



**Rochford District  
Council**

**DEVELOPMENT COMMITTEE**

**28<sup>th</sup> September 2023**

<b>APPLICATION NO.</b>	23/00274/FUL
<b>ADDRESS</b>	Land Opposite 92-102 Windermere Avenue, Hullbridge
<b>APPLICATION DETAILS</b>	Section 73 application to vary conditions: 2 (approved plans), condition 5, (Implementation of Landscaping Details), 9 (Tree Protection), 10, (Development in accordance with Arboricultural Report and Tree Protection Plan) of planning application reference 20/00332/FUL as approved on 15th March 2022
<b>APPLICANT</b>	Mr M Stace
<b>ZONING</b>	SER 6a and 6b Southwest of Hullbridge
<b>PARISH</b>	Hullbridge and Rawreth
<b>WARD</b>	Hullbridge and Downhall and Rawreth.

**REPORT SUMMARY**

S.1 This application is limited in its scope as a Section 73 application to address only those matters cited by the planning application which relate to the submission of revised details to address the anomaly within the original planning application which granted planning permission (planning reference 20/00332/FUL) on 15<sup>th</sup> March 2022 for 17 dwellings. This current application addresses two matters the first being the plotting of 2 trees protected under a Tree Preservation Order relative to the site boundary and the implications of this error made by the original applicant in terms of the Site Layout Plan cited at condition 2 and conditions 9 and 10 which make reference to the originally submitted Tree Report, Tree Protection Plan and Method Statement which set out how the development works ensure appropriate site construction methods and mitigation to safeguard the root protection area of these trees. The implication of the mis - plotting of the trees as represented by the originally submitted Site Layout Plan which is however unaffected in all other respects (reference DAP-1299-200-07) and Tree Report, is that revisions are required to the details of the Tree protection works covered under conditions 9 and 10 and this application provides an appropriate mechanism to enable further consideration of this matter and the consideration of a further Arboricultural Impact Assessment coinciding with the revised layout plan (reference PA\_01 Rev D) correctly plotting the two protected trees.

S.2 The second aspect of the application relates to the details of the originally approved Structural Landscape Plan referenced as 05 2226-21.1 at condition 2 of the approved permission which required a width of existing vegetation along the north boundary of the site to be retained and enhanced. A section of vegetation forming part of the boundary to the

east of the site access has been totally removed which was not anticipated by the development and this section 73 application therefore enables this matter to be rectified through the provision of a further Structural Landscaping Plan (now referenced LSDP 2010.01 Rev A) showing proposed new planting to replace that hedge lost and enhanced planting along the same boundary to the west of the access where an existing hedge has been retained other than where site access and parking bay space is required.

S.3 The plotting of the two trees is also shown on a corresponding Boundary Plan which is unchanged in all other respects. It is proposed that the originally approved 220.01 Boundary Plan be replaced by the proposed Boundary Plan referenced PA\_06 Rev D.

S.4 It is clarified and emphasised that this application does not revisit the principle of the development nor any other matter other than those matters subject of the application in accordance with the guidance on the limited scope of section 73 applications. The matters for consideration are the acceptability of the details now submitted and whether the revised details relating to Tree protection works and soft landscaping works as now represented by the submitted revised plans are acceptable.

S.5 It is considered that the revisions to the tree protection works in view of the closer proximity of the two trees to the development area are acceptable as confirmed by the council's Arboricultural Officer. It is considered that the Structural Landscaping Plan is also acceptable to address the loss of the hedge to the east of the site access. It is recommended that that the pertinent conditions are revised to ensure that the development complies with the new Arboricultural Impact Assessment as updated 27.07.2023 including its Method Statement. It is considered that the submitted Structural Landscaping Plan subject to the attached conditions will achieve the outcomes required reflecting the consideration the first time around. It is recommended that new conditions are attached to a new consent therefore requiring the development to comply with the revised plans cited. The condition set out the requirement that works be undertaken in accordance with the details of the updated Arboricultural Method Statement whilst the timing of new and additional planting works are as are the future management of the to hedge to the northern boundary of the site conditioned.

S.6 As a matter of planning law, the original planning permission other than where the details have been revised by this application under section 73 of the Town and Country Planning Act 1990 remains valid and sits alongside the Section 73 if granted. The previously approved development other than where the details require revisions in all other respects is capable of lawful implementation in accordance with the approved plans and respective conditions including the details submitted to discharge many of the conditions. It is essential and necessary that a further consent is bound by the obligations of the legal agreement entered into as part of the original application and approval to ensure a fully policy compliant development.

S.7 Furthermore, other than where compliance conditions need to be included on this new consent or where original conditions affected by this application need to be revisited and redefined those conditions subsequently discharged further to the granting of planning permission on the original 20/00332/FUL consent, do not need to be repeated by this planning permission. Although the development has commenced standard condition 1 in accordance with guidance is dated to the date of the original planning permission in terms of commencement as a Section 73 does not provide scope to extend the time limit of commencement.

**RECOMMENDATIONS**

1.1 It is proposed that the **Committee RESOLVES that planning permission be APPROVED**, subject to the permission being bound by the terms of the original and existing legal agreement entered into under Section 106 of the Town and Country Planning Act as signed and dated 10<sup>th</sup> of March 2022. The heads of terms are set out below:

(a) Financial contributions towards education provision: Early Years and Childcare Contributions of £18,887.00 (plus indexation) and Secondary Education contributions of £74,851.00 (plus indexation).

(b) Provision and implementation of a Residential Travel Information Pack for every household.

(c) Provision of 12-month season tickets for bus travel to all eligible occupiers of the development (maximum 2 per household).

(d) Provision of 35 percent affordable housing, as cited by the details of the planning application.

(e) Payment of a financial contribution of £3,400 (at a cost of £200 per dwelling) towards the cost of providing the proposed National Cycle Network Route 135 (Stock to Southend).

and subject to the following conditions:

**Commencement**

(1) The development hereby permitted shall be begun before the expiration of the 14<sup>th</sup> March 2025.

REASON: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

**Approved Plans**

(2) The development shall be undertaken in strict accordance with the details of the approved plans referenced:

PA\_01 Rev D- Site Layout Plan, DAP-1299-201-07 – Apartment Floor Plans  
DAP-1299-202-07 – Apartment Elevations DAP-1299-203-07 – House Type 01  
DAP-1299-204-07 – House Type 02 DAP-1299-205-07 – House Type 03 DAP-  
1299-208-06 – Street Scene DAP-1299-209 –01 Parking Plan 203.08 (showing  
revised treatment of east elevation: Plot 4) DAP-1299-210 – Illustrative Visual  
DAP-1299-211 – Illustrative Visual DAP-1299-212 – Illustrative Visual DAP-1299-  
213 – Illustrative Visual DAP-1299-610-02 – Design Updates Document Plan,  
LSDP 2010.01 Rev A Structural Landscaping Plan, PA\_06 Rev D Boundary  
Plan, 211.00 Street View Plan (indicating inclusion of window to east elevation of  
Plot 4) 2475-RE-03-20-01 – Flood Risk Assessment and Drainage Strategy

prepared by Evans Rivers and Coastal Ltd and the details of the Arboricultural Method Statement (27.07.2023).

REASON: To ensure that the development is undertaken in accordance with the approved plans as considered.

**Submission of External Lighting Details**

- (3) Prior to first installation, details of an external lighting scheme shall be submitted to the Local Planning Authority for its written approval. Such details shall include details of all external lighting and illumination within the development site, including details of the height and position of all lighting columns, together with details of luminosity. The lighting shall be installed in accordance with the details as may be approved.

REASON: To ensure adequate control over design and to ensure a satisfactory appearance in the interests of visual amenity in compliance with policy DM1 of Rochford District Council's Local Development.

**Implementation of Landscaping Details**

- (4) The soft and hard landscaping provision as shown by plan reference LSDP 2010.01 Rev A Structural Landscaping Plan and PA\_06 Rev D Boundary Plan shall be implemented in its entirety in accordance with the submitted and approved details within the first planting season (soft landscaping) and within one year respectively (boundary treatments and all hardstanding) from the date of occupation of any development. Any tree, shrub, or hedge plant (including replacement plants) removed, uprooted, destroyed, or be caused to die, or become seriously damaged or defective, within five years of planting, shall be replaced by the developer(s) or their successors in title, with species of the same type, size and in an agreed location, in the first available planting season following removal.

REASON: To ensure adequate control over design and to ensure a satisfactory appearance in the interests of visual amenity in compliance with policy DM1 of Rochford District Council's Local Development Framework Development Management Plan (adopted December 2014).

**Submission of Landscape Management Plan**

- (5) Notwithstanding the details of the approved plan reference LSDP 2010.01 Rev A Structural Landscaping Plan, within 6 months of the date of this grant of consent a management plan detailing the future maintenance of all planted boundaries and retained and desired heights over the lifetime of the development shall have been submitted to and approved in writing by the local planning authority. The ongoing management of the hedge shall be implemented in accordance with the details of the agreed 'Management Plan'.

REASON: To ensure that the retention and management of this hedge contributes to the development over the lifetime of its use in providing visual

screening and a backdrop to the site the same time as promoting biodiversity in accordance with the principles embodied within the National Planning Policy Framework (July 2021) and the council's Local Development Framework Development Management Plan policies DM1 and DM25 and DM 26

**Removal of permitted development rights**

- (6) Notwithstanding the provisions of Article 3, Schedule 2, Part 1, Classes A, B, C, D and E, of the Town and Country Planning (General Permitted Development) Order 2015 (including any Order revoking or re-enacting that Order, with or without modification) following first implementation no extensions, porches or alterations of any kind including the insertion of any window openings or the creation of balconies may be implemented within the development hereby permitted, nor ancillary buildings erected anywhere within the respective curtilage(s) of the properties without the prior permission in writing of the Local Planning Authority.

REASON: In order that the Local Planning Authority retains control over future development at the site, in the interest of visual and residential amenity and limited garden areas to some parts of the development in accordance with policy DM1 of the Council's Local Development Framework's Development Management Plan.

**Provision of Off-Street Loading and Storage Areas**

- (7) From the first day of the commencement of the development and for the duration of all construction works thereafter until the completion of the development the areas within the curtilage of the site for the purpose of loading / unloading / reception and storage of building materials and manoeuvring of all vehicles, including demolition and construction traffic shall be provided clear of Windermere Avenue.

REASON: In the interest of maintaining access to and the amenity of properties served by Windermere Avenue in compliance with policies DM1 and DM10 of the Council's Local Development Framework Development Management Plan (adopted 16th December 2014).

**Provision of Parking Spaces**

- (8) All parking areas to serve plots 1-11 inclusive shall be provided with parking space (combined undercroft and drive parking space) of no less than 11 metres in length and 3 metres in width.

REASON: To encourage the use of garages/undercrofts for their intended purpose and to ensure adequate provision for parking clear of the highway, in the interest of highway safety in accordance with policy DM1 of the Council's Local Development Framework's Development Management Plan and the adopted parking standards - contained in the Essex County Council "Parking Standards - Design and Good Practice" 2009 (adopted 2010).

**Tree Protection**

**Development in accordance with Arboricultural Report, Tree Protection Plan and Arboricultural Method Statement.**

- (9) No site works including demolition, ground work or construction shall be carried out until all trees are protected in line with the arboricultural method statement (AMS) ref LS1843-01 section 6 Phase 1, Phase 2 and Phase 3 as described and as per the drawings ref Phase 1, Phase 2 and Phase 3.

REASON: To safeguard protected trees in accordance with policy DM25 of the Local Development Framework's Development Management Plan.

- (10) The construction of the visitor parking space and access are to be constructed in line with the arboricultural method statement (AMS) ref LS1843-01 section 8 and 9 as shown in drawings ref Phase 1, Phase 2 and Phase 3.

REASON: To safeguard protected trees in accordance with policy DM25 of the Local Development Framework's Development Management Plan.

- (11) Tree works are to be carried out in line with the arboricultural method statement (AMS) ref LS1843-01 section 5 and section 8 bullet point 6 (soil air injection and application of the compost tea) and section 9 bullet point 5 (soil air injection and application of the compost tea).

REASON: To safeguard protected trees in accordance with policy DM25 of the Local Development Framework's Development Management Plan

- (12) All tree works, including construction of the reduced dig construction for the visitor spaces and access, soil air injection and application of compost tea and all tree crown and below ground tree works (root pruning), are to be supervised by the project arboriculturist (details of the named person to be provided prior to all works as described above) in line with the arboricultural method statement (AMS) ref LS1843-01 sections 2-4. Photographs and a brief report provided by the Project Arboriculturist are to be supplied to Rochford District Councils planning section on, or the day after, each item as specified.

REASON: To safeguard protected trees in accordance with policy DM25 of the Local Development Framework's Development Management Plan

**Provision of Parking Spaces**

- (13) All vehicular parking spaces serving the development whether internally or external parking shall have minimum dimensions of 2.9 metres x 5.5 metres as shown by the submitted revised parking layout plan reference 209.01.

REASON: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with the Local Development Framework's Development Management Plan policies DM1



and DM30 and the requirements of the Essex Parking Standards (2009) adopted 2010.

**Surface Water Drainage Maintenance Logs**

- (14) 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 request by the Local Planning Authority.

REASON: To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

**Submission of Archaeological Investigation**

- (15) The applicant shall submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Local Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

REASON: To safeguard the archaeological integrity of the site in accordance with the provisions of The National Planning Policy Framework 2023.

**Contamination Matters**

- (16) Prior to the importation of any material brought onto the site for use as subsoil, topsoil or backfill, a compliance certificate for that material proposed to be imported to the site shall be submitted to and agreed in writing by the Local Planning Authority.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property, and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours, and other offsite receptors in accordance with policy ENV11 of the Rochford District Council Local Development Framework adopted Core Strategy 2011.

- (17) In the event that contaminated material or asbestos is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the following requirements and a report submitted to and approved in writing by the Local Planning Authority to include: -

(i) a survey of the extent, scale, and nature of contamination (ii) an assessment of the potential risks to: - human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining

land, ground waters and surface waters, ecological systems, archaeological sites, and ancient monuments. (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This shall be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Where remediation is necessary a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works and the developer shall complete the remediation works in accordance with the scheme approved. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.

Prior to occupation of any property hereby permitted the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in the approved remediation scheme.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property, and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours, and other offsite receptors in accordance with policy ENV11 of the Rochford District Council Local Development Framework adopted Core Strategy 2011.

#### **Implementation of Hard Landscaping (Private & Shared Access Drives)**

- (18) All hard landscaping including the surfacing of private or shared access drives, the service road and all pedestrian footways shall be fully constructed and completed in accordance with the details to be approved prior to the occupation of any dwellings to be served by such surfacing.

REASON: To achieve an inclusive design which promotes choice and to ensure that the development provides opportunities for pedestrians and cyclists to move freely between this development and the adjacent development in order to access designated open space and play areas in accordance with the principles



laid out by The Essex Design Guide and Chapter 12 of the National Planning Policy Framework (September 2023).

**Limiting Construction Hours**

- (19) No works during any part of the construction phase of the development, including all associated ground works, building operations deliveries and / or collections shall take place between the hours of 6pm and 7 am (Monday to Friday) and between the hours of 1 pm and 7am on Saturdays. No construction works, deliveries or collections shall take place on a Sunday or on any bank holidays.

REASON: To safeguard the residential amenity of the vicinity. in accordance with policies DM1 of Rochford Council's Development Management Plan (Adopted December 2014).

**Travel Information Packs**

- (20) Prior to first occupation of the proposed development, the developer shall be responsible for the provision, implementation, and distribution of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the developer to each dwelling free of charge.

REASON: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the council's Local Development Framework's Development Management Plan.

**Access Construction**

- (21) Prior to first occupation of the development, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in each direction, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.

REASON: To provide adequate inter-visibility between vehicles using the access and those in the existing public highway in the interest of highway safety in accordance with Rochford District Council's Local Development Framework Development Management Plan policy DM1.

- (22) Prior to first occupation of the development, as shown in principle on planning drawing 209.01. the shared vehicular access shall be constructed at right angles to the existing carriageway and shall be provided with an appropriate vehicular crossing.

REASON: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the

limits of the highway in the interest of highway in accordance with Rochford District Council's Local Development Framework Development Management Plan policy DM1.

- (23) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

REASON: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with Rochford District Council's Local Development Framework Development Management Plan policy DM1.

- (24) Prior to first occupation of the development, as shown in principle on planning drawing 209.01. The shared internal access road, turning head, parking, and turning areas shall be provided in accordance with current standards. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.

REASON: To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety in accordance with Rochford District Council's Local Development Framework Development Management Plan policy DM1 and DM8.

#### **Electric Car Charging Points**

- (25) Prior to the first occupation of the development hereby permitted the electric car charging points as shown on plan reference 209.01 (Parking Plan) (shown to be serving Plots 1-11 inclusive) shall be installed and fully operational.

REASON: To ensure that the development achieves sustainability in its design in compliance with Rochford District Council's Local Development Framework Development Management Plan policy DM1 and policy CP1 of the Core Strategy and Chapter 12 of the National Planning Policy Framework (September 2023).

- (26) Notwithstanding the details of the submitted Parking Plan (which does not indicate electric car charging points to serve the Apartment Block), prior to the first occupation of the Apartment Block electric car charging points shall be provided and fully operational in accordance with the details of a further plan which shall have been submitted to and agreed in writing by the Local Planning Authority.

REASON: To ensure that the development achieves sustainability in its design in compliance with Rochford District Council's Local Development Framework Development Management Plan policy DM1 and policy CP1 of the Core Strategy and Chapter 12 of the National Planning Policy Framework (September 2023).

**SUPPORT ING INFORMATION**

**1.0 PLANNING APPLICATION DETAILS**

<b>DRAWING NOS.</b>	PA_01 Rev D Site Layout Plan LSDP 2010.01 Rev A Structural Landscaping Plan PA_06 Rev D Boundary Plan
<b>SUBMITTED DOCUMENTS</b>	Arboricultural Method Statement (referenced: LS1843-01 DATE January 2023)  Arboricultural Method Statement (referenced LS 1843.01 11.07.23)  Arboricultural Report including Tree Protection Plan and Method Statement (Revised 27.07.2023) Planning Statement

1.1 The application is supported by revised plans referenced as above to vary the details of three plans referenced at condition 2 of the approved 20/00332/FUL consent and the details of the previously approved Tree Report, Tree Protection Plan and Arboricultural Method Statement cited at conditions 9 and 10 of the stated consent. The application seeks to ensure adequate landscaping treatment of the northern boundary of the site previously secured by condition 5 of the issued consent.

**2.0 MATERIAL PLANNING CONSIDERATIONS**

**Site and Context**

2.1 The application site constitutes a rectangular area of land which is approximately 0.46 hectares in site area being located to the south of West Avenue which forms the western continuation of Windermere Avenue. The site is located to the west of those properties located at Harrison Gardens which will remain separated from the site’s east boundary by approximately 105 metres.

2.2 The site is adjoined to the west by grazed paddocks marked by post and wire fencing whilst to the north aspect at Windermere Avenue an unadopted highway separates the site from residential development arranged in linear form along its north aspect. In addition to the site itself the land to the east and south of the site forms part of the strategic allocation which has been subject to outline approval 14/00813/OUT and subsequent Reserved Matters approval reference 18/00135/REM for 500 dwellings and which is at an advanced stage in construction. There are no water courses within the site itself which was dry at the time of the officer site visit.

2.3 Following the adoption of the Allocations Plan in February 2014 the application site forms a part of that land released from the Green Belt and allocated for residential development under Policy SER6b which adjoins that land subject of allocation

SER6a which most of the land excluding this current application site, is subject to an outline approval for 500 dwellings on a site constituting an approximate site area of 21.79ha. The outline planning approval under planning reference 14/00813/OUT (approved 18th January 2017) was subsequently followed by a Reserved Matters application 18/00135/REM granted approval on 16th January 2019 and which is now under construction. Other than those matters covered by this section 73 application the approval granted under 20/00332/FUL is in the course of lawful implementation and works within the root protection area of the two protected trees has stopped. Other than the removal of vegetation which was anticipated as part of the original application and the removal of vegetation to the east which was not intended originally to be removed, the vegetation to the west of the access remains intact.

- 2.4 There is vegetation located outside the physical limits of the application site closer to the edge of the grass verge adjacent to Windermere Avenue. No measures can be taken or asserted by the local planning authority to control the loss of any vegetation located outside the limits of the planning application site other than where protected by a Tree Preservation Order. In addition, no planning condition can be applied relating to the retention of such vegetation which are outside the scope of control or ownership of the applicant.

#### **The proposed Development**

- 2.5 As indicated within the report summary, the purpose of this application is to substitute three approved plans with revised plans to address in the main, how the two protected Oak trees are represented on those plans. Condition 2 which makes reference to the approved plans other than as revised by this application remains the same and there is no change to the position and extent of the planning application site as edged in red on the plans, the position of any built form or hardstanding including any service roads. The application includes a revised Tree Report and Tree Protection Plan coinciding with the revised plans to account for the mitigation and methods necessary to safeguard the root systems of these protected trees during the course of development and thereafter. The second element is the requirement to achieve a suitable hedge boundary along the north aspect of the site particularly in view of the substantial loss of a length of hedge to the east of the vehicular access in order that the level of screening required when the development was first considered is achieved. The planning conditions attached as part of the officer's recommendation are key to achieving this outcome.

#### **Planning Site History**

- 2.6 Application No. 20/00332/FUL: Proposed Erection of 17 No. Dwellings (11 No. Houses and 1 No. Buildings Containing 6 No. Flats) with Associated Access, Parking and Private Amenity Space: Planning Permission Granted 15.03.2022.
- 2.7 Application No. 22/00313/DOC: Discharge of Condition 18 (Archaeological Groundworks) of Planning Consent Ref. 20/00332/FUL - Proposed Erection of 17 No. Dwellings (11 No. Houses and 1 No. Buildings Containing 6 No. Flats) with Associated Access, Parking and Private Amenity Space: Discharged 22.07.2022.

- 2.8 Application No. 22/00435/DOC: Discharge of Conditions 3 - (Materials), Condition 9 - (Tree protection), Condition 11 - (Renewable energy), Condition 12 (Construction Method Statement) and Condition 19 - (Archaeological investigation) of approved application ref: 20/00332/FUL: Proposed Erection of 17 No. Dwellings (11 No. Houses and 1 No. Buildings Containing 6 No. Flats) with Associated Access, Parking and Private Amenity Space: Discharged 22.12.2022.
- 2.9 Application No. 22/00450/DOC: Discharge of Condition(s) 14 (Surface water drainage), 15 (Minimise flooding), 16 (SWD and Maintenance activities/frequencies) & 23 (Hard landscaping) of Planning Consent Ref 20/00332/FUL: Discharged 25.07.2022.
- 2.10 Application No. 22/00518/DOC: Discharge of Conditions 18 (Second Dig Written Scheme of Investigation), Condition 19 (First Dig Archaeological Evaluation) following grant of planning permission 20/00332/FUL dated 15/03/2022: Discharged 29.07.2022.

### **Material Planning Considerations**

#### **Legal Scope of Section 73 applications**

- 2.11 This application is limited to the subject matters highlighted within the planning application. From a procedural perspective if granted, this section 73 consent would constitute a further consent to be read in conjunction with the earlier approved planning permission under application reference 20/00332/FUL. Other than the plans subject of this application, the plans as previously approved remain unaffected. Relevant conditions attached to this Section 73 approval include compliance conditions and those conditions requiring information or an action to be instigated to satisfy the conditions which if not discharged in their entirety pursuant to the 20/00332/FUL consent must be included as part of the new Section 73 planning permission. Section 73 of The Town and Country Planning Act indicates that applications such as the one in question, are applications to develop land without compliance with conditions previously attached to previous planning permissions. The statute advises that on such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and if they decide that planning permission should be granted subject to conditions, which conditions are necessary to uphold the original consent which may differ to those previously granted as discharged conditions would no longer be relevant.
- 2.12 The original planning permission must have been lawfully implemented or still be capable of implementation. The amendment cannot have the effect of extending the time within which a development must be commenced. The amendment cannot display the biodiversity gain condition which will automatically be imposed on every planning permission granted in England for a future date to be appointed. If an amendment to a scheme cannot be facilitated through an amendment to a condition, the use of s.73 would be inappropriate and a fresh planning application will need to be submitted to the local planning authority. The planning permission granted will be a new planning permission, however it will expire on the same date as the original permission. The new permission sits alongside the original permission, which

remains intact and unamended. It is up to the applicant to decide whether to implement the new planning permission or the original permission granted.

### **Impact of Proposed Development on Protected Trees**

- 2.13 Policy DM25 (Trees and Woodlands) of the of the Council’s Development Management Plan indicates that development should seek to conserve and enhance existing trees and woodlands, particularly Ancient Woodland. Development which would adversely affect, directly or indirectly, existing trees and/or woodlands will only be permitted if it can be proven that the reasons for the development outweigh the need to retain the feature and that mitigating measures can be provided for, which would reinstate the nature conservation value of the features.
- 2.14 Where development would result in the unavoidable loss or deterioration of existing trees and/or woodlands, then appropriate mitigation measures should be implemented to offset any detrimental impact through the replacement of equivalent value and/or area as appropriate. Consideration should be given to the impact on the landscape character area and the findings of the Rochford District Historic Environment Characterisation Project (2006) when considering the potential loss of trees and/or woodland, and the replacement of these.
- 2.15 Given the fact that root areas of the two protected oak trees are closer than first indicated to the proposed parking area and hardstanding to the north and front aspect of plots 1-4, consideration must be given to how the trees will be safeguarded from any unacceptable impacts which could otherwise arise during and after the development has taken place.
- 2.16 The Council’s Arboricultural and Conservation officer has previously highlighted that Tree T3 is an old tree with occasional veteran associations. The tree has good vitality and provides good visual amenity, landscape and wildlife value and advised that this tree should be categorised as A1/2/3 those of high value. Officers advised the applicant that BS 5837 recommends that any permanent hard surfacing should not exceed 20% of any existing unsurfaced ground. Windemere Avenue has a road stone covering that is very well compacted and as such is considered a surfaced road that suggests that the hard surfacing, as shown by the original Tree Protection Plan originally submitted with the first application exceeds 20% of the current unsurfaced area and very likely to have a detrimental impact upon the health of tree T3 resulting from a loss of water and nutrient uptake that is currently available.
- 2.17 It is recognised that development proposed in close proximity to established trees many of which in this case are protected under statute, has the potential to affect their root protection areas (RPA’s). This can occur as a result of any excavations on site which either directly affects the root systems or indirectly by way of material operations taking place on land such as the construction of access roads, access drives, car parking and foundation construction. Compaction which starves tree roots systems of nutrients is one of the commonest concerns where development affects roots systems.



- 2.18 Previously the installation of a Green Grid system was proposed which provides a root bridge when installed and in effect consists of modular steel lattice units designed when laid to protect tree roots where new developments such as walkways, steps and car parking areas are proposed close to existing trees. Such a system protects the existing root range from harmful pressures which can lead to soil compaction, loss of aeration, drainage problems and, ultimately, the death of the tree. The previous approval included a condition seeking further details of the specification of works incorporating no dig principles to be submitted and approved in writing by the local planning authority prior to the construction of the Green Grid system.
- 2.19 On the previous scheme it was recommended to use the greengrid system to raise the drive above the Root Protection Areas due to levels and the amount of hard surface covering the Root Protection Areas of the trees, in particular T3. On consideration of the revised and updated Arboricultural Method Statement (referenced: LS1843-01 DATE January 2023) the councils Arboricultural Officer is content with the principles of the 'traditional' no-dig construction as detailed in the revised report. On consulting the councils Arboricultural Officer, a question was raised as to whether a 'no dig' methodology can be achieved without excavation taking into account site levels.
- 2.20 A question was raised whether the tree barrier protection (as shown in a broken red line on the Tree protection Plan) will cover the full extent of the Root Protection Area and retained until the end hard landscaping phase and then be altered to allow construction of the no-dig or whether the hard surface would be constructed as a starting phase to act as ground protection and the barrier protection set back. This was not entirely clear on the on the drawings or method statement.
- 2.21 A point also made by the council's Arboricultural Advisor, that it needs to be clear that the no-dig construction will be supervised and that the council will receive reports of compliance including photos of the construction from the project arboricultural consultant, during the construction phase as the originally submitted statement indicated no supervision.
- 2.22 It was also stated that the crown of the trees will likely need raising on the development side. The works had not been specified on the submitted information with reference only to a generic recommendation.
- 2.23 Following a site visit in May the council's Arboricultural Officer advised that a good protection system for 'most' of the Root Protection Area was in place, considering the issues with proximity following the site set up. It was confirmed that as of the time the grass / weeds are untouched within the protected area so it could be ascertained that the area has not been used since the protection went in and they last cleared along this area for the 'hedgerow management', which was just before Christmas 2022. The view expressed by the council's Arboricultural Consultant in an e mail to the case officer was that the tree protection is as best as could be required. It was highlighted that the council as part of its consideration required tree protection plans phased for each activity. (i.e., when they intend to move the tree protection following the intensive phase to then construct the access).

- 2.24 The critique of the initial Arboricultural Method Statement submitted dated January 2023, was that there were no details relevant to potential impacts of the works on the trees in the context of the construction of the access road and visitor parking spaces. Initially the report dated January 2023 indicated that a 'No dig' approach was deemed unviable due to levels whilst there was no clarity on why the principles laid out initially in connection with the 20/00332/FUL could not be followed. No other alternative was cited, and clarity was required whether it was proposed to revert to the Green Grid System.
- 2.25 In comment on the initially submitted Arboricultural report the council's Arboricultural officer indicated that the suggestion within the report is to use a no-dig surface, this was previously dismissed due to the amount of surface required within the RPA and difficulty installing without significant excavation. The approved system was a green grid system which was a totally above ground system, this would be preferred unless the method statement can demonstrate using current and finished levels that the excavation will be minimal. It was commented that there were no depths for construction, depth of cellular grid, finished surface details etc.
- 2.26 The council's Arboricultural officer subsequently advised on the requirement for a further Method Statement and Tree Protection Plan including the following documents:
- Updated tree protection plan to show various phasing of works and alterations to the location of tree protection.
  - Method statement for the construction of the access road.
  - Schedule of tree works for both below ground and crown works.
- 2.27 It was also advised that the protection arrangements need to be shown on a plan (tree protection plan) in phases i.e. intensive build phase tree protection, then tree protection for the access road construction phase, then tree protection for the landscaping phase, each time the barrier/ground protection will need to be moved / altered to ensure the protection is sufficient for the activity / phase, this needing to be shown on a drawing or series of drawings for each phase.
- 2.28 It was also advised that tree works need to be listed and agreed prior to the activity. The works should not be carried out at certain times of the year such as leaf break or leaf fall as this is when the tree is using the most energy. There needs to be further works to improve the current soil / rooting environment, such as soil air injection and root feed. In discussion between the applicant and the council's Arboricultural Advisor the case officer was advised that bullet point 1 and 3 (cited above) have been covered in communication. However, it was indicated that it was fundamental that bullet point 2 be subject of address in that one Arboricultural statement is required rather than part supplied such that all outstanding issues are covered within one document.
- 2.29 It was advised that further to this if a decision is made to use the lesser excavation of 150mm with a shingle finish, a soil amelioration Method Statement would be required

such as root feed, soil tea etc to improve the soil biology and demonstrate that whilst there will be some root loss there will be mitigation for this impact.

- 2.30 Subsequently a further Arboricultural Report including Tree Protection Plan and Method Statement (Revised 27.07.2023) was submitted to which the council's Arboricultural Officer stated that he was content with the suggested tree works, although 2.5m may not be sufficient crown clearance to allow access, advising however they can apply for this work again if needed. It was also indicated that in discussion with civil engineers representing the applicant that the ground levels of the parking bays could be raised by 50mm to reduce excavation depths. The raising of this area further would cause surface water runoff in the direction of the dwellings at plots 1-4.
- 2.31 In clarification on consideration of the updated and further Method Statement dated 27.07.2023 it was clarified that what was proposed was a 150mm excavation for the visitor spaces (Cellweb with stone finish) and block pave finish with 380mm excavation for the driveway outside the visitor parking space. By way of mitigation, the applicant's are proposing soil amelioration of soil decompaction and injection of a compost tea which will improve the soil biology.
- 2.32 The shallow excavation (150mm) will be 2.4m from T2 and 3.1m from T3. The deeper excavation will be at 5.2m from T2 and 3.2m from T3. Structural roots tend to taper after around 4m from the stem. Given the distances above and the soil, the advice received is that the methods now proposed represent the best solution. On the basis of the most updated proposals in conjunction with the relevant parts of previously submitted Assessments, the council's Arboricultural Officer has no objection and recommends the following conditions:
- 2.33 No site works including demolition, groundwork or construction shall be carried out until all trees are protected in line with the arboricultural method statement (AMS) ref LS1843-01 section 6 Phase 1, Phase 2 and Phase3 as described and as per the drawings ref Phase 1, Phase 2 and Phase 3.
- 2.34 The construction of the visitor parking space and access are to constructed in line with the arboricultural method statement (AMS) ref LS1843-01 section 8 and 9 as shown in drawings ref Phase 1, Phase 2 and Phase 3.
- 2.35 Tree works are to be carried out in line with the arboricultural method statement (AMS) ref LS1843-01 section 5 and section 8 bullet point 6 (soil air injection and application of the compost tea) and section 9 bullet point 5 (soil air injection and application of the compost tea).
- 2.36 All tree works, including construction of the reduced dig construction for the visitor spaces and access, soil air injection and application of compost tea and all tree crown and below ground tree works (root pruning), are to be supervised by the project arboriculturist (details of the named person to be provided prior to all works as described above) in line with the arboricultural method statement (AMS) ref LS1843-01 sections 2-4. Photographs and a brief report provided by the Project Arboriculturist are to be supplied to Rochford District Councils planning section on, or the day after, each item as specified.

**The Treatment of Hedge Boundaries**

- 2.37 The Town and Country Planning (Development Management Procedure) (England) Order 2010 (SI 2010/2184) defines 'Landscaping' as comprising the treatment of the land to enhance or protect the amenities of the site and the surrounding area, including screening and tree planting.
- 2.38 Part of the application seeks therefore to address the loss of Blackthorn hedge to the east aspect of the site access which became unviable to retain as the original Landscaping Plan had anticipated. There were gaps in the boundary to the east of the site access (as now constructed which previously constituted a gateway into the field) at the time the original planning application was submitted. However with the removal of the scrub in the field the gaps within that section nearest to Windermere Avenue became more pronounced. The reason for this is that the root system of this shrub species is shallow and consists of many routes which spread laterally for some distance from the stem of the plant itself. The concept behind the previously approved Landscaping Plan was that the site should be offered screening to provide a sense of containment within the site itself and privacy as part of its contribution to the overall design of the development. The purpose of a boundary is not exclusively to mitigate any view of a development site from a neighbouring property or properties. Importantly this current application does not seek to show on any plan the extent of the vegetation which was to be lost, which was acknowledged as part of the previous application as a significant extent of the Blackthorn scrub to be removed to make way for the development which was that self-seeding and regenerating scrub that had grown into the field on either side of the access.
- 2.39 This application is neither about showing what used to exist or what still exists outside the physical limitations of the planning application site as their presence or their loss in any circumstance cannot be accounted for by the application as it is beyond the control of the Local Planning Authority to control any activity which takes place outside the physical limitations of the application site and neither can the authority condition any measures to be undertaken outside the planning application site as the 6 key tests relevant to the imposition of conditions would not be met.
- 2.40 What is relevant is how the loss of vegetation to the east of the access can be addressed to create the same conditions as depicted by the initial proposed Landscaping Plan submitted as part of the 30/00332/FUL application. The clear aim of the revised Landscaping Plan is to provide clarity regarding what is expected in landscaping terms to address the loss of hedge vegetation to the east of the site access and certainty in terms of what is expected with regards to the treatment and management of this boundary and the retention and supplementary planting along the hedge boundary located to the west of the access.
- 2.41 It is considered that the details shown on the revised Structural landscaping Plan are acceptable as details of a planting specification and planting schedule, are indicative of a suitable and robust planting scheme which is conditioned in terms of the timing of the planting. The plan indicates that the boundary of the site to the east of the access will be planted up with a mix of species comprising 245 in number of plants which will be planted in staggered double rows comprising of species including Acer

Capmestre, Crataegus monogyna, Corylus avellana, Carpinus betulus, Cornus sanguinea, Euonymus europaeus, Ilex aquifolium, malus sylvestris, Prunus avium, Rosa carina. A total of 19 trees are also to be planted, 66 herbaceous plants and 574 shrubs which is considered to be satisfactory.

- 2.42 It is also considered important to ensure that the north boundary of the site when planted and is maintained at an optimum height and condition to ensure its longevity and its function as a visual feature and screen. An additional planning condition is attached at condition 5 to ensure that an appropriate management regime is followed to ensure the hedge achieved the desired objectives over the lifetime of the use.

### **Third Party Representations**

- 2.43 The representations received from the occupant of Number 10 West Avenue, Hullbridge are noted. The material facts of the original case and those surrounding this application are not as set out within the objection, however the objector is entitled to an opinion. There is very little that can be stated in response to representation which is based on an interpretation rather than the facts. The originally approved Landscaping Plan was not explicit in that it annotated the plan as the hedgerow to the east of the aspect was to be retained but the plan did show a hedgerow approximately 2 m in depth and the principle of retention was set out within the supporting statements which accompanied the original application. Officers did not mislead members or the public in this regard.
- 2.44 This application does not remove more hedgerow than what exists at this current point in time. In terms of the plans not showing the full extent of the hedgerow on the northern border primarily to the east of the access – from what can be ascertained from the representation as articulated, the officers response to this is that the focus is not on what vegetation exists outside the planning application site boundary (which clearly where the reference is made to shrubs that are not within the planning application site) but importantly what is going to be planted within the application site boundary to mitigate the loss of the hedge removed. Officers have never lost focus on this key endeavour whilst the comments received although noted, have no relevance to the application as the plans submitted are representative now of the measures necessary to mitigate the loss of the hedge to the east.
- 2.45 As stated previously within this report, what vegetation remains outside the planning application site boundary is irrelevant to the plans and this application and officers have not lost sight of this. The plans submitted therefore are accurate in the detail they show and in their relevance to the subject matter of this application. The last three bullet points highlighted have no relevance to this application as they are clearly outside the scope of consideration for this Section 73 application.

## **3.0 CONSULTATIONS AND REPRESENTATIONS**

- 3.1 **Rochford District Council Arboricultural Officer:** No objection on the basis of the supplementary information provided subject to the conditions recommended.

**Third Party Representations:**

- 3.2 Two representations of objection have been received from the occupier of 10 West Avenue.
- Points raised include that the original application excluded the hedgerow on the southern side of the ditch which was to be retained.
  - The view is expressed that the current application indicates even more removal of this hedgerow.
  - Houses and roadway are too close to the tree line,
  - Nesting season
  - Officers have deceived both RDC Cllrs and the public by insisting that the hedgerow be retained when they knew it would be removed.
  - I welcome the comment on the plans that existing hedgerow will remain. However, the plans are incorrect and do not show the full extent of the hedgerow on the northern border primarily to the east of the access. - Please see the attachments - eside1, 2 3 and 4 show the current extent of the hedgerow on the eastern side of the access and 'wside' shows the western side of the access. From these you will see that the current extent of the hedgerow is far greater than that on the plans particularly around the access point where as per the submitted plans there is an existing hawthorn/blackthorn / snowberry shrub to be retained - that shown on the plan is significantly less than is currently in place and because of this error the verge shown on the plan is significantly larger. In addition running along the length of the ditch there is a hedgerow /small trees that are not included on the submitted plans.
  - The submitted plans are therefore incorrect and need to be amended in order to protect the hedgerow. The plans as currently presented do not correlate to the statement made in the LSDP document that existing hedgerow will remain . I do not want to see a repeat of the original plans that excluded the hedgerow on the southern border of the ditch which resulted in removal of the hedgerow in order to accommodate parking bays and access to the dwellings being constructed.
  - Hullbridge Parish Council are committed to tackling their carbon footprint - any removal of hedgerows no matter how small jeopardises this initiative and has an impact on the environmental and ecological status. I might add RDC are also committed to tackling carbon footprint so should therefore ensure no hedgerows are removed. Note the remaining hedgerows on the northern side provide a natural border to the site and must remain as is.
  - Parking spaces - The apartment block is entitled to 8 places - the submitted plans show 7 places at the southern side of the apartment block and 3 on the





Rochford District Council Local Development Framework Development Management Plan (Adopted December 2014) Policies DM1, DM2, DM4, DM25, DM26, DM28, DM30,

Rochford District Council Local Development Framework Supplementary Planning Document 2 Housing Design (January 2007)

SER6a and 6b of the Allocations Plan 2014

Supplementary Planning Document 2 – Housing Design

Parking Standards: Design and Good Practice Supplementary Planning Document adopted December 2010

Essex Design Guide 2019

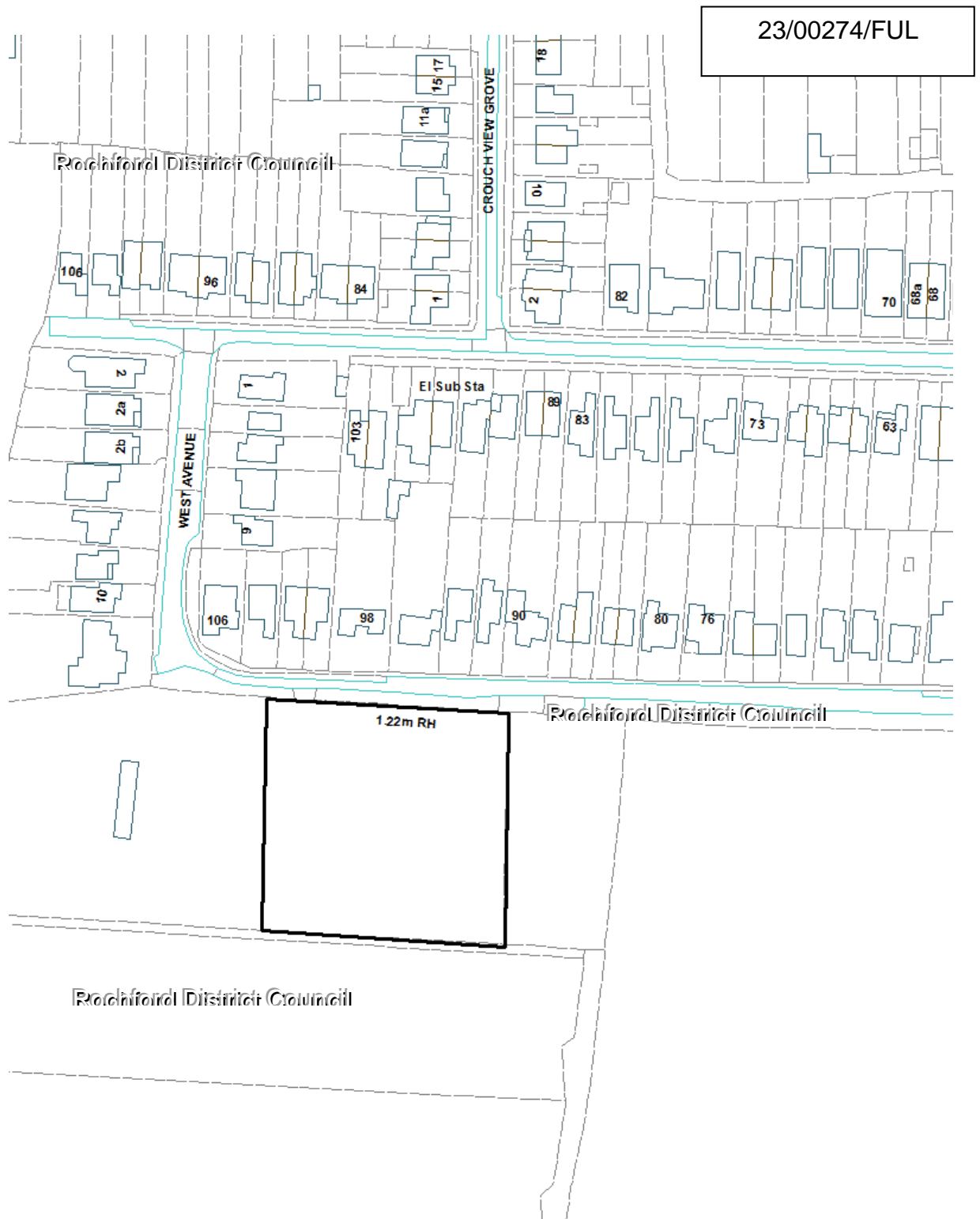
#### **BACKGROUND PAPERS**

None.

#### **SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
<b>Development Committee Item 6</b>	<b>23<sup>rd</sup> September 2021</b>

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