstanding areas to serve the new industrial units as shown on drawing soft landscaping plan Revision A (Andrew May Arboricultural Consultancy Ltd, dated 6th July 2022, which is welcomed. Subject to an appropriate condition, it is considered the proposed landscaping scheme would enhance the character and appearance of the proposed development.

### 11.3 Ecology

11.3.1 The Ecological impact of developing the overall site was assessed in full at the outline planning application stage and is not for consideration as a reserved matter.

11.3.2 The Applicant however, has submitted a report carried out by ACJ Ecology Ltd, March 2022), Reserved matters 21 report by ACJ Ecology Ltd, March 2022, soft landscaping plan revision C (Andrew May Arboricultural Consultancy Ltd, July 2022 and the Lighting Plan Drawing D43711/RD/L dated 15<sup>th</sup> June 2022, relating to the likely impacts of development on designated sites, protected and Priority Species & Habitats. The Council's Ecologist has confirmed following revisions and additional information provided, there is sufficient ecological information provided ensuring the local wildlife will be protected subject to appropriate conditions to protect and conserve species.

### 11.4 Highway Considerations

11.4.1 Paragraph 104 of the NPPF is explicit that development proposals should identify and pursue opportunities to promote walking, cycling and modes of transport. Paragraph 105 of the NPPF goes on to state the planning system should actively manage patterns of growth in support of these objectives.

11.4.2 Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. Paragraph 111 of the NPPF states development shall only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

11.4.3 Similarly, amongst other matters Policy LPP42 of the Adopted Local Plan, require new developments to be provided with a safe and suitable access, without detriment to the local road network, in order to maintain highway safety for all highway users.

11.4.4 The access would be located to the north of the site and will also provide access to the parcel of land immediately to the north, which also formed part of the outline planning permission which has recently been granted planning permission under Application Reference 21/00411/FUL for a

modular office building and haulage yard. The proposed access road from the existing Southern Perimeter Road is part of the road network privately owned by the wider business park. It is 7m wide in the vicinity of the site and caters for a range of vehicle movements. The B1024 in the vicinity of the access to the business park has an approximate width of 5.3m. The access to serve the staff parking to Unit 37 to the south would be accessed from the existing service road adjoining Spitfire Drive.

- 11.4.5 The impact of a mixed-use development on the highway network in principle was assessed at the outline planning application stage with a thorough review of the transport assessment examining the impact of the proposed development on the existing highway network with no objections raised by Essex County Council Highways.
- 11.4.6 With regard to the site layout, ECC Highways have been consulted and no objections have been raised to the proposal in relation to the position and layout of the access which is deemed appropriate to meet the needs of the development without resulting in harm to the surrounding highway network.
- 11.4.7 Essex Parking Standards (2009) states that relating to B8 use 1 space per 150sq.m, cycle provision to include 1 space per 500sq.m for staff plus 1 space per 1000sq.m for visitors.
- 11.4.8 Unit 35 has a floorspace of 1,496sq.m and Unit 37 has 2,870sq.m floorspace respectively.
- 11.4.9 The Applicant had confirmed within the supporting information that Unit 35 would be occupied and used for storage and distribution associated with the haulage use the subject of the Application Reference 21/00411/FUL adjacent to the site to the north. However, as Application Reference 21/00411/FUL benefits from a separate planning permission, the plans have been amended to ensure each building has sufficient parking to comply with Adopted Parking Standards. Unit 35 to the north of the site would benefit from 10 car parking spaces plus 1 accessible parking space for disabled persons, together with 1 powered two wheeler bay and 6 cycle spaces, which would be policy compliant.
- 11.4.10 Unit 37 would comprise 24 parking spaces (4 with electric charging points) plus two accessible spaces for disabled persons, with covered parking for 10 cycles and 2 powered two wheeler bays in accordance with the Council's Adopted Parking Standards. No objection to the proposal was made by Essex Highways. On balance, the proposed parking provision is considered acceptable.
- 11.4.11 The application is accompanied by a Travel Plan with a number of measures for non-car modes of transport and car sharing in order to achieve a number of objectives and targets. ECC Highways have recommended the current travel plan revised and can be controlled by condition to ensure further details are provided.

11.4.12 Taking the above into the account and with no indication that the proposal would raise parking provision above existing levels, the proposal is considered to be acceptable and policy compliant in respect of highway and parking considerations.

11.4.13 Overall, no objections are raised by Essex County Council Highways or Officers to the proposed access, parking provision and measures employed by the Travel Plan to offer alternative modes of transport which can be controlled by condition.

#### 11.5 Impact upon Neighbouring Residential Amenity

11.5.1 One of the core principles set out in the NPPF is that planning should 'always seek to secure a high quality of design and a good standard of amenity for all existing and future occupants. This is supported by Policy RLP90 of the Adopted Local Plan which states that 'there shall be no undue or unacceptable impact upon the amenity of any nearby residential properties. The emerging plan has similar objective.

11.5.2 There are no residential properties within the immediate locality of the site and the nearest residential properties would be sufficiently distanced from it to prevent any harm to their amenity. No impact is considered to arise to nearby commercial/industrial uses as a consequence of the development.

11.5.3 The application is therefore considered to satisfy national and local policies designed to safeguard neighbouring residential amenity.

#### 11.6 Flooding and Drainage Strategy

11.6.1 The site is located within Flood Zone 1 (a low probability of flood risk). Flood risk and drainage were considered in general terms at outline planning application stage and relevant conditions were attached to the outline planning permission. The Environment Agency and ECC SuDs advisors have confirmed the surface water drainage is being dealt with by related application 21/00411/FUL and have therefore raised no objections this this application. Furthermore, the ECC Suds advisors have now confirmed following application 21/00373/DAC which related to the overall drainage for the wider outline site has been agreed this can now be applied to this current proposal and therefore no objections or further comments are raised.

#### 11.7 Heritage and Archaeology

11.7.1 The likely heritage impact of the proposed development of the overall site was assessed at outline planning application stage. The application site is not located within or near a Conservation Area or Listed Building. Essex County Council Place Services (Archaeology) have raised no objection in relation to the archaeological surveys or investigation works. It is not considered the proposal would cause a harmful impact on the historic environment.

## 11.8 Lighting

11.8.1 Policy LPP70 of the Adopted Local Plan indicates that external lighting should be designed as an integral element of the development and provides guidance on the design of the lighting.

11.8.2 In this respect, this application is accompanied by an External Lighting Impact Assessment, which concludes a compliant lighting scheme can be designed and installed with a low impact on commercial properties and wildlife. As highlighted above, additional external lighting is proposed to the southern building (Unit 37) and a suitable condition is recommended to ensure any development would not result in material harm to the surrounding area, nearby residents, nor impact upon local wildlife.

## 11.9 Contamination

11.9.1 It is noted contamination would have been reviewed at outline planning application stage and a thorough review has been carried out under Application Reference 21/00396/REM whereby a report carried out by GEMCO Phase 2 Geo-Environmental Assessment February 2021 demonstrated any development on site would not give rise contamination and the risk to controlled waters is low. Following discussions with the Applicant an updated version of the contamination report will be provided to ensure this application complies with policy on contamination grounds.

## 11.10 Public Footpath

11.10.1 Public Footpath PROW 75\_1 currently runs through part of the application site. Following the approval of outline planning permission (Application Reference 17/01157/OUT), the Applicant proposed to divert PROW 75\_1 to run around the outside of 19 the application site, on the opposite side of the established hedge which forms its northern, western and southern boundaries rather than through it. This would also be on land owned by the Applicant. This remains unchanged and the footpath has now been closed and diverted.

## 12.1 CONCLUSION

12.1.1 The principle of employment and industrial development of the site has been established under the extant outline planning permission (Application Reference 17/01157/OUT as varied by Application Reference 21/03483/VAR). The Applicant now seeks approval of the reserved matters for land within the southern part of the outline planning application site area consisting of layout, scale, appearance, landscaping and access.

12.1.2 The site is located within an Employment Policy Area as outlined on the Proposals Map contained within the Adopted Local Plan. Policy LPP2 of the Adopted Local Plan states that within defined Employment Policy Areas proposals for uses other than those within Use Classes B1, B2, and B8 will

be refused, which is further reinforced by Policy LPP3 of the Adopted Local Plan.

- 12.1.3 The proposal would maintain a policy compliant industrial usage of the site, carrying an economic and social benefit to the local community consistent with the planning objectives contained within Paragraph 11 of the NPPF.
- 12.1.4 In terms of scale, appearance and layout, whilst concerns remain in respect of the layout of the development, specifically in respect of Unit 37 to the south of the application site area, it is acknowledged that the Applicant has sought to respond to Officers concerns through the submission of revised plans which have improved the overall quality of the proposed development. In addition, measures and amendments have also been proposed to mitigate the concerns arising from the layout as far as possible, within the scope of the submitted proposals. No adverse impacts have been identified on highways grounds and the provision of the access is deemed acceptable. There would be no harm arising to neighbouring residential amenity, environmental health, ecology or flooding.
- 12.1.5 Consequently, the proposal is considered to be acceptable in planning terms and therefore it is recommended that the Reserved Matters are approved.

### 13. RECOMMENDATION

- 13.1 It is RECOMMENDED that the following decision be made: Application GRANTED in accordance with the Approved Plans and Documents, and subject to the Condition(s) & Reason(s), and Informative(s) outlined within APPENDIX 1.

CHRISTOPHER PAGGI  
PLANNING DEVELOPMENT MANAGER



## APPENDIX 1:

### APPROVED PLAN(S) & DOCUMENT(S) / CONDITION(S) & REASON(S) AND INFORMATIVE(S)

#### Approved Plan(s) & Document(s)

| <b>Plan Description</b> | <b>Plan Ref</b> | <b>Plan Version</b> |
|-------------------------|-----------------|---------------------|
| Lighting Plan           | D43711/LC/M     | N/A                 |
| Location Plan           | 21094/301       | N/A                 |
| Proposed Plans          | 21094/103       | N/A                 |
| Section                 | 21094/H/01      | A                   |
| Lighting Plan           | D43711/LC/F     | N/A                 |
| Proposed Elevations     | 21094/202       | F                   |
| Proposed Elevations     | 21094/102       | E                   |
| Proposed Block Plan     | 21094/001       | E                   |
| Proposed Plans          | 21094/302       | N/A                 |

#### Condition(s) & Reason(s)

##### Condition 1

The development hereby permitted shall take place not later than two years from the date of this approval.

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

##### Condition 2

The development hereby permitted shall be carried out in accordance with the approved plans listed above.

Reason: For the avoidance of doubt and in the interests of proper planning.

##### Condition 3

The external materials and finishes shall be as indicated on the approved plans and/or schedule.

##### Reason

To ensure that the development does not prejudice the appearance of the locality.

##### Condition 4

Notwithstanding the submitted External Lighting Plan D43711/LC/M carried out by Kingfisher Lighting, prior to the installation of any external building, details with regard to hours of lighting and lighting shielding measures shall be submitted to and approved in writing by the Local Planning Authority. The external lighting shall only be installed in accordance with the approved details and retained thereafter.

Reason: To minimise pollution of the environment and to safeguard the amenities of the locality and the appearance of the development.

Condition 5

The noise attenuation performance of the noise mitigation measures set out in the submitted Noise Technical Note reference 2109120-01A completed by Ardent Consulting Engineers and dated 11th March 2022 shall be implemented in their entirety prior to first use of the development hereby approved and shall be retained in perpetuity thereafter.

Reason: To ensure that the proposed noise mitigation measures are both effective and properly installed.

Condition 6

The development shall only be carried out in accordance with the submitted report Reserved Matter 20 carried out by ACJ Ecology Report dated March 2022.

Reason: In the interests of protecting and enhancing biodiversity.

Condition 7

The development shall only be carried out in accordance with the submitted Arboricultural Report, Tree Protection Plan Revision A and Arboricultural Protection Measures detailed therein completed by Andrew Day Arboricultural Consultancy, dated 11th March 2022.

Reason: To ensure the protection of the existing trees and hedgerows on the site which are to be retained.

Condition 8

The scheme of landscaping indicated on the 'Soft Landscaping Plan' Revision C dated 6th July 2022 drawn by Andrew Day Arboricultural Consultancy Limited, shall be implemented in the first planting and seeding seasons after the commencement of the development, and shall be maintained in perpetuity thereafter.

Any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season in accordance with the approved landscaping scheme.

Reason: To enhance the appearance of the development and in the interests of amenity and enhance the development.

Condition 9

The principal access to serve the development shall be constructed as shown on the approved plan prior to the commencement of any work upon the commercial development on site.

Reason: In the interests of highway safety.

Condition 10

Notwithstanding the Travel Plan carried out by Journey Transport Planning reference

JTP457 dated June 2022, prior to above ground development: a revised Travel Plan shall be submitted to and approved in writing by the Local Planning Authority (see informative for contact details of the Travel Planning Team).

Reason: In the interests of sustainability, accessibility, highways efficiency and safety, residential amenity and general environmental quality.

#### Condition 11

All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in Reserved Matter 20 report (ACJ Ecology Ltd, March 2022), Reserved Matter 21 report (ACJ Ecology Ltd, March 2022), soft landscaping plan (Andrew May Arboricultural Consultancy Ltd, March 2022), and the revised Lighting Strategy Drawing D43711/LC/M dated 22nd June 2022, as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW,) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason: To conserve and enhance Protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

#### Informative(s)

##### Informative 1

To avoid killing or injuring small animals which may pass through the site during the construction phase, it is best practice to ensure the following measures are implemented:

- a) Trenches, pits or holes dug on site should be covered over at night. Alternatively, ramps (consisting of a rough wooden plank) or sloped/stepped trenches could be provided to allow animals to climb out unharmed;
- b) Materials brought to the site for the construction works should be kept off the ground on pallets to prevent small animals seeking refuge;
- c) Rubbish and waste should be removed off site immediately or placed in a skip, to prevent small animals using the waste as a refuge.

#### 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, in accordance with the presumption in favour of sustainable development, as set out in the National Planning Policy Framework.

## APPENDIX 2:

### POLICY CONSIDERATIONS

#### National Planning Guidance

National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)

#### Braintree District Local Plan 2013 - 2033

|       |  |
|-------|--|
| SP1   | Presumption in Favour of Sustainable Development   |
| SP5   | Employment   |
| SP6   | Infrastructure and Connectivity  |
| SP7   | Place Shaping Principles   |
| LPP1  | Development Boundaries   |
| LPP2  | Location of Employment Land  |
| LPP3  | Employment Policy Areas  |
| LPP7  | Rural Enterprise   |
| LPP42 | Sustainable Transport  |
| LPP43 | Parking Provision  |
| LPP45 | New Road Infrastructure  |
| LPP47 | Built and Historic Environment   |
| LPP52 | Layout and Design of Development   |
| LPP63 | Natural Environment and Green Infrastructure   |
| LPP65 | Tree Protection  |
| LPP66 | Protection, Enhancement, Management and Monitoring of Biodiversity                       |
| LPP67 | Landscape Character and Features   |
| LPP70 | Protecting and Enhancing Natural Resources, Minimising                                   |
| LPP71 | Climate Change   |
| LPP73 | Renewable Energy Schemes   |
| LPP74 | Flooding Risk and Surface Water Drainage   |
| LPP75 | Surface Water Management Plan  |
| LPP77 | External Lighting  |
| LPP78 | Infrastructure Delivery and Impact Mitigation<br>Pollution and Safeguarding from Hazards |

#### Other Material Considerations

Essex Design Guide  
EPOA Vehicle Parking Standards

### APPENDIX 3:

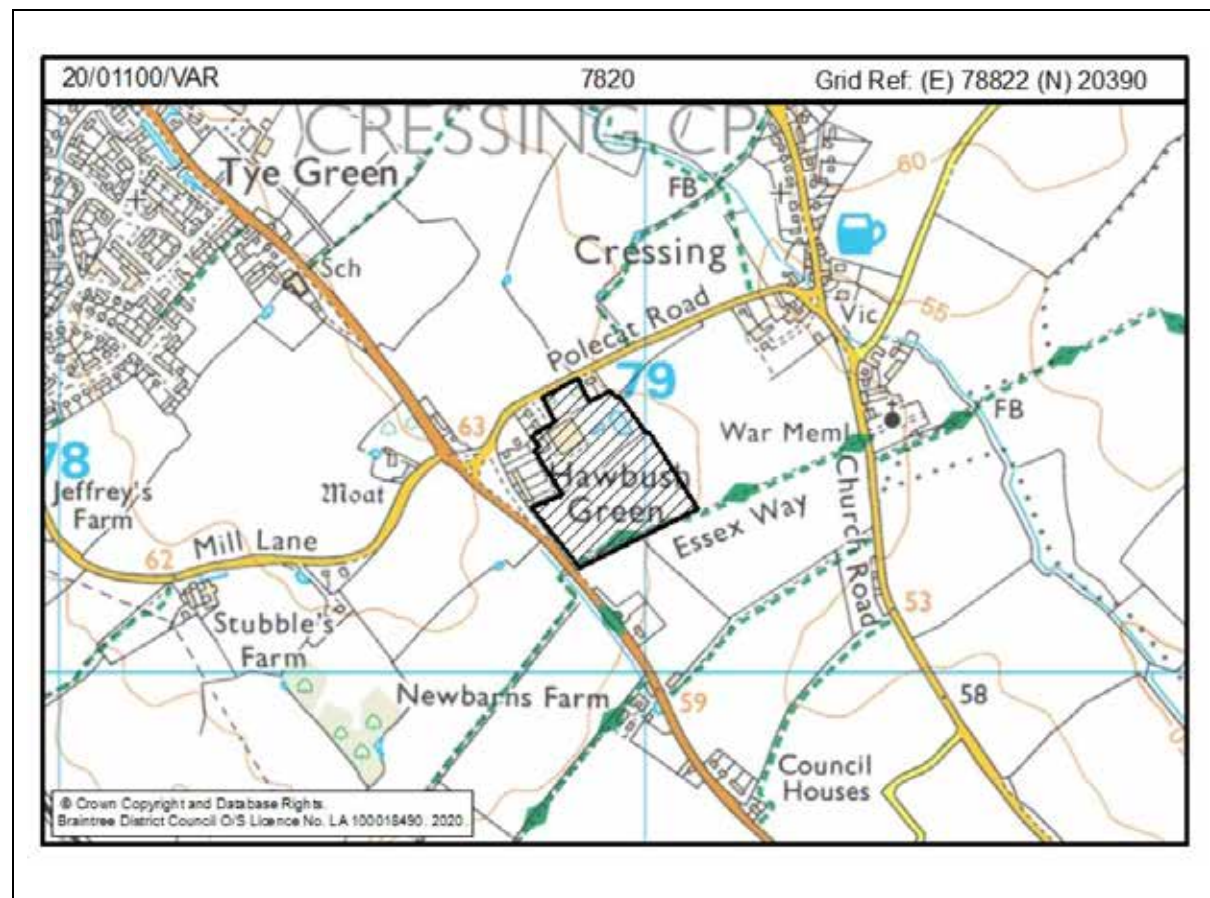
#### SITE HISTORY

| <b>Application No:</b> | <b>Description:</b>  | <b>Decision:</b>                   | <b>Date:</b> |
|------------------------|--|------------------------------------|--------------|
| 17/00002/SCR           | Town & Country Planning Act 1990 (as amended), Town & Country Planning (Environmental Impact Assessment) Regulations 2011 - Screening Request - Outline Planning Application with some matters reserved - Development of 10,220sq.m. B1, B2 and B8 floor space   | Screening/ Scoping Opinion Adopted | 30.03.17     |
| 17/01157/OUT           | Outline Planning Application with all matters reserved for the erection of up to 10,220m2 of B1, B2 and B8 employment floor space.   | Granted with S106 Agreement        | 25.11.19     |
| 21/00373/DAC           | Application for approval of details as reserved by conditions 6, 9, 12, 13, 14 and 16 of approved application 17/01157/OUT   | Granted                            | 22.11.22     |
| 21/00396/REM           | Application for the approval of reserved matters (in respect of layout, scale, appearance, access and landscaping) pursuant to outline planning permission 17/01157/OUT granted 25.11.2019 for the erection of up to 10,220m2 of B1, B2 and B8 employment floor space. Reserved matters relates to the development of the southern parcel of the site for B8 external storage and ancillary parking. | Granted                            | 23.03.22     |

|              |  |                             |          |
|--------------|--|-----------------------------|----------|
| 21/00411/FUL | Change of Use of land to be used as a Haulage Yard (Sui Generis) with associated works, security fencing, access and landscaping with the erection of a two-storey building to be used as ancillary office space.                          | Pending Decision            |          |
| 21/03483/VAR | Removal of Condition 18 (Maximum finished height) of permission 17/01157/OUT granted on 25/11/2019 for: Outline Planning Application with all matters reserved for the erection of up to 10,220m2 of B1, B2 and B8 employment floor space. | Granted with S106 Agreement | 31.05.22 |
| 22/02788/DAC | Application for approval of details as reserved by conditions 10 & 16C of approved application 17/01157/OUT  | Pending Consideration       |          |

|  |   |   |
|--|---|---|
| <b>Report to:</b> Planning Committee               |   |   |
| <b>Planning Committee Date:</b> 20th December 2022 |   |   |
| <b>For:</b> Decision                               |   |   |
| <b>Key Decision:</b> No                            |   | <b>Decision Planner Ref No:</b> N/A   |
| Application No:                                    | 22/02600/VAR  |   |
| Description:                                       | S73a variation of condition application for the erection of 77 residential dwellings with associated open space, landscaping, amenity space, car and cycle parking and other associated works including the variation of Condition 2 (Approved Plans); Condition 3 (Materials); Condition 6 (Contamination); Condition 8 (CMP); Conditions 9, 10 & 11 (SUDS); Condition 14 (CEMP); Condition 16 (Refuse & Lighting); Condition 18 (Hard Landscaping) of application 18/00920/FUL granted 13/02/2020 ( <i>see full description at Paragraph 6.1 below</i> ). |   |
| Location:  | Appletree Farm, Polecat Road, Cressing  |   |
| Applicant:   | Mr Patrick Thomas, Appletree Farm Cressing Limited, Burnham Yard, London End, Beaconsfield, HP9 2JH   |   |
| Date Valid:  | 12th October 2022   |   |
| <b>Recommendation:</b>                             | It is RECOMMENDED that the following decision be made:<br><br>§ Application GRANTED subject to the completion of a Deed of Variation to the original S106 and subject to the Condition(s) & Reason(s) and Informative(s) outlined within Appendix 1 of this Committee Report.   |   |
| <b>Options:</b>                                    | The Planning Committee can:<br><br>a) <b>Agree</b> the Recommendation<br>b) <b>Vary</b> the Recommendation<br>c) <b>Overturn</b> the Recommendation<br>d) <b>Defer</b> consideration of the Application for a specified reason(s)   |   |
| <b>Appendices:</b>                                 | <b>Appendix 1:</b>  | Approved Plan(s) & Document(s)<br>Condition(s) & Reason(s) and Informative(s) |
|  | <b>Appendix 2:</b>  | Policy Considerations   |
|  | <b>Appendix 3:</b>  | Site History  |
| <b>Case Officer:</b>                               | Mathew Wilde<br>For more information about this Application please contact the above Officer on: 01376 551414 Extension: 2512, or by e-mail: <a href="mailto:mathew.wilde@braintree.gov.uk">mathew.wilde@braintree.gov.uk</a>   |   |

**Application Site Location:**





|  |   |
|--|---|
| <b>Purpose of the Report:</b>              | The Committee Report sets out the assessment and recommendation of the abovementioned application to the Council's Planning Committee. The report sets out all of the material planning considerations and the relevant national and local planning policies.   |
| <b>Financial Implications:</b>             | <p>The application was subject to the statutory application fee paid by the Applicant for the determination of the application.</p> <p>As outlined above, it is recommended that the decision is subject to a Deed of Variation to the original Section 106 Agreement which seeks to mitigate the impact(s) arising from the proposed development. Any financial implications arising out of a Section 106 Agreement will be set out in more detail within the body of this Committee Report.</p> <p>Financial implications may arise should the decision be subject to a planning appeal or challenged via the High Court.</p> |
| <b>Legal Implications:</b>                 | <p>Any legal implications arising out of a Section 106 Agreement will be set out in more detail within the body of this Committee Report.</p> <p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>Following the decision of the Planning Committee, a formal decision notice will be issued which will either set out the relevant Conditions &amp; Reasons and any Informatives, or the Reasons for Refusal if applicable.</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>   |
| <b>Other Implications:</b>                 | The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.  |
| <b>Equality and Diversity Implications</b> | Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:   |

|                                  |  |
|----------------------------------|--|
|                                  | <p>a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act;</p> <p>b) Advance equality of opportunity between people who share a protected characteristic and those who do not;</p> <p>c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.</p> <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> <p>The consideration of this application has not raised any equality issues.</p>  |
| <p><b>Background Papers:</b></p> | <p>The following background papers are relevant to this application include:</p> <p>§ Planning Application submission:</p> <ul style="list-style-type: none"> <li>§ Application Form</li> <li>§ All Plans and Supporting Documentation</li> <li>§ All Consultation Responses and Representations</li> </ul> <p>The application submission can be viewed online via the Council's Public Access website:<br/> <a href="http://www.braintree.gov.uk/pa">www.braintree.gov.uk/pa</a> by entering the Application Number: 22/02600/VAR.</p> <p>§ Policy Documents:</p> <ul style="list-style-type: none"> <li>§ National Planning Policy Framework (NPPF)</li> <li>§ Braintree District Local Plan 2013 - 2033</li> <li>§ Neighbourhood Plan (if applicable)</li> <li>§ Supplementary Planning Documents (SPD's) (if applicable)</li> </ul> <p>The National Planning Policy Framework can be viewed on the GOV.UK website: <a href="http://www.gov.uk/">www.gov.uk/</a>.</p> <p>The other abovementioned policy documents can be viewed on the Council's website:<br/> <a href="http://www.braintree.gov.uk">www.braintree.gov.uk</a>.</p> |

## 1. EXECUTIVE SUMMARY

- 1.1 The Planning Practice Guidance states that in deciding an application under Section 73 of the Town and Country Planning Act 1990, the Local Planning Authority must only consider the condition(s) that are the subject of the application – it is not a complete re-consideration of the application. It also states that the original planning permission will continue to exist whatever the outcome of the application under Section 73.
- 1.2 The application in this case is part retrospective, meaning that works have already taken place on the site. A number of these works were not however previously approved or in line with the extant planning permission for the site (Application Reference 18/00920/FUL). This application is therefore a Section 73a application and seeks to regularise the unauthorised development, as well as amend Conditions 2 (Plans), 3 (Materials), 6 (Contamination), 8 (CMP), 9, 10, and 11 (SuDS), 14 (CEMP), 16 (Refuse and Lighting) and 18 (Hard Landscaping) attached to planning permission reference 18/00920/FUL. It also seeks to demonstrate compliance with the accessibility standards M4(2) for the affordable units.
- 1.3 The Condition 2 (Plan) changes are summarised below:
- a) Incorporate any layout and house type amendments previously sought by previous application 20/01100/VAR to 18/00920/FUL, that haven't otherwise been changed again by this current VAR application;
  - b) Re-numbering of the plot numbers on the layout;
  - c) Retain, instead of relocating, the existing sub-station in the northern part of the site, at the expense of 1 residential unit;
  - d) Amend Plot 68 (previously Plot 10) to include a bay window;
  - e) Amendment to the affordable plot numbers;
  - f) Regularise and make changes to Plot 1 at the front of the site, which was not built in accordance with the approved plans;
  - g) Make similar changes to other corresponding house types;
  - h) Introduce a pumping station for foul water; and
  - i) Make minor amendments to two other house types.
- 1.4 In terms of the other conditions, details/plans have been submitted relating to Conditions 3, 6, 8, 9, 10, 11, 14, 16 and 18. If this application is approved, it would mean that these conditions are updated to compliance conditions, as opposed to still requiring further information to be submitted.
- 1.5 Overall, the changes to the conditions proposed by the development are considered to be acceptable and it is recommended that planning permission be granted, subject to a Deed of Variation to the original S106 Agreement. It should be noted that the Condition numbers have all been reduced by 1 (e.g. Condition 6 contamination is now condition 5) as the original time limit Condition 1 is no longer necessary.

2. INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

- 2.1 This application is being reported to Planning Committee in accordance with Part A of the Council's Scheme of Delegation, as the application is deemed to be 'significant' by the Planning Development Manager.

3. POLICY CONSIDERATIONS

§ See Appendix 2

4. SITE HISTORY

§ See Appendix 3

5. DESCRIPTION OF THE SITE AND SITE CONTEXT

- 5.1 The application site measures 5.3 hectares in totality. The site is located adjacent to the countryside on three of four sides; however in its entirety the site is well screened due to existing trees, vegetation and existing residential development. In terms of wider context, the site is situated between the villages of Tye Green and Cressing and approximately 4-5km from the centre of Braintree.
- 5.2 The site previously comprised of multitude of industrial/commercial uses and pre-fabricated buildings which ranged in size. It now contains a partially complete residential development (following the approval of planning application reference 18/00920/FUL).

6. PROPOSAL

- 6.1 The full description of this application is as follows:

*S73a variation of condition application for the erection of 77 residential dwellings with associated open space, landscaping, amenity space, car and cycle parking and other associated works including the variation of Condition 2 (Approved Plans); Condition 3 (Materials); Condition 6 (Contamination); Condition 8 (CMP); Conditions 9, 10 & 11 (SUDS); Condition 14 (CEMP); Condition 16 (Refuse & Lighting); Condition 18 (Hard Landscaping) of application 18/00920/FUL granted 13/02/2020 for the: Demolition of existing buildings on site and erection of 78 residential dwellings with associated open space, landscaping, amenity space, car and cycle parking and other associated works.*

- 6.2 This S73a application seeks part retrospective permission to amend conditions attached to planning application approval 18/00920/FUL. These conditions include:

- a) Condition 2 (Approved Plans) – the development seeks to reduce the total number of units from 78 to 77. This is to allow for the retention of

an existing substation at the site. There are also proposed changes to include a pump station and amendments to some house types. These amendments are discussed in detail in the report.

- b) Condition 3 (Materials) – the development seeks to formally secure the previously informally agreed materials.
- c) Condition 6 (Contamination) – the development seeks to formally regularise the works completed for remediation during the construction of the initial phase of development.
- d) Condition 8 (CMP) – the development seeks to formally regularise the works completed to protect neighbouring amenity and highway safety during the construction of the initial phase of development.
- e) Conditions 9, 10 & 11 (SUDS) – the development seeks to formally regularise the SUDS system which was previously agreed.
- f) Condition 14 (CEMP) – the development seeks to formally regularise the works completed to protect ecology during the construction of the initial phase of development.
- g) Condition 16 (Refuse & Lighting) – the development seeks to formally approve these details.
- h) Condition 18 (Hard Landscaping) – the development seeks to formally approve these details including boundary treatments as well as regularise what has already been built.

6.3 It should be noted that this application also seeks to include a number of changes which were proposed by two previous S73 applications (Application Reference 20/01100/VAR and 20/01101/VAR).

6.4 These two applications were presented to Planning Committee in October 2020 securing a Resolution to Grant subject to the completion of a Section 106 Agreement, and were re-reported to Planning Committee in October 2021 with a Resolution to Grant following a ransom strip issue. The history of the site is set out in the report below.

## 7. SUMMARY OF CONSULTATION RESPONSES

### 7.1 Environment Agency

7.1.1 Offer no objection for the discharge of condition 6 (Contamination and Remediation).

### 7.2 BDC Ecology

7.2.1 Offered no objection to the submitted CEMP required by Condition 14 or the Lighting Scheme required by Condition 16.

### 7.3 BDC Environmental Health

7.3.1 Offered no objection with regard to the updated Construction Method Statement required by Condition 8.

- 7.3.2 With regard to Condition 6 (Contamination & Remediation), the Environmental Health Officer (EHO) notes the Environment Agencies no objection regarding the re-use of materials at the site. However the EHO comments that some control is still required about remediation at the site until the development is complete, as otherwise it could be difficult to obtain further information about how the site was remediated later in the process.
- 7.3.3 In this case, Officers have suggested updated Condition wording to try and satisfy the EHO's concerns about the sites remediation, however it may be that Condition 6 needs to be updated further following discussions with the EHO. An update will be provided to Members about the wording of this Condition prior to/on the night of Committee.
- 7.4 BDC Housing Officer
- 7.4.1 Offered no objection.
- 7.5 BDC Waste Services
- 7.5.1 Offered no objection to the refuse scheme as proposed to satisfy Condition 16
- 7.6 ECC Highways
- 7.6.1 Offered no objection to the development.
- 7.7 ECC Historic Buildings Consultant
- 7.7.1 Offered no objection to the amendment of Condition 2 (Plans).
- 7.8 ECC SUDS
- 7.8.1 Offered no objection to satisfy Conditions 9, 10 and 11 relating to SuDS features.
- 8. PARISH / TOWN COUNCIL
- 8.1 Cressing Parish Council
- 8.1.1 No response received.
- 9. REPRESENTATIONS
- 9.1 Three site notices were posted around the site, as well as neighbours close to the site being consulted via letter. No comments have been received.

## 10. PRINCIPLE OF DEVELOPMENT

### 10.1 National Planning Policy Framework (NPPF)

- 10.1.1 As set out in Paragraph 7 of the NPPF, the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 of the NPPF explains that achieving sustainable development means that the planning system has three overarching objectives: economic; social; and environmental; which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).
- 10.1.2 Paragraph 9 of the NPPF outlines that planning decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area. In addition, paragraph 38 of the NPPF prescribes that local planning authorities should approach decisions on proposed development in a positive and creative way and that decision makers at every level should seek to approve applications for sustainable development where possible.
- 10.1.3 Paragraph 12 of the NPPF sets out that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making. In addition, paragraph 47 of the NPPF states that planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 10.1.4 The NPPF underlines the Government's objective of significantly boosting the supply of homes. In this regard, Paragraph 60 of the NPPF highlights the importance of ensuring that there is a sufficient amount and variety of land that can come forward where it is needed, that specific housing requirements are met, and that land with permission is developed without unnecessary delay. Paragraph 74 of the NPPF outlines that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against (in the case of Braintree District) our 'local housing need' plus the relevant buffer.
- 10.1.5 In this regard, and in considering the overall planning balance as to whether the proposed development subject to this application constitutes sustainable development, an important material consideration in this case is whether the Council can robustly demonstrate a 5 Year Housing Land Supply. This will affect whether Paragraph 11 of the NPPF is engaged and consequently the weight that can be attributed to the Development Plan (see below).

## 10.2 5 Year Housing Land Supply

- 10.2.1 The Council has an up-to-date Local Plan which has an approved minimum housing target of 716 new homes per year in the District between 2013 and 2033.
- 10.2.2 To this annual supply the Council must add the backlog which it has not delivered at that level since the start of the Plan period. This figure is recalculated each year and as of April 2022 stands at 1,169 across the 5 Year Housing Land Supply.
- 10.2.3 The Council must also apply a buffer to the housing land supply based on the results of the Housing Delivery Test. In the latest results published on the 14th January 2022, the Council had delivered 125% of the homes required. This means that the Council is required to apply the lowest level of buffer at 5%.
- 10.2.4 Taking the above into account, the Council's latest 5 Year Housing Land Supply position for 2022-2027 shows a supply of 4.86 years. This position is marginal and with a number of strategic sites starting to deliver homes alongside other permissions, that situation is likely to change.
- 10.2.5 Nevertheless, as the Council cannot demonstrate the required 5 Year Housing Land Supply, the 'tilted balance' pursuant to Paragraph 11d) of the NPPF is engaged. It also means that the most important Development Plan policies relevant to the provision of housing are out-of-date. However, this does not mean that Development Plan policies should be completely disregarded. It is for the decision-maker to determine the weight to be attributed to the conflict with those policies.

## 10.3 The Development Plan

- 10.3.1 Currently the Council's statutory Development Plan consists of the Adopted Local Plan 2013-2033. The site is allocated for residential development in the Adopted local Plan (CRESS 201). The site also has an extant planning application approval at the site (Application Reference 18/00920/FUL) for 78 dwellings. The principle of residential development is therefore firmly established.

## 10.4 S73A Planning Application

- 10.4.1 The Planning Practice Guidance states that in deciding an application under Section 73 of the Town and Country Planning Act 1990, the Local Planning Authority must only consider the condition(s) that are the subject of the application – it is not a complete re-consideration of the application. It also states that the original planning permission will continue to exist whatever the outcome of the application under Section 73.
- 10.4.2 This S73A application seeks part retrospective permission to amend Conditions 2 (Plans), 3 (Materials), 6 (Contamination), 8 (Construction



Management Plan), 9,10,11 (SUDS), 14 (Construction Environmental Management Plan), 16 (Refuse and Lighting) and 18 (Hard Landscaping) attached to planning application approval 18/00920/FUL. These individual conditions are discussed below along with the site background. All other matters outside of these changes are not therefore for consideration.

## 11. APPLICATION ASSESSMENT

### 11.1 Background

11.1.1 Planning Application Reference 18/00920/FUL was granted at Planning Committee in September 2019 for the erection of 78 dwellings with associated infrastructure and open space.

11.1.2 Since then, this site has been subject to three S73 applications (not including this one currently under consideration):

- § **20/01100/VAR** – Which sought to amend Condition 2 (Plans) of application 18/00920/FUL to make a number of layout and house type changes to the top part of the site;
- § **20/01101/VAR** – Which sought to amend the wording for Conditions 3 (Materials), 4 (Site Clearance), 6c (Contamination), 9 (SUDS), 11 (SUDS), 16 (Refuse), 17 (Landscaping), 18 (Hard Landscaping) of application 18/00920/FUL; and
- § **21/01922/VAR** – Which sought to make further amendments to Condition 2 of application 18/00920/FUL predominantly at the southern residential part of the site.

11.1.3 Focusing firstly on 20/01100/VAR, layout modifications were sought to the northern part of the site and a switch around of the location of some units including affordable units. It also included house type modifications; the majority of the changes were aesthetic to the design/materials, the only internal changes were that en-suites were introduced to the three bedroom units.

11.1.4 This application was first considered at Planning Committee in October 2020. Members resolved to grant planning permission subject to the signing of a Deed of Variation to the S106 Agreement attached to planning application reference 18/00920/FUL. Due to issues with ransom strips, the application had to be re-reported to Planning Committee in October 2021 for consideration. The Planning Committee again resolved to grant planning permission subject to the completion of a Deed of Variation to the S106 Agreement.

11.1.5 Following the Committee Resolution in 2021, there was a further delay in signing the Deed of Variation to the S106 Agreement for this application due to unauthorised works which were taking place on the site. Given the unauthorised works that had been completed, Officers could not issue the Deed of Variation decision as it contained a number of discrepancies with

what had been built, with multiple pre-commencement conditions not discharged. As such, this application remains undetermined at this time.

11.1.6 Secondly, application 20/01101/VAR sought to modify the wording of a number of conditions:

- 3 - Materials,
- 4 - Site clearance,
- 6 - Contamination,
- 9 - Drainage,
- 11 - Maintenance plan,
- 16 - Bins and lighting,
- 17 - Landscaping,
- 18 - Hard landscaping part 1,
- 19 – New Condition - Hard Landscaping Part 2

11.1.7 The proposed amendments were primarily to make the conditions easier to discharge or to allow for information to be submitted later in the process. This application was therefore limited in its scope as to what it was seeking to change against the original planning permission (Application Reference 18/00920/FUL).

11.1.8 This application was first considered at Planning Committee in October 2020. Members resolved to grant planning permission subject to the signing of a Deed of Variation to the S106 Agreement attached to planning application reference 18/00920/FUL. Due to issues with ransom strips, the application had to be re-reported to Planning Committee in October 2021 for consideration. The Planning Committee again resolved to grant planning permission subject to the completed of a Deed of Variation to the S106 Agreement.

11.1.9 Following the Committee Resolution in 2021, there was a further delay in signing the Deed of Variation to the S106 Agreement due to unauthorised works which were taking place on the site. Given the unauthorised works that had been completed, Officers could not issue the Deed of Variation or decision as it contained a number of discrepancies with what had been built, with multiple pre-commencement conditions not discharged. This application also remains undetermined at this time. It should be noted that the agreed wording changes as part of 20/01101/VAR have not been carried over into this S73a application (22/02600/VAR).

11.1.10 Finally, application 21/01922/VAR also sought to amend Condition 2 of application 18/00920/FUL; it sought to build on the changes made by 20/01100/VAR and regularise some of the unauthorised works that had been taking place on the site, while also proposing further changes to the residential area on the southern aspect of the site. Officers however had significant concerns with the unauthorised works and proposed changes to the rear part of the site.

- 11.1.11 The unauthorised works related to the change in the appearance of the house type at the front of the site, the retention of the existing substation, as well as the inclusion at a later point of a very prominent foul pumping station. The changes at the rear of the site sought to change the apartment types to houses, while also accommodating more units in this area, to account for the loss of 1 unit which was necessary to allow the retention of the existing substation. Officers also had concerns with the revised layout as proposed in this area.
- 11.1.12 In light of the significant Officer concerns that were raised, and following intervention by the Council's Planning Enforcement team, the Applicant agreed to work with the Council to put forward revisions to the unauthorised works for consideration. In doing so, a number of solutions were identified.
- 11.1.13 Following advice from Officers the Applicant submitted the S73a application to regularise the changes. Application 21/01922/VAR therefore also remains undetermined and was not reported to Planning Committee.
- 11.1.14 It should be noted that if this current application is approved, the Applicant would be advised to withdraw applications 20/01100/VAR, 20/01101/VAR and 21/01922/VAR as they will become redundant, with the current application 22/02600/VAR forming the new planning permission for the site.

## 11.2 Current S73a Application Proposal

- 11.2.1 The current S73a application for consideration (22/02600/VAR) seeks to amend a number of conditions attached to 18/00920/FUL. It also seeks to amalgamate the majority of the layout and house type changes made by application 20/01100/VAR, in conjunction with regularising the unauthorised changes which have taken place at the site during construction. The part retrospective nature of works at the site is why this application is categorised as a S73a application, as opposed to a normal S73 application (which is in relation to proposed changes only).
- 11.2.2 As the plan changes proposed by Application Reference 20/01100/VAR have already received a resolution to grant at Planning Committee, this report will not re-cover those changes in significant detail. Instead it will focus on the further changes that have happened on the site since construction started and the acceptability of these proposals.
- 11.2.3 This application also seeks to amend a number of other pre-commencement conditions that were attached to Application Reference 18/00920/FUL. These condition changes will also be discussed in the report.

### **Condition 2 (now recommended Condition 1) – Plan changes**

- 11.2.4 In summary, this application seeks to amend Application Reference 18/00920/FUL by:

- a) Building in the previously agreed (resolution to grant) layout and house type changes made by 20/01100/VAR that haven't otherwise been updated by the current application proposals;
- b) Re-number the plot numbers on the layout to be in accordance with the sales plot numbers layout;
- c) Retain, instead of relocating, the existing sub-station in the northern part of the site, at the expense of 1 residential unit which is not proposed to be relocated, so the proposal results in a reduction of residential units (reduced from 78 residential units to 77 residential units);
- d) Amend Plot 68 (Previously Plot 10) to include a bay window to add active surveillance over the new landscaped area which would be left by virtue of retaining the sub-station;
- e) With the resultant loss of a unit (Plot 9) which was an affordable rented unit, the development would change Plot 27 from a shared ownership unit to an affordable rented unit. To ensure that no affordable housing was lost, Plot 28 changed from a market unit to a shared ownership unit. There would still however be a 70:30 split between affordable rented and shared ownership respectively;
- f) Regularise and make changes to Plot 1 at the front of the site, which was not built in accordance with the approved plans;
- g) Make the same changes to other corresponding house types (Plots 78, 31, 35 and 37) to have a bay window at the side and external cladding, but no bay window at the front as built in Plot 1;
- h) Introduce a pumping station for foul water as gravity is not sufficient in this location to facilitate effective removal of foul water from the development. The pump station location as built would be amended to be further away from existing and future residents of the development;
- i) Make minor amendments to house type 3A-A to add a bay window, while house type 4c would have an additional single storey rear extension.

11.2.5 In terms of a detailed assessment, these changes will be grouped/split up and discussed below.

11.2.6 Focusing firstly on points c) and d), it is understood that the retention of the substation has come about as it is not required to be replaced as originally envisaged. Initially the substation was proposed to be moved to be adjacent to the southern area of open space at the site. The Applicant therefore argues that by retaining the existing substation the wider street scene would be improved. It is also understood that moving the substation would have significant timescale implications and require underground

cabling to not only this development, but also to the existing properties on Hawbush Green, which would result in additional disruption to existing residents.

- 11.2.7 The retention of the substation necessitates the loss of 1 residential unit which was proposed to replace the substation. The loss of this unit would mean that there would no longer be a building enclosing the space, which is at the end of a vista along the street and is a key principle in the Essex Design Guide.
- 11.2.8 In order to address this, Officers negotiated with the Applicant to secure a new brick wall along this boundary. There would be a gate to allow for access to the substation, however critically the space would be secure and enclosed at eye level to help prevent any anti-social behaviour. A feature tree is also proposed to be included, as well as ornate detailing including an 'appletree farm' sign. The wall would be located in line with the rear of Plot 68 to allow for an area of open space. Plot 68 would also be amended to include a bay window to ensure that there was adequate surveillance of this space. The substation would also be enclosed by a new brick structure, as opposed to close boarded fence.
- 11.2.9 Overall, for points c) and d), Officers, on balance, were satisfied that the proposed wall and feature tree would provide an appropriate solution to justify the loss of the residential unit in this location.
- 11.2.10 Secondly, focusing on points f) and g) relating to Plot 1 and house type 4eb1, this was one of the main issues with the development as built. Plot 1 had not been built in accordance with the approved plans, as it did not provide a bay window in the side elevation, nor did it provide the same level of fenestration as consented to provide an adequate 'corner turning' unit. The bay window was actually placed on the front elevation instead.
- 11.2.11 Plot 1 is in a highly prominent location at the front of the site, and once the development is completed, will be visible across the open space at the front of the site between the development and Appletree Close. Officers therefore raised a significant issue with what was built, as it did not provide sufficient visual interest on its flank elevation.
- 11.2.12 In order to resolve this, the Applicant has agreed to put back the majority of the fenestration on the side elevation of Plot 1, including the bay window. The Applicant however proposed to keep the bay window for Plot 1 as built, so this plot would have a double bay. A number of the house type 4eb1 units (including Plot 1) would also have render on the front and side, with the extension element at the side in brick, which would add to the overall visual interest. These changes would therefore make this house type, and Plot 1, align more with the previous planning approval.
- 11.2.13 Overall, for points f) and g), subject to the implementation of the changes for Plot 1, and the correct building of the other house type 4eb1 units, it is considered the amendments/alterations are acceptable.

- 11.2.14 Thirdly, considering point h), no pump station was ever formally set out in any preceding planning submissions. It has come about owing to technical requirements on site and is required to effectively remove foul water from the site into the mains sewer.
- 11.2.15 The proposed pump station was partially constructed in the location just to the north of the SuDS feature in the south western area of public open space. In this location, it would have been highly visible in views from the development and also across the open space itself. It would also have been within 15m of residential properties. Owing to the above, Officers raised significant concerns with the Applicant in this regard.
- 11.2.16 In order to address these concerns, the pump station is proposed to be relocated to the southwestern edge of the site, parallel to the proposed footway/cycleway through the site. It would therefore be hidden from wider views in the development, and be tucked away so that it did not form a prominent part of the public open space.
- 11.2.17 At Officer request, the pump station would be built with a brick surround in order to provide a better boundary treatment. Furthermore, there would be space for landscaping around it to lessen its visual impact. These details would come forward alongside the details pursuant to the landscape condition(Condition No.16). Critically the edge of the pump station would be located a minimum of 42m away from the closest existing residential property (No.8 Hawbush Green) and 36m away from proposed Plot 78. These distances would therefore be far in excess of the 15m buffer from the wet well within the pump station which is required as a minimum on new residential development.
- 11.2.18 Overall, for point h), the pump station is a necessity of the scheme infrastructure and Officers are satisfied that the proposed new location of the pump station would be acceptable.
- 11.2.19 Fourthly, the application would result in the loss of a unit (Plot 9) which was approved as an affordable rented unit under Application Reference 18/00920/FUL. The application would not however lose an affordable unit overall, as it is proposed that Plot 28 is changed from a market unit to a shared ownership unit. Plot 27 was previously approved as a shared ownership unit but this has been changed to an affordable rented unit, to replace Plot 9. The Council's Housing Enabling Officer has reviewed this change and offered no objection, as the scheme would still deliver 70% affordable rented units and 30% shared ownership. As such, overall it is considered that this change is acceptable.
- 11.2.20 Finally for point i), the application seeks to add a bay window to the front of house type 3a-3, as well as a full single storey rear extension to house type 4c. Officers consider that these changes are minor in nature and are acceptable.

- 11.2.21 With regard to points a) and b), this current S73A application would update all relevant plans to the latest proposals. Therefore any changes that remain unchanged as proposed within Application Reference 20/01100/VAR are also included as part of this submission. As such, the development proposals put forward are comprehensive in nature.
- 11.2.22 It should be noted that Officers repeatedly reported their dissatisfaction with the Applicant that works had been completed at the site in breach of the original planning approval. Officers from the Planning Enforcement team worked alongside Planning Officers to resolve this breach of planning control. While it was made clear to the Applicant that if the concerns raised were not resolved, formal enforcement action would be taken, in this case Officers were able to successfully negotiate a forward with the Applicant, who agreed to all the changes that Officers requested to make the scheme acceptable. As such, if this application is approved, no enforcement action would be required for the works that have taken place at the site so far.
- 11.2.23 Overall, having regard to the changes secured as part of this application, Officers are satisfied that the development is acceptable. As such, it is considered that Condition 2 of 18/00920/FUL can be amended.

### **Condition 3 (now recommended Condition 2) – Materials**

- 11.2.24 Condition 3 attached to Application Reference 18/00920/FUL was set out as follows:
- “No above ground development shall commence unless and until samples of the materials to be used on the external finishes have been submitted to and approved in writing by the local planning authority. The development shall only be implemented in accordance with the approved details.”*
- 11.2.25 The Applicant originally submitted these details through discharge of condition application 21/01263/DAC. Materials were agreed informally with Officers, however no formal decision was issued, owing to the outstanding Variation of condition applications 20/01100/VAR and 20/01101/VAR which were to be issued prior to discharging 21/01263/DAC. As applications 20/01100/VAR and 20/01101/VAR were not issued for reasons explained in Section 11.1 above, the Applicant proceeded to start the development based on the informally agreed materials.
- 11.2.26 These materials are set out on the submitted materials schedule and are as follows:
- Red brick – Forterra - Atherstone Red Multi
  - Buff brick – ET – Anglian Cream Stock
  - Roof Tiles – McCann Planum Duo – Dark Brown
  - Roof Tiles – McCann planum Du- Rustic Red
  - Timber weatherboarding – Hardie Plank – Midnight Black
  - Render – Webber Monocouche – Chalk
  - Windows – White uPVC

11.2.27 The materials schedule also contains information on the proposed surface treatments for the roads, which are covered in more detail in Condition 18. Overall it is considered the materials chosen would complement the hard landscaping and treatments.

11.2.28 The materials are considered to be acceptable and it is considered that the Condition can be updated as follows:

*The development shall be carried out in accordance with the samples schedule dated 08/12/2022 and materials plan reference IN009-06 REV D. The development shall only be implemented in accordance with the approved details.*

### **Condition 6 (now recommended Condition 5) – Contamination and Remediation**

11.2.29 Condition 6 attached to application 18/00920/FUL was set out as follows:

*“Where the preliminary contaminated land risk assessment determines that further assessment is required than prior to the commencement of development a comprehensive survey shall be undertaken to assess the nature and extent of any contamination on the site, a copy of the survey findings together with a remediation scheme to bring the site to a suitable condition in that it represents an acceptable risk shall be submitted to and agreed in writing with the Local Planning Authority prior to the commencement of development. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with 'Model Procedures for the Management of Land Contamination, CLR 11'. Such agreed measures shall be implemented and completed prior to the commencement of development hereby approved.*

*Notwithstanding the above, should contamination be found that was not previously identified or not considered in the remediation scheme agreed in writing with the Local Planning Authority, that contamination shall be made safe and reported immediately to the Local Planning Authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and agreed in writing with the Local Planning Authority. Such agreed measures shall be implemented and completed prior to the first occupation of any parts of the development.*

*The Applicant shall give one-month's advanced notice in writing to the Local Planning Authority of the impending completion of the remediation works. Within four weeks of completion of the remediation works a validation report undertaken by competent person or persons and the agreed remediation measures shall be submitted to the Local Planning Authority for approval. There shall be no residential occupation of the site (or beneficial occupation of the office building hereby permitted) until the Local Planning Authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the*



*Applicant shall submit to the Local Planning Authority a signed and dated certificate to confirm that the remediation works have been completed in strict accordance with the documents and plans comprising the remediation scheme agreed in writing with the Local Planning Authority.”*

- 11.2.30 The Applicant had submitted a request to discharge this condition (21/01172/DAC) before the development had commenced, however this DAC was not determined. The Environmental Health Officer as part of this discharge of condition application required further information to be submitted with regards to the remediation of the site. In order to address this, the Applicant has now prepared an updated remediation method statement and post demolition report for approval. The Environment Agency reviewed the submitted information and raised no objection to the discharge of this condition. The Council's Environmental Health Officer (EHO) however still raised concerns with regard to receiving further information about how the site has been remediated. As the contaminated land regulator, Braintree District Council must be confident that the remediation leads to no significant risks to the end users and ending this process with an agreement of the remediation does not ensure that. As such, Officers have put forward updated wording (as below), however this may be updated prior to Committee as discussions are still ongoing with the EHO about how best to secure the details.

- 11.2.31 As such, it is considered that the Condition can be updated as follows:

*“Where the preliminary contaminated land risk assessment determines that further assessment is required then a comprehensive survey shall be undertaken to assess the nature and extent of any contamination on the site, a copy of the survey findings together with a remediation scheme to bring the site to a suitable condition in that it represents an acceptable risk shall be submitted to and agreed in writing with the Local Planning Authority. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with the agreed remediation and shall be implemented and completed prior to the occupation of development hereby approved.*

*Should contamination be found that was not previously identified or not considered in the approved remediation scheme, that contamination shall be made safe and reported immediately to the Local Planning Authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and agreed in writing with the Local Planning Authority. Such agreed measures shall be implemented and completed prior to the first occupation of any parts of the development.*

*The applicant shall give one-month's advanced notice in writing to the Local Planning Authority of the impending completion of the remediation works. Within four weeks of completion of the remediation works a validation report undertaken by competent person or persons and the agreed remediation measures shall be submitted to the Local Planning Authority for approval. There shall be no residential occupation of the site (or*

*beneficial occupation of the office building hereby permitted) until the Local Planning Authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the applicant shall submit to the Local Planning Authority a signed and dated certificate to confirm that the remediation works have been completed in strict accordance with the documents and plans comprising the remediation scheme agreed in writing with the Local Planning Authority.”*

**Condition 8 (now recommended Condition 7) – Construction Method Statement (CMS)**

11.2.32 Condition 8 attached to application 18/00920/FUL was set out as follows:

*No development shall commence unless and until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:*

- Safe access to/from the site including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development;*
- The parking of vehicles of site operatives and visitors;*
- The loading and unloading of plant and materials;*
- The storage of plant and materials used in constructing the development;*
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;*
- Wheel washing facilities;*
- Measures to control the emission of dust and dirt during construction;*
- A scheme for recycling/disposing of waste resulting from demolition and construction works;*
- Delivery, demolition and construction working hours.*
- A method statement for badger/small mammal protection during construction*

*The approved Construction Method Statement shall be adhered to throughout the construction period for the development.*

11.2.33 These details were submitted as part of 21/01173/DAC prior to works starting on site. The CMS was approved in principle by the Highways Officer and Environmental Health Officer at the time, however the Environmental Health Officer required the compound for the second phase of the development (which has yet to be built) to be moved further away from existing residential properties. The developer has since made this change and provided an updated CMS with this application. The Environmental Health Officer has reviewed the updated CMS and raises no objection.

11.2.34 As such, it is considered that the condition can now be updated to:

*Any remaining development to be constructed shall adhere to the approved Construction Method Statement (revision B) dated 02/11/2022.*

*The approved Construction Method Statement shall be adhered to throughout the construction period for the development.*

**Conditions 9-10-11 (now recommended Conditions 8-9-10) - SUDS**

- 13.2.35 Conditions 9, 10 and 11 attached to application 18/00920/FUL all related to SuDS at the site. Condition 9 sought a surface water drainage scheme in accordance with SuDS principles, Condition 10 sought a surface water avoidance scheme during construction, and Condition 11 sought a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system.
- 11.2.36 The developer submitted this information as part of 21/01173/DAC and had received an approval in principle from the SuDS team. This condition was not however discharged formally owing to issues with other conditions.
- 11.2.37 The development now proposes to lose 1 unit at the site, however the SuDS scheme essentially remains as approved. The SuDS Officer therefore raised no objection to the application. Accordingly, it is considered that the conditions can be updated as follows:

- *Condition 9*

*The development shall be carried out in accordance with the drainage strategy report prepared by Walker-Associates dated September 2021, as well as drainage and external levels plans C7378-CE1K C7378-CE2K, C7378-CE3K.*

*The drainage scheme shall subsequently be implemented prior to occupation of any unit.*

- *Condition 10*

*The principles hereby approved to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction as set out in the report prepared by Walker-Associates dated September 2021 shall be implemented for the entirety of the construction process.*

- *Condition 11*

*The Maintenance Plan for the SuDS features as set out in the report prepared by Walker-Associates dated September 2021 shall be put in place on completion of the development and remain in perpetuity.*

**Condition 14 (now recommended Condition 13) – Construction Environmental Management Plan (CEMP)**

- 11.2.38 Condition 14 of application 18/00920/FUL was set out as follows:

*“No development shall take place unless and until a construction environmental management plan (CEMP: Biodiversity) is submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following.*

- a) Risk assessment of potentially damaging construction activities.*
- b) Identification of "biodiversity protection zones".*
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).*
- d) The location and timing of sensitive works to avoid harm to biodiversity features.*
- e) The times during construction when specialist ecologists need to be present on site to oversee works.*
- f) Responsible persons and lines of communication.*
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.*
- h) Use of protective fences, exclusion barriers and warning signs. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority"*

11.2.39 In this case, no prior information was submitted before development commenced with regard to the Construction Environmental Management Plan (CEMP). The developer admitted that this was an oversight on their part and apologised. A CEMP has subsequently been produced to set out how biodiversity was taken into account during construction of the built phase, as well as what measures will be put in place for the remaining phase of development.

11.2.40 The Council's Ecological Officer reviewed the submitted CEMP and raised no objection. As such, it is considered that the Condition can be updated as follows:

*The entirety of the construction phase of the development shall take place in accordance with the approved construction environmental management plan (CEMP: Biodiversity) prepared by The Environmental Dimension Partnership LTD dated November 2022 reference edp4086\_r010a.*

#### **Condition 16 – (now recommended Condition 15) Lighting and Refuse**

11.2.41 Condition 16 was in regards to lighting and refuse and set out the following requirements:

*“No above ground development shall commence unless and until the following (including an implementation timetable) has been submitted to and approved in writing by the Local Planning Authority:*

(a) details of the location and design of refuse bin and recycling materials storage areas (for internal and external separation) and collection points,

(b) details of any proposed external lighting to the site including a strategy to protect bats

*The development shall be constructed in accordance with the approved details/specification and thereafter so retained."*

11.2.42 This information was also not submitted prior to the submission of this application. The information is however now included. Focusing firstly on refuse collection, the roads at the site are not going to be adopted by Essex Highways. Instead, the roads are to be private, maintained by the Management Company. In order for the Council to be satisfied that refuse collection can take place safely, a refuse collection plan and a refuse tracking plan have been submitted. The tracking plan highlights that waste vehicles will be able to traverse the site which will be built to adoptable standards, (although not adopted). Moreover, it shows that the refuse collection points for the development would all be within the 20m drag distances from the main road.

11.2.43 Previously, when the original application was considered, it was anticipated that the roads would have been adopted by Essex Highways. As this is now not the case, Officers are recommending that an indemnity clause is added into the Deed of Variation to absolve the Council of any maintenance/damage costs associated with the roads within the site. With this clause in place, the Councils Waste Services Officer considers that the proposed refuse collection is acceptable.

11.2.44 The other element to Condition 16 is the lighting, details of which have also been submitted. As the road is not to be adopted, the developer has had a greater ability to put lights on shared surfaces which would not be accepted under adoptable standards. Having reviewed the lighting scheme, the Ecology Officer was satisfied that it would not have a detrimental impact on wildlife in the area. Furthermore, having reviewed the locations and amenity implications of the street lighting, Officers are also content that the lighting scheme is acceptable.

11.2.45 As such, it is considered that the Condition can be updated to:

*A – The development shall be implemented in accordance with the approved refuse collection plan, Reference 1583/RC/01 dated November 2022.*

*B – The development shall also be implemented in accordance with the approved lighting scheme, Reference 21/0176-1D dated November 2022,*

*The development shall be constructed in accordance with the approved details/specifications and thereafter so retained.*

### **Condition 18 (now recommended Condition 17) – Hard Landscaping**

- 11.2.46 Condition 18 was in regard to hard landscaping but also had a number of elements including boundary treatments and levels. The condition was worded as follows:

*“No development shall commence until details of hard landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:*

- Earthworks showing existing and proposed finished levels or contours;*
- Means of enclosure and retaining structures;*
- Boundary treatment[s];*
- Other vehicle and pedestrian access and circulation areas;*
- Colour and type of material for all hard surface areas and method of laying;*
- Minor artefacts and structures [e.g. furniture, play equipment, refuse or other storage units, signs, external letter boxes etc.];*
- Proposed and existing functional services above and below ground [e.g. drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, supports as relevant];*
- Renewable energy installations where relevant;*
- Lighting, floodlighting*
- An implementation programme, [including phasing of work where relevant].*

*The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.*

*All areas of hardstanding which do not form part of the adoptable highway shall be constructed using porous materials laid on a permeable base.*

*The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance which shall be submitted and approved in writing by the local planning authority prior to first occupation of the development.”*

- 11.2.47 This condition was previously sought to be split into two, as part of application 20/01101/VAR, to remove some elements such as boundary treatments which are not necessarily needed prior to commencement. As application 20/01101/VAR was not approved, this condition remains in its original form as above.
- 11.2.48 In any case, the proposed development seeks to discharge the condition in full and has provided details relating to each of the above subject points. Focusing firstly on levels, details were provided of the finished floor levels of the properties which have been built, and the proposed finished floor levels of the properties which are to be built. Having compared the original

topographical plans against the finished floor levels (existing and proposed), it is considered that no unreasonable land raising/excessive foundations have taken place, which may have a greater neighbouring impact than previously considered. As such, in terms of earthworks and levels, it is considered that the development is acceptable.

- 11.2.49 With regard to means of enclosure, retaining structures and boundary treatments, details of these are also submitted. Officers initially raised some concerns with regard to the boundary treatments proposed and the enclosure around some of the amenity areas for the flats. The developer listened to all concerns and made the necessary changes to better ensure that the amenity spaces for the flats were as private and functional as possible. The boundary treatment for the substation was also changed to a bespoke brick wall, to ensure that a high quality solution can be achieved over and above the more standard brick walls which will front onto the public realm in the locality. Overall with the above changes, Officers are again satisfied that the boundary treatments and enclosures are acceptable.
- 11.2.50 With regard to vehicle and pedestrian access, hard surface materials and minor artefacts and structures, these details are also included on the hard landscaping plan. As the roads would not be adopted (but would be built to an adoptable standard), there is little tarmac on the development, and more block paving has been introduced instead in order to try and provide a higher quality public realm. The plans also include indicative details of the play equipment (which need to be finalised by way of S106 agreement discharge), but also the location of benches and bins in the public realm. Overall it is considered that the hard landscaping proposed would be acceptable and add good visual interest into an already visually attractive development. As such, it is considered that these details are also acceptable.
- 11.2.51 The application is also supported by a services plan which shows proposed and existing services and facilities. It is understood however that on this particular development, there are no renewable energy proposals, as this scheme pre-dated any sustainability checklist requirement by the new Local Plan. That said, the development would provide a number of large areas of open spaces and trees which would add to the sense of place but also help to a limited degree to reduce carbon emissions once established. Overall it is considered these details are acceptable.
- 11.2.52 Details of lighting have been submitted, while an implementation programme is no longer necessary given that the northern half of the development has more or less been completed.
- 11.2.53 Overall, it is considered that sufficient details have been submitted to satisfy the requirements of Condition 18. As such, it is considered the condition can be updated as follows:

*“The development shall be carried out in accordance with the approved hard landscape scheme reference PRC-CAM-ZZ-00-DR-L-1100 C13 dated 29.01.2021, and the levels plans identifying final finished floor levels, references C7378-CE1J, C7378-CE2J, C7378-CE3J dated 29.01.2021.*

*The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.*

*All areas of hardstanding which do not form part of the adoptable highway shall be constructed using porous materials laid on a permeable base.*

*The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance which shall be submitted and approved in writing by the local planning authority prior to first occupation of the development.”*

- 11.2.54 Furthermore, while not an approved condition on application 18/00920/FUL, Application Reference 20/01100/VAR sought to include two additional conditions regarding compliance with the accessibility standards Category M4(2) for the affordable housing units. The first condition sought a certificate to show that the units had been designed to comply with the standards, while the second condition asked that a certificate be issued to demonstrate that the units had been built in accordance with the accessibility standards.
- 11.2.55 In this case, the first condition letter has been submitted which sets out that the ground floor affordable housing plots all comply with the accessibility standard. This letter has been provided by an Approved Building Inspector. The affordable plot numbers contained in the letter however refer to the previous plot numbers associated with application 20/01100/VAR. However, as set out in this report, the plot numbers have been updated as part of this application. Therefore, Officers are waiting for final confirmation on the updated plot numbers for the affordable units that are Category M4(2) compliant. Officers are however satisfied that the Design Certificate requirements have been met.
- 11.2.56 A further condition would still be needed however to ensure that the construction of these units would still meet the overall accessibility standard. A Condition 18 to secure this has not been included at the time of preparing the report while finalised plot numbers are being confirmed by the Applicant. This Condition will however be added prior to/at Planning Committee.

## 12. PLANNING OBLIGATIONS

- 12.1 This application is supported by a Deed of Variation which seeks to bring forward the original S106 Agreement attached to 18/00920/FUL to ensure that the obligations and planning gain secured would be transferred to this application, which if approved will form the new permission for the site.



However, owing to the changes made by this application, certain things in the S106 agreement need updating by way of the Deed of Variation. This includes:

- A refuse schedule – which shows the roads for refuse collection coupled with securing an indemnity to ensure that any damage caused by refuse collection vehicles is not at the expense of the council (as the roads are not to be adopted);
- Affordable housing – the plan appended to the S106 requires updating as well as the corresponding plot numbers;
- The RAMS contribution for HRA payment has been updated to reflect the current rate as opposed to the previously secured rate (which was lower at the time of application 18/00920/FUL).

### 13. PLANNING BALANCE AND CONCLUSION

#### 13.1 Sustainable Development

13.1.1 The presumption in favour of sustainable development sits at the heart of the NPPF. The Framework is clear in its instruction at Paragraph 11d, that for decision-taking this means where there are no relevant Development Plan policies, or the policies which are most important for determining the application are out-of-date (this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in Paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years), granting permission unless:

- i. The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

13.1.2 As the Council cannot currently demonstrate a 5 Year Housing Land Supply, the 'titled balance' pursuant to Paragraph 11d) of the NPPF is engaged. As a consequence, the most important Development Plan policies relevant to the provision of housing are currently out-of-date due to a lack of 5 Year Housing Land Supply. However this does not mean that Development Plan policies should be completely disregarded. It is for the decision-maker to determine the weight to be attributed to the conflict with those policies. In this regard it is considered that Policy LPP1 of the Adopted Local Plan, which seeks to restrict development outside defined development boundaries to uses appropriate to the countryside, can only be afforded moderate weight. Similarly, it is considered that Policy SP3, which sets out the spatial strategy for North Essex, can only be afforded less than significant, but more than moderate weight.

- 13.1.3 In this case, it is not considered that pursuant to Paragraph 11d) (i) that the application of policies in the Framework provide a clear reason for refusing the proposed development.
- 13.1.4 As such, pursuant to Paragraph 11d) (ii) it is necessary to consider whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposed development, when assessed against the policies in this Framework taken as a whole. Such an assessment must take account of the economic, social and environmental impact of the proposed development and these matters must be considered in the overall planning balance.
- 13.1.5 As set out in Paragraph 8 of the NPPF, achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and needed to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):
- an economic objective (to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure);
  - a social objective (to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being); and
  - an environmental objective (to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy).

## 13.2 Summary of Adverse Impacts

- 13.2.1 The adverse impacts and the weight that should be given to these factors are set out below:

### **Conflict with the Development Plan**

- 13.2.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Paragraph 15 of the NPPF emphasises that the planning system should be “genuinely plan led”.

- 13.2.3 As set out within Paragraph 47 of the NPPF, planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise. In this case, the application site is located within a defined development boundary where the principle of development is acceptable. The proposal therefore accords with Policy LPP1 of the Adopted Local Plan and this weighs in favour of the proposal in the overall planning balance in accordance with the presumption in favour of sustainable development.
- 13.2.4 The development would result in the net loss of one market dwelling at the site, which would reduce (albeit to a very minor extent) the Council's housing land supply.
- 13.2.5 The application was not supported by a sustainability statement or health and wellbeing impact assessment. However as this is a S73A application, the principles of development on this site have long been established. As such, it is considered this conflict with the development plan is minimal. Indeed, any new requirements made by the now Adopted Local Plan cannot reasonably in Officers opinion be added retrospectively to this current application.

### 13.3 Summary of Public Benefits

- 13.3.1 The public benefits arising from the proposal and the weight that should be given to these factors are set out below:

#### **Market and Affordable Housing**

- 13.3.2 The development would still deliver 77 units towards the housing land supply, and following the amendments secured by Officers as part of the discussions with the Applicant, the application would deliver a high quality development. The changes secured by this application would allow for the developer to go on and lawfully complete building the site, which otherwise may have had to remain half built.
- 13.3.3 The development would still provide 31 affordable units (40%) to help meet the housing need in the District. It would still provide jobs during construction and once occupied, provide social benefits to Tye Green and beyond in terms of the new residents it would bring into the area to help support the local economy.

### 13.4 Conclusion

- 13.4.1 Taking into account the above, while there are minor conflicts with the Development Plan which weigh against the proposal, it is considered that the proposed amendments and overall development complies with the Development Plan when taken as a whole. Officers consider that there are no material considerations, that indicate that a decision should be made other than in accordance with the Development Plan. The Planning Balance is concluded below.

### 13.5 Planning Balance

- 13.5.1 When considering the planning balance and having regard to the adverse impacts and benefits outlined above, Officers have concluded that the adverse impacts of granting permission do not significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. Consequently, it is recommended that planning permission is granted for the proposed development.

### 14. RECOMMENDATION

- 14.1 It is therefore RECOMMENDED that subject to the applicant entering into a suitable legal agreement pursuant to S106 of the Town and Country Planning Act 1990 (as amended) to cover the following Heads of Terms:

- § Refuse Strategy
- § Affordable Housing Plots
- § HRA

The Planning Development Manager or an authorised Officer be authorised to GRANT planning permission under delegated powers in accordance with the Approved Plans and Documents, and subject to the Condition(s) & Reason(s), and Informative(s) outlined within APPENDIX 1.

- 14.2 Alternatively, in the event that a suitable planning obligation is not agreed within three calendar months of the date of the resolution to GRANT planning permission by the Planning Committee, the Planning Development Manager may use his delegated authority to refuse the application.

CHRISTOPHER PAGGI  
PLANNING DEVELOPMENT MANAGER

## APPENDIX 1:

### APPROVED PLAN(S) & DOCUMENT(S) / CONDITION(S) & REASON(S) AND INFORMATIVE(S)

#### Approved Plan(s) & Document(s)

| <b>Plan Description</b> | <b>Plan Ref</b>             | <b>Plan Version</b> |
|-------------------------|-----------------------------|---------------------|
| Location Plan           | 02-001                      | N/A                 |
| House Types             | IN009 HT-03 B               | N/A                 |
| House Types             | IN009 HT-13 B               | N/A                 |
| House Types             | IN009 HT-15 C               | N/A                 |
| Site Plan               | IN009-02 REV C              | N/A                 |
| Garden Study            | IN009-03 REV C              | N/A                 |
| Housing Mix Plan        | IN009-04 REV D              | N/A                 |
| Tenure Plan             | IN009-05 REV C              | N/A                 |
| Proposed Plans          | IN009-13 REV F              | N/A                 |
| House Types             | IN009-HT-03 REV AA TYPE 3   | N/A                 |
| House Types             | IN009-HT-04 REV AA TYPE 4   | N/A                 |
| House Types             | IN009-HT-05 REV AA TYPE 5   | N/A                 |
| House Types             | IN009-HT-06 REV AA TYPE 6   | N/A                 |
| House Types             | IN009-HT-07 REV AA TYPE 7   | N/A                 |
| House Types             | IN009-HT-08 REV AA TYPE 8   | N/A                 |
| House Types             | IN009-HT-09 REV AA TYPE 9   | N/A                 |
| House Types             | IN009-HT-10 REV AA TYPE 10  | N/A                 |
| House Types             | IN009-HT-11 REV AA TYPE 11  | N/A                 |
| House Types             | IN009-HT-12 REV AA TYPE 12  | N/A                 |
| House Types             | IN009-HT-14 REV AA TYPE 14  | N/A                 |
| Proposed Plans          | IN009-PS 01- REV A          | N/A                 |
| Street elevation        | IN009-ST 01- REV D          | N/A                 |
| Lighting Plan           | 21-0176-1D                  | N/A                 |
| Refuse Information      | 1583/RC/01                  | N/A                 |
| Site Layout             | c7378-CE13C                 | N/A                 |
| Site Layout             | c7378-CE12C                 | N/A                 |
| Site Layout             | c7378-CE11C                 | N/A                 |
| Service Strip plan      | c7378-CE26                  | N/A                 |
| Service Strip plan      | c7378-CE27                  | N/A                 |
| Service Strip plan      | c7378-CE28                  | N/A                 |
| Proposed Plans          | IN009 HT-15 (plot1)         | C                   |
| Levels                  | C7378-CE1J                  | N/A                 |
| Levels                  | C7378-CE1L                  | N/A                 |
| Levels                  | C7378-CE1L                  | N/A                 |
| Materials Details       | IN009-06 REV D              | N/A                 |
| Street Furniture        | PRC-CAM-ZZ-00-DR-L-1100 C13 | N/A                 |

### Condition(s) & Reason(s)

#### Condition 1

The development hereby permitted shall be carried out in accordance with the approved plans listed above.

Reason: For the avoidance of doubt and in the interests of proper planning.

#### Condition 2

The development shall be carried out in accordance with the samples schedule dated 08/12/2022 and materials plan IN009-06 REV D. The development shall only be implemented in accordance with the approved details.

Reason: To ensure that the development does not prejudice the appearance of the locality.

#### Condition 3

No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following times:-

Monday to Friday 0730 hours - 1800 hours

Saturday 0730 hours - 1300 hours

Bank Holidays & Sundays - no work

Reason: To protect the amenities of the occupiers of nearby residential properties and the surrounding area.

#### Condition 4

No piling shall be undertaken on the site in connection with the construction of the development until a system of piling and resultant noise and vibration levels has been submitted to and agreed in writing by the Local Planning Authority and shall be adhered to throughout the construction process.

Reason: To protect the amenities of the occupiers of nearby residential properties and the surrounding area.

#### Condition 5

Where the preliminary contaminated land risk assessment determines that further assessment is required then a comprehensive survey shall be undertaken to assess the nature and extent of any contamination on the site, a copy of the survey findings together with a remediation scheme to bring the site to a suitable condition in that it represents an acceptable risk shall be submitted to and agreed in writing with the Local Planning Authority. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with the agreed remediation and shall be implemented and completed prior to the occupation of development hereby approved.

Should contamination be found that was not previously identified or not considered in the approved remediation scheme, that contamination shall be made safe and

reported immediately to the Local Planning Authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and agreed in writing with the Local Planning Authority. Such agreed measures shall be implemented and completed prior to the first occupation of any parts of the development.

The applicant shall give one-month's advanced notice in writing to the Local Planning Authority of the impending completion of the remediation works. Within four weeks of completion of the remediation works a validation report undertaken by competent person or persons and the agreed remediation measures shall be submitted to the Local Planning Authority for approval. There shall be no residential occupation of the site (or beneficial occupation of the office building hereby permitted) until the Local Planning Authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the applicant shall submit to the Local Planning Authority a signed and dated certificate to confirm that the remediation works have been completed in strict accordance with the documents and plans comprising the remediation scheme agreed in writing with the Local Planning Authority.

Reason: To protect the amenities of the occupiers of nearby residential properties and the surrounding area.

#### Condition 6

No unbound material shall be used in the surface finish of the driveway within 6 metres of the highway boundary of the site.

Reason: To protect the amenities of the occupiers of nearby residential properties and the surrounding area.

#### Condition 7

Any remaining development to be constructed shall adhere to the approved Construction Method Statement (revision B) dated 02/11/2022. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Reason: To protect the amenities of the occupiers of nearby residential properties and the surrounding areas.

#### Condition 8

The development shall be carried out in accordance with the drainage strategy report prepared by Walker-Associates dated September 2021, as well as drainage and external levels plans C7378-CE1J C7378-CE2L, C7378-CE3L.

The drainage scheme shall subsequently be implemented prior to occupation of any unit.

Reason: To protect the amenities of the occupiers of nearby residential properties and the surrounding area. The statement is required prior to the commencement of development to ensure that measures are in place to safeguard the amenity of the

area prior to any works starting on site.

Condition 9

The principles hereby approved to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction as set out in the report prepared by Walker-Associates dated September 2021 shall be implemented for the entirety of the construction process.

Reason: To prevent flooding during construction by ensuring the satisfactory storage of/disposal of surface water from the site.

Condition 10

The Maintenance Plan for the SuDS features as set out in the report prepared by Walker-Associates dated September 2021 shall be put in place on completion of the development and remain in perpetuity.

Reason: The National Planning Policy Framework paragraph 163 and paragraph 170 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution.

Condition 11

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason: To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk.

Condition 12

All measures and/or works shall be carried out in accordance with the approved details contained in the Ecological Appraisal (The Environmental Dimension Partnership Ltd, April 2018), Landscape Management Plan (The Environmental Dimension Partnership Ltd, May 2018).

Reason: To conserve and enhance Protected and Priority species/habitats and allow the LPA to discharge its duties under the UK Habitats Regulations, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

Condition 13

The entirety of the construction phase of the development shall take place in accordance with the approved construction environmental management plan (CEMP: Biodiversity) prepared by The Environmental Dimension Partnership LTD dated November 2022 reference edp4086\_r010a.

Reason: To conserve and enhance Protected and Priority species/habitats and allow the LPA to discharge its duties under the UK Habitats Regulations, the Wildlife &



Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

#### Condition 14

No residential properties shall be occupied unless and until a Biodiversity Enhancement Strategy for Protected and Priority species, following the details contained within the Ecological Appraisal (The Environmental Dimension Partnership Ltd, April 2018) has been submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) Detailed designs to achieve stated objectives;
- c) Locations of proposed enhancement measures by appropriate maps and plans;
- d) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e) Persons responsible for implementing the enhancement measures;
- f) Details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details and shall be retained in situ thereafter.

Reason: To conserve Protected and Priority species and allow the LPA to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

#### Condition 15

A - The development shall be implemented in accordance with the approved refuse collection plan, Reference 1583/RC/01 dated November 2022.

B - The development shall also be implemented in accordance with the approved lighting scheme, Reference 21/0176-1D dated November 2022,

The development shall be constructed in accordance with the approved details/specifications and thereafter so retained.

Reason: To minimise pollution of the environment and to safeguard the amenities of the locality and the appearance of the development.

#### Condition 16

Prior to the first occupation of the development hereby approved a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall incorporate a detailed specification including plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying where appropriate.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in the first planting and seeding seasons after the

commencement of the development.

All hard surface areas agreed as part of the scheme shall be carried out before the first occupation of the buildings or upon the completion of the development whichever is the earlier.

Any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.

Reason: To minimise pollution of the environment and to safeguard the amenities of the locality and the appearance of the development.

#### Condition 17

The development shall be carried out in accordance with the approved hard landscape scheme reference PRC-CAM-ZZ-00-DR-L-1100 C13 dated 29.01.2021, and the levels plans identifying final finished floor levels, references C7378-CE1J, C7378-CE2L, and C7378-CE3L dated 29.01.2021.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

All areas of hardstanding which do not form part of the adoptable highway shall be constructed using porous materials laid on a permeable base.

The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance which shall be submitted and approved in writing by the local planning authority prior to first occupation of the development.

Reason: To enhance the appearance of the development and in the interests of amenity and privacy.

#### Informative(s)

##### Informative 1

Remediation details submitted with Condition 5 shall include capping depths and locations and final destination of contaminated waste material. Sampling frequency of finished gardens and incoming soil shall be agreed. Please liaise with the Council's Environmental Health Officer in this regard.

### 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, in accordance with the presumption in favour of sustainable development, as set out in the National Planning Policy Framework.

## APPENDIX 2:

### POLICY CONSIDERATIONS

#### National Planning Guidance

National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)

#### Braintree District Local Plan 2013 - 2033

|       |  |
|-------|--|
| SP1   | Presumption in Favour of Sustainable Development   |
| SP2   | Recreational disturbance Avoidance and Mitigation Strategy (RAMS)                              |
| SP3   | Spatial Strategy for North Essex   |
| SP4   | Meeting Housing Needs  |
| SP6   | Infrastructure & Connectivity  |
| SP7   | Place Shaping Principles   |
| LPP1  | Development Boundaries   |
| LPP16 | Housing Provision and Delivery   |
| LPP31 | Affordable Housing   |
| LPP35 | Housing Mix, Density and Accessibility   |
| LPP42 | Sustainable Transport  |
| LPP43 | Parking Provision  |
| LPP46 | Broadband  |
| LPP47 | Built and Historic Environment   |
| LPP48 | An Inclusive Environment   |
| LPP49 | Health and Wellbeing Impact Assessment   |
| LPP50 | Provision of Open Space, Sport and Recreation  |
| LPP52 | Layout and Design of Development   |
| LPP57 | Heritage Assets and their Settings   |
| LPP59 | Archaeological Evaluation, Excavation and Recording  |
| LPP63 | Natural Environment and Green Infrastructure   |
| LPP64 | Protected Sites  |
| LPP65 | Tree Protection  |
| LPP66 | Protection, Enhancement, Management and Monitoring of Biodiversity                             |
| LPP67 | Landscape Character and Features   |
| LPP70 | Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards |
| LPP71 | Climate Change   |
| LPP72 | Resource Efficiency, Energy Generation and Energy Efficiency                                   |
| LPP75 | Surface Water Management Plan  |
| LPP76 | Sustainable Urban Drainage Systems   |
| LPP77 | External Lighting  |
| LPP78 | Infrastructure Delivery and Impact Mitigation  |

## Cressing Parish Neighbourhood Plan 2017 - 2033

- 1 Protecting and Enhancing the Natural Environment
- 2 Protection of Special and Sensitive Landscapes
- 4 Protecting the Historic Environment
- 5 Infrastructure, Services, and Utilities
- 6 Protecting and Enhancing Community Facilities and Public Open Spaces
- 7 Housing
- 8 Design, Layout, Scale, Character, and Appearance of New Development
- 9 Economy
- 11 Developer Contributions

### APPENDIX 3:

#### SITE HISTORY

| <b>Application No:</b> | <b>Description:</b>  | <b>Decision:</b>            | <b>Date:</b> |
|------------------------|--|-----------------------------|--------------|
| 89/01045/P             | Proposed New Weighbridge   | Granted                     | 28.06.89     |
| 13/01340/ELD           | Application for a Lawful Development Certificate for an Existing Use - Creation of Hardstanding  | Granted                     | 14.03.14     |
| 14/01064/FUL           | Change of use of office and land to construction training ground   | Granted                     | 28.11.14     |
| 14/01586/FUL           | Change of use of B2 workshop to B8 storage unit  | Granted                     | 14.04.15     |
| 15/00169/FUL           | Application for removal or variation of a condition no. 3 following grant of planning permission 14/01064/FUL - Change of use of office and land to construction training ground           | Granted                     | 19.01.16     |
| 15/00004/NMA           | Application for a non-material amendment following grant of planning permission 14/01064/FUL - Change of use of office and land to construction training ground                            | Granted                     | 05.01.16     |
| 18/00920/FUL           | Demolition of existing buildings on site and erection of 78 residential dwellings with associated open space, landscaping, amenity space, car and cycle parking and other associated works | Granted with S106 Agreement | 13.02.20     |
| 18/00921/FUL           | Demolition of existing buildings on site and erection of 65 residential dwellings with associated open space, landscaping, amenity space, car and cycle parking and other associated works | Withdrawn                   | 22.04.21     |
| 20/01100/VAR           | Application for variation of   | Pending                     |              |

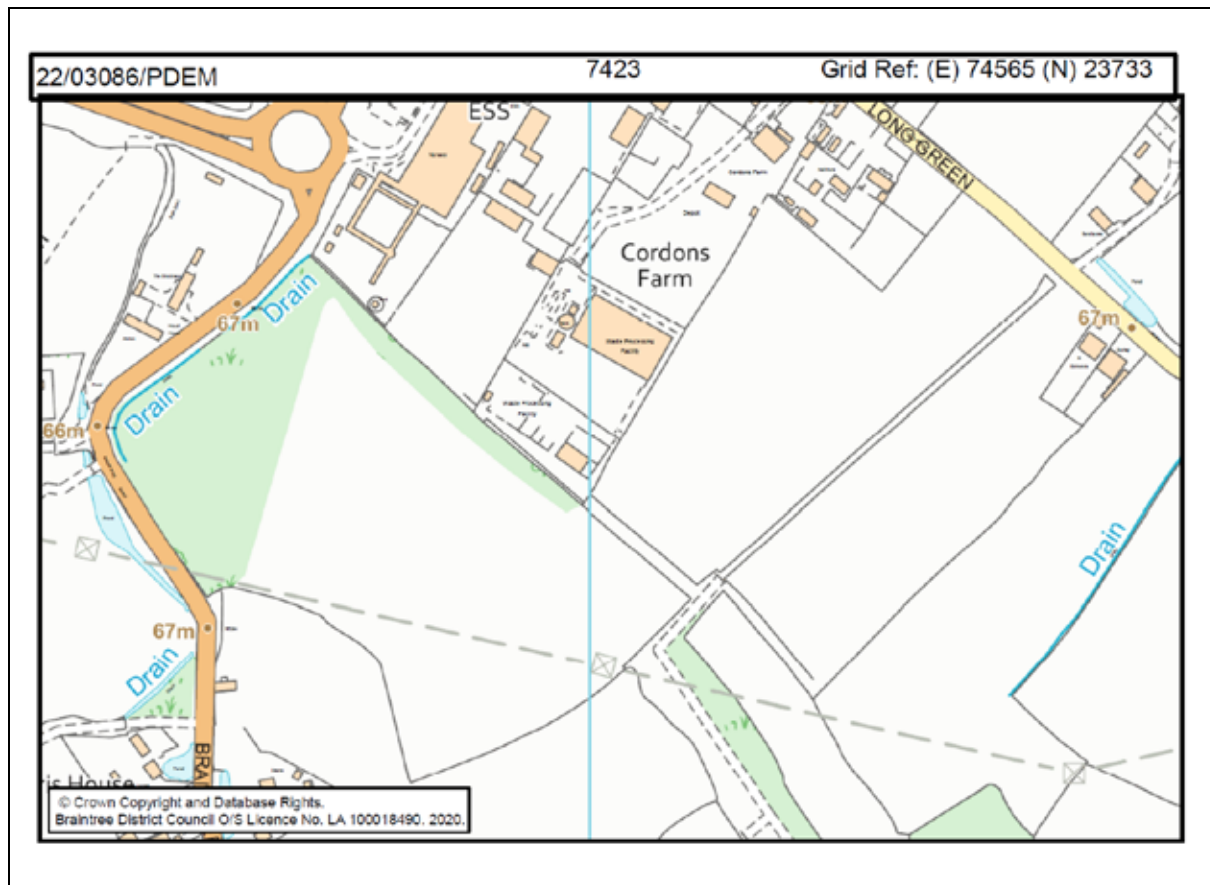
|              |   |                       |  |
|--------------|---|-----------------------|--|
|              | Condition 2 'Approved Plans' of application 18/00920/FUL granted 13/02/2020 for: Demolition of existing buildings on site and erection of 78 residential dwellings with associated open space, landscaping, amenity space, car and cycle parking and other associated works. Variation would allow:<br>- Amendment to site layout and house types.                              | Decision              |  |
| 20/01101/VAR | Application for variation of Conditions 6c, 9, 11, 17, 18 of application 18/00920/FUL granted 13/02/2020 for: Demolition of existing buildings on site and erection of 78 residential dwellings with associated open space, landscaping, amenity space, car and cycle parking and other associated works.   | Pending Decision      |  |
| 20/00004/PPA | Application for variation of Condition 2 'Approved Plans' of application 18/00920/FUL granted 13/02/2020 for: Demolition of existing buildings on site and erection of 78 residential dwellings with associated open space, landscaping, amenity space, car and cycle parking and other associated works. Variation would allow:<br>- Amendment to site layout and house types. | Pending Consideration |  |
| 21/01172/DAC | Application for approval of details as reserved by condition 6 (Contamination) of approved application  | Pending Consideration |  |

|              |   |                       |  |
|--------------|---|-----------------------|--|
|              | 18/00920/FUL  |                       |  |
| 21/01173/DAC | Application for approval of details as reserved by condition 8, 9, 10, 11, 14 & 18 of approved application 18/00920/FUL   | Pending Consideration |  |
| 21/01263/DAC | Application for approval of details as reserved by condition 3 of approved application 18/00920/FUL   | Pending Consideration |  |
| 21/01774/DAC | Application for approval of details as reserved by condition 16 of approved application 18/00920/FUL  | Application Returned  |  |
| 21/01922/VAR | Variation of Condition 2 (Approved Plans) of permission 18/00920/FUL granted 13/02/2020 for: Demolition of existing buildings on site and erection of 78 residential dwellings with associated open space, landscaping, amenity space, car and cycle parking and other associated works. Variation would allow amendments to layout and housetypes. | Pending Consideration |  |



|  |   |   |
|--|---|---|
| <b>Report to:</b> Planning Committee               |   |   |
| <b>Planning Committee Date:</b> 20th December 2022 |   |   |
| <b>For:</b> Decision                               |   |   |
| <b>Key Decision:</b> Yes                           |   | <b>Decision Planner Ref No:</b> N/A   |
| <b>Application No:</b>                             | 22/03086/PDEM   |   |
| <b>Description:</b>                                | Application for prior notification of proposed demolition - Demolition of disused industrial building.  |   |
| <b>Location:</b>                                   | 4 Crittall Drive Braintree Essex  |   |
| <b>Applicant:</b>                                  | Mr Michael Shorten, Braintree District Council, Causeway House, Braintree, CM7 9HB  |   |
| <b>Date Valid:</b>                                 | 23rd November 2022  |   |
| <b>Recommendation:</b>                             | It is RECOMMENDED that the following decision be made:<br>§ Prior Approval Required and Given   |   |
| <b>Options:</b>                                    | The Planning Committee can:<br>a) <b>Agree</b> the Recommendation<br>b) <b>Vary</b> the Recommendation<br>c) <b>Overturn</b> the Recommendation<br>d) <b>Defer</b> consideration of the Application for a specified reason(s) |   |
| <b>Appendices:</b>                                 | <b>Appendix 1:</b>  | Approved Plan(s) & Document(s)<br>Condition(s) & Reason(s) and Informative(s) |
|  | <b>Appendix 2:</b>  | Policy Considerations   |
|  | <b>Appendix 3:</b>  | Site History  |
| <b>Case Officer:</b>                               | Sam Trafford<br>For more information about this Application please contact the above Officer on: 01376 551414 Extension: 2520, or by e-mail: <a href="mailto:sam.trafford@braintree.gov.uk">sam.trafford@braintree.gov.uk</a> |   |

## Application Site Location:



|  |  |
|--|--|
| <b>Purpose of the Report:</b>              | The Committee Report sets out the assessment and recommendation of the abovementioned application to the Council's Planning Committee. The report sets out all of the material planning considerations and the relevant national and local planning policies.  |
| <b>Financial Implications:</b>             | The application was subject to the statutory application fee paid by the applicant for the determination of the application.   |
| <b>Legal Implications:</b>                 | <p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>Following the decision of the Planning Committee, a formal decision notice will be issued which will either set out the relevant Conditions &amp; Reasons and any Informatives, or the Reasons for Refusal if applicable.</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>  |
| <b>Other Implications:</b>                 | The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.   |
| <b>Equality and Diversity Implications</b> | <p>Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:</p> <ul style="list-style-type: none"> <li>a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act;</li> <li>b) Advance equality of opportunity between people who share a protected characteristic and those who do not;</li> <li>c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.</li> </ul> <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> |

|                           |   |
|---------------------------|---|
|                           | <p>The consideration of this application has not raised any equality issues.</p>  |
| <b>Background Papers:</b> | <p>The following background papers are relevant to this application include:</p> <p>§ Planning Application submission:</p> <ul style="list-style-type: none"> <li>§ Application Form</li> <li>§ All Plans and Supporting Documentation</li> <li>§ All Consultation Responses and Representations</li> </ul> <p>The application submission can be viewed online via the Council's Public Access website: <a href="http://www.braintree.gov.uk/pa">www.braintree.gov.uk/pa</a> by entering the Application Number: 22/03086/PDEM.</p> <p>§ Policy Documents:</p> <ul style="list-style-type: none"> <li>§ Town &amp; Country Planning GPDO</li> </ul> <p>The National Planning Policy Framework can be viewed on the GOV.UK website: <a href="http://www.gov.uk/">www.gov.uk/</a>.</p> <p>The other abovementioned policy documents can be viewed on the Council's website: <a href="http://www.braintree.gov.uk">www.braintree.gov.uk</a>.</p> |

1. EXECUTIVE SUMMARY

- 1.1 The application proposes the demolition of an industrial unit on the Springwood Industrial Estate.
- 1.2 The proposed demolition is permitted development under Part 11 Class B of the General Permitted Development (England) Order 2015 (as amended) but is subject to an application to determine whether the prior approval of the Local Planning Authority is required in respect of the proposed means of demolition and the remediation of the site.
- 1.3 Sufficient detail has been provided with this application in order to assess the matters of prior approval. It is recommended that the application be determined as Prior Approval Required and Given.

2. INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE
- 2.1 This application is being reported to Planning Committee in accordance with Part A of the Council's Scheme of Delegation as the Applicant is Braintree District Council.
3. POLICY CONSIDERATIONS
  - § See Appendix 2
4. SITE HISTORY
  - § See Appendix 3
5. DESCRIPTION OF THE SITE AND SITE CONTEXT
- 5.1 The application site consists of an industrial unit which is located on Springwood Industrial Estate. The site is located within the designated settlement boundary of Braintree and is allocated as an Employment Policy Area.
- 5.2 The building is currently vacant.
6. PROPOSAL
- 6.1 The proposed demolition is permitted development under Part 11 Class B of the General Permitted Development (England) Order 2015 (as amended) but is subject to an application to determine whether prior approval of the Local Planning Authority is required in respect of the proposed means of demolition and the remediation of the site.
7. SUMMARY OF CONSULTATION RESPONSES
- 7.1. BDC Building Control
- 7.1.1 No comments on the method of demolition at this stage.
- 7.2 Environmental Health
- 7.2.1 No Response Received.
8. PARISH / TOWN COUNCIL
- 8.1 Parish/Town Council
- 8.1.1 N/A.

9. REPRESENTATIONS

- 9.1 In accordance with Paragraph B.2 (iv), Part 11, Schedule 2 of the GPDO, the only consultation necessary requires the Applicant to display a site notice at the site. The application has been supplied with a photo of the site notice which has been displayed, and this has been at the site for at least 21 days. No responses have been received in response to the site notice.

10. ASSESSMENT

- 10.1 Applications for prior approval are assessed using the provisions as set out in Part 11, Class B of Schedule 2 of the General Permitted Development Order (GPDO).
- 10.2 For completeness the following assessment considers the proposal against the permitted development criteria, followed by consideration of the matters for prior approval.
- 10.3 Any building operation consisting of the demolition of a building can constitute permitted development, subject to compliance with the criteria set out below:

| <b>B.1</b> Development is not permitted by Class B if—   | Officer Comment   |
|--|---|
| (a) the building has been rendered unsafe or otherwise uninhabitable by the action or inaction of any person having an interest in the land on which the building stands and it is practicable to secure safety or health by works of repair or works for affording temporary support; | The building has been rendered unsafe; however, it is unviable for refurbishment such it would not be practical to secure safety or health by works of repair or temporary support. |
| (b) the demolition is “relevant demolition” for the purposes of section 196D of the Act (demolition of an unlisted etc building in a Conservation Area);   | The proposed demolition does not consist demolition of an unlisted building in a Conservation Area and is not therefore relevant demolition.  |
| (c) the building is used, or was last used, for a purpose falling within—<br>(i) article 3(6)(p) (drinking establishments etc.) of the Use Classes Order; or<br>(ii) article 3(6)(q) (drinking establishments with expanded food provision) of that Order;                             | The building is not/was not last in use as a drinking establishment or a drinking establishment with an expanded food provision.  |

|   |  |
|---|--|
| (d) the building is used, or was last used, for the purpose of—<br>(i) a concert hall;<br>(ii) a venue for live music performance;<br>or<br>(iii) a theatre; or   | The building was not last used as either a concert hall, a venue for live music performance, or a theatre.         |
| (e) the demolition relates to a statue, memorial or monument (“a commemorative structure”) in place for a period of at least 10 years on the date of any proposed demolition, other than a commemorative structure— | The demolition does not relate to a statue, memorial, or a monument.   |
| (i) that is a listed building;  | The building is not a listed building.   |
| (ii) that is a scheduled monument;  | The building is not a scheduled monument.  |
| (iii) within a cemetery, on consecrated land, or within the curtilage of a place of public worship;   | The building is not located within a cemetery, on consecrated land, or within the curtilage of a place of worship. |
| (iv) within the grounds of a museum or art gallery; or  | The building is not located within the grounds of a museum or an art gallery.                                      |
| (v) within the curtilage of a dwellinghouse   | The building is not located within the curtilage of a dwellinghouse.   |

10.4 The above assessment concludes that the proposed demolition would constitute permitted development under Part 11 Class B of the GPDO and the assessment can proceed to consider whether prior approval is required in respect of the method of demolition and the proposed remediation of the site.

## 11 Method of demolition

11.1 The proposed method of demolition includes the appointment of a specialist contractor to remove the building, including the appropriate removal of all asbestos and any other hazardous materials which may be encountered during demolition. It is understood that appropriate certification would be forthcoming in order to demonstrate appropriate disposal of materials. Risk assessments and a detailed method statement would be provided to the Applicant from the specialist contractor prior to any demolition being undertaken.



- 11.2 The proposed method of demolition is considered to be acceptable. Officers conclude that the method of demolition requires prior approval in the interests of the amenity of neighbouring sites and based on the information provided, it should be given.
- 12 Remediation of the Site
- 12.1 The proposed remediation of the site would include the retention of the existing concrete floor and access way. If required, a type 1 material would be compacted into areas to make the ground level. All existing services would be made secure, and fencing provided.
- 12.2 It is likely that a planning application will be forthcoming in the future for redevelopment of the site, however the specifics are currently unknown and are not subject to this application.
- 12.3 The proposed remediation of the site is considered to be acceptable. Officers conclude that the proposed remediation of the site requires prior approval to ensure it is left in a satisfactory manner in the interests of visual amenity and given the information provided, prior approval should be given.
- 12.4 It is noted that no objection has been raised by the Council's Building Control Team on the proposed method of demolition or remediation of the site, and no comments have been received from Environmental Health.
13. CONCLUSION
- 13.1 The proposed demolition of a vacant industrial unit constitutes permitted development under Part 11 Class B of the GPDO. It is Officers view that the prior approval of the Local Planning Authority in respect of the method of demolition and the remediation of the site is required and should be given.
14. RECOMMENDATION
- 14.1 It is RECOMMENDED that the following decision be made:  
Prior Approval Required and Given in accordance with the Approved Plans and Documents outlined within APPENDIX 1.

CHRISTOPHER PAGGI  
PLANNING DEVELOPMENT MANAGER

## APPENDIX 1:

### APPROVED PLAN(S) & DOCUMENT(S) / CONDITION(S) & REASON(S) AND INFORMATIVE(S)

#### Approved Plan(s) & Document(s)

| <b>Plan Description</b> | <b>Plan Ref</b> | <b>Plan Version</b> |
|-------------------------|-----------------|---------------------|
| Location Plan           |                 | 10.11.2022          |

#### Informative(s)

The Applicant is advised that:

- 1) The development must be carried out—

(aa) Where prior approval is required, in accordance with the details approved;

(bb) Where prior approval is not required, in accordance with the details submitted with the application.

The development must be carried out within 5 years from the date on which the LPA were given the information.

- 2) All construction or demolition works should be carried out in accordance with the "Control of Pollution and Noise from Demolition and Construction Sites Code of Practice 2012." A copy can be viewed on the Council's web site [www.braintree.gov.uk](http://www.braintree.gov.uk).
- 3) Please be aware Braintree Building Control will require the Applicant to submit a Demolition Notice under Section 80 The Building Act 1984 with sufficient information setting out the processes of demolition and all issues relating to safety of the public and workforce.

Full technical details and specification of the existing building structure will be required. Building Control are then required to issue a Section 81 Notice once the Council is in receipt of the Section 80 Notice. This sets out the statutory requirements for the applicant to meet compliance.

## APPENDIX 2:

### RELEVANT LEGISLATION

Schedule 2 Part 11 Class B of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

APPENDIX 3:

SITE HISTORY

None relevant to this Application.