

## **DELEGATED DECISION OFFICER REPORT**

<b>AUTHORISATION</b>	<b>INITIALS</b>	<b>DATE</b>
Case officer recommendation:	AN	20/11/23
Planning Manager / Team Leader authorisation:	ML	23/11/2023
Planning Technician final checks and despatch:	LN	24/11/2023

**Application:** 22/01396/DOVO5      **Town / Parish:** Ardleigh Parish Council

**Applicant:** Michael McKinstry - Devonshires

**Address:** Herbert Way Colchester Essex

**Development:** Deed of variation under TCPA 1990 Section 106A to vary the terms of the Section 106 Agreement dated 13 November 2018 linked to outline planning permission 15/00932/OUT, seeking to insert a Conditional Mortgagee Exclusion Clause into clause 37 as these properties can only currently be valued at EUV-SH (Existing Use Value - Social Housing), rather than MV-STT (Market Value Subject to Tenancy) with the current wording.

### **1. Town / Parish Council**

N/a

### **2. Consultation Responses**

N/a

### **3. Relevant Planning History**

12/00885/OUT	Full planning permission is sought for the demolition of existing buildings, remediation, earthworks, tree protection and tree removal works and the spinal road. Outline planning permission is being sought for the erection of up to 73 residential units (C3 use), hard and soft landscaping, secondary access roads, perimeter enclosure, car parking, open spaces, play areas and lighting.	Approved	23.08.2013
13/00994/DISCON	Discharge of conditions on previously approved planning application 12/00885/OUT (Full Planning Permission Element) - 03 - Tree removal and retention details, 06 - Scheme of supervision of the arboricultural protection, 07 - Details of wheel washing facilities, 08 - Construction/ works method statement, 12 - Risk assessment to assess the extent and nature of contamination, 13 - Remediation scheme, 16 - Validation Report, 17 - Monitoring and maintenance plan in respect of contamination.	Approved	27.11.2013

13/01298/NACON	Construction of below ground surface water pumping station with associated storage tank above ground control kiosk, hardstanding and security wall and access gates.	Determination	02.12.2013
13/01482/DISCON	Discharge of condition 16 (Remediation Validation Report) of planning permission 12/00885/OUT (Full Planning Permission Element).	Approved	11.02.2014
14/00778/DISCON	Discharge of condition 7 (Code for Sustainable Homes), 11 (Details of Earthworks), 12 (Details of Tree Protection Fencing), 15 (Arboricultural Implications Assessment, Method Statement and Tree Protection Plan), 16 (Scheme of Supervision for Arboricultural Protection Measures), 17 (Noise Mitigation Measures), 18 (Lighting), 19 (Refuse and Recycling Scheme), 22 (Noise from Plant, Equipment and Machinery) and 26 (Surface Water Drainage Scheme) of planning permission 12/00885/OUT (Outline Planning Permission Element).	Approved	25.09.2014
14/00807/DETAIL	Erection of 70 dwellings, with associated hard and soft landscaping, access roads, perimeter enclosure, car parking, open space, play areas and lighting.	Approved	11.09.2014
14/01726/DISCON	Discharge of conditions 23 (parking) and 29 (trees) of planning permission 12/00885/OUT.	Approved	23.12.2014
14/01727/DISCON	Discharge of conditions 02 (external facing and roofing materials) and 03 (surfacing materials) of planning permission 14/00807/DETAIL.	Approved	23.12.2014
15/00932/OUT	Outline planning permission for the erection of up to 120 dwellings (C3) including hard and soft landscaping, public open space, play areas, vehicle parking and supporting site infrastructure with all matters reserved apart from access at Land North of the Former Betts Factory, Colchester.	Approved	22.03.2016

15/01235/DISCON	Discharge of conditions 9 (landscaping), 10 (landscape management plan) and 21 (details of management company) of outline planning permission approved under 12/00885/OUT.	Approved	06.04.2017
16/01874/DISCON	Discharge of Condition 12 (Fencing of Bullock Wood) and 16 (Reptile Method Statement) of Planning Permission 15/00932/OUT.	Approved	18.01.2017
17/00560/DISCON	Discharge of condition 8 (Final Code Certificates - Plots 55 to 89) of the approved planning application 12/00885/OUT (Outline planning permission element).		26.05.2017
17/01477/DETAIL	Reserved matters application for the erection of up to 120 dwellings including hard and soft landscaping, public open space, play areas, vehicle parking and supporting site infrastructure and site access.	Approved	01.12.2017
17/01538/DISCON	Discharge of conditions 5 (Construction Method Statement), 6 (Construction and Environment Management Plan), 8 (Wheel Cleaning facility details), 11 (Parking Strategy), 13 (Landscape Work Details), 14 (Details of Earthworks), 18 (Surface Water Drainage Details) and 20 (Maintenance Plan) of approved planning application 15/00932/OUT.	Approved	01.08.2019
17/01685/DISCON	Discharge of conditions 12 (Fencing Detail) and 15 (Arboricultural Method Statement) of planning permission 15/00932/OUT.	Approved	05.12.2017
17/01825/DISCON	Discharge of Condition 19 (Surface Water Drainage) of Planning Permission 15/00932/OUT.	Approved	15.02.2018
18/00917/DISCON	Discharge of Condition 9 Part B (Residential Travel Information Packs) of 15/00932/OUT.	Approved	14.09.2018
18/01217/NMA	Non-Material Amendment to 17/01477/DETAIL - Amendment of roof tile selection.	Approved	09.08.2018
19/00042/DISCON	Discharge of condition 17 (Management Company) of	Approved	31.01.2019

	approved Planning Application 15/00932/OUT.		
19/00699/OUT	Variation of Condition 4 & 9(b) to approved Planning Application 15/00932/OUT - Amendment to approved drawings amending the access and road layout.	Approved	05.07.2019
22/01396/DOVO5	Deed of variation under TCPA 1990 Section 106A to vary the terms of the Section 106 Agreement dated 13 November 2018 linked to outline planning permission 15/00932/OUT, seeking to insert a Conditional Mortgagee Exclusion Clause into clause 37 as these properties can only currently be valued at EUV-SH (Existing Use Value - Social Housing), rather than MV-STT (Market Value Subject to Tenancy) with the current wording.	Current	

#### **4. Relevant Policies / Government Guidance**

N/a

#### **Status of the Local Plan**

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any neighbourhood plans that have been brought into force.

#### **Neighbourhood Plans**

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

#### **5. Officer Appraisal (including Site Description and Proposal)**

##### **Proposal**

Deed of variation under TCPA 1990 Section 106A to vary the terms of the Section 106 Agreement dated 13 November 2018 linked to outline planning permission 15/00932/OUT, seeking to insert a Conditional Mortgagee Exclusion Clause into clause 37 as these properties can only currently be valued at EUV-SH (Existing Use Value - Social Housing), rather than MV-STT (Market Value Subject to Tenancy) with the current wording.

## Timeline

This request was submitted on 10/03/2022.

On 06/04/2022 the Council's Solicitor raised a query regarding the S106 dated 22/03/2016 also needing to be varied. No response was received.

On 29/10/2022 this query was chased.

On 07/09/2023 this was chased again confirming application would be formally disposed of if no reply by 21/09/2023.

On 24/09/2023 Devonshires replied to say they still wished to proceed and would come back as soon as possible. However no further information/response has been received.

## Assessment

In accordance with the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 the application has been publicised by posting notice on the land to which the obligation relates for not less than 21 days (posted 07/11/2023), and also published notice in the Evening Gazette (on 27/10/2023). The period for making representations has now expired. No representations have been received.

The only information submitted in support of the proposal is the email dated 10/03/2022. No draft deed of variation has been provided, and no undertaking has been provided to pay the Council's costs in drafting a deed of variation.

The application remains as submitted for over 1 year and 8 months. The Council has therefore moved to refuse it in its current form.

In accordance with the 1992 Regulations when a local planning authority determine that a planning obligation shall continue to have effect without modification, the notice of that decision shall- (a) state, clearly and precisely, the authority's full reasons for their decision; and (b) include a statement to the effect that the applicant may appeal to the Secretary of State against the decision within 6 months of the date of the notice or within such longer period as the Secretary of State may, at any time, allow.

## Recommendation – Refusal

The application was submitted on 10/03/2022. Despite repeated contact by the Council the case has not progressed and no draft deed of variation has been produced for consideration. The planning obligation shall therefore continue to have effect without modification.

## **6. Recommendation**

Section 106 Refusal

## **7. Reasons for Refusal**

- 1 The application was submitted on 10/03/2022. Despite repeated contact by the Council the case has not progressed, and no draft deed of variation has been produced for consideration. The planning obligation shall therefore continue to have effect without modification.

## **8. Informatives**

1. The applicant may appeal to the Secretary of State against the decision within 6 months of the date of the notice or within such longer period as the Secretary of State may, at any time, allow. Please see section 7 of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 for more information.

## 9. **Equality Impact Assessment**

In making this recommendation/decision regard must be had to the public sector equality duty (PSED) under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic\* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic\* and those who do not, including tackling prejudice and promoting understanding.

It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

<b>Are there any letters to be sent to applicant / agent with the decision?</b>		<b>NO</b>
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<b>If so please specify:</b>		
<b>Are there any third parties to be informed of the decision?</b> <b>If so, please specify:</b>		NO