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# Appeal Decision

Inquiry opened on 8 November 2021

Site visit made on 23 November 2021

**by David M H Rose BA(Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17<sup>th</sup> December 2021**

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**Appeal Ref: APP/V1505/W/21/3279154**

**Land at Market Square, Basildon, SS14 1DU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Orwell (Basildon) Limited against Basildon Borough Council.
  - The application Reference 20/00955/FULL, is dated 30 July 2020.
  - The development proposed is: Demolition and Redevelopment of the Existing Building and Erection of a Mixed Use Scheme Comprising of Flexible Commercial Floorspace (Use Class A1- A5, B1, D1 and/or D2) on the Ground-First Floors and 492 No. One and Two Bedroom Residential Apartments (Use Class C3) in 3 Blocks of up to 17 Storeys, with Associated Parking, Servicing and Communal Amenity Areas.
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## Decision

1. The appeal is allowed and planning permission is granted for: Demolition and Redevelopment of the Existing Building and Erection of a Mixed Use Scheme Comprising of Flexible Commercial Floorspace (Use Class A1- A5, B1, D1 and/or D2) on the Ground-First Floors and 492 No. One and Two Bedroom Residential Apartments (Use Class C3) in 3 Blocks of up to 17 Storeys, with Associated Parking, Servicing and Communal Amenity Areas at Land at Market Square, Basildon, SS14 1DU in accordance with the terms of the application, Reference 20/00955/FULL, dated 30 July 2020, subject to the Schedule of Conditions (nos. 1 - 49) appended at Annex A to this decision.

## Preliminary matters

### (i) The Inquiry and Site Visits

2. The Inquiry opened on Tuesday 8 November 2021 and was held in a 'virtual' format. I heard evidence over a period of 7 days<sup>1</sup>. Oral Closing Submissions were presented on 3 December 2021.
3. As well as the main parties, the Inquiry was attended by 2 Rule 6(6) Parties each with an interest in its own development proposals in Basildon Town Centre. These were Basildon Estates Limited<sup>2</sup>; and Infrared UK Lion Nominee 1 Limited (in administration) and InfraRed UK Lion Nominee 2 Limited (in administration)<sup>3</sup>.
4. I undertook a preliminary unaccompanied site visit in and around the town centre, following an agreed itinerary, on 27 October 2021. I also carried out an accompanied site visit on 23 November 2021.

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<sup>1</sup> On 8 – 11 and 16 – 18 November 2021

<sup>2</sup> Hereafter Basildon Estates

<sup>3</sup> Hereafter Infrared

**(ii) Putative Reasons for Refusal**

5. The Council's putative reasons for refusal are:
- 1) *Good design encompasses not only external quality but also the quality of internal environments. The application is not considered to have robustly justified the approach to townscape and architectural language and the resulting harm, in respect of matters including height, scale, massing and general design, the proposed internal arrangement which comprises unwelcoming long corridors, unequal access to private amenity space which is of even greater importance post the pandemic, and a residential entrance which lacks presence and legibility. Therefore, it is not considered that the application adequately demonstrates that it complies with the amended social objective to secure 'well designed, beautiful and safe places'.*
  - 2) *The proposed development would, by reason of its height, overshadowing, scale, massing and general design, including the internal environment and lack of direct access to private amenity space, result in an intrusive addition, harmful to the townscape, including landmark Brooke House, character and appearance of the area and fails to create a high quality, well designed development, contrary to the requirements of the NPPF (July 2021), Policy BE12 of the Basildon District Local Plan Saved Policies (2007) and Policies H25, DES1 and DES4 of the Basildon Borough Revised Publication Local Plan 2014 - 2034 (October 2018).*
6. At the Inquiry, the Council confirmed that it did not oppose the principle of a residential led mixed-use development of the appeal site. It supported appropriate regeneration in Basildon Town Centre and welcomed the range of benefits that suitable regeneration could be expected to deliver. In addition, the authority recognised that housing supply and delivery in the Borough is constrained (by Green Belt) and the contribution to housing supply was a significant consideration in favour of the proposal. Finally, the Council acknowledged that it could not demonstrate a 5-year supply of deliverable sites for housing and, accordingly, any adverse effects of allowing the appeal must be shown to significantly and demonstrably outweigh the scheme benefits.

**(iii) Site and Surroundings**

7. The defining elements of Basildon Town Centre are grounded in its New Town planned form and the influence of Modern Movement architecture. The essence of the place was an encircling road embracing town centre commercial uses and extensive car parking. The central core was laid out in low rise, flat-roofed, blocks, often with ground floor canopies of varying styles, along pedestrian precincts, notably East Walk, and generous squares including East Square, Town Square, St Martin's Square and Market Square. Brooke House, an imposing 14 storey building above a 3 storey pilotis, was a later adjustment to add scale and residential use to the centre. It is listed Grade II.
8. The appeal site is one of the original, predominantly 3 storey and part 4 storey, blocks towards the western edge of the centre. Ground floor retail and commercial units, many now vacant, line Town Square as it merges into St Martin's Square to the north, Market Pavement to the east, Market Square to the south and Fodderwick to the west.

9. The block has widespread use of concrete framing, a range of infill panels, limited use of brickwork and extensive glazing. Seen as a whole, it is strongly horizontal in form, albeit most of its northern and western façades have exposed vertical framing at upper floor levels which wrap around onto the Market Square and Market Pavement elevations before giving way to wider vertical brickwork panels. Similar characteristics prevail elsewhere within the centre, with some elevations squat and unashamedly horizontal in form, and others with pronounced erect framing as evidenced by the northern façade of the adjacent block on the corner of Market Pavement and Town Square.
10. The northern side of Town Square, in the vicinity of the appeal site, is flanked with ground floor commercial uses. Former upper floor offices, Northgate House, converted to residential use, are now clad in an eye-catching manner with vertical 'punched hole' fenestration. The square contains 2 free-standing retail pavilions before taking on a narrower form leading into St Martin's Square.
11. St Martin's Square, with recent public realm enhancement, contains the striking New Town Church of St Martin utilising dark brickwork, pronounced glazing to its western elevation and conspicuous vertical framing. It is complemented by a free-standing, slender, steel framed and glass Millennium Bell Tower. Modern civic buildings, including the Towngate Theatre, constructed in buff brick with darker banding, mark the irregular western sides of the square. The eastern side of the square is formed by the austere blank brick and concrete panel wall of the former M&S store. The final side of the square, again in stepped form, includes the large store format Westgate Shopping Park building, comprising buff brick and stone facing, and the north-western corner of the appeal site.
12. Market Square has seen the recent introduction of the South Essex College building and associated enhancement to the public realm. The contemporary 3 storey building, with an angled footprint, has pronounced horizontal massing broken above the ground floor by light-grey vertical ribbed cladding and vertically proportioned strip windows.
13. Since its conception, Basildon Town Centre as a whole, including sites outside the ring road, has seen the introduction of a scatter of tall buildings (often originating as offices and remodelled to residential) including: Great Oaks House (11 storeys), a short distance to the north of Brooke House and, in turn, Acorn House (7 storeys); Kelting House (9 storeys) abutting the inner cordon of the ring road; The Icon (10 storeys) and Trafford House (8 storeys with approval to add a further 3 floors) to the south of the ring road. Approval also exists for the redevelopment of the Great Oaks GS8 'island' site (8 – 11 storeys), within the arterial road but physically detached from the main town centre.
14. Basildon railway station is located immediately to the south of the ring road, between the continuation of Fodderwick and Market Pavement, and the bus station is to be found a few paces to the east of the southern end of Market Pavement. Beyond St Martin's Square and the northern part of the ring road lies Gloucester Park, an extensive area of attractive recreational space, laid out with water, woodland, pathways and play facilities.

15. In general terms, the physical fabric of parts of the early town centre appear outworn and on a well-advanced downward spiral of decline, evidenced by vacancy and buildings which will not be re-used in their current form. There is consensus that these areas are in need of regeneration and that benefits would accrue from an appropriate mixed-use scheme.

**(iv) The appeal proposal**

16. The primary massing of the scheme takes the form of 3 north-south orientated blocks ('fingers') connected by 2 storey pavilions and single-storey arcades along the north and south elevations. The western finger contains 3 interlocking blocks stepping down from 17 storeys facing St Martin's Square to 13 storeys fronting Market Square. The central finger reduces in the same way from 13 storeys to 9 storeys. The eastern finger has its tallest element of 15 storeys on the corner of Market Place and Market Pavement stepping down to 10 storeys fronting Town Square.
17. Ground floor uses include a perimeter of flexible commercial/retail units inclusive of a potential healthcare/community facility; an 'incubator' space for small businesses; and the designated double height residential entrance. All servicing and parking would be accommodated internally within the scheme. External communal amenity space would take the form of podium and rooftop gardens. A proportion of the apartments, limited to the inner, podium facing, elevations would have projecting balconies and the remainder would have Juliette balconies. Internal communal amenity space, with a combined circulation function, would be provided mainly at reception level and on the first floor of the central finger. Access to apartments in the eastern and western fingers would be gained through these spaces and thereafter across one of the podium gardens.
18. The scheme is promoted on a Build to Rent basis designed specifically for renting and typically owned by institutional investors and managed by specialist operators. The National Planning Policy Framework<sup>4</sup> Glossary defines Build to Rent as: *'Purpose built housing that is typically 100% rented out. It can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control'*.

**(v) Statement of Common Ground and Housing Land Supply**

19. An extensive Statement of Common Ground, between the Appellant and the Council, was submitted before the opening of the Inquiry. The issues in dispute generally reflected those set out in the putative reasons for refusal. No point was pursued on alleged overshadowing.
20. As to housing land supply, the Council's latest calculation of 3.5 years<sup>5</sup>, uplifted from an earlier 'acknowledged' position of 2.4 years, was not accepted. It was said that the Council's Position Statement<sup>6</sup> did not provide sufficient evidence of a realistic prospect of deliverability within a period of 5 years.

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<sup>4</sup> Hereafter the Framework

<sup>5</sup> CD B14 Basildon Borough Council Five Year Land Supply Report (2021-2026) – published 23 September 2021

<sup>6</sup> CD E1 dated 29 October 2021

21. However, it was agreed, irrespective of the figure, that the material shortfall, in combination with the Housing Delivery Test score (45%), engaged the tilted balance in paragraph 11 d) of the Framework. Accordingly, the policies which are most important for determining the application were to be treated as out-of-date and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. Basildon Estates, in its opening submissions, confirmed that it did not seek to occupy a material amount of Inquiry time on the matter as it was accepted that, whilst the scale of any deficit was important, a range would suffice. However, it invited clarification on the town centre regeneration schemes which formed part of the anticipated supply.
23. Infrared alleged that the Council's reliance on sites identified in the Housing and Economic Land Availability Assessment<sup>7</sup> fell well short of clear evidence of deliverability. This was supplemented by a Position Statement<sup>8</sup> that discounted the HELAA sites equating to a supply of 1.7 years.
24. In turn, the Council submitted a more detailed Position Statement<sup>9</sup> setting out further information. This prompted requests from the Appellant and the Rule 6(6) Parties to respond. These responses, and that of the Council limited to clarification, were invited as written statements for my consideration.
25. I return to the matter later in my decision.

### **Main Issues**

26. The main issues are:
  - 1) Having particular regard to the government's objective of 'achieving well-designed places':-
    - (i) the effect of the proposal on the character and appearance of the area; and
    - (ii) whether the proposed development would provide acceptable living conditions for future occupants.
  - 2) In the absence of a 5-year supply of housing land, would any resultant harm significantly and demonstrably outweigh the benefits of the scheme.

### **Reasons**

#### **(i) Planning Policy: The Local Plan**

27. The Statement of Common Ground identifies Policy BAS BE 12 of the Basildon District Local Plan Saved Policies and draft Policies H25, DES1 and DES4 in the Basildon Council Revised Publication Local Plan, which is awaiting examination, as the most relevant to the consideration of the main issues.

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<sup>7</sup> Hereafter HELAA

<sup>8</sup> ID11

<sup>9</sup> ID19 (15 November 2021) and ID23 (Supplementary Note)

28. Saved Policy BAS BE 12 indicates that permission for new residential development will be refused if it causes material harm in any of 5 ways, including harm to the character of the surrounding area.
29. Policy H25 relates to the size and type of homes and expects, amongst other things, the provision of high-quality homes with sufficient private amenity space to meet the needs of residents. Policy DES1 is aimed at achieving good design with reference to the delivery of regeneration and public realm improvements in town centres and a checklist setting out 10 components of good design. Finally, Policy DES4 requires buildings to be designed to a high standard, responding appropriately to their location and reflecting their function and role in relation to the public realm<sup>10</sup>.
30. The Local Plan policies attract limited weight, consistent with their draft status, although it is to be noted that their underlying aims are consistent with national guidance<sup>11</sup> and its drive to secure good design in its widest sense.

**(ii) Planning and related Guidance**

31. The Essex Design Guide (2018 Edition) was endorsed by Basildon Council, in 2018, as a material consideration that may be taken into account when determining planning applications in the Borough<sup>12</sup>. I have had regard to it accordingly.
32. The Basildon Town Centre Masterplan (2012) is an Interim Supplementary Planning Document that was intended to be part of the new Local Plan. It was also required to be reviewed after 7 years<sup>13</sup>.
33. The Masterplan established a vision to 2030 and beyond and identified areas for redevelopment including the western side of the appeal site. It acknowledged that some taller buildings would benefit the legibility of the town centre if placed strategically at key arrival points and on route to the town centre.
34. The Illustrative Storey Heights Plan indicated low redevelopment (2 - 4 storeys) fronting Fodderwick and a low to medium building (3 - 7 storeys) where the College now sits. Some high development (8 - 12+ storeys) was anticipated in peripheral locations. The document was intended to be replaced by the Basildon Town Centre Masterplan 2020 following research and study undertaken by 'We Made That' in its Urban Appraisal<sup>14</sup>. It provides context and general principles but its relevance in guiding development on the appeal site has waned.
35. The up-dated Masterplan, in turn, became the Basildon Town Centre Regeneration Strategy (2020) as it was not possible to formalise the Masterplan as either a Supplementary Planning Document or a Development Plan Document prior to the adoption of the emerging Local Plan. The appeal site forms part of the Station Environs sub-area which was identified as having an illustrative potential capacity for 840 residential units. Various visual impressions of the town centre indicate tall buildings on the appeal site and elsewhere.

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<sup>10</sup> The policies are described in short by way of context – I have had regard to the policies as a whole

<sup>11</sup> Including: the Framework; Planning Practice Guidance; National Design Guide; and Historic England Tall Buildings Advice Note No 4 (2015) and March 2020 Consultation Draft

<sup>12</sup> ID24

<sup>13</sup> CD E2

<sup>14</sup> CD B7



36. Although the Regeneration Strategy was relevant to the processing of the planning application, the Council is working towards a replacement Strategy based on a further urban capacity study<sup>15</sup>. Accordingly, the Regeneration Strategy has no formal policy status or weight in my consideration of the appeal.

### **The first main issue**

#### **(i) The effect of the proposal on the character and appearance of the area**

##### *The townscape role of Brooke House*

37. It can be said, without controversy, that Brooke House provides a landmark function in the town centre arising from its height, bulk and architectural design and detailing. Whether or not it was intended, some 60 years ago, to be the only tall building is academic as other buildings around the town centre form part of its current wider surroundings.
38. Nonetheless, Brooke House remains pre-eminent because of its distinctive form and the contrast provided by much lower buildings along the main pedestrianised spine. This is most notable around East Square, East Walk and Town Square with the existing buildings on the appeal site forming part of that continuum and accentuating the presence of Brooke House.
39. The appeal proposal would introduce new built form, significantly taller and bulkier than that which exists. The highest part of the development, at its north-western corner, would be some 6 metres higher than Brooke House. The nub of the Council's concern, in terms of the relationship, is from viewpoints in and around the town centre.
40. Starting from the vicinity of the railway station<sup>16</sup>, Brooke House and the proposed development would be seen as separate and dissimilar elements within the town centre. The 2 would be perceived as standing well apart and they would be clearly distinguishable from each other in terms of location, composition and material palette. It would also be difficult to determine their comparative heights given their separation and relative distances from the viewer. Although the proposal would remove the singularity of Brooke House in this view, the latter would nonetheless retain its strong landmark function within the eastern part of the retail spine.
41. From Broadmayne<sup>17</sup>, separation and the distracting presence of intervening foreground buildings and roof top clutter are relevant factors. The nearer presence of the proposal would give it dominance, but Brooke House would still read as a more distant landmark building.
42. Moving along to the vicinity of the fire station<sup>18</sup>, Brooke House (save for the slender fire station tower) stands foremost with Great Oaks House and Acorn House completing a subordinate composition. The proposed new cluster of buildings would form a subservient backdrop well beyond both Brooke House and Great Oaks House. In my opinion, the status and standing of Brooke House would remain clearly legible.

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<sup>15</sup> CD E2 and CD E3

<sup>16</sup> Including Viewpoint 18

<sup>17</sup> Viewpoint 12

<sup>18</sup> Viewpoint 13

43. In terms of East Walk<sup>19</sup>, facing westwards, the looming and dominance of Brooke House would remain foremost. In this regard, the proposed development would form a secondary and subsidiary marker at the opposite end of the 'precinct', with its height significantly diminished by distance. Progressing along East Walk into East Square and Town Square, the relative stature of Brooke House would increase, given its dramatic and arresting construction, before the attention of the viewer progresses towards the proposed new townscape element. However, in my view, the symbolism of Brooke House would not be eroded.
44. Finally, from the opposite direction, the western end of Town Square is, comparatively, constrained in width, with the primacy of Brooke House coming gradually into the frame as the precinct widens into the main square. The proposed block on the north-eastern corner of the appeal site would form the main comparator. Restricted to 10 storeys in height, and on the opposing side of the retail spine, I consider, notwithstanding the removal of the current low-rise buildings, that Brooke House would remain as the principal focal point.
45. Whilst these are only representative static viewpoints, my overall findings are reinforced by my visits in and around the town centre. In my opinion, although the singular landmark quality of Brooke House would be eroded, the proposed development would not have a material adverse impact on the primacy and captivating townscape function of Brooke House as the centre piece of the New Town.

*Urban design*

46. There has been long-standing recognition that the legibility of the town centre could be improved by introducing some increased height at key arrival points and on routes into the centre. This remains a relevant design aspiration and it is evident, to meet future housing needs and to diversify and enliven the town centre, that there is an increased pressure and architectural justification for, in principle, some additional built definition.
47. The starting point is that it was established, in cross-examination, that such an objective did not demand a response in the form of a building of substantial scale and of 17 storeys in height. That is true in so far as it goes. However, the point at issue is, as advocated by the Appellant, whether the site is worthy of the gesture<sup>20</sup>.
48. Fodderwick and Market Pavement are principal pedestrian routes from the railway station and the bus station into the town centre. The former also links directly into the civic focus of the town in St Martin's Square and thereafter towards the residential enclave bordering the recreational facilities in Gloucester Park. The appeal site forms the backdrop to Market Square and the new College building. The plot also defines the southern side of Town Square as it leads from the western extent of the main shopping area into St Martin's Square. In my opinion, these characteristics combine to form impeccable credentials for a townscape driven form of development which would provide improved waymarking and definition.

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<sup>19</sup> Viewpoint 15 (where more of Brooke House is now obscured by the new cinema)

<sup>20</sup> CD E6 Appeal Decision APP/A5270/W/21/3268157 paragraph 19



49. Turning to this in more detail, it is necessary to assess the impacts on surrounding spaces, starting with St Martin's Square. The vision for St Martin's Square in the 2012 Masterplan was essentially cosmetic without reference to new building form. Any suggestion of indicative building heights for Fodderwick, and perhaps elsewhere, needs to be reassessed in the context of current drivers for change.
50. The square itself has a somewhat disparate character consisting of the Council Offices and Towngate Theatre; the Church and associated bell tower; the drab and uninviting side wall of the former M&S store; the Westgate shopping park; and the north-western corner of the appeal site. The square is generous in proportion and the bell tower, as assessed by 'We Made That', provides a very distinctive landmark and asset to the space. It is, generally, only locally prominent in the townscape<sup>21</sup>.
51. The most critical relationship would be approaching, and on entering, the square from the north where the proposed development would form a partial backdrop to the bell tower. Despite the significantly greater height and bulk of the appeal scheme, the individual identity of the structures could not be more striking and, to my mind, the distinctive and delightful eye-catching qualities of the bell tower would prevail.
52. In more general terms, the 17 storey element would occupy a corner recess of the space, and the development as a whole would be perceived as being located outwith and beyond the square itself. In my opinion, despite occupying the re-entrant inset of the existing block, the influence on the pedestrian square would be quite modest with reference to the height of the building and its relationship with the scale and dynamism of the public realm. In addition, I believe that the development would bring purposeful waymarking and contrast to the space, rather than any strong sense of enclosure.
53. Moving on to Town Square, having assessed the project from East Walk relative to Brooke House, Northgate House introduces an increased building height on the northern side of the square, opposite the north-eastern corner of the appeal site. Whilst the proposal would be yet taller, with preceding towers stepping down, it would herald a clear marker to Market Pavement and provide added definition to Town Square as it narrows in width and terminates immediately beyond the appeal site.
54. From the south, in the vicinity of the railway station, the relationship of the proposal with Brooke House is discussed above. In that view, little or nothing is evident of the townscape characteristics of the inner core. Elsewhere along Roundacre, in those locations where Brooke House does not feature<sup>22</sup>, the proposal would provide a cluster of tall buildings above and beyond the foreground of the modern retail park.
55. Entering Fodderwick, the appeal site is framed by the eastern side of the Westgate shopping park and the recent insertion of the College. In this location I see nothing fundamentally wrong with the proposal's scale and bulk as a function of delineating the edge of the main retail core and waymarking along Fodderwick. The Council's concern about the loss of townscape character is something that I consider below.

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<sup>21</sup> There is, for example, a longer view of its 'spire' from Gloucester Park (Viewpoint 11)

<sup>22</sup> For example Viewpoint 19

56. Finally, from the general locality of the southern end of Market Pavement<sup>23</sup>, the low-rise characteristics of the appeal site are now influenced by the foreground of the College and the notably taller, uncharacteristic, backdrop of Northgate House. Again, I see the opportunity for change and waymarking, subject to the wider design considerations which I turn to now.

*Evolution of the scheme and the proposed design*

57. The Inquiry was not afforded the benefit of hearing from the project architect and, despite the overall competency of the Design and Access Statement, the evolution of the scheme is chronicled only in summary form. There is no record of the brief and whether or not the design team was charged with maximising or optimising development on this brownfield site. There was, however, during pre-application engagement with Council Officers, endorsement of the concept of a proposal rising to 17 storeys in height<sup>24</sup>.
58. Similarly, the Essex Quality Review Panel<sup>25</sup>, supported in principle matters of scale and density as presented in the Masterplan noting that '*A further review of appropriate building heights and placement within the town centre is now required to ensure that both existing key views are not harmfully affected, whilst creating opportunities for new vistas. The Panel recognised that the use of the Grade II listed Brooke House as the focal building for development within the masterplan. Not enough of the proposed visuals or views have addressed how this structure will be used; it was noted that it currently looks like potential vistas would be obstructed by new development*'.
59. Whilst the genesis of the scheme is vague, a matter to which the Council submit '*is a matter of some importance*<sup>26</sup>, the task now is to critically evaluate the proposal and to establish whether it is well-founded by reference to the principles set out in the National Design Guide<sup>27</sup>, and whether it results in a well-designed place.
60. The Design and Access Statement<sup>28</sup> records that the '*proposals have been developed in close conjunction with the ambitions and principles set out within the ..... Draft Basildon Town Centre Masterplan*' followed by an illustration of indicative areas for buildings taller than 8 storeys. The crux of the Council's case is that the Appellant, in following this route, has neither understood the local context nor, in consequence, integrated the proposed development into its surroundings.
61. For my part, there is clear evidence that the Appellant was mindful of the origins of Basildon, its architecture, heritage and urban form. It remains to be seen whether that appreciation is expressed in the scheme before me. I have already dealt broadly with the relationship with Brooke House, and I am satisfied that the proposal would not undermine the landmark quality of the original focal building and it would not obstruct vistas or views of that building in its context. Similarly, I have found that the proposal has clear rationale in terms of urban design.

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<sup>23</sup> Viewpoint 21

<sup>24</sup> CD C3 Paragraph 4 '*.....a development ranging between some 9-17 storeys ....*'

<sup>25</sup> The Review Panel was appointed to undertake a collective review of proposals for the Eastgate Quarter, Market Square (the appeal proposal), and Town Square north which sought to meet the expectations of the emerging 2020 Town Centre Masterplan

<sup>26</sup> ID33 paragraph 24

<sup>27</sup> CD A9

<sup>28</sup> CD C11 section 2.13

62. Moving on to the detail, the design appears to have evolved with an early focus on East Walk, in particular, which exhibits a range of design elements including zig-zag form above ground level, shaped canopies, 2 storey framed pavilions and the interrelationship of horizontal form with Brooke House and its own horizontality. West of Brooke House, towards the appeal site, the buildings tend to have a much simpler rectilinear form and, where they exist, simple flat roofed canopies or colonnaded projection.
63. The National Design Guide points out that *'well-designed places do not need to copy their surroundings in every way ..... it is important to explain how the design of a development relates to context and local character'*<sup>29</sup>. In this regard, I recognise that there are key elements which the Appellant has sought to include based on its interpretation of context.
64. Starting at street level, the proposed towers, pavilions and podiums each has an identifiable base. In the case of the former, brickwork pillars provide robust vertical framing, with 2 storey proportions. The pavilions are similarly 2 storeys in form, with single storey podiums in deep recess, incorporating generous glazing sub-divided by clearly articulated vertical metal framing. Horizontal subdivision at first floor level, employing dark metal spandrels, shows restraint and does not compromise overall verticality.
65. In terms of seeking to reflect the horizontal banding of Brooke House, the upper floors of the towers are delineated by a string course of brickwork, comprising 2 stretcher courses between single soldier courses. The banding would project some 25mm from the face of the building to provide subtle definition. The robust bulk of the towers is emphasised by deep set fenestration, comprising a combination of glazing and dark aluminium panels for unity in appearance. In my view, although the towers would lack the overt horizontal expression of Brooke House, and that of other 'lesser' buildings, it is evident that the devices employed are based on an understanding of context and its interpretation in a contemporary form.
66. Further, I note that the Council is critical of window openings being of a similar size, with 3 types of fenestration within them, and that all brick piers and spandrels are identical, with all elevations sharing the same treatment. However, to my mind this results in an understated elegance founded on simplicity and unity. Indeed, repetition and consistency are key attributes of Brooke House. The complaint about the proposed building being monotonous and over-bearing lacks foundation.
67. The overall configuration, with tall finger blocks and low pavilions and podiums along the southern and northern elevations would clearly differ from the current composition of town centre street blocks. However, the pavilions would serve to delineate the towers, add human scale to the street and pay homage to the setting of the College. Articulation of the frontages, although 'new' to the centre, serves a justifiable design purpose in emphasising the constituent elements of the proposal and creating visual interest to engage the eye. Nonetheless, with repetition and common elements, the scheme would have a singular identity.

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<sup>29</sup> CD A9 paragraphs 44 and 45

68. The primary facing material for the proposed development would be brickwork which the Council say '*has no reliable or positive precedent in the Town Centre's original design*<sup>30</sup> and '*..... is characteristic of the arguably less successful late 20<sup>th</sup> century development on the west side of the town centre*<sup>31</sup>.
69. However, brickwork is common throughout the centre albeit often secondary and in combination with other materials. Brooke House, above its pilotis, employs brick, as do parts of the appeal site block and it is characteristic of St Martin's Square. In terms of the mesh metal cladding for the pavilions, the claim that it would be '*alien*' lacks appreciation of its rationale in that its sculptural qualities are founded in a '*lost*' piece of public sculpture crafted in Corten steel<sup>32</sup>. It would sit comfortably within its context and bring enrichment to its surroundings. The Council's misgivings are also blind to the materials employed on the College and of course Northgate House.
70. I recognise the Review Panel's concern, whilst welcoming brick as an alternative palette, about the loss of local character and what could be seen as more of a London identity. Nonetheless, given the immediate characteristics and surroundings of the site, and the interposing materials of the proposed pavilions and podiums, I consider that the proposed palette would reinforce the design concept of the scheme and contribute towards local distinctiveness.
71. It is true that the scheme lacks street canopies, other than on the north-western corner as microclimate mitigation, which are a modernist feature of the town centre. However, they are by no means universal or continuous across the centre. Omission here does not render the scheme unattractive or so incongruous that it could be claimed to be poor design which would be out of place in its surroundings.
72. Similarly, narrower glazed street level frontages would not, to my mind, diminish the language or invitation of the ground floor uses. Nor would they have a material impact on the character of the centre as active frontages are less evident along the western side of Fodderwick and into St Martin's Square.
73. I have already referred to the articulation of the scheme and its stepped massing. The resultant niches could, as the Council points out, offer hiding places and impact on the perception of safety. However, active frontages, a resident population and generously proportioned public realm should lessen the opportunity for, and a fear of, anti-social behaviour and crime.
74. In conclusion on this part of the first main issue, I acknowledge that the proposal would result in considerable change which requires special consideration. In this regard, I have found that the proposal would not have a material adverse effect on the townscape function of Brooke House. In addition, the scheme would have a clear role in urban design by providing new landmarks related to patterns of movement and emphasising the importance of the western edge of the town centre. Finally, the design is founded in an understanding of the place which has been incorporated, by interpretation and innovation, into a proposal which would relate well to its context. Overall, I find the criticism levelled at the scheme as '*any place design*' to be unfounded.

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<sup>30</sup> ID33 paragraph 22

<sup>31</sup> Lowndes Proof paragraph 5.31

<sup>32</sup> The Pineapple by William Mitchell 1977

**(ii) Whether the proposed development would provide acceptable living conditions for future occupants**

*Accessibility and internal circulation*

75. Starting with the main and only residential entrance to the proposed development, this would be well placed for residents going to and from public transport facilities. In that regard, it has clear logic but those wishing to avail themselves of amenities within the town centre, or to take exercise in Gloucester Park, would have to negotiate part of the perimeter of the building.
76. Whilst multiple entrances would resolve this, by providing choice, it would be counter-intuitive to the ethos of Build to Rent and its objective of fostering community. It would also serve to dilute the legibility of an intended focal entrance and interrupt street facing active mixed-use frontages. I also accept that such an arrangement would have drawbacks in terms of security and management.
77. Endorsing the principle of a dramatic single dedicated entrance, with concierge and space for sitting<sup>33</sup>, residents would ascend to the first-floor communal internal amenity area either by a flight of stairs or a lift. It would only be at that point where residents would disperse, with those living in either the eastern or western blocks walking across a communal courtyard, under a covered canopy, before entering their respective residential fingers.
78. Internally, the journey would often be in two parts, utilising a corridor at podium level and another on the apartment floor. Alternatively, for example in the case of a resident either in the north-east corner or the south-west corner of the development, who chose to take the nearest lift, the final leg of the journey would be a longer angulated route along the home corridor. The corridors would lack natural light and natural ventilation.
79. Such an arrangement, in the absence of cores to ground level, is necessarily somewhat contrived, and the lack of natural light and ventilation is contrary to best practice<sup>34</sup>. The journey from entering the building to home is also, potentially, a long one along corridors with possible blind spots. The Build to Rent Practice Guide does however acknowledge that *'the actual fit of these shared corridors and common areas will have a strong influence on their character .....'*
80. To counterbalance the identified disadvantages, the journey home would offer the potential for meeting others, for nurturing a sense of belonging, and an opportunity for using the communal amenities, and appreciating the outdoor landscaped gardens. To my mind, given the concept of Build to Rent housing, notably *'.....enabling customers to feel that the entire building is their home, and not just their own unit .....'*<sup>35</sup>, the Council's claim that the scheme would be *'harmful to the health and well-being of the resident .....'*<sup>36</sup> is a misplaced overstatement. In my opinion, the 'well-being' advantages firmly outweigh such misgivings and lead to a conclusion that the scheme is well-designed.

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<sup>33</sup> CD C11 page 142 Based on an Artist's impression of the entrance lobby

<sup>34</sup> ID21 page 80 paragraph 4.6.2

<sup>35</sup> ID21 page 33 'Section 2.3 'Sense of Community'

<sup>36</sup> Deeley proof paragraph 8.8

81. As to additional items raised by the Council, including the claimed drawbacks of residents using a shared service corridor for waste disposal or recycling, the corridors would have generous width and normal management responsibilities and security arrangements, finalised by planning condition, should minimise issues arising from shared use.

*Access to amenity space*

82. The Essex Design Guide makes plain that *'every home should have the benefit of individual private or communal private amenity space ..... the guidance applies to homes of all tenures'*<sup>37</sup>. It adopts a tiered approach indicating that *'development on sites larger than 0.1 hectares should provide at least 25 sq m of private space for each home .....'*<sup>38</sup>. Where this is not possible, the provision of balconies will be expected.
83. It is common ground that the appeal scheme would provide in the order of 5.4 sq m of communal open space for each residential unit; and external balconies would be limited to 24% of the apartments, some of which would serve one-bedroom accommodation<sup>39</sup>. The Build to Rent Good Practice Guide notes that *'good practice would be to provide between 6-10m<sup>2</sup> per dwelling of shared external amenity spaces .....'*<sup>40</sup>.
84. The Essex Design Guide and the Build to Rent Guide are not embodied within policy. It can also be seen that the former does not explicitly provide guidance on high density schemes of the order proposed. Irrespective, accepting the proposition that balconies should be provided, and that Juliette balconies cannot provide privacy or separation for living areas, it is notable that the inclusion of balconies was never intended, and they were added during consideration of the application.
85. There is no doubt that balconies often present a design challenge and that retrofitting to an advanced scheme makes the task more difficult. Although I agree that the addition of projecting balconies on the proposed street facing elevations would be inappropriate in townscape terms, that is not the point. Neither is it of any relevance that an operator might not want balconies, nor that schemes without balconies score highly on surveys of residential satisfaction. The matter at issue is whether the totality of the outdoor space would provide sufficient opportunities for the needs of the residents.
86. The scheme as presented has the advantage of 2 distinct podium gardens. Both, with southerly aspect, would have the potential to receive direct sunlight for a good proportion of the day; enjoy screening from the street; and present opportunities for a variety of outdoor enjoyment. Three smaller rooftop terraces, at floors 11, 12 and 15, would add further choice. Although individual apartments would have unequal access to the facilities, depending on their location by floor level and relative proximity to a lift, any difference would be largely immaterial. The balconies that would be provided would be either east or west facing and would benefit from good levels of sunlight. The appeal site also has close access to Gloucester Park.

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<sup>37</sup> CD B11 paragraph 3.139

<sup>38</sup> CD B11 paragraph 3.150

<sup>39</sup> ID22

<sup>40</sup> ID21 page 75



87. In my opinion, the deficiency in the quantum of outdoor amenity space, or access to it, would be outweighed by the range of spaces offered, their overall utility, the general principles embodied in their design, and the reservation of details by condition.
88. Moreover, the proposed development would also offer a modest amount of internal communal amenity space, principally at podium level. Whilst its form and related functions would be dependent on the operator's business model, utilisation of the space in one way or another, as part of the 'unique offer' of the development, would be likely to result in some further contribution to residents' overall amenity.

**(iii) Conclusion on the first main issue**

89. There is a single development plan policy relevant to the main issue, namely Saved Policy BAS BE 12. Draft Policies H25 (1), DES1 and DES4 also merit weight given their consistency with national guidance. In turn, the Framework confirms that *'the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve'*<sup>41</sup>. Paragraph 130 identifies 6 overarching criteria to guide decision makers.
90. In my opinion, the proposal would not have a harmful impact on the character and appearance of the area, and it would offer good quality living conditions for future occupants. There would be no conflict with local policies or national guidance.

**The second main issue**

**In the absence of a 5-year supply of housing land, would any resultant harm significantly and demonstrably outweigh the benefits of the scheme**

**(i) Housing Land Supply**

91. Basildon is required to deliver a minimum of 6,048 homes over the 5-year period 2021- 2026. This has been calculated using the standard method and includes a 20% buffer as the Council has only been able to meet 45% of its housing requirement over the last 3 years. The Five Year Housing Land Supply Report<sup>42</sup> identifies a total supply of 4,234 dwellings (3.5 years) consisting of sites with planning permission (1,779 dwellings); HELAA sites (980 dwellings); and Town Centre Regeneration sites in Basildon and Wickford (1,475 dwellings).
92. The Council's Five Year Housing Land Supply Position Statement<sup>43</sup> made some minor adjustments, including an uplift to the sites with planning permission and a downward revision to yields from Basildon Town Centre. In a further statement<sup>44</sup>, responding to the submissions of the Appellant and the Rule 6 Parties, the Council's confirmed position was a supply of 3.3 years. However, it is important that the annual housing land supply calculation should not be distorted by ad hoc additions or deductions throughout the monitoring year. Therefore, those dwellings arising from planning permissions, resolutions, or applications post-dating the annual report should be discounted.

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<sup>41</sup> CD A2 paragraph 126

<sup>42</sup> CD B14

<sup>43</sup> ID19

<sup>44</sup> ID30

93. In terms of the remainder of the disputed sites, the principal issue is whether the Council's assessment of deliverability is justified. The Glossary to the Framework defines 'Deliverable' as:
- 'To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:*
- a) .....
  - b) *where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years'.*
94. In turn, Planning Practice Guidance: Housing supply and delivery explains that *'in order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available .....*'. It goes on to outline 4 potential sources of evidence which may demonstrate deliverability including, but not limited to: the current status of the site; firm progress towards the submission of an application; firm progress with site assessment work; or clear relevant information about site viability, ownership constraints or infrastructure provision and any successful bids for related funding.
95. Looking first at the sites deriving from the Brownfield Register, none have planning permission and anticipation of development does not amount to clear evidence. Indeed, for example, Car Park 14 and adjacent land, which is identified as delivering over 200 dwellings, was the subject of an application which was withdrawn at the end of September 2021. Despite a reported intention to submit a revised application, and the agreement with Homes England, the prospect of deliverability is, nonetheless, vague.
96. Turning to 'Other Basildon Town Centre Sites', the development of Car Park 2 and Car Park 12 relies on the refurbishment of Great Oaks multi-storey car park. This is due to take place in 2022 with an expectation that the surplus car parks will be the subject of planning applications in the same year. There is no demonstrable evidence to support housing completions within the relevant period.
97. In terms of 'Basildon Council Sites', many of which form part of the Council's housebuilding programme for the next 5 years, most are identified as 'Future Building Programme' and have not progressed to application stage. Whilst it is understandable that full details are not yet in the public domain, and it is acknowledged that the Council has been pro-active in building houses, there is no firm evidence to support the prospect of delivery. The small site owned by Essex County Council is similarly unsupported.
98. Overall, a substantial part of the Council's projected supply does not attain the threshold of deliverability as defined by the Framework and the Planning Practice Guidance. Accordingly, this would diminish a robust assessment of supply to around 1.7 years, a figure promoted by Basildon Estates and Infrared by slightly different means. It would also support the Appellant's reluctance to accept the Council's proffered housing land supply.

99. The calculation of housing land supply is by no means an exact computation, and some sites may yet come forward through the Council's endeavours and land ownership. Indeed, material weight is to be given to the Council's Housing Delivery Action Plan 2021 in response to the acknowledged housing land supply shortfall, and that many of the identified sites are in its control. Small sites are also likely to be easier to deliver.
100. Looking at the exercise as a whole, it is reasonable to assume, on the balance of probability, that some of the sites discounted by the Rule 6 Parties are likely to generate new housing within the relevant period. As a matter of judgement, I find the critique undertaken by Basildon Estates and Infrared to be unduly pessimistic. On the other hand, it is inevitable that some of the sites relied on by the Council will not materialise and a claim of 3.3 years supply cannot be supported.
101. Whilst it has been verified that it is not always necessary to establish the precise level of the shortfall, the difference here is sizeable. As a matter of judgement, from the evidence before me and without undertaking a comprehensive site by site assessment, I consider that the available supply is likely to be, at the very best, no more than the mid-point of the conflicting figures. The shortfall is clearly significant.
102. This leads me to conclude that the housing land availability, and the performance against the Housing Delivery Test, falls well below the expectations of national policy. On this basis, the delivery of additional housing arising from the proposal should be given great weight in the planning balance.

**(ii) Heritage assets**

103. The Statement of Common Ground confirms that the Council does not advance any heritage objections. In addition, Historic England did not oppose the project. Essex County Council's Places Services identified that Brooke House, a prominent and landmark building of the New Town development, would experience a change to its setting resulting in less than substantial harm at the lower end of the scale.
104. For my part, it is evident that Brooke House, a robust building with distinctive architectural language, was designed to be the tallest building in the New Town. It remains as a landmark feature and a symbol of the New Town Movement. The proposed development would bring about change within the setting of Brooke House as a result of the introduction of a cluster of tall buildings. In my opinion, in local views, these would appear distinct in form and character set well apart from Brooke House. More widely, the development would appear as an additional element on the skyline, lessening the focus of Brooke House. Overall, this would amount to less than substantial harm to the significance of the designated heritage asset.
105. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be given to the desirability of preserving the setting of a Listed Building. Considerable importance and weight are to be given to the harm identified. Taking account of the totality of the public benefits arising from the proposed development, with particular reference to the provision of a significant number of homes, in a highly sustainable location, and the catalyst to the much-needed regeneration of the town centre, this would outweigh the heritage harm that I have identified.

106. The Council also considered the proposal in the context of non-designated heritage assets, including the Fire Station and the Geoffrey Clarke patterned untitled mosaic on the northern elevation of the existing buildings. I agree that there would be no adverse impact on the setting of the former, and provision to relocate the mosaic would be an adequate safeguard.

**(iii) Local Representations at application and appeal stage**

107. A key local concern is the scale, height and density of the proposed development and its impact on the town centre both visually and socially. I have considered the visual implications earlier in my decision. In my opinion, with active ground floor uses, around the clock concierge service, measures incorporated to design out crime, and the comings and goings of residents, this part of the town centre would become more welcoming
108. In terms of car parking, I am satisfied that provision within the building is at an appropriate level having regard to the location of the site, its proximity to public transport, and the aim to encourage sustainable modes of travel. Conditions to secure a delivery and servicing plan and measures to inform residents of local parking restrictions are added considerations.
109. Fire safety is a dual responsibility with Building Regulations. However, a planning condition could be imposed requiring the submission and approval of a comprehensive independent Fire Statement. It is also to be noted that the scheme was amended, whilst under consideration, to make provision for a secondary stair to the most upper levels of the fingers as a mitigation against possible future change to the regulations.
110. As to potential impacts on local services, the scheme includes space for a healthcare facility or, as an alternative, a financial contribution to supplement provision elsewhere. Financial contributions to complement existing infrastructure and facilities, appropriate to the impacts arising from the proposal, would also be secured by planning obligation.
111. A further repeated concern is that of precedent in relation to the acceptance of other tall buildings. However, my decision is site and project specific and other schemes, as they come forward, would be considered on individual merit.
112. Having considered the other points of objection, including concerns about living at height, the size of the apartments, the Build to Rent model and the lack of affordable housing, I am satisfied from my analysis of the main issues that none of these provide reasons to dismiss the appeal.
113. The proposal also received some expressions of support related to the benefits of the project which I assess below.

**(iv) The benefits of the proposal**

114. The Appellant identifies a comprehensive list of scheme benefits<sup>45</sup>. These are not challenged by the Council other than in the terms that many would be realised by an alternative form of development designed to overcome the harm raised by the authority. Whilst it is true that some of the benefits would be generic, the weight to be attached is scheme specific and, in the case before me, there is no other for comparative assessment.

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<sup>45</sup> CD C10 (pages 22-25)

115. In short, the project would generate additional spend locally during the construction period; and, on completion, expenditure from residents and those employed within the development. Improved employment opportunities would arise and, more generally, redevelopment would revitalise this part of the town centre with mixed-uses, resulting in greater investor confidence. I attach significant weight to these benefits, many of which would be long-term. The provision of a substantial amount of new housing in a highly sustainable location, providing choice and diversity in the local housing market, is a factor of very significant weight.
116. Other claimed benefits, including wider infrastructure improvements, are generally in the nature of mitigation related to increased demands arising from the development. Similarly, good design, sustainability measures and public realm enhancements are a fundamental expectation of local and national policies. None of these add weight in the final planning balance.

**(v) The planning balance**

117. In conclusion, the proposal would deliver 492 dwellings as part of a mixed-use development in a highly sustainable location. The scheme would not have a harmful effect on the character and appearance of the area, and it would provide good living conditions for future residents. Harm to the setting, to the limited extent identified, and thus the significance of Brooke House, would be outweighed by the benefits of the scheme. There are no other matters which count against the proposal.
118. The Statement of Common Ground<sup>46</sup> identifies a spectrum of policies with which no discord is alleged. In terms of those most relevant to the appeal, I have found no material conflict. I therefore conclude that the proposal would be in accordance with the development plan when read as a whole. It would also correspond with the Framework when approached in the same manner.
119. The Council acknowledges that it cannot demonstrate a 5-year supply of deliverable housing sites and that the 'tilted' balance in paragraph 11 d) of the Framework requires planning permission to be granted unless '*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*'.
120. From my consideration of the main issues, other material considerations and all matters raised, and for the reasons set out above, I conclude that planning permission should be granted.

**Planning Conditions**

121. The draft planning conditions include a number of pre-commencement conditions (Conditions 3 -12). These are acknowledged, in the Statement of Common Ground, to be agreed for the purposes of section 100ZA and regulation 2 of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.
122. Conditions are necessary to identify the period within which the development is to commence and to specify the approved plans (Conditions 1 and 2).

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<sup>46</sup> CD E4

123. As the site is previously developed land, measures will need to be taken to identify any sources of contamination and to ensure appropriate working methods and remediation (Conditions 3 – 6). Given the constrained location of the development site, protocols are needed for working methods, noise control and logistics (Conditions 7 – 9).
124. A record of buildings on the site is required for archive purposes; important trees, in the public realm adjacent to the site, need to be safeguarded for amenity reasons; and measures for the relocation of the existing mosaic and additional public art are required for heritage protection and civic pride (Conditions 10 - 12).
125. Important components of the scheme need to be agreed and implemented, to ensure appropriate external materials of construction; site levels relative to adjacent buildings and public realm surfaces; surface water drainage to ensure no off-site flooding; details of fire safety measures; and biodiversity enhancement (Conditions 13 – 17).
126. Given the form and mass of the buildings, wind mitigation measures are to be agreed to ensure safe and comfortable pedestrian movement. Noise mitigation for the apartments will also be required to provide suitable living conditions. The use of glazing, to an agreed standard, at ground floor level is justified on public safety grounds (Conditions 18 – 20).
127. A number of details need to be agreed before the development is occupied. These include the management and maintenance of the surface water drainage system, in the interests of flood prevention; hard and soft landscaping for the amenity of residents, including defensible space for podium level residents facing the outdoor amenity areas; a lighting scheme to avoid light pollution; and a refuse strategy for visual and health well-being (Conditions 21 – 25). The operation of the commercial units should be controlled, to protect living conditions, through noise mitigation and odour control (Conditions 26 - 27).
128. Additionally, car parking facilities, including blue badge parking, electric vehicle charging points, car park management and cycle storage are essential for highway safety and to promote sustainable travel (Conditions 28 - 30). Energy and sustainability measures are justified by the reality of climate change; bird and bat nesting boxes have well founded ecological justification; and communal television and satellite systems would safeguard the buildings from a plethora of unsightly attachments (Conditions 31 – 33).
129. Further, a delivery and servicing plan is intended to minimise impacts on the local highway network; the provision of green roofs would have amenity and ecological benefits; a residential welcome pack, aimed at promoting sustainable transport and well-being are laudable aims; and a strategy for 'meanwhile' uses would enliven vacant units pending full scheme occupation (Conditions 34 – 37). An additional prior to occupation condition is designed to inform prospective residents of local parking restrictions in the interests of highway safety (Condition 49).
130. Compliance conditions are imposed to ensure that all ecological mitigation and enhancement measures are fulfilled; and flexibility is provided between uses to reflect the changes made to the Town and Country Planning (Use Classes) Order 1987 (as amended) which post-dated the making of the application (Conditions 38 – 39).



131. In addition, the hours during which the commercial units are open to customers is to be restricted, and noise from operational plant is to be controlled to safeguard living conditions; a record of drainage maintenance is to be kept related to conditions 15 and 21; superfast broadband is essential for modern living; a proportion of the apartments are to be accessible and adaptable for inclusivity; water efficiency measures are to be implemented to save natural resources; and Secured by Design measures are to provide safety and security (Conditions 40 – 46).
132. Finally, there are 2 conditions related to site assembly to enable the freeholder interest the ability to sign the associated section 106 legal agreement necessary to enable the development (Conditions 47 – 48).
133. I am satisfied that the conditions meet the relevant legal and policy tests. The draft informatives have no formal status and do not need to be included.
134. I have also had regard to the Council's concerns about the unknown nature of the internal amenity provision within the scheme and whether details should be required by condition. However, it is clear from the submitted Management Strategy<sup>47</sup> that the amenity space is intended to be adaptable and flexible following resident engagement. In my view, a condition would undermine these objectives and it is therefore unreasonable.

### **Planning Obligation**

135. A completed Deed of Planning Obligation, made between the Council, the Appellant and a Mortgagee, pursuant to section 106 of the Town and Country Planning Act 1990, was submitted during the Inquiry. This was accompanied by an agreed Compliance Statement in accordance with Regulation 122(2) of the Community Infrastructure Regulations 2010.
136. The obligations, in summary, include financial contributions in respect of: support for an Employment and Skills Plan (£150,000); childcare and primary education places (£369,144); healthcare infrastructure in the event that NHS England does not accept to operate the healthcare facility within the development (£186,070); open space, culture and sports provision (£570,936.48); high quality highway improvements and pedestrian access in the town centre (£676,091.64); sustainable transport, including local walking and cycling, (£492,092.62); Travel Plan Monitoring (£17,500); measures to monitor, with a view to improving, the performance of existing on street parking controls in the vicinity of the site (£10,000); and an overall combined monitoring fee (£42,200). Related requirements would secure the provision of car club spaces, electric vehicle charging points, car club membership and repairs to the public realm and public roads arising from any damage as a consequence of the demolition and construction phases.
137. There is also a contribution (£62,631.60) towards the Essex Coast Recreation Disturbance Avoidance Strategy (RAMS). This follows on from an Appropriate Assessment (Stage 2), to assess any necessary recreational disturbance mitigation related to the proposed development. Natural England has confirmed that the mitigation described accords with its strategic-level advice and that it should rule out any 'adverse effect on the integrity' of relevant European designated sites within the RAMS.

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<sup>47</sup> CD C26

138. Other obligations include a Build to Rent provision that would secure a marketing strategy and a residential management plan; a review of child yield in the event of occupancy or management changes; an Employment and Skills Plan; the provision of a healthcare facility to a defined standard; and historic building recording.
139. Finally, there is a two-stage viability review mechanism which could secure an uplift in the education contributions (maximum £1,597,021.56). Any further surplus would provide a commuted sum to deliver affordable housing.
140. The Compliance Statement carefully sets out justification related to the underpinning tests set out in Regulation 122(2). There is clear validation through extant or emerging Development Plan policies and the use of transparent formulae.
141. On my analysis, the Obligations are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. As such, they all meet the requirements of paragraph 57 of the Framework, and Regulation 122(2).

### **Conclusion**

142. For the reasons given above I conclude that the appeal should be allowed subject to the schedule of conditions at Annex A.

*David MH Rose*

Inspector

## **ANNEX A: SCHEDULE OF CONDITIONS (1 – 49)**

### **1. Time Limit**

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

### **2. Plan Numbers**

The development hereby permitted shall be carried out in accordance with the following approved plans:

**Plans dated 11th November 2020:**

Ground Floor Masterplan 19065-SWAP-XX-00-DR-A-MA-1100  
First Floor Masterplan 19065-SWAP-XX-01-DR-A-MA-1101  
Second Floor Masterplan 19065-SWAP-XX-02-DR-A-MA-1102  
Third Floor Masterplan 19065-SWAP-XX-03-DR-A-MA-1103  
Fourth Floor Masterplan 19065-SWAP-XX-04-DR-A-MA-1104  
Fifth Floor Masterplan 19065-SWAP-XX-05-DR-A-MA-1105  
Sixth Floor Masterplan 19065-SWAP-XX-06-DR-A-MA-1106  
Seventh Floor Masterplan 19065-SWAP-XX-07-DR-A-MA-1107  
Eighth Floor Masterplan 19065-SWAP-XX-08-DR-A-MA-1108  
Ninth Floor Masterplan 19065-SWAP-XX-09-DR-A-MA-1109  
Tenth Floor Masterplan 19065-SWAP-XX-10-DR-A-MA-1110  
Eleventh Floor Masterplan 19065-SWAP-XX-11-DR-A-MA-1111  
Twelfth Floor Masterplan 19065-SWAP-XX-12-DR-A-MA-1112  
Thirteenth Floor Masterplan 19065-SWAP-XX-13-DR-A-MA-1113  
Fourteenth Floor Masterplan 19065-SWAP-XX-14-DR-A-MA-1114  
Fifteenth Floor Masterplan 19065-SWAP-XX-15-DR-A-MA-1115  
Sixteenth Floor Masterplan 19065-SWAP-XX-16-DR-A-MA-1116  
Roof Level Masterplan 19065-SWAP-XX-RF-DR-A-MA-1120  
Ground Floor General Arrangement 19065-SWAP-XX-00-DR-A-GA-1200  
First Floor General Arrangement 19065-SWAP-XX-01-DR-A-GA-1201  
Second Floor General Arrangement 19065-SWAP-XX-02-DR-A-GA-1202  
Third Floor General Arrangement 19065-SWAP-XX-03-DR-A-GA-1203  
Fourth Floor General Arrangement 19065-SWAP-XX-04-DR-A-GA-1204  
Fifth Floor General Arrangement 19065-SWAP-XX-05-DR-A-GA-1205  
Sixth Floor General Arrangement 19065-SWAP-XX-06-DR-A-GA-1206  
Seventh Floor General Arrangement 19065-SWAP-XX-07-DR-A-GA-1207  
Eighth Floor General Arrangement 19065-SWAP-XX-08-DR-A-GA-1208  
Ninth Floor General Arrangement 19065-SWAP-XX-09-DR-A-GA-1209  
Tenth Floor General Arrangement 19065-SWAP-XX-10-DR-A-GA-1210  
Eleventh Floor General Arrangement 19065-SWAP-XX-11-DR-A-GA-1211  
Twelfth Floor General Arrangement 19065-SWAP-XX-12-DR-A-GA-1212  
Thirteenth Floor General Arrangement 19065-SWAP-XX-13-DR-A-GA-1213  
Fourteenth Floor General Arrangement 19065-SWAP-XX-14-DR-A-GA-1214  
Fifteenth Floor General Arrangement 19065-SWAP-XX-15-DR-A-GA-1215  
Sixteenth Floor General Arrangement 19065-SWAP-XX-16-DR-A-GA-1216  
Roof Level General Arrangement 19065-SWAP-XX-RF-DR-A-GA-1220  
General Arrangement Building Section A 19065-SWAP-XX-XX-DR-A-GA-1411  
General Arrangement Proposed Long Section B 19065-SWAP-XX-BB-DR-A-GA-1412  
General Arrangement Proposed Short Section C 19065-SWAP-XX-CC-DR-A-GA-1413

General Arrangement Proposed Short Section D 19065-SWAP-XX-DD-DR-A-GA-1414

East Elevation 19065-SWAP-XX-01-DR-A-GA-1311

North Elevation 19065-SWAP-XX-02-DR-A-GA-1312

South Elevation 19065-SWAP-XX-03-DR-A-GA-1313

West Elevation 19065-SWAP-XX-04-DR-A-GA-1314

West Courtyard Elevation 19065-SWAP-XX-05-DR-A-GA-1315

East Courtyard Elevation 19065-SWAP-XX-06-DR-A-GA-1316

**Plans dated 24th June 2020:**

Landscaping Plan - 4126\_BBLA-XX-01-L-101-B

Landscaping Plan - 4126\_BBLA-XX-XX-L-102-B

**Plans dated 25th June 2020:**

Location Plan 19065-SWAP-XX-XX-DR-A-CP-1000 Revision R5

Red Line Plan 19065-SWAP-XX-XX-DR-A-CP-1001 Revision R12

Demolition Plan 19065-SWAP- XX-00-DR-A-MA-1011 Revision R3

**Plans dated 3rd July 2020:**

Landscaping Plan - 4126\_BBLA-XX-00-L-100-P1

**Plans dated 31st July 2020:**

Podium Sections 19065-SWAP- XX-XX-DR-A-GA-1601 Revision PA

Pavilion Detail Sections 19065-SWAP- XX-XX-DR-A-GA-1700 Revision PA

Podium Detail Sections 19065-SWAP- XX-XX-DR-A-GA-1701 Revision PA

Finger A Detail Sections 19065-SWAP- XX-XX-DR-A-GA-1702 Revision PA

Finger A Detail Sections with Canopy 19065-SWAP- XX-XX-DR-A-GA-1703 Revision PA

Lateral Unit Type 1WCA -19065-SWAP- 1W-XX-DR-A-GA-1502 Revision PA

Lateral Unit Type 2A - 19065-SWAP- 2A-XX-DR-A-GA-1506 Revision PA

Lateral Unit Type 2B -19065-SWAP- 2B-XX-DR-A-GA-1507 Revision PA

Lateral Unit Type 2WCA - 19065-SWAP- 2W-XX-DR-A-GA-1509 Revision PA.

## **PRE-COMMENCEMENT CONDITIONS**

### **3. Land Contamination (Site Characterisation)**

No development shall commence, including any works of demolition, until a desk-top study has been carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). The desk-top study and a non-technical summary shall be submitted to and approved in writing by the Local Planning Authority without delay upon completion.

### **4. Land Contamination (Site Investigation)**

If identified as being required following the completion of the desk-top study, a site investigation shall be carried out prior to commencement of development to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed, taking into account the site's existing status and proposed new use. The site investigation and findings shall be submitted to and approved in writing by the Local Planning Authority without delay upon completion.

## **5. Land Contamination (Submission of Remediation Scheme)**

A written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site, shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development and all requirements shall be implemented and completed in accordance with the approved method statement. No deviation shall be made from this scheme without the express written agreement of the Local Planning Authority. If during redevelopment contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and approved in writing by the Local Planning Authority.

## **6. Land Contamination (Implementation of Approved Remediation Scheme)**

Following completion of measures identified in the remediation scheme, a full closure report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation has been fully met. The closure report shall include a completed certificate, signed by the developer, confirming that the required works regarding contamination have been carried out in accordance with the approved written method statement. A sample of the certificate to be completed is available in Appendix 2 of Land Affected by Contamination: Technical Guidance for Applicants and Developers.

## **7. Construction Environmental Management Plan (CEMP) and Site Waste Management Plan (SWMP)**

No development shall commence, including any works of demolition, until a Construction Environmental Management Plan (CEMP) and Site Waste Management Plan (SWMP) have been submitted to and approved in writing by the Local Planning Authority. The approved Plans shall be adhered to throughout the construction period. The Plans shall provide for:

- i. construction traffic management;
- ii. the parking of vehicles of site operatives and visitors;
- iii. details of access to the site;
- iv. loading and unloading and the storage of plant and materials used in constructing the development;
- v. the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
- vi. wheel washing facilities;
- vii. measures to control the emission of noise, dust and dirt during construction;
- viii. a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- ix. details of a nominated developer/resident liaison representative with an address and contact telephone number to be circulated to those residents consulted on the application by the developer's representatives. This person will act as first point of contact for residents who have any problems or questions related to the ongoing development.

Dust suppression methods shall be employed during demolition and construction so as to minimise the likelihood of nuisance being caused to neighbouring properties.

No materials produced as a result of the site development or clearance shall be burned on site.

### **8. Construction Noise**

No development shall commence, including any works of demolition, until a scheme specifying the provisions to be made to control noise emanating from the site during construction works has been submitted to and approved in writing by the Local Planning Authority. This scheme should include details of the construction methods to be employed and the equipment to be used. The works are to be carried out in accordance with the recommendations contained within British Standard 5228:2009 'Code of practice for noise and vibration control on construction and open sites' (Parts 1 and 2).

### **9. Construction Logistics Plan**

- A. No development shall commence, including any works of demolition, until a Construction Logistics Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall be designed to minimise deliveries of materials and export of any waste materials within the times of peak traffic congestion on the local road network.
- B. The approved Plan shall be adhered to throughout the construction period.

### **10. Historic Building Recording**

- A. No development shall commence, including any works of demolition, until a programme of historic building recording has been secured in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.
- B. No development shall commence, including any works of demolition, until the satisfactory completion of fieldwork in accordance with the submitted Written Scheme of Investigation approved at A.
- C. The developer shall submit a Historic Buildings Report to the Local Planning Authority for approval in writing and deposition of a digital archive with the Archaeological Data Service (ADS), within 6 months of the completion of the fieldwork.

### **11. Tree Protection**

No development shall commence, including any works of demolition, until:

- A. The three large mature London Plane trees at the south-west and south-east corners of the site boundary (within the public realm), have been protected by secure, stout exclusion fencing erected at a minimum distance equivalent to the branch spread of the trees and in accordance with BS5837:2012 Trees in relation to design, demolition and construction recommendations; and
- B. any works connected with the approved scheme within the branch spread of the trees shall be by hand only. No materials, supplies, plant or machinery shall be stored, parked or allowed access beneath the branch spread or within the exclusion fencing. Any trees that are damaged or felled during construction work must be replaced with semi-mature trees of the same or similar species.



## **12. Public Art**

- A. No development shall commence, including any works of demolition, until a Public Art Strategy for the development, including all reasonable endeavours and best practices to preserve the existing mosaic (The Vortex) within a publicly accessible location, has been submitted to and approved in writing by the Local Planning Authority.
- B. The Public Art Strategy shall be implemented in accordance with the approved details and the approved artwork(s) shall be installed prior to occupation of the development and retained thereafter.

## **NO ABOVE GROUND NEW DEVELOPMENT**

### **13. External Materials**

- A. No development comprising external elevational treatments shall take place until full details, including samples, specifications, annotated plans and fire safety ratings, of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority.
- B. The development shall only be implemented in accordance with the approved details.

### **14. Site Levels**

- A.) No above ground new development shall commence, until details of existing and finished site levels, finished floor and ridge levels of the buildings to be erected, and finished external surface levels have been submitted to and approved in writing by the Local Planning Authority.
- B. The development shall be carried out in accordance with the approved details.

### **15. Surface Water Drainage Scheme**

- A. No above ground new development shall commence, until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme should include but not be limited to:
- Limiting discharge rates to 7.3l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change. All relevant permissions to discharge from the site into any outfall should be demonstrated.
  - Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
  - Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event.
  - Final modelling and calculations for all areas of the drainage system.
  - The appropriate level of treatment for all run-off leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
  - Detailed engineering drawings of each component of the drainage scheme.
  - A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
  - A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

B. The development shall be carried out in accordance with the approved details.

### **16. Fire Statement**

A. No above ground new development shall commence until a Fire Statement has been submitted to and approved in writing by the Local Planning Authority. The Fire Statement shall be produced by an independent third party suitably qualified assessor which shall detail the building's construction, methods, products and materials used; the means of escape for all building users including those who are disabled or require level access together with the associated management plan; access for fire service personnel and equipment; ongoing maintenance and monitoring and how provision will be made within the site to enable fire appliances to gain access to the building.

B. The development shall be carried out in accordance with the approved details.

### **17. Biodiversity Enhancement Strategy**

A. No above ground new development shall commence until a Biodiversity Enhancement Strategy for protected and priority species 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).

B. The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

### **18. Wind Mitigation Measures**

A. No above ground new development shall commence until a detailed scheme of wind mitigation measures, accompanied by wind testing, has been submitted to and approved in writing by the Local Planning Authority.

B. The approved details shall be implemented prior to occupation of the development and shall be maintained at all times thereafter.

### **19. Noise Protection Scheme (Residential Units)**

A. No above ground new development shall commence until a scheme of noise insulation for the residential units has been submitted to and approved in writing by the Local Planning Authority. The insulation provided shall ensure that the noise levels within the residential units (with windows partially open) does not exceed:

35-40 dB LAeq for living rooms (07.00 hours - 23.00 hours);

30-35 dB LAeq for bedrooms (23.00 hours - 07.00 hours);

45 dB LAm<sub>ax</sub> for individual noise events in bedrooms (23.00 hours - 07.00 hours);

50-55 dB LAeq for outdoor living area (07.00 hours - 23.00 hours).

- B. The approved scheme shall be fully implemented before the first occupation of the residential unit to which it relates and shall be maintained at all times thereafter.
- C. Should predicted noise levels (with partially open windows) exceed the criteria identified above then details of an alternative method of ventilation should be submitted to and approved in writing by the Local Planning Authority and fully implemented prior to the first occupation of the residential unit to which it relates and shall be maintained at all times thereafter.

## **20. Ground floor frontage glazing**

- A. No development comprising external elevational treatments shall take place until details of the standard of glazing proposed to the ground floor frontages have been submitted to and approved in writing by the Local Planning Authority.
- B. The development shall only be implemented in accordance with the approved details.

## **PRIOR TO OCCUPATION CONDITIONS**

### **21. Drainage Maintenance**

- A. Prior to occupation of the development a Maintenance Plan detailing the maintenance arrangements, including who is responsible for different elements of the surface water drainage system, and the maintenance activities / frequencies, shall be submitted to and approved in writing by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long-term funding arrangements should also be provided.
- B. Drainage maintenance shall be carried out thereafter in accordance with the approved details.

### **22. Hard Landscaping**

- A. Prior to occupation of the development full details of the hard landscaping shall be submitted to and approved in writing by the Local Planning Authority. The hard landscaping scheme shall include, but not be limited to, details of the following:
  - a) surface materials;
  - b) communal amenity spaces and play spaces and any related play equipment;
  - c) boundary treatment, including to the roof terraces; and
  - d) management and maintenance.
- B. The hard landscaping scheme shall be implemented prior to occupation of the development in accordance with the approved details and thereafter permanently maintained.

### **23. Soft Landscaping**

- A. Prior to occupation of the development a detailed scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme, which shall incorporate local sourced and drought tolerant plants, shall be designed with the aim of improving and increasing biodiversity and demonstrating a net gain for pollinators in line with the Council's Pollinator Action Plan.

- B. The approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation or completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

#### **24. Lighting Scheme**

- A. Prior to occupation of the development a Lighting Scheme shall be submitted to and approved in writing by the Local Planning Authority.
- B. The development shall be carried out in accordance with the approved Lighting Scheme prior to occupation of the development and the Lighting Scheme shall thereafter be retained in operation as approved.

#### **25. Refuse Strategy**

- A. Prior to occupation of the development a detailed residential and commercial refuse and recycling strategy, including the design and location of the refuse and recycling stores, shall be submitted to and approved in writing by the Local Planning Authority but otherwise in accordance with the Design & Access Statement.
- B. The approved refuse and recycling stores shall be provided before the occupation of the development and thereafter permanently retained unless otherwise agreed in writing with the Local Planning Authority.
- C. The development shall also make provision for any future connection to a centralised waste scheme in accordance with details to be submitted to and approved in writing by the Local Planning Authority prior to occupation of the development.

#### **26. Noise Impact Assessment**

- A. Prior to occupation of the commercial units hereby permitted an additional detailed Noise Impact Assessment, detailing expected amplified noise levels and any mitigation measures to be introduced to overcome any such issues, shall be submitted to and approved in writing by the Local Planning Authority.
- B. The use of the relevant commercial units shall only commence once any mitigation measures set out in the Noise Impact Assessment have been carried out in accordance with the approved details and any mitigation measures shall thereafter be retained in operation / complied with as approved.
- C. The building structure (residential units directly above commercial units) shall incorporate insulation measures as necessary to meet the standard of Part E of the Building Regulations Approved Document for Impact Sound.

#### **27. Details of Any Commercial Kitchen Extract Ventilation System and Carbon Filtration**

- A. Prior to occupation of any commercial unit hereby permitted with a commercial kitchen, details of any ventilation system for the removal and treatment of cooking odours, which include the location and appearance of external ducting and measures to mitigate system noise, shall be submitted to and approved in writing by the Local Planning Authority. The details shall have regard to guidance and recommendations in DEFRA publication 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems'.

- B. The approved details shall be fully implemented prior to the commencement of the relevant commercial use and shall be maintained at all times thereafter. The external ducting shall be removed when the authorised use of the premises for the sale of hot food ceases.
- C. Where a commercial kitchen is installed in a commercial unit a high efficiency activated carbon filtration unit shall be installed for that premises which shall ensure a maximum capture of odour producing chemicals and incorporate 100kg of carbon granules per 1,000 cubic feet per minute air flow. The extract system shall be isolated from the building structure with suitable mountings and shall terminate at a point at least 1 metre above the eaves. If this cannot be complied with for planning reasons, then a higher level of odour control will be required in line with EMAQ Guidance – Control of Odour and Noise from Commercial Kitchen Exhaust Systems.

### **28. Car Parking, Blue Badge Car Parking and Electric Vehicle Charging Points**

Prior to occupation of the development:

- A. the car parking areas indicated on Drawing No. 19065-SWAP-XX-00-DR-A-GA-1200 shall be constructed and marked out, and thereafter retained permanently for the accommodation of vehicles of occupiers and visitors to the premises and not used for any other purpose; and
- B. 20 active and 20 passive electric vehicle charging points shall be provided within the car parking spaces. These shall be constructed and marked out and the charging points installed, and thereafter retained permanently for the accommodation of vehicles of occupiers and visitors to the premises and not used for any other purpose; and
- C. the Blue Badge (WCA) car parking bays indicated on Drawing No. 19065-SWAP-XX-00-DR-A-GA-1200 shall be clearly marked with a British Standard disabled symbol and permanently retained for the use of disabled persons and their vehicles.

### **29. Car Park Management**

- A. Prior to occupation of the development a Car Parking Management Plan shall be submitted to and approved in writing by the Local Planning Authority.
- B. The scheme shall be implemented in accordance with the approved details prior to occupation of the development and thereafter permanently retained.

### **30. Cycle Parking**

- A. Prior to occupation of the development details of the cycle parking facilities, as shown on Drawing Nos. 19065-SWAP-XX-00-DR-A-GA-1200 shall be submitted to and approved in writing by the Local Planning Authority. The submission should include details of the security, monitoring and access arrangements for the cycle parking facilities.
- B. The development shall not be occupied until the approved details have been implemented. Thereafter, the cycle parking facilities shall be permanently retained.

### **31. Energy and Sustainability**

- A. Prior to occupation of the development details of the location and quantum of any photovoltaic panels and Air Source Heat Pumps shall be submitted to and approved in writing by the Local Planning Authority.
- B. The development shall not be occupied until the approved details have been implemented.
- C. The development hereby permitted shall be carried out in accordance with the submitted Energy and Sustainability Strategy dated 10th July 2020 prepared by MTT Ltd.
- D. The development shall be future proofed for connection to a district energy centre in accordance with details to be submitted to and approved in writing by the Local Planning Authority prior to occupation of the development.
- E. The commercial units shall achieve a Building Research Establishment Environmental Assessment Method (BREEAM) rating of 'Good'.

### **32. Bird / Bat Boxes**

- A. Prior to occupation of the development details of bird and bat nesting boxes shall be submitted to and approved in writing by the Local Planning Authority. The details shall accord with the advice set out in "Biodiversity for Low and Zero Carbon Buildings: A Technical Guide for New Build" (Published by RIBA, March 2010) or similar advice from the RSPB and the Bat Conservation Trust.
- B. The bird and bat nesting boxes shall be installed on the building or in any trees on the site prior to occupation of the development in accordance with the approved details and shall be permanently retained thereafter.

### **33. Communal Television and Satellite System**

- A. Prior to occupation of the development details of any communal television and/or satellite system shall be submitted to and approved in writing by the Local Planning Authority.
- B. The approved system shall be provided prior to occupation of the residential units and be made available to each residential unit.
- C. No antennae or satellite dishes may be installed on the exterior of the building, with the exception of a single antennae or satellite dish per block to support the communal television and satellite system. The proposed antennae or satellite dishes shall be designed to minimise their visual impact and shall not be mounted on any publicly visible façade.

### **34. Delivery and Servicing Plan**

- A. Prior to occupation of the development a Delivery and Servicing Plan shall be submitted to and approved in writing by the Local Planning Authority but otherwise in accordance with the Design and Access Statement. The Plan shall identify efficiencies and sustainability measures to be undertaken once the development is operational and should incorporate details of deliveries to the site and servicing arrangements, including the size of vehicles, routing and tracking of vehicles and times of deliveries and servicing.
- B. The approved Plan shall be implemented and adhered to thereafter.



### **35. Green Roofs**

- A. Prior to occupation of the development a detailed scheme for the green roofs, including maintenance and management arrangements, shall be submitted to and approved in writing by the Local Planning Authority.
- B. The approved scheme shall be implemented in accordance with the approved scheme prior to occupation of the development.

### **36. Residential Welcome Pack**

- A. Prior to occupation of the development the developer shall submit to the Local Planning Authority for approval in writing a Residential Welcome Pack which includes details relating to the non-availability of on-street parking permits, details of travel plan measures to encourage the use of sustainable modes of transport, the availability of the car club scheme and health, wellbeing (including the promotion of local areas of natural green space) and community support information.
- B. The Residential Welcome Pack as approved shall be provided to all new residents of the development on occupation.

### **37. Meanwhile Uses**

- A. Prior to occupation of the development a strategy for providing meanwhile uses for the new commercial units upon their completion as part of a wider phasing programme, shall be submitted to and approved in writing by the Local Planning Authority.
- B. For a period of 3 years post-completion meanwhile uses shall be secured and implemented for any vacant commercial units in accordance with the approved strategy at no cost to the developer.

## **COMPLIANCE CONDITIONS**

### **38. In Accordance with Ecological Appraisal Recommendations**

All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the submitted Ecological Assessment (Ecology Solutions, July 2020).

### **39. Flexible Uses**

Following the first occupation of the flexible use commercial units hereby permitted, any subsequent change of use of a commercial unit to another use within Class A1, A2, A3, B1, D1 and D2 is permitted with the exception of Classes A4 or A5.

### **40. Restriction on Operating Hours of Commercial Uses**

The commercial uses hereby permitted are permitted to open to customers between the hours of 07:00 and 23:00 on any day and at no other time.

### **41. Drainage Logs**

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.

#### **42. Noise from Plant (BS4142:2014)**

The combined rating level of the noise from any plant installed pursuant to this permission (other than plant which is only to be operated in emergency circumstances) shall not exceed the existing background sound level any time at the outside of noise-sensitive buildings. Any assessment of compliance with this condition shall be made according to the methodology and procedures presented in BS4142:2014.

#### **43. Superfast Broadband**

Prior to occupation of the development all of the residential units hereby approved shall be fitted with superfast broadband capability.

#### **44. Accessibility and Adaptability**

A minimum of 10% of the residential units shall comply with Building Regulations Optional Requirement Approved Document M4(2) Category 2: Accessible and adaptable dwellings (2015 edition). Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.

#### **45. Water Efficiency**

The development hereby permitted shall comply with the water efficiency optional requirement in paragraphs 2.8 to 2.12 of the Building Regulations Approved Document G. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.

#### **46. Secured By Design**

- A. The development hereby permitted shall use reasonable endeavours to achieve a Gold award of the Secured by Design for Homes (2019 Guide) and Commercial (2015 Guide) or any equivalent document superseding these Guides.
- B. A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the development, confirming that the agreed standards at A. have been met.
- C. In the event that the agreed standards at A. are not achievable then prior to completion of the development the applicant shall submit to the Local Planning Authority for approval in writing justification for this and details of the highest award of the Secured by Design for Homes (2019 Guide) and Commercial (2015 Guide) or any equivalent document superseding these Guides which is achievable for the development.
- D. A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the development, confirming that the agreed standards at C., as relevant, have been met.

### **SITE ASSEMBLY CONDITIONS**

#### **47. Site Assembly 1**

None of the following shall take place unless a registered conveyancer's certificate has been submitted of the same date as the relevant operations or occupation (as applicable) confirming whether the leasehold interest bound by the Section 106 Agreement continues to subsist over the whole of the Land:

- a) commencement of development

- b) Substantial Implementation
- c) Practical Completion
- d) first marketing of the dwellings hereby approved
- e) 12 months following Practical Completion
- f) first occupation (other than fitting out, marketing, security and management-set up) of more than
  - (i) 123 of the dwellings hereby approved
  - (ii) 246 of the dwellings hereby approved
  - (iii) 394 of the dwellings hereby approved

#### **48. Site Assembly 2**

None of the following shall take place unless on the date of as the relevant operations or occupation (as applicable) either: (1) the leasehold interest bound by the Section 106 Agreement continues to subsist over the whole of the Land; or (2) the local planning authority has confirmed in writing that the freehold and any new long leasehold interest then subsisting in the Site have been bound by the obligations in Section 106 Agreement to the local planning authority's written satisfaction:

- a) commencement of development
- b) Substantial Implementation
- c) Practical Completion
- d) first marketing of the dwellings hereby approved
- e) 12 months following Practical Completion
- f) first occupation (other than fitting out, marketing, security and management-set up) of more than
  - (i) 123 of the dwellings hereby approved
  - (ii) 246 of the dwellings hereby approved
  - (iii) 394 of the dwellings hereby approved

#### **ADDITIONAL PRIOR TO OCCUPATION CONDITION**

##### **49. CPZ Restrictions**

- A. The residential element of the development shall not be occupied until a marketing scheme is submitted to and approved in writing by the Local Planning Authority containing measures for notifying prospective owners or occupiers of the permitted residential units from time to time of:
  - (a) existing on-street parking restrictions and penalties for breach of these restrictions; and
  - (b) the effect of The Essex County Council (Basildon Borough) (Prohibition of Waiting, Loading and Stopping) and (On-Street Parking Places) (Civil Enforcement Area) Consolidation Order 2019 (as amended) and how Schedule 5 to the Order restricts eligibility for parking permits for properties built after 1 November 2019.
- B. Notification of prospective owners or occupiers of the permitted residential units shall be carried out in accordance with the approved scheme.

**End of Conditions Schedule**

## **ANNEX B: APPEARANCES**

### **FOR BASILDON BOROUGH COUNCIL**

Douglas Edwards QC

Instructed by Charlotte McKay  
Locum Senior Planning Lawyer  
Basildon Borough Council

#### **He called**

Neil Deely  
BA (Hons) Dip.Arch RIBA ARB FRSA

Founding Partner  
Metropolitan Workshop LLP

Michael Lowndes  
BA (Hons) Dip TP MSc Dip Cons(AA) MRTPI

Senior Consultant  
Lichfields

Mrs Adele Lawrence\*  
BA MPlanPrac MRTPI

Principal Planner  
Basildon Borough Council

Mrs Charlotte McKay\*  
FCILEX LLB

Locum Senior Planning Lawyer  
Basildon Borough Council

### **FOR ORWELL (BASILDON) LIMITED - APPELLANT**

Scott Lyness QC  
Assisted by Ben Fulbrook of Counsel

Instructed by  
Dentons

#### **He called**

David Cafferty  
BSc(Hons) BArch RIBA

Director  
HLM Architects

Timothy Jackson  
BA(Hons) Dip LA CMLI

Director  
FPCR Environment and Design Limited

Ms Lesley Roberts  
BSc MIPRM MARLA NAEA

Partner/Executive Director  
Allsop LLP

Mark Harris  
BA(Hons) Dip TP MRTPI

Partner  
Freeths LLP

Roy Pinnock\*

Instructing Solicitor  
Dentons

\* Participation in Section 106 and conditions round table discussion

**FOR BASILDON ESTATES LIMITED – RULE 6**

Thomas Hill QC

Instructed by  
Asserson LLP

**He called**

Ms Lucy Markham  
IHBC MRTPI

Partner  
Montagu Evans

Ms Karen Jones\*  
BA(Hons) MSc MRTPI

Senior Director  
RPS Group Limited

**FOR INFRARED UK LION NOMINEE 1 LIMITED (IN ADMINISTRATION) &  
INFRARED UK LION NOMINEE 2 LIMITED (IN ADMINISTRATION) - RULE 6**

Miss Stephanie Hall of Counsel

Instructed by  
Rebecca Roffe  
Partner CMS

**She called**

John Mumby  
BA (Hons) MRTPI

Director of Planning  
Iceni Projects Limited

**INTERESTED PERSONS**

Councillor Davida Ademuyiwa

St Martin's Ward  
Basildon

Angela O'Donoghue CBE

Principal and Chief Executive  
South Essex College

\* Ms Jones was not called - her Proof of Evidence remained before the Inquiry

**ANNEX C: LIST OF DOCUMENTS****Core documents list (provided by Dentons)**

<b>A</b>	<b>Government policy and guidance</b>
1.	NPPF (February 2019)
2.	NPPF (July 2021)
3.	NPPG (various extracts)
4.	Building Research Establishment (BRE) Guidelines: Site Layout Planning for Daylight and Sunlight 2011, A Guide to Good Practice, Second Edition (2011)
5.	Historic England Advice Note 3 – The Setting of Heritage Assets (December 2017)
6.	Historic England Advice Note 4 – Tall Buildings (December 2015 and March 2020 Consultation Draft)
7.	Historic England Conservation Principles, Policies and Guidance (2008)
8.	Historic Environment Good Practice Advice in Planning: Note 12: Statements of Heritage Significance (October 2019)
9.	National Design Guide (October 2019)
10.	Nationally Described Space Standards (March 2015)

<b>B</b>	<b>Development Plan documents, LPA guidance, and other LPA documents</b>
1.	Basildon District Local Plan Saved Policies (2007)
2.	Basildon Borough Revised Publication Local Plan (2018)
3.	Basildon Planning Obligations Strategy SPD (2015)
4.	Basildon Town Centre Masterplan (2012)
5.	Basildon Town Centre draft Masterplan / Regeneration Strategy (2020)
6.	Basildon Urban Characterisation and Design Review (2015)
7.	Basildon Town Centre Masterplan – We Made That - Urban Appraisal (revision A) (15-04-2020)
8.	Essex County Council Parking Standards (2009)
9.	Essex County Council Developer’s Guide to Infrastructure Contributions (Revised 2020)



<b>B</b>	<b>Development Plan documents, LPA guidance, and other LPA documents</b>
10.	Basildon Council Development Control Guidelines (1997)
11.	Essex Design Guide (2018)
12.	BBC Response to the Local Plan Inspector's Initial Questions (29 January 2021)
13.	Inspector's Response to Council's Response to Initial Questions (23 March 2021)
14.	Basildon Borough Council – Five Year Land Supply Report (2021-2026)
15.	Basildon Note on the Standard Methodology Figure for Housing Need in Basildon Borough (July 2021)
16.	Basildon Council - Housing Delivery Test Action Plan (May 2020)
17.	Basildon Council – Town Centre Masterplan Residential Audit (August 2018)
18.	Basildon Council – Housing and Economic Land Availability Assessment (HELAA) Review 2020 - Vol 1: main report, Appendices A-G (October 2021)
19.	Basildon Council – DRAFT Housing Delivery Test Action Plan (July 2021)

<b>C</b>	<b>Market Square Basildon planning application documents (ref: 20/00955/FULL)</b>
1.	Planning Performance Agreement dated 27 April 2020
2.	Design Review Panel Report dated 20 May 2020
3.	BBC pre-application response dated 13 July 2020
4.	Covering Letter - 30 July 2020
5.	Application Form - 30 July 2020
6.	Location Plan 19065-SWAP- XX-XX-DR-A-CP-1000
7.	Red Line Plan 19065-SWAP-XX-XX-DR-A-CP-1001
8.	Original application plans
9.	Landscaping Plans (4126_BBLA-XX-XX-L-102-B; 4126_BBLA-XX-01-L-101-B; 4126_BBLA-XX-00-L-100-P1)
10.	Planning Statement - July 2020
11.	Design and Access Statement - July 2020
12.	Environmental Statement - Non-Technical Summary - July 2020

<b>C</b>	<b>Market Square Basildon planning application documents (ref: 20/00955/FULL)</b>
13.	Environmental Statement Vol 1 - July 2020
14.	Environmental Statement Vol 2 - July 2020
15.	Transport Statement - July 2020
16.	Travel Plan - July 2020
17.	Ecological Assessment - July 2020
18.	Financial Viability Assessment - July 2020
19.	External Daylight Sunlight Report - July 2020
20.	Internal Daylight Sunlight Report - July 2020
21.	Statement of Community Involvement - July 2020
22.	Flood Risk Assessment - June 2020
23.	Drainage Strategy - June 2020
24.	Sustainability and Energy Statement - July 2020
25.	Ground Investigation and Contamination - June 2020
26.	Mainstay Management Strategy - July 2020
27.	Section 106 Heads of Terms - July 2020
28.	Essex County Council SUDS Planning Advice sent to Officers - August 2020
29.	Financial Viability Assessment Post Submission Review Response - September 2020
30.	Air Quality Technical Note - September 2020
31.	Appropriate Assessment Report - September 2020
32.	External Daylight Sunlight Report Addendum - October 2020
33.	Internal Daylight Sunlight Overshadowing Report Addendum - October 2020
34.	Design and Access Statement Addendum - October 2020
35.	Addendum Covering Letter - 16 November 2020
36.	November 2020 amended application plans
37.	Planning Statement Addendum - November 2020
38.	Concept Fire Strategy Report - November 2020

<b>C</b>	<b>Market Square Basildon planning application documents (ref: 20/00955/FULL)</b>
39.	Environmental Statement Further Information Report - November 2020
40.	Pub and Nightclub Noise Impact Technical Memorandum - November 2020
41.	Draft conditions with Freeths comments - December 2020
42.	Statutory Consultee Responses
43.	Third Party Objection Responses
44.	Third Party Support Responses
45.	Committee Report - 24 February 2021 with update sheet and minutes
46.	DCMS Listing decision dated 22 March 2021 and accompanying Historic England Report dated 10 February 2021
47.	Essex County Council letter to BBC dated 29 April 2021 confirming no objection to application
48.	Committee Report - 29 April 2021 with minutes
49.	Mosaic Retention Options Report - February 2021
50.	Mosaic Listing Representation - February 2021
51.	Mosaic Listing Response to HE - February 2021

<b>D</b>	<b>Market Square Basildon appeal documents</b>
1.	Appeal form (16 July 2021)
2.	Appellant Statement of Case (16 July 2021)
3.	Basildon Council Appeal Questionnaire
4.	Basildon Council Planning Committee Report with enclosures (18 August 2021)
5.	Basildon Council Planning Committee Report update sheet (18 August 2021)
6.	Basildon Council Planning Committee Minutes (18 August 2021)
7.	LPA Statement of Case (13 September 2021)
8.	Basildon Estates Statement of Case (17 September 2021)
9.	Infrared Capital Partners Statement of Case (24 September 2021)
10.	PINs Case Management Conference notes (20 September 2021)
11.	Description of Development (4 October 2021)

<b>D</b>	<b>Market Square Basildon appeal documents</b>
12.	Environmental Statement – Statement of Competency (4 October 2021)
13.	Environmental Statement – References & Sources list (4 October 2021)
14.	Appeal representations

<b>E</b>	<b>Inquiry documents</b>
1.	Basildon Borough Council - Five Year Housing Land Supply Position Statement (29 October 2021)
2.	Basildon Borough Council - Basildon Town Centre Regeneration Strategy Note for the Inquiry (29 October 2021)
3.	Basildon Borough Council - Position Statement - The Emerging Local Plan (29 October 2021)
4.	Statement of Common Ground agreed between BBC and Appellant (November 2021)
5.	Basildon Borough Council – CIL Compliance Statement (2 November 2021)
6.	Appeal decision ref: APP/A5270/W/21/3268157 - 51-56 Manor Road and 53-55 Drayton Green Road, West Ealing, London W13 0LJ (29 October 2021)

<b>BBC evidence submitted</b>	
	Michael Lowndes – Planning – summary proof of evidence
	Michael Lowndes – Planning – proof of evidence
	Michael Lowndes – Planning – appendix to proof of evidence
	Michael Lowndes – Planning – rebuttal statement
	Michael Lowndes – Planning - Addendum
	Neil Deely – Design – summary proof of evidence
	Neil Deely – Design – proof of evidence
	Neil Deely – Design – rebuttal statement

<b>Appellant evidence submitted</b>	
	Mark Harris – Planning – summary proof of evidence
	Mark Harris – Planning – proof of evidence

<b>Appellant evidence submitted</b>	
	Mark Harris – Planning – appendix to proof of evidence
	David Cafferty – Design – proof of evidence with appendix
	David Cafferty – Design – rebuttal statement
	David Cafferty – Design – architect's presentation
	Tim Jackson – Townscape – proof of evidence with appendices
	Lesley Roberts – Planning – summary proof of evidence
	Lesley Roberts – BTR – proof of evidence
	Lesley Roberts – BTR – appendices proof of evidence

<b>Basildon Estates evidence submitted</b>	
	Karen Jones – Planning – proof of evidence
	Lucky Markham – Townscape – summary proof of evidence
	Lucky Markham – Townscape – proof of evidence
	Lucky Markham – Townscape – appendices to proof of evidence
	Lucky Markham – Townscape – rebuttal statement

<b>InfraRed evidence submitted</b>	
	John Mumby – Planning – proof of evidence with appendix

<b>Documents submitted at Inquiry</b>	
ID1	GS8 Committee Report and DAS (submitted by Appellant, 9 November 2021)
ID2	Trafford House Committee Report and DAS (submitted by Appellant, 9 November 2021)
ID3	Basildon Town Centre Regeneration – in answer to questions about building height (submitted by Appellant, 9 November 2021)
ID4	London Housing Design Guide, pages 35 & 36 (submitted by Council, 9 November 2021)
ID5	Appellant opening submissions (submitted by Appellant, 9 November 2021)

<b>Documents submitted at Inquiry</b>	
ID6	Basildon Borough Council opening submissions (submitted by BBC, 9 November 2021)
ID7	Basildon Estates (R6) opening submissions (submitted by Basildon Estates, 9 November 2021)
ID8	Infrared (R6) opening submissions (submitted by Infrared, 9 November 2021)
ID9	Local resident 1 representation (submitted 9 November 2021)
ID10	Local resident 2 representation (submitted 9 November 2021)
ID11	Position statement from InfraRed on the topic of five year housing land supply and PPG extracts (submitted by Infrared, 10 November 2021)
ID12	Updated draft conditions (submitted by Appellant, 10 November 2021)
ID13	East Square committee report (refs: 18/00275/FULL & 18/00941/LBBAS) (submitted by Basildon Estates, 11 November 2021)
ID14	Statement from the Leader of the Council (submitted by Council, 11 November 2021)
ID15	Final CIL Compliance Statement (submitted by Appellant, 11 November 2021)
ID16	Section 106 Agreement with Plans (submitted by Appellant, 11 November 2021)
ID17	Section 106 Agreement comparison changed pages (submitted by Appellant, 11 November 2021)
ID18	Agreed conditions (submitted by Appellant, 11 November 2021)
ID19	Five Year Housing Land Supply Position Statement – 15 November 2021 (submitted by Council, 16 November 2021)
ID20	Urban Capacity and Local Plan Update Note (submitted by Council, 16 November 2021)
ID21	UK ULI Residential Council – Build to Rent – A Best Practice Guide (March 2016) (requested to be submitted by Council, 17 November 2021)
ID22	Note on balconies and amenity space (submitted by Appellant, 17 November 2021)
ID23	Supplementary Note in respect of Core Document B14 - Five Year Housing Land Supply (submitted by Council, 17 November 2021)
ID24	Transcript of the minutes of Basildon Borough Council’s Strategic Planning and Infrastructure Committee of 28 June 2018 (submitted by Council, 18 November 2021)
ID25	Local Plan Proposals Map 1998 Town Centre Inset map (submitted by Basildon Estates, 18 November 2021)



<b>Documents submitted at Inquiry</b>	
ID26	Agreed note on Environment Act and Biodiversity Net Gain (submitted by Appellant, 23 November 2021)
ID27	Appellant 5YHLS Observations (submitted 24 November 2021)
ID28	Basildon Estates Limited 5YHLS Note (submitted 24 November 2021)
ID29	Infrared 5YHLS Note with Appendices A1-A4 (submitted 24 November 2021)
ID30	Response of Basildon Borough Council to Appellant and Rule 6 Parties Submissions on Five Year Housing Land Supply (submitted 1 December 2021)
ID31	Infrared Closing Submissions
ID32	Basildon Estates Closing Submissions
ID33	Basildon Borough Council Closing Submissions
ID34	Appellant's Closing Submissions