

21/01184/FUL

**AIRPORT BUSINESS PARK, CHERRY ORCHARD WAY,
ROCHFORD**

REMOVAL OF CONDITION 14 (RESTRICTION ON FLOOR SPACE RELATING TO DIFFERENT USE CLASSES) RELATING TO OUTLINE PLANNING CONSENT REFERENCE 15/00781/OUT OUTLINE APPLICATION WITH ALL MATTERS RESERVED APART FROM ACCESS TO THE SITE OFF CHERRY ORCHARD WAY TO CREATE A BUSINESS PARK TO COMPRISE USE CLASSES B1 (BUSINESS), B2 (GENERAL INDUSTRIAL), AND ANCILLARY USES TO INCLUDE A1 (RETAIL), A3 (RESTAURANTS / CAFÉS), A4 (DRINKING ESTABLISHMENTS), C1 (HOTEL), D1 (NON RESIDENTIAL INSTITUTIONS), D2 (ASSEMBLY AND LEISURE) AND B8 (STORAGE AND DISTRIBUTION), PROVIDE HARD AND SOFT LANDSCAPING AND DEMOLITION OF EXISTING RUGBY CLUB AND ASSOCIATED WORKS

APPLICANT:	HENRY BOOT DEVELOPMENTS
ZONING:	LONDON SOUTHEND AIRPORT AND ENVIRONS JOINT AREA ACTION PLAN
PARISH:	ROCHFORD PARISH COUNCIL
WARD:	ROCHE SOUTH

1 RECOMMENDATION

1.1 It is proposed that the Committee RESOLVES

That the condition is not removed but rather varied in accordance with the scope to do so under Section 73 of the 'Act' to provide greater flexibility relating to the total allowable gross floor space of primary B8 use within the defined site area totalling a gross floor area of 10,000m². This provision is to be written into the new condition (condition 12) as varied and subject to the re

imposition as required by Section 73 of the 'Act' of all relevant compliance conditions which apply to the site as a whole, together with relevant conditions which are still required to secure the discharge of outstanding matters relating to the subsequent Reserved Matters applications pursuant to the granting of the outline planning permission. The recommended conditions, as set out below are to form the issue of a new outline planning permission under application 15/00781/OUT/A and to be read in conjunction with the legal agreement under section 106 of the act forming part of the outline consent:

Conditions

Reserved Matters

- (1) No development shall commence, save for construction of that section of the spine road as shown on Drawing Number 0688 A _2103 Rev C, until plans and particulars showing precise details of the layout, scale, design, external appearance, access (save for vehicular access to the site as shown on the approved plan Drawing Number 0688 A _2103 Rev C) and landscaping of the site, (herein after called the "Reserved Matters"), have been submitted to and approved in writing by the Local Planning Authority. All development at the site shall be carried out in accordance with the Reserved Matters details approved. Application for the approval of the remaining Reserved Matters shall be made to the Local Planning Authority before the expiration of five years from the date of this permission.

REASON: Required to be imposed pursuant to Section 92 of the Town and Country Planning Act 1990 (as amended) and to enable the Local Planning Authority to secure an orderly and well-designed development.

Approved Plans

- (2) The development hereby approved shall be constructed in accordance with the following approved plans:

Drawing Reference: 0688 A_0100 Rev D Location Plan

Drawing Reference: 582093/CIV/005 Rev. P3 S278 works general arrangement sheet 2 of 3.

Drawing Reference: 0688 A_2000 Rev P Indicative layout

Drawing Reference: 0688 A_2101 Rev K Indicative layout for Building Heights

Drawing Reference: 0688 A_2103 Rev C Details of proposed access road

Drawing Reference: 0688 A_8217 Rev B Phase 1 Rugby Pitch Impact Study

Drawing Reference: 582098/112 Rev P3 Proposed Surface Water Drainage Strategy sheet 3 of 6

Drawing Reference: 582098/113 Rev P3 Proposed Surface Water Drainage Strategy sheet 4 of 6

Drawing Reference: 582098/114 Rev P3 Proposed Surface Water Drainage Strategy sheet 5 of 6

Drawing Reference: 582098/115 Rev P3 Proposed Surface Water Drainage Strategy sheet 6 of 6

Drawing Reference: 582098/116 Rev P2 Details of proposed SUDS Measures sheet 1 of 2.

Drawing Reference: 582098/117 Rev P2 Details of proposed SUDS Measures sheet 2 of 2

Drawing Reference: 4719_103_E Overall Landscape Layout

Drawing Reference: 4719_104_A Hardworks General Arrangement Plan 1 of 4

Drawing Reference: 4719_105_A Hardworks General Arrangement Plan 2 of 4

Drawing Reference: 4719_106_A Hardworks General Arrangement Plan 3 of 4

Drawing Reference: 4719_107_A Hardworks General Arrangement Plan 4 of 4

Drawing Reference: 4719_108_A Soft Landscape General Arrangement Plan 1 of 4

Drawing Reference: 4719_109_A Soft Landscape General Arrangement Plan 2 of 4.

Drawing Reference: 4719_110_A Soft Landscape General Arrangement Plan 3 of 4

Drawing Reference: 4719_111_A Soft Landscape General Arrangement Plan 4 of 4

REASON: To ensure that the development is undertaken in accordance with the approved drawing(s) and for the avoidance of doubt and in the interests of proper planning.

Accommodation works

- (3) Prior to the commencement 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 construction traffic shall be provided clear of the highway.

REASON: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

Vehicle access surface treatment

- (4) No unbound material shall be used in the surface treatment of the vehicular access within 30 metres of the highway boundary.

REASON: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

Control of surface water

- (5) There shall be no discharge of surface water onto the highway.

REASON: To prevent hazards caused by water flowing onto the highway and to avoid the formation of ice on the highway in the interest of highway safety to ensure accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011

Submission of Construction Method statement

- (6) No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
- i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. wheel and underbody washing facilities

REASON: To ensure that on street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway

safety and Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

Retention of public right of way

- (7) The public's rights and ease of passage over public footpaths and bridleways within the development site shall be maintained free and unobstructed at all times. Diversions shall require the appropriate order securing the diversion of the existing definitive right of way to a route agreed with the Local Planning Authority.

REASON: To ensure the continued safe passage of the public on the definitive right of way and accessibility in accordance with Policies DM1 and DM11 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

Submission of left turn signage

- (8) Prior to the first occupation of any business premises within the site details of proposed signage to encourage traffic to turn left on leaving the business park onto Cherry Orchard Way directing to use the strategic highway network shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the signage as may be agreed.

REASON: To require signage to encourage traffic to follow the strategic highway network in accordance with Policy T2 of the Rochford District Council Southend - On – Sea Borough Council London Southend Airport and Environs Joint Area Action Plan adopted December 2014.

Prevention of ransom strip

- (9) The road link from the site to the northern boundary adjoining Area 1 of the business park as identified on the Rochford District Council and Southend-on-Sea Borough Council London Southend Airport and Environs Joint Area Action Plan Proposals Map and shown on Drawing Number 0688 A _2103 Rev C shall be completed such that it would directly adjoin the boundary with the adjoining site prior to the first occupation of any premises at the site.

REASON: To enable Area 1 to be fully integrated as part of the business park and utilise the same access onto Cherry Orchard Way.

BREEAM rating

- (10) All buildings within the site shall achieve a BREEAM rating of 'excellent' unless this cannot be achieved for reasons of viability in which case details of the BREEAM rating that can be achieved, including details to demonstrate the viability case to demonstrate why the 'excellent' rating cannot be achieved, shall be submitted to and approved in writing by

the Local Planning Authority. If an alternative BREEAM standard is approved for any building this shall be met.

REASON: In the interests of sustainability and to achieve compliance with Policy ENV7 of the Rochford District Council Southend-on-Sea Borough Council London Southend Airport and Environs Joint Area Action Plan adopted December 2014.

Limitations to development mix

- (11) “Class E(g) or its future equivalent counterpart as may be cited by any amendment to the current Use Classes Order statutory instrument 2020 No. 757 Town and Country Planning, England the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 shall be the principle use on the site. As such the following uses shall not exceed the total gross (with the exception of A1 which would be net) internal floor space stated, unless otherwise agreed in writing by the Local Planning Authority:
- i General industrial uses (Class B2 uses) at the site shall not exceed 32,250 square metres.
 - ii A1 (retail) uses shall be limited to small scale convenience retail to a maximum total net internal floor space of 1000 square metres.
 - iii Use Class C1 / D1 shall not exceed 4896 square metres
 - iv Use Class B8 (Storage or Distribution) as a primary land use shall not exceed an overall gross floor space of 10,000 square metres.
 - v Uses within Use Classes A3, A4 and D1 shall not individually exceed a total gross internal floor space of 1000 square metres”.

REASON: To ensure that the business park delivers a majority of light industrial, business and research and development uses (former use class B1) in accordance with Policy ED3 of the Rochford District Council and Southend-on-Sea Borough Council London Southend Airport and environs Joint Area Action Plan adopted December 2014; given the restrictive sequential approach in Policy RTC 2 and the need to ensure that any retail serves a day to day local need of employees at the business park in accordance also with Policy ED3 of the Rochford District Council and Southend-on-Sea Borough Council London Southend Airport and environs Joint Area Action Plan adopted December 2014 and not undermine the role of the districts town centres; to ensure that these uses remain ancillary to the business, light industrial and industrial uses within the business park.

Spine Road design and landscaping

- (12) The road through that part of the site as shown on Drawing Number 0688 A _2103 Rev C shall be designed and constructed in accordance with the principles as set out in the Landscape Design Code dated October 2015 (including both road links to the north; to the brickworks site and relocated rugby pitch site) including the provision of street trees, footpath, hedges and grass verges. Precise details of the hard and soft landscaping including spacing of trees, species and girth shall be submitted to and agreed in writing by the Local Planning Authority prior to commencement of construction in connection with the road.

The soft landscaping including tree planting as agreed shall be planted in the first planting season following completion of the section of highway to which the planting is directly adjacent.

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 the same location as those removed, in the first available planting season following removal. The hard landscaping agreed shall be completed prior to completion of the adjacent highway.

REASON: To secure the provision of the main spine road within a green corridor as required by Policy ENV5 to the Rochford District Council and Southend-on-Sea Borough Council London Southend Airport and Environs Joint Area Action Plan adopted December 2014.

Green Spine design and landscaping

- (13) The green spine as set out in the Landscape Design Code October 2015 shall be designed in detail to accord with the principles as set out in this aforementioned document and be proposed in detail at a minimum width of 18 metres measured from the western edge of the existing hedgerow. The hard and soft landscaping as agreed for the green spine shall be delivered including completion of the footpath, tree, shrub and hedge planting and provision of seating and lighting (where applicable) to be delivered in a phased arrangement in conjunction with development within the phase adjacent or as otherwise agreed in writing by the Local Planning Authority.

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 the same location as those removed, in the first available planting season following removal.

REASON: To ensure that whilst a phased approach may be adopted to the delivery of plots the strategic landscaping of the site is secured and to accord with Policy T5 of the Rochford District Council and Southend-on-Sea Borough Council London Southend Airport and Environs Joint Area Action Plan adopted December 2014.

Green Ribbon design and landscaping

- (14) The green ribbon as set out in the Landscape Design Code October 2015 shall be designed in detail to accord with the principles as set out in this aforementioned document and be proposed in detail at a width equal to that shown (average) on the indicative layout Drawing Number 0688 A_2000 Revision P along its length. The hard and soft landscaping as agreed for the green ribbon shall be delivered across the full width of the site east to west including completion of the footpath, tree, bridge crossing of the green spine, shrub and hedge planting and provision of seating and lighting (where applicable) to be delivered in a phased arrangement in conjunction with development within the phase adjacent or as otherwise agreed in writing by the Local Planning Authority.

The soft landscaping including tree planting as agreed shall be planted in the first planting season following completion of the section of highway to which the planting is directly adjacent.

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 the same location as those removed, in the first available planting season following removal. The hard landscaping agreed shall be completed prior to completion of the adjacent highway.

REASON: To secure the provision of the main spine road within a green corridor as required by Policy ENV5 to the Rochford District Council and Southend-on-Sea Borough Council London Southend Airport and Environs Joint Area Action Plan adopted December 2014.

Public Realm design and landscaping

- (15) An area of public realm in the central area of the site as set out in the Landscape Design Code October 2015 shall be designed in detail to accord with the principles as set out in this aforementioned document and be proposed in detail with an area equal to that as shown on the indicative layout Drawing Number 0688 A_2000 Revision P. The public realm shall be delivered including completion of the footpaths, paved areas, tree, grass and other planting and provision of seating and lighting (where applicable) prior to the first occupation of the centrally positioned building within the area as set out as the central hub in the

aforementioned Design Code or as otherwise agreed in writing by the Local Planning Authority.

REASON: In the interests of visual amenity and public realm provision within the business park.

Reserved Matters Design Code

- (16) All Reserved Matters applications shall accord with the principles of design as set out in the Landscape Design Code and Design Code October 2015 and in addition shall ensure that elevations of buildings that would face green spaces containing footpaths are fenestrated. Details of how the requirements of these have been taken into account in the design of the Reserved Matters applications shall be submitted with each Reserved Matters application.

REASON: In lieu of a masterplan for the site to provide a degree of consistency in design across the business park in the interests of visual amenity in accordance with Policy E1 of the Rochford District Council and Southend-on-Sea Borough Council London Southend Airport and Environs Joint Area Action Plan adopted December 2014 and to avoid the presentation of large blank elevations to public spaces in the interests of visual amenity and surveillance.

Submission of lighting details

- (17) Prior to the erection of any lighting at the site, details of proposed lighting shall be submitted to and approved in writing by the Local Planning Authority. Details should demonstrate accordance with design principles and considerations as per guidelines from the Bat Conservation Trust as set out at paragraph 6.1.2 of the Ecological Appraisal and Protected Species Surveys October 2015 report accompanying the planning application and achieve compliance with CAP 168

REASON: To reduce impact on foraging habitat and commuting links for bats as a result of light-spill and to ensure safety as a result of proximity to the nearby airport.

Submission of surface water drainage details

- (18) Prior to the commencement of development within each phase (equating to a Reserved Matters application site area) a surface water drainage scheme for the phase, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, shall be submitted to and approved in writing by the Local Planning Authority. The scheme as agreed shall be implemented concurrently with the development within the phase to which it relates to ensure that each premises is served by a properly functioning surface water drainage system prior to first use and that the

scheme is completed in its entirety prior to the first use of the last premises to be constructed within the phase to which the scheme relates. The scheme shall: -

- o Limit the discharge from the site to 24.2l/s and provide details of the device(s) that shall be installed to achieve this.
- o Provide attenuation storage (including locations on layout plan) for all storm events up to and including the 1 in 100 year storm event inclusive of climate change. Provide calculations to demonstrate that the proposed surface water management scheme has been adequately sized to accommodate the critical duration 1 in 100 year rainfall event, including allowances for climate change. o Provide the necessary number of treatment stages associated with each element of the development.
- o Provide plans and drawings showing the locations and dimensions of all aspects of the proposed surface water management scheme. The submitted plans should demonstrate that the proposed drainage layout will perform as intended based on the topography of the site and the location of the proposed surface water management features. In addition, full design details, including cross sections of any proposed infiltration or attenuation features, will be required.
- o Incorporate the SUDS "Management Train" and ensure all features are designed in accordance with CIRIA (C697) The SUDS Manual so ecological, water quality and aesthetic benefits can be achieved in addition to the flood risk management benefits. In addition, the maintenance requirements for the SUDS element of the proposed surface water drainage system should be formulated as per the recommendations within the CIRIA SUDS Manual (C697).
- o Provide a Sustainable Urban Drainage System Management Plan which shall detail the proposed management and maintenance regime for the surface water drainage scheme for the lifetime of the proposed development.
- o Confirm that the receiving water course (River Roach tributary) is in a condition to accept and pass on the flows from the discharge proposed.

REASON: To prevent flooding by ensuring the satisfactory storage and disposal of surface water from the site for the lifetime of the development. To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided.

Mitigation of construction run off

- (19) Prior to the commencement of development within each phase (equating to a Reserved Matters application site area) the development hereby permitted shall not be commenced until such time as a scheme to minimise the risk of off site flooding caused by surface water run off and groundwater during construction works has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.

REASON: The National Planning Policy Framework paragraph 103 states that local planning authorities should ensure flood risk is not increased elsewhere by development.

Tree protection

- (20) No ground work or development shall take place within any phase (with a phase equivalent to a Reserved Matters application submission) until a tree protection plan and method statement in accordance with BS5837:2012 has been submitted to and approved in writing by Rochford District Council for that phase taking account of trees within the phase or whose root protection areas lie in any part within that phase. Tree protection measures, as agreed shall be implemented prior to commencement of ground works within the relevant phase and the agreed method statement shall be complied with throughout the construction period.

REASON: To protect trees and hedges to be retained during the construction period. Prior to commencement justification: It is necessary for tree protection measures to be agreed and in place prior to commencement of development as ground works may impact on root protection areas.

Provision of Green Buffer

- (21) A green planted buffer of a width of at least 18 metres measured from the curtilage boundary shall be provided to the eastern, northern and southern boundaries of Cherry Orchard Farmhouse. Details of the proposed tree planting shall be submitted to and agreed in writing by the Local Planning Authority prior to planting which shall be undertaken in accordance with the agreed details within the first planning season following commencement of development on the site of the existing rugby club and pitches as shown on Drawing 0688 A_8217 Revision B.

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 the same location as those removed, in the first available planting season following removal.

REASON: To accord with the Rochford District Council Southend-on-Sea Borough Council London Southend Airport and Environs Joint Area Action Plan adopted December 2014 Proposals Map and in the interest of residential amenity.

Change in use

- (22) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 (GPDO) and as amended further by the statutory instruments of 2018 and 2020, none of the premises as built shall benefit from provisions within the GPDO which allow for a change of use.
- (23) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 (GPDO) and as amended, the commercial floorspace / premises hereby approved shall be retained as commercial uses and shall not benefit from the provisions of the GPDO to change in use residential.

REASON: In order to ensure the development is retained for specialised and high-density employment purposes in order that the benefits gleaned from commercial development can be secured and to minimise conflict those rights present with the development plan.

2 PLANNING APPLICATION DETAILS

- 2.1 This application as set out by section 5 of the application form seeks to remove condition 14 of the outline planning permission (reference 15/00781/OUT) which was granted outline planning approval on 31 October 2016. The permission granted was in respect of a new business park involving a predominance of B1 (Business) (now E (g) uses as redefined by the Use Classes Order statutory instrument 2020 No. 757 Town and Country Planning, England the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. The permission also granted permission for B2 (General Industrial) use with some ancillary uses proposed to include A1 (Retail), A3 (Restaurant/Café), A4 (Drinking Establishments), C1 (Hotel), D1 (Non-Residential Institutions), D2 (Assembly and Leisure) and B8 (Storage and Distribution)'. It is noted that this permission was the subject of a Section 106 agreement to deliver a number of infrastructure improvements and commuted sums. The site as approved by the outline planning permission and as commonly referred to as Airport Business Park Southend (ABPS) extends to 22.5 hectares as was shown by drawing reference A_0103 which accompanied the outline planning application. Condition 14 relates to all developments within this defined area.

(Officer Note: The applicant on the receipt of feedback from the case officer as part of the process has now agreed to a revised position indicating its acceptance of the condition being varied as opposed to being removed. This matter is covered within the report).

- 2.2 Condition 14 (discussed further under Section 3 of this report) in summary specified the quantum and gross floor space limitations pertaining to each use as mentioned and covered by the outline planning permission description. The purpose of the condition was aligned with the policy provisions and aspirations as set out within the adopted Joint Area Action Plan (JAAP) to ensure that this strategic site delivered predominantly B1 and B2 uses with an element of supporting uses and some B8 uses, the latter of which was limited to 1,000m². It is emphasised that the condition as intended is not limited to the future development that would take place in the form of Reserved Matters applications only which were envisaged at that time would follow within the prescribed time limits for submission, but to all future development within the defined area of the outline approval as shown by drawing reference A_0103 whether Reserved Matters or full applications.
- 2.3 This application indicates that the applicant's ultimate objective is to be able to offer unrestricted B8 opportunities for the benefit of maximising development prospects at the park. The covering letter submitted in support of the application indicates that the application is submitted seeking to remove this restrictive condition to reflect market interest in the wider employment use classes (themselves revised since the award of the outline) and with particular reference to B8 (Storage and Distribution). The application indicates that '... any revision will not result in a reduction in the quality of the product and the Business Park will still remain focused on employment uses as founded within the JAAP'.
- 2.4 The application sets out that undeveloped plots and speculative units at ABPS have been professionally marketed since early 2017 via three professional agency firms each with their own individual mandates and target markets seeking occupiers attracted by the opportunity of a bespoke facility in a professionally managed business park environment, delivered to the highest quality.
- 2.5 The application indicates that development opportunities within the ABPS have been widely marketed via 3 selected agent companies. It is indicated that all three exclusive agents are in keeping with market practice incentivised to work collaboratively and have attended marketing meetings on a monthly basis where enquiries have been presented. It is indicated that the applicant has extensive data on the interest in the site. These firms have been supported by professionally prepared marketing materials, with the flagship being the scheme's website – www.abpsouthend.co.uk. For the wider property agency community, it is indicated that the applicant has extensively communicated that any requirement introduced that the applicant is not aware of and successfully results in a transaction will be rewarded. This has historically resulted in one meaningful aviation sector related requirement which has now fallen away due to the global pandemic.
- 2.6 The application indicates that to ensure a continual proactive marketing programme, a continual cycle of mailing exercises has been adopted broadcasting availability of the scheme. The application indicates the view

that mailing is the most effective manner of marketing property. The application indicates that mailing exercises have targeted occupiers with 20 or more employees and office occupiers with 50 or more employees. This exercise has generated a mailing list of 1,870 companies stretching from East London to Southend. This is additional to all known property agents active within the target areas. More recently the exercise has extended this to the smaller requirement sizes via a sustained Southend HTML campaign as marketing of the small unit speculative scheme has taken place which is due to start on site at the end of the year. That list contains a similar number of potential occupiers.

Occupier Interest

- 2.7 The application sets out interest in this respect which included the following information:
- 2.8 **Office Accommodation:** There has been no single occupier from project inception seeking a bespoke office facility to warrant a viable pre-let or pre-sale scenario at the Business Park. Given the landowner's and LPA's aspirations for employment uses it is the applicant's position that had there been an occupier but a questionable development viability it would have reported it accordingly given the Local Authority's ability to access capital in the scenarios where the Cost Benefit Analysis proves it to be warranted. There has been interest from some Southend based professional firms seeking small office pods, both on a leasehold and freehold basis. These requirements are typically in the region of 5,000 sq. ft (465m²) but in each instance these provide little employment benefit and are commercially challenging with significant premium rents required against the existing office stock within Southend.
- 2.9 **Industrial and Warehouse accommodation:** The applicant states that data since the start of this calendar year has been reviewed to ensure that the marketing takes into account an up-to-date picture. It is indicated that a total of seven strong enquiries were made seeking space at the business park (additional to the ongoing discussions around the expansion plans of the site's anchor client), totalling 19,161 sq m (206,250 sq ft). This represents an average requirement size of approximately 2,740 sq m (29,500 sq ft).
- 2.10 The submission notes the relatively small requirement size which is a function of both the nature of the occupier community within the wider area and the fact that plot sizes are fixed, owing to site-wide infrastructure already being in place. This means that the site can only accommodate a very limited range of unit sizes. One of the seven enquiries is from a predominantly B8 operator. The occupier is heavily embedded within the Thames Estuary project and operates within the film industry and is seeking to relocate from East London. The remaining six enquiries are from predominantly B2 operators, who require an element of B8 use in their operation. They all seek to upsize and upgrade their real estate offering in the wider Southend area. Often the B8 element is

an online retail offering that has grown exponentially during the recent pandemic as routes to market have changed.

- 2.11 The applicant's submission estimates based on the ongoing design conversations that a maximum of 19,161 sq m (206,250 sq ft) could be attributed to a B2 use taking into consideration the implemented 18/00584/REM IPECO site and the consented 20/00454/REM Speculative Scheme and the undetermined 21/01185/REM Speculative Scheme application, with a potential total of 7,741.8 (83,332 sq ft) of B8 orientated use taking into account the floor areas provided for by the 2 highlighted Speculative Schemes (Plot 12 and Plot 4). The application indicates that the further plots (and any further B2 or B8 uses) will be considered on a case-by-case basis as part of full planning applications.
- 2.12 The applicant's case is that all the evidence to date suggests that the occupier community is considering the Airport Business Park as an industrial and warehouse focused location only. The applicant indicates that they are encouraged by the diversity of interest itself representing the diverse nature of local business and especially in light of an aviation sector industry going through a significant market correction.

3 MATERIAL PLANNING CONSIDERATIONS

The Site

- 3.1 The Airport Business Park extends to 22.5 ha. The indicative site layout of ABPS, as approved as part of the Outline Planning Permission, identifies 22 development plots and an associated loop road and landscaping. The site is located immediately north of Aviation Way Industrial Estate. To the east the site borders scrub land and an agricultural field adjacent to the western boundary of the airport. To the north the site borders the field on which the relocated rugby pitches are sited (15/00776/OUT) and the former site of the Cherry Orchard Brickworks. To the west the site runs alongside the B1013/Cherry Orchard Way and wraps around a residential dwelling house known as Cherry Orchard Farmhouse, which is accessed via Cherry Orchard Lane. Beyond the site to the east lies Cherry Orchard Jubilee Country Park to the south of which and some 900m from the site is Rochford Business Park, a smaller site containing car dealerships and other commercial uses. The site wraps around the northern and eastern boundaries of Kent Elms Tennis Club to the south western corner of the site.
- 3.2 Since the grant of outline planning permission, a number of phased developments have come forward to establish the infrastructure necessary to service the development and a significant part of the infrastructure works have been undertaken and will continue to serve respective developments, as required by the safeguards of conditions set out by the outline planning permission. The first phase of built development enabled by the 18/00584/REM IPECCO B2 development has now been implemented.

Site History

- 3.3 Application No. 15/00776/OUT (“Rugby Club Application”) - Hybrid Application for Outline Planning Permission with All Matters Reserved Apart from Access to The Site For The Provision Of A Rugby Club, Associated Pitches And Facilities With Submission Of Full Details For Vehicular Access To The Site And Pitches. Approved 14/03/2016.
- 3.4 Application No. 15/00781/OUT - Outline application with all matters reserved apart from access to the site off Cherry Orchard Way to create a business park to comprise use classes B1 (business), B2 (general industrial) and ancillary uses to include A1 (retail), A3 (restaurants/cafés), A4 (drinking establishments), C1 (hotel), D1 (non-residential institutions), D2 (assembly and leisure) and B8 (storage and distribution). Provide hard and soft landscaping and demolition of existing rugby club and associated works. Approved 31/10/2016.
- 3.5 Application No. 18/00411/REM - Reserved Matters application for phase 2 infrastructure works comprising a spine road and associated infrastructure, including the creation of green corridors pursuant to creating access to all parts of the business park following approval of application reference 15/00781/OUT. Approved 24.09.2018
- 3.6 Application No. 18/00584/REM (“IPECO Plot”) - Reserved matters application (following outline permission reference 15/00781/OUT) to consider details in connection with a proposed employment unit for B1/B2: access, layout, appearance, scale and landscaping. Approved 23/11/2018.
- 3.7 Application No. 19/01063/REM (“IPECO Plot”) - Reserved Matters Application for the approval of site levels and related landscaping incorporating enhanced boundary treatments including the provision of a boundary wall, in relation to the IPECO Unit, Airport Business Park, Southend, pursuant to Outline Planning Permission (reference: 15/00781/OUT). Approved 13/02/2020.
- 3.8 20/00454/REM: Reserved Matters application comprising the construction of 12 No Industrial Units (Use Class B1/B2/B8), pursuant to outline planning permission reference 15/00781/OUT: Approved 2/11/2020.
- 3.9 20/00565/REM: Reserved Matters Application comprising the construction of a coffee shop (with drive thru) (Use Class A1/A3), pursuant to Outline Planning Permission (Ref: 15/00781/OUT) all reserved matters namely, Access, Appearance, Layout, Landscaping and Scale for consideration. Approved 4/11/2020.
- 3.10 21/01185/REM: Reserved Matters application comprising the construction of an industrial unit (Use Class E(g)/B2/B8) (Plot 4) pursuant to outline planning permission reference 15/00781/OUT. This application submitted concurrently with planning reference 21/01184/FUL remains pending and is subject of consideration at the same Development Management Committee meeting).

- 3.11 In addition to the above, Southend-on-Sea Borough Council has secured Reserved Matters permission for a new Innovation Centre under planning reference application No. 19/00566/REM ("Innovation Centre") - Details of reserved matters (Access, Appearance, Landscaping, Layout and Scale) pursuant to outline planning permission reference 15/00781/OUT- dated 31/10/2016 relating to part of the Airport Business Park, Southend Masterplan. The development will comprise office and light industrial (Use Class B1), ancillary café facilities, landscaping, and car parking facilities. (The outline application was not EIA development). Approved 17/10/2019.

Assessment of Condition 14 and the Case for Removal

- 3.12 Condition 14 reads as follows: 'B1 shall be the principal use on the site. As such the following uses shall not exceed the total gross (with the exception of A1 which would be net) internal floor space stated, unless otherwise agreed in writing by the Local Planning Authority; i. Class B2 uses at the site shall not exceed 32,250 square metres ii. A1 (retail) uses shall be limited to small scale convenience retail to a maximum total gross internal floor space of 1000 square metres. iii. Use Class C1 / D1 shall not exceed 4896 square metres. iv. Uses within Use Classes A3, A4, D1 and B8 uses at the site shall cumulatively not exceed 7078 square metres and individually each of these proposed uses (save for any C1 use) shall not exceed a total gross internal floor space of 1000 square metres.
- 3.13 The reason for this provision is cited as follows within the decision notice: 'To ensure that the business park delivers a majority B1 use in accordance with Policy ED3 of the Rochford District Council and Southend-On–Sea Borough Council London Southend Airport and Environs Joint Area Action Plan adopted December 2014; Given the restrictive sequential approach in Policy RTC2 and the need to ensure that any retail serves a day-to-day local need of employees at the business park in accordance also with Policy ED3 of the Rochford District Council and Southend-on–Sea Borough Council London Southend Airport and Environs Joint Area Action Plan adopted December 2014 and not undermine the role of the District's town centres; To ensure that these uses remain ancillary to the main B1/B2 uses within the business park'.
- 3.14 In consideration of the condition, it is clear that its imposition was absolutely necessary and justified and reflected the relevant policies cited within the adopted Joint Area Action Plan (JAAP) and the Council's Core Strategy. Condition 14 therefore is considered a fundamental provision and mechanism to deliver the requirements of the Joint Area Action Plan which is a long term vision and strategic economic development and regeneration objective extending beyond 2030 way beyond this current year of 2022. It is considered that to remove the condition altogether would be tantamount to the acceptance of a position that the JAAP policy and the principles it upholds have little or no validity now in 2022 or indeed over the intended term of the policy. In conjunction and in discussion with colleagues in the Council's Strategic Policy and Economic Development teams a clear position has been established by officers with regard to this application, such that for reasons as

fully set out by the joint consultation response issued by RDC Strategic Policy and Economic Development there is no potential of removing the condition. (A full copy of this response is included as an appendix to the report and summarised under 'CONSULTATION RESPONSES'.

- 3.15 It not considered that the changes to the Use Classes Order 1987 mentioned by the applicant's submission and as now embodied by its successor: statutory instrument 2020 No. 757 Town and Country Planning, England the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 fundamentally supports a case to remove the condition as the formerly recognised B1 use is now captured under Class E (g) within the updated Use Classes Order. A B1 (now) E (g) use Includes offices linked to industrial facilities typically being used for research and development purposes, some light industrial processes providing they are suitable to be placed near residential properties (in effect having no impact upon residential amenity).
- 3.16 It is important to note that an element of storage in connection with the primary uses of (former B1) now E (g) and B2 in itself would be permitted as an ancillary activity affiliated with the main primary use – therefore condition 14 does not prevent this scenario from taking place within any development, providing that the main primary use continues supported by an element of storage as a secondary use. An example of this is the primary use of IPECCO (approved under 18/00584/REM) as a B2 use which would have an element of secondary or related storage connected with the main B2 use. In this scenario the storage use itself does not constitute a B8 primary use. What is clear from the submission is that, although seeking to remove the condition to ensure a greater degree of flexibility (beyond the current limitation of 1000m² gross B8 use in total within the site area of the outline planning permission) in future to ensure that units built are occupied which is a commercial risk consideration and to meet demand, there is also reference within the applicant's submission to short term objectives. These are understood.
- 3.17 These objectives refer to ensuring that the units already granted approval of Reserved Matters under reference 20/00454/REM (Speculative 12 Unit scheme) (6,467m² of flexible space (B1, B2/B8) can deliver if necessary, a use which is entirely primary B8 use which at present it currently could not until the 1000m² limitations on the B8 use as set by condition 14 was varied through the only means available which is via this Section 73 application. In addition for the same reason the concurrent application 21/01185/REM (Speculative Scheme at Plot 4) proposing a gross floor space of 1,274.8m² of flexible space (B1, B2/B8) could not be used exclusively for a primary B8 use. In consideration of the applicant's short term objective it has become clearer in more recent discussion that a mechanism to secure a greater degree of permitted B8 use is required to ensure the delivery and occupation of the 2 stated Speculative Schemes which would provide potentially a total of 7.741.8m² of B8 use if used exclusively for this primary B8 use purpose whilst if these units were used purely in connection with a B2 use the 7.741m² would

be additional to the 11.468 m² already approved on plot 7 which was the 18/00584/REM approval for the IPECCO site.

- 3.18 Further evidence was submitted by the applicant in terms of the current demand and inquiries from businesses which cannot be named for sensitive commercial reasons. For this reason, the further information submitted has been marked as Private and Confidential. The information indicates that not only is there demand for B8 use at present but there is demand for other uses such that the summary position reached by officers is that providing some flexibility on further B8 use would be acceptable. It is considered that increasing the limit to 10,000m² would provide some flexibility, whilst this increase would neither undermine the long term strategic objective embodied within the JAAP.
- 3.19 This consideration is supported by the following points raised by the consultation response received jointly from Rochford District Council's Strategic Policy and Economic Development teams:
- The JAAP, alongside the Council's planning and economic development policies, prioritises the 'Airport Business Park Southend' (APBS) site for the provision of high value employment activities, with the aim of delivering a significant number of jobs by 2031.
 - The outline application 15/00781/OUT established clear guidelines for the quantum of floor space for various uses permitted on the site, which the applicant now seeks to change.
 - Activities on the site following the granting of outline application 15/00781/OUT have led to the construction of enabling works, infrastructure, and employment activities, with further building currently underway and scheduled to commence shortly.
 - Recognising that the JAAP is a long-term plan and that there is a need for the Local Planning Authority to be flexible and responsive to hitherto unforeseen economic trends and changes affecting the demand for various types of employment sites, the Council has already demonstrated flexibility on this site through granting permission to 20/00454/REM, which allows for 12 smaller B1/B2/B8 units on one of the ABPS development plots. This is in accordance with JAAP Policy E3, which allows for a degree of ancillary storage and distribution element, along with non-B1/B2 uses, where they are in a supporting capacity.
 - The Team has reviewed the evidence supplied by the applicant relating to commercial interest in the site. This demonstrates a wide variety of different uses, including combinations of these. This evidence serves to suggest there may be grounds for revising the current caps on quantum of B2 and B8 floor space established by 15/00781/OUT.

- Nevertheless, the evidence does not support a complete removal of all restrictions on B8 floor space on the ABPS site, which the removal of Condition 14 would permit. Firstly, the evidence demonstrates a sufficient level of interest in either B1 or B2 uses on the site (in accordance with Policy DM32). Secondly, the potential implications of the removal of Condition 14 do not accord with strategic planning or economic development priorities for the site in terms of delivery of high-quality employment space and jobs. This is explored further below.
 - As an alternative, the Team proposes that Condition 14 is varied and that existing floor space restrictions for the site are revised to permit a larger quantum of B8 space to reflect market conditions. However, the total amount of B8 floor space should continue to be restricted, which would help minimise the chance of a proliferation of uses within this category that are not supported by policy (e.g., self storage or trade counters). Proposals for individual plots which involve a proportion of B8 space should be judged individually, on their own merits.
- 3.20 The consultation response goes on to say further that the applicant, in their planning statement, correctly notes the Council's Core Strategy Policy ED1 (which supports employment growth and development which will enable the economy to diversify and modernise, along with the objectives of the Economic Development Strategy extant at the time (since superseded by the 2017 Economic Growth Strategy). The applicant also refers to the ED1 supporting text in paragraph 11.12, emphasising the importance of maintaining high and stable levels of employment and reducing reliance on out-commuting. The statement also notes that Policy E3 should not be 'overly prescriptive' about the uses accommodated within the business park. Whilst the Council agrees with this sentiment, the definition of 'overly prescriptive' is a matter of debate which reflects that, whilst it is necessary to allow for some change in the market to ensure the site still attracts occupiers, the fundamental aim of the JAAP, and of Policy E3, is to secure a sizeable number of high quality employment opportunities.
- 3.21 The consultation response indicates that it notes the intention behind the JAAP of not being 'overly prescriptive'. It also notes the evidence presented of a sizeable body of enquiries which require some degree of warehousing space within their wider requirements. It is important that any strategic planning document seeking to foster long term economic growth closely monitors the state of the market, including wider macro economic and technological trends which may influence the type of demand which ABPS could attract.
- 3.22 These include, although are not limited to:
- the impact of the COVID-19 pandemic (both on general patterns of work, but also on specific sectors, such as the aviation industry). This has had a severe impact on the commercial airline industry and its supply chain,

including at the airport, but has also presented new opportunities for air freight to London Southend Airport (LSA) over the same period.

- the changing fortunes of London Southend Airport, which saw a change in passenger numbers from 0.9m per annum in 2015/16 to 2.1m per annum in 2019/20, and a substantial investment in airside and landside airport facilities during that period. The pandemic saw a significant fall in passenger numbers that resulted, for a time, in the loss of all scheduled flights at the Airport. It also, however, saw an increased demand for air freight which led to a growth in cargo operations on the airport site. As of December 2021, this situation is changing again, with confirmation of a return of EasyJet flights in May 2022 suggesting a prospect of further aviation activities as and when consumer confidence returns.
- advances in technology which have enabled greater remote working, but also increased demand on e-commerce.
- the consequences of the UK leaving the European Union (both to date and potentially in the future), such as additional customs and immigration restrictions, potential benefits from future trade deals and opportunities in both the UK and overseas for 'made in Britain' goods;

- 3.23 The consultation response goes on to say further ambitious development plans set out by the Association of South Essex Local Authorities (ASELA) in its July 2020 *Growth and Recovery Prospectus*. These seek to leverage the strategic potential of the South Essex sub-region, providing leadership and lobbying for funding and investment to deliver 96,000 new homes, 50,000 new businesses and 100,000 new jobs by 2050, along with £5bn of private sector investment, an integrated public transport system and cutting edge digital connectivity. These will see the airport promoted as a strategic international gateway alongside other nationally significant infrastructure projects such as the Thames Freeport and Lower Thames Crossing.
- 3.24 The evidence supplied by the client which demonstrates a demand for up to 10,000 sq. m of B8 is also acknowledged, as is the increasing need for B1 or B2 operations to incorporate an element of B8 to satisfy market demands. However, it does not necessarily follow that a complete removal of B8 restrictions is appropriate, for reasons outlined in terms of job quantity/density, alongside the strategic reasons for protecting the use class mix set out in the application.
- 3.25 Considering this evidence against the Council's policies, it is clear that JAAP Policy E3 is still relevant in this instance, with this policy stating *B1 and B2 developments may be accompanied by ancillary storage and distribution uses*, as well as that *supporting non B1/B2 uses may be acceptable where it can be demonstrated that these uses are necessary to support the operation and/or the requirements of employees working in the business park*. In the instance of B2-led schemes where there is a B8 element (i.e., both 21/01185/REM and some of the other firm enquiries received), these could be

considered within the boundaries of Policy E3, whilst not undermining the fundamental aims of both the policy and wider JAAP to deliver a high quality B1/B2 led scheme. It is also recognised that certain high-quality B8 led schemes may be complementary to the overall ABPS site, as they do fulfil a market demand and enable the wider scheme to remain viable. Allowing such requirements onto the ABPS site to a certain extent would be policy compliant in accordance with JAAP Policy E3, but also at odds with the present Condition 14 restriction on the site of 1,000 sq. m of B8 floor space. Consequently, it is recommended that this present restriction is revised to allow for a certain amount of supporting B8 uses to locate.

- 3.26 However, the fundamental aim of E3 and the JAAP is a B1/B2 led scheme. The evidence suggests there is a strong market demand for B2 floor space, along with a certain degree of interest in B1 office accommodation. Therefore, it is not proven that there is insufficient demand in B1 and B2 uses on the ABPS site to necessitate a complete removal of restrictions on B8 (or other uses), given this has a strong potential to result in a much lower level of employment, along with a radically different character to the business park which is contrary to the long term innovation and knowledge economy led scheme envisaged by the JAAP, which the adjacent Launchpad Innovation Centre and IPECO operation have laid the ground work for.
- 3.27 The Council's planning and economic development policies demonstrate a clear rationale for retaining the ABPS site within the JAAP as a high quality employment site focused on fostering knowledge intensive industries and delivering many skilled jobs. In addition, the Council's evidence base demonstrates a strong need for the delivery of high quality grow on accommodation for businesses within both Rochford District and South Essex, something this site has considerable potential to contribute towards.
- 3.28 Evidence submitted, along with observed evidence of recent progress on the site, suggests there is still considerable demand for B1 or B2 uses to fulfil the majority of functions on the ABPS site, and given the JAAP's long-term vision and the demonstrated flexibility of the local planning authority in adapting to changing market needs, this suggests the policies within planning policies ED1, DM32 and JAAP E3 are still relevant.
- 3.29 Whilst evidence submitted by the applicant indicates that demand for B8 is likely to have increased, it is considered that the evidence for B1/B2 uses, along with the greater strategic benefits of prioritising such uses, uphold policies E3 and DM32 in keeping B8 uses on the ABPS to a supporting function. Consequently, the evidence for the deletion of Condition 14 to allow unrestricted B8 uses on the site is not compelling enough, and this removal is not recommended. This is further justified by the strong possibility that the development of all remaining space on the site to B8 uses is likely to result in a lower quality employment scheme which does not support the JAAP strategic vision.

- 3.30 However, given the clearly demonstrated rationale for a certain amount of B8 to support changing business functions, it is suggested that the current limit of 1,000 sq. m on the site is revised upwards through a variation of Condition 14 that gives an additional element of flexibility. However, given the strategic rationale behind the JAAP policies, it is considered important that B8 is not considered a primary use on the site, and that measures are taken to prevent a proliferation of B8 uses on large parts of the site – something which is likely to result in a lower quantum of employment, particularly where uses such as open/self storage or trade counters are able to proliferate.
- 3.31 In terms of a revised limitation that could be included in a variation of Condition 14, the applicant's evidence is considered, including the following statement: In relation to undeveloped plots, Henry Boot Developments Ltd. has been approached by a number of operators who require B8 use, alongside E(g) and B2 uses. Combined, these potential operators seek to deliver circa 10,000sq.m. of B8 floor space across ABPS.
- 3.32 10,000 sq. m represents under 13% of the total permitted 79,000 sq. m on the ABPS site, so could be argued to be an ancillary/supporting function that does not undermine the policies in the JAAP. This would mean the ABPS site is still able to be overwhelmingly B1/B2 in nature when fully built out. In granting this concession, the Council would clearly be demonstrating willingness to be flexible to the market whilst not fundamentally undermining the vision of the JAAP. This would allow for monitoring of any B8 uses that do then occupy the site. If it is determined that occupiers are not in keeping with the desired image and vision for the JAAP and business park, measures could be taken in future to refuse any further planning applications seeking to remove or raise the cap further to accommodate more B8. Any 10,000 sq. m limit on B8 should also account for the fact that an element of B8 floor space is already likely to be delivered as part of the Spec Scheme and applications such as 21/01185/REM, meaning this sum should be deducted from any revised B8 limit. A 'running total' of B8 (and other) floor space on the site would help support any future proposals for development.
- 3.33 A variation of the condition is a compromise that would not necessarily frustrate the ability for future proposals involving B8 which exceed the 10,000 sq. m limit on the site to come forward. However, any such proposal would need to be accompanied by compelling evidence to support the development of such. The Council's own evidence base relating to employment space demand is likely to be updated periodically, something which may well have a bearing on the types of uses that are appropriate on site.
- 3.34 On this basis, the Team considers that a variation of Condition 14 along the lines described above would be proportionate. This would also mean that the proposals set out in 21/01185/REM would accord with the revised parameters. This proposal is considered to have the potential to deliver a high quality scheme which is likely to result in a large concentration of employment on the site, much of it in E1(g) and B2 uses. It is also likely to result in the vacation of employment space elsewhere in the district, presenting an

opportunity for redevelopment or reoccupation which could benefit other local businesses. For these reasons, this proposal is considered in keeping with policy and is not objected to.

Procedural Matters

- 3.35 From a procedural perspective if granted, this section 73 consent would become the operative consent taking into account the plans as previously approved which remain unaffected, together with any new updated plans and those conditions deemed to be still relevant. Relevant conditions 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 must be included as part of the new outline 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.
- 3.36 In dealing with this particular application which is made to remove the condition the local planning authority has 3 clear choices. The first is to refuse the application such that no agreement is made to waive the condition and its terms. The second choice is to allow it and agree to remove the condition which for the reasons set out would totally undermine the planning policy position. The third choice as provided by the scope of the Section 73 statute is to agree a variation to the original condition varying the express terms of the condition, providing as in this case the Council is satisfied that the new condition is aligned with the key tests relating to the imposition of planning conditions which must be aligned to a planning purpose, be clear, precise, unambiguous, and enforceable.
- 3.37 The applicant, in discussion and in written communication with officers, is agreeable to the variation as now opposed to the removal of the condition whilst as a matter of procedure the application can go forward on the basis recommended by the case officer. The condition as it is recommended be revised is a reasonable one which provides scope to fulfil current demand and enables units to be occupied when built providing a return for significant investment on the applicant's part, whilst at the same time safeguarding the planning policy position still ensuring capacity for the predominant uses still accounted for by the revised condition.
- 3.38 Officers further consider that in view of legislative changes to the use classes order and permitted development rights that now in certain circumstances would allow industrial premises to be converted to housing, it is nevertheless necessary to add conditions to the new consent to secure the commercial

benefits of the development by in this case removing permitted development rights for the conversion of the buildings on the site to residential use.

On a further procedural note this new consent will not need to be bound by the terms of the original Section 106 due to the imposition of clause 4.3 within the Section 106 agreement which ensures that any variation or new consent does not impact on the legal position and requirements of the legal obligations set out within the Section 106 agreement. This clause states as follows:

“If the Council agrees, following an application under Section 73 of the Act, to vary or release any condition contained in the Planning Permission or if a condition is varied or released following appeal under Section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless the Council in determining the application for the new planning permission indicates that consequential amendments are required to this Deed to reflect the impact of the Section 73 application, when a separate deed under s106 of the Act will be required to secure relevant planning obligations in relation to the new planning permission”.

4 CONSULTATIONS AND REPRESENTATIONS

4.1 Natural England: No objection.

4.2 Essex County Council: Development and Flood Risk Environment and Climate Action (Lead Local Flood Authority): Holding Objection

(Officer Comment: As this application relates to the principle of the removal of a condition the holding objection has no relevance as the application does not fundamentally relate to a particular development). (The case officer has written to the LLFA explaining this such that the holding objection as a matter of law and materiality cannot be taken into account).

4.3 Rochford District Council Strategic Policy & Economic Development (joint response): No objection to a variation to allow greater flexibility:

4.4 It determines that, whilst there is evidence to suggest a strong demand for B8 uses at the site, this is not sufficient such that there is insufficient demand for the B1 and B2 uses that policy earmarks for the majority of the site. Given the JAAP is a long term strategic document that stretches to 2031 and given the accelerating pace of commercial development on the site in recent years, it suggests that there is no clear rationale for removing a condition which would effectively render the JAAP irrelevant. There is an existing track record on the site of flexibility to accommodate changing economic trends whilst still retaining the core principles outlined in the JAAP vision of a significant number of highquality employment opportunities, and it is therefore proposed that varying the condition to allow a certain degree of additional B8 use may be appropriate,

A variation of the condition is a compromise that would not necessarily compromise the ability for future proposals involving B8 which exceed the 10,000 sq. m limit on the site to come forward. However, any such proposal would need to be accompanied by compelling evidence to support the development of such. The Council's own evidence base relating to employment space demand is likely to be updated periodically, something which may well have a bearing on the types of uses that are appropriate on site.

5 EQUALITY AND DIVERSITY IMPLICATIONS

- 5.1 An Equality Impact Assessment has been completed and found there to be no impacts (either positive or negative) on protected groups as defined under the 'Equality Act' 2010.
- 5.2 The Equality Impact Assessment (EIA) indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

6 CONCLUSION

- 6.1 Subject to the condition as revised making reference to the use class as re-defined by the statutory instrument 2020 No. 757 Town and Country Planning, England the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 and the reimposition of the conditions as recommended, the development subject to the revised expressed terms as set out by condition is acceptable and a revised outline planning permission reflecting the revised condition can be issued.



Marcus Hotten

Assistant Director, Place and Environment

Relevant Development Plan Policies and Proposals

National Planning Policy Framework (July 2021)

Policies E1,E3,E5,E6,T1,T3,T4,T5,T6,T7, ENV5 and ENV7 of the Joint Area Action Plan (JAAP)

Background Papers:-

None.

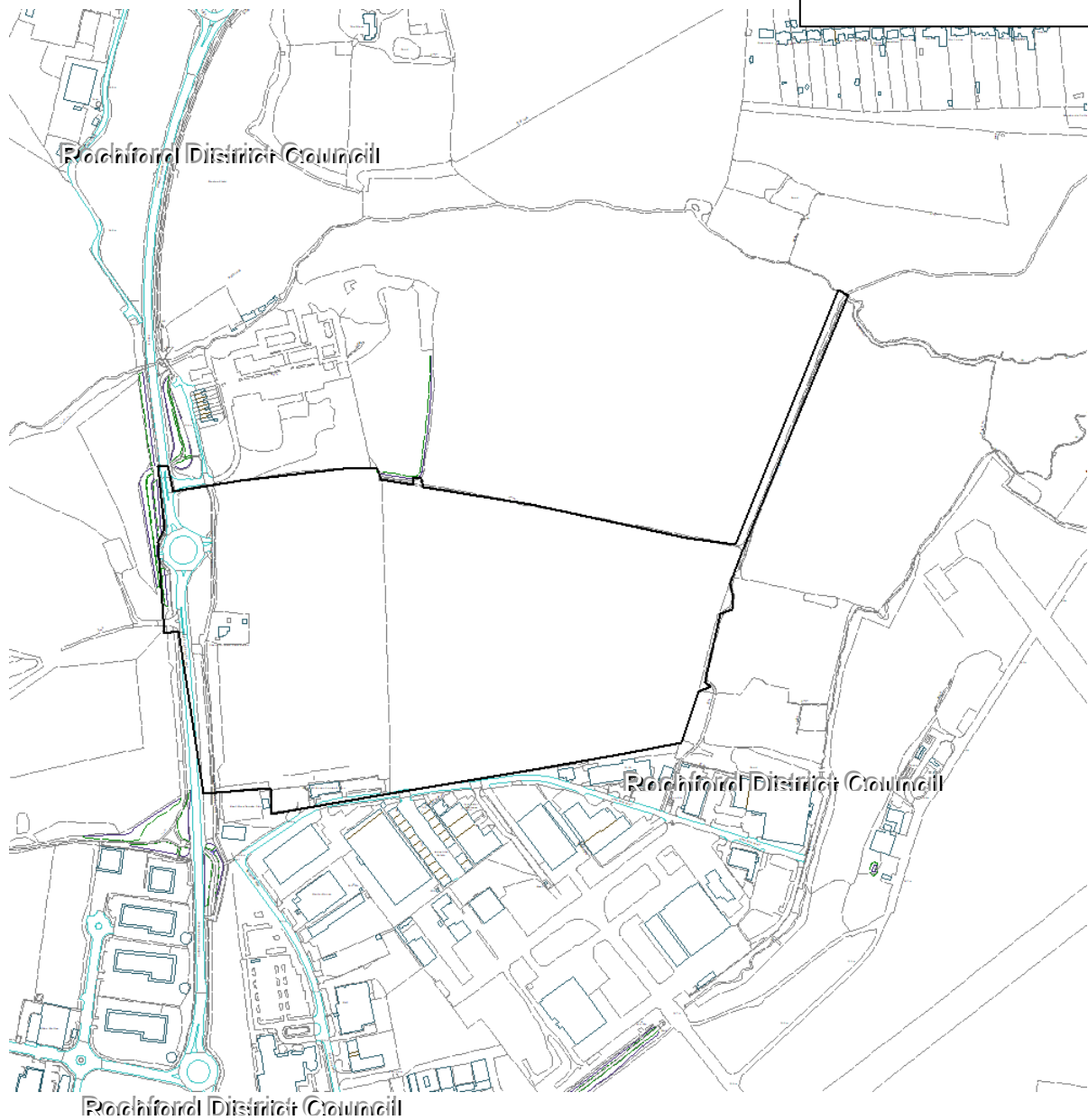
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