



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

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to  
**SOUTH EASTERN AREA PLANNING COMMITTEE  
5 AUGUST 2020**

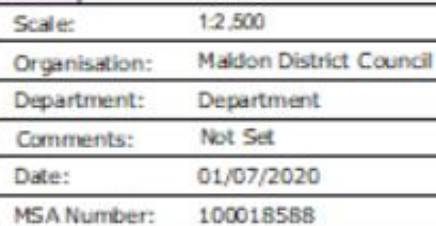
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| <b>Application Number</b>                             | <b>20/00097/FUL</b>  |
| <b>Location</b>                                       | Former Petticrows Boatyard, The Quay, Burnham-on-Crouch  |
| <b>Proposal</b>                                       | Demolition of existing building and erection of a residential institution (C2 Use Class) to accommodate 75 specialist assisted living elderly persons units, including restaurant/bar, cafe, tv room, wellbeing suite, quiet area, consultation room and other communal facilities, together with vehicular and pedestrian accesses, car parking, amenity space and landscaping. |
| <b>Applicant</b>                                      | McLaren Senior Living  |
| <b>Agent</b>  | Mr Michael Carpenter – CODE Development Planners Ltd   |
| <b>Target Decision Date</b>                           | 12.08.2020   |
| <b>Case Officer</b>                                   | Devan Hearnah  |
| <b>Parish</b>   | <b>BURNHAM SOUTH</b>   |
| <b>Reason for Referral to the Committee / Council</b> | Major Application  |

**1. RECOMMENDATION**

**REFUSE** for the reasons as detailed in Section 8 of this report.

**2. SITE MAP**

Please see overleaf.



### **3. SUMMARY**

#### **3.1 Proposal / brief overview, including any relevant background information**

##### Site Description

- 3.1.1 The application site is located at the eastern end of The Quay, Burnham-on-Crouch and comprises the Petticrows Boat Yard, which contains the main storage shed, two smaller storage buildings and outside storage. The site extends to an area of 0.75 hectares. The main building is constructed from light green corrugated metal sheeting and stands on a brick plinth. The remainder of the site is mainly hard surfaced, with limited vegetation except from grass to the north and hedges to the south and west.
- 3.1.2 Directly to the north of the site is an area of undeveloped land, to the east is other boatyard facilities, a caravan park and sewage works and to the west lies car parking, other boating facilities and various buildings located along The Quay. The Blackwater river and estuary are located immediately south of the site.
- 3.1.3 The site is adjacent to and accessed via the Conservation Area of Burnham. The settlement boundary of Burnham-on-Crouch lies 72m to the west of the application site. The Royal Corinthian Yacht Club, a Grade II\* Listed Building is also lies approximately 175m to the east of the site. Access to the site and The Quay are gained from the High Street. The site is also located within Flood Zone 3.
- 3.1.4 In terms of the existing use of the site, the submitted planning statement says that the site has been largely unoccupied since 2015 and has 0 employees. However, the planning application form states that the site is currently used for storage and is not vacant. This appears to be conflicting information however, it is noted that planning permission was previously granted under the terms of 16/00288/FUL for the change of use of the site to B8 storage. It is stated that the site was used for this purpose for a short time by a contractor but is no longer in use.

##### Proposal

- 3.1.5 Full planning permission is sought for the demolition of the existing building and the erection of 75 assisted living, elderly persons apartments, together with vehicular and pedestrian access, car parking and a range of communal facilities in the form of a restaurant/bar café, TV room, well-being suite, quiet area, consultation room, and amenity areas.
- 3.1.6 The proposed apartments would consist of a mix of one and two-bedroom apartments. The submitted accommodation schedule states that there will be 29, two-person, one-bedroom units, 42 three person- two-bedroom units and four, four-person, two-bedroom units. It is stated that 24-hour on-site care and management support would be provided on site in the form of a full-time manager to organise social events, care and transport, a night porter and a standard minimum care package starting with a minimum of 2 hours personal care a week.
- 3.1.7 The building would have a mixture of four and five storeys, with a maximum height of 16.8m on the western end and 20m on the eastern end of the building. The

footprint of the building is an irregular 'F-shape' with a maximum width of 56.8m and a maximum depth of 79.6m.

- 3.1.8 The south elevation features six gable roofs with two glazed links. At ground floor would be the communal facilities including the restaurant, quiet area, TV room, wellbeing suite/GP and career suite. The ground floor would have large glazed windows with the residential floors above featuring full length windows, balconies and fully glazed gable ends.
- 3.1.9 The north elevation, would feature a mixture of gable and flat roofs, with limited glazing and openings at ground floor and full length residential windows and balconies within the upper floors.
- 3.1.10 From the eastern elevation the north-south running gables would be visible, with limited openings at ground floor- and full-length residential windows and balconies within the upper floors.
- 3.1.11 The west elevation can be viewed in three blocks. The bulk of the most northerly block features a north to south running gable roof with three smaller gable projections, which provides balconies at first, second and third floor level and provides an overhang at ground floor. There is a lower projection to the north which features flat roof dormers. The second block also features a north to south running gable with a smaller gable projection to the west and over hang at first floor. The tallest element on the western elevation is towards the south, which features a hip to gable roof, adjoining the south facing gables that front the seawall. There is also a four storey gable projection and a flat balcony projection up to third floor height.
- 3.1.12 Under cover parking 41 vehicles, including two disabled bays will be provided at the site.
- 3.1.13 Tree planting is proposed along the southern boundary of the site and in and around the car parking area within the northwest of the site. An area of landscaping is also proposed in the form of a courtyard between the two western projecting elements of the building. A less formal landscaped area is proposed within the north of the site, which features a footpath, lawn and sparse tree planting. Low level bollard lighting is also proposed around the courtyard spaces to illuminate walking routes.
- 3.1.14 The building will feature a mixture of materials including render, both vertical and horizontal weather boarding and red brick work for the walls. The roof will consist of a grey cement roof tile and the windows and doors will feature grey double glazing.
- 3.1.15 Access to the site will be via the existing access taken from Belvedere Road, linking to the High Street.

## **3.2 Conclusion**

- 3.2.1 The proposed development would be sited outside of the defined development boundary, contrary to policy S8. Furthermore, the proposal as a result of the scale, mass, bulk and design of the proposed building would result in a contrived form of development that results in material harm to the character and appearance of the area. The proposed development would therefore represent an unnecessary visual intrusion.

- 3.2.2 In addition to the above it has not been demonstrated that there would not be an unacceptable loss of employment as a result of the development. The development would therefore be unacceptable and contrary to policies S1, S2, S8, E1 and H4 of the Maldon District Local Development Plan (MDLDP) (2017) and Government advice contained within the National Planning Policy Framework (NPPF) (2019).
- 3.2.3 The proposed development is also considered to fall within a C3 or Sui Generis Use Class, opposed to a C2 Use as proposed. Therefore, the development also makes inadequate provision for affordable housing or a financial contribution in lieu of affordable housing contrary to policy H1 of the approved MDLDP and the NPPF (2019). Furthermore, in the absence of a completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990, the necessary financial contribution towards Essex Coast Recreational disturbance Avoidance and Mitigation Strategy has not been secured.
- 3.2.4 In relation to need, it is also not considered that it has been satisfactorily demonstrated that there is a need for the development proposed, particularly in Burnham-on-Crouch, due to the impacts of other planning permissions for similar developments across the Town and District. Therefore, there is a concern that the development would result in an over concentration of similar uses within Burnham-on-Crouch contrary to Policies S2 and H3 of the Local Development Plan (LDP).
- 3.2.5 Further to the above, the details included in the Preliminary Ecological Appraisal are insufficient to ensure that the development would not adversely impact on the existing ecological assets and habitats and would not provide ecological enhancement as required by policy N2 of the approved LDP.
- 3.2.6 Whilst it is noted that there are some benefits arising from the scheme such as the provision of specialist accommodation, given that the need for this type of development has not been sufficiently justified, it is not considered that the benefits would be sufficient to outweigh the objections highlighted above.

#### **4. MAIN RELEVANT POLICIES**

Members' attention is drawn to the list of background papers attached to the agenda.

##### **4.1 National Planning Policy Framework 2019 including paragraphs:**

- 7 Sustainable development
- 8 Three objectives of sustainable development
- 10-12 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications
- 59-66 Delivering a sufficient supply of homes
- 80-84 Building strong, competitive economy
- 85-90 Ensuring the vitality of town centres
- 91-101 Promoting healthy and safe communities
- 102-111 Promoting sustainable transport
- 124-132 Achieving well-designed places

- 117-123 Meeting challenges of climate change, flooding and coastal change
- 170-183 Conserving and enhancing the natural environment

#### **4.2 Maldon District Local Development Plan 2014 – 2029 approved by the Secretary of State:**

- S1 Sustainable Development
- S2 Strategic Growth
- S8 Settlement Boundaries and the Countryside
- S6 Burnham-on-Crouch Strategic Growth
- D1 Design Quality and the Built Environment
- D2 Climate Change & Environmental Impact of New Development
- D3 Conservation and Heritage Assets
- D4 Renewable and low Carbon Energy Generation
- D5 Flood Risk and Coastal Management
- E1 Employment
- E2 Retail Provision
- E3 Community Services and Facilities
- E6 Skills, Training and Education
- H1 Affordable Housing
- H2 Housing Mix
- H3 Accommodation for ‘Specialist’ Needs
- H4 Effective Use of Land
- N1 Green Infrastructure Network
- N2 Natural Environment and Biodiversity
- N3 Open Space, Sport and Leisure
- T1 Sustainable Transport
- T2 Accessibility
- I1 Infrastructure and Services
- I2 Health and Wellbeing

#### **4.3 Adopted Burnham-on-Crouch Neighbourhood Plan (BOCNP)**

- Policy S1 – Strategic Housing Growth
- Policy EN.1 – Flood Prevention
- Policy EN.2 – New Development and Flood Risk
- Policy HO.2 – Range and Type of New Residential Development
- Policy HO.3 – Housing for Retired and Elderly Persons
- Policy HO.4 – Affordable Market Housing
- Policy HO.8 – Housing Design Principles
- Policy HC.2 – New Development Features
- Policy RI.2 – Design Sensitivity of Riverside Developments

- Policy RI.3 – Retention of Primary River Related Employment Uses

#### **4.4 Relevant Planning Guidance / Documents:**

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Maldon District Design Guide SPD (2017)
- Maldon District Special Needs Housing SPD (2018)
- Maldon District Vehicle Parking Standards SPD (2018)

### **5. MAIN CONSIDERATIONS**

#### **5.1 Principle of Development**

5.1.1 The MDLDP has been produced in light of the original NPPF's emphasis on sustainable development and policy S1 promotes the principles of sustainable development encompassing the three objectives identified in the NPPF. These three objectives of sustainable development are also reiterated in the revised NPPF (paragraph 8).

5.1.2 Policy S1 of the LDP states that "When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF and will apply, inter alia, the following key principles in policy and decision making:

- 1) Ensure a healthy and competitive local economy by providing sufficient space, flexibility and training opportunities for both existing and potential businesses in line with the needs and aspirations of the District;
- 2) Deliver a sustainable level of housing growth that will meet local needs and deliver a wide choice of high-quality homes in the most sustainable locations
- 3) Promote the effective use of land and prioritise development on previously developed land and planned growth at the Garden Suburbs and Strategic Allocations;
- 4) Support growth within the environmental limits of the District;
- 5) Emphasise the importance of high-quality design in all developments;
- 6) Create sustainable communities by retaining and delivering local services and facilities;
- 8) Ensure new development is either located away from high flood risk areas (Environment Agency defined Flood Zones 2 and 3) or is safe and flood resilient when it is not possible to avoid such areas;
- 9) Conserve and enhance the natural environment, by providing protection and increasing local biodiversity and geodiversity, and effective management of the District's green infrastructure network;
- 11) Identify the capacity and constraints of local infrastructure and services, and seek to mitigate identified issues through developer contributions including Section 106 agreement and / or Community Infrastructure Levy and other funding sources;
- 12) Maintain the rural character of the District without compromising the identity of its individual settlements;
- 13) Minimise the need to travel and where travel is necessary, prioritise sustainable modes of transport and improve access for all in the community".

- 5.1.3 Alongside policy S1, policies S2 and S8 of the approved MDLDP seek to support sustainable developments within the defined settlement boundaries. This is to ensure that the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. Outside of the defined settlement boundaries, Garden Suburbs and Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and when it is for a purpose that falls within a defined list of acceptable development.
- 5.1.4 Policy HO.1 of the Burnham-on-Crouch Neighbourhood Plan states that “Proposals will be supported for residential development provided that it complies with the requirements set out in other policies of this Plan and the Development Plan”.
- 5.1.5 The site is located outside the defined settlement boundaries, with the Burnham-on-Crouch settlement located 72m to the west. According to Policy S8, there are circumstances where planning permission for development outside of the defined settlement boundaries, Garden Suburbs and Strategic Allocations may be granted provided that the intrinsic character and beauty of the countryside is not adversely impacted upon. One of those circumstances include mixed use development proposals that enable the delivery of a new Community Hospital or a similar healthcare facility in accordance with policy I2 and other development proposals that are in accordance with policies within the LDP, neighbourhood plans and other local planning guidance. However, having regard to the proposed use, facilities, limited care provision proposed and potential interaction with the wider community, it is not considered that the development can be considered a similar facility to a Community Hospital.
- 5.1.6 The development consists of 75 specialist living elderly persons apartments, together with vehicular and pedestrian access, car parking and a range of communal facilities, including a restaurant/bar, café, tv room, well-being suite, quiet area, consultation room and landscaped gardens; it is worth noting that the Applicant has stated that the development is a C2 Use. The supporting statement states that the consultation room allows for private consultations and treatment for minor open wounds. The Applicant also considers that a collaboration agreement between the NHS and the on-site care provide and management could be provided to allow joint training exercised and a coordinated approach to medical services. Also, the submitted Health Impact Assessment states that the Consultation room meets the NHS specifications required for private, consultation and treatment by visiting medical practitioners. However, future residents will still be expected to attend the local GP for many of their medical needs. Therefore, it is not considered that the development is comparable to a community hospital and is therefore, not an exception under Policy S8 for development types considered acceptable outside the settlement boundary.
- 5.1.7 Further to the above, as discussed in greater detail further within the report the development is considered to cause material harm to the character and appearance of the area, which in Policy terms is considered a countryside location. Policy S8 only supports developments of certain types where the intrinsic character and beauty of the countryside is not impacted on. The proposal would therefore, fail in this regard.



- 5.1.8 Notwithstanding the above, the aims of policy I2 are for the District to improve health and wellbeing. One way to achieve that is through the promotion of suitable types of residential developments which cater for the aging population and support healthy and independent living.
- 5.1.9 Paragraph 8.24 of policy I2 clarifies the type of residential accommodation that would be encouraged by the Council, which would include housing especially suitable for older people, either because of the dwelling type (e.g. bungalows), specific design features (including ‘lifetime homes’) or because of adaptations to suit older people’s needs, or by specialist housing for elderly people. Specialist housing often has special design features and facilities, and usually includes visiting or on-site support and care. In this regard, it is noted that the development has been designed to provide accommodation in a form that would to some degree accord with the abovementioned housing types, particularly due to the fact that there would be facilities provided to support the elderly population on site.
- 5.1.10 Policy H3 of the LDP further describes the required accommodation for specialist needs, which derives from evidence contained in the Older Persons Housing Strategy (2010) and Strategic Housing Market Assessment (SHMA) (2012) considered in support of the Local Plan. This states that:

*“Proposals for specialist needs housing such as homes for older people, people with disabilities, or homes for other specific groups who may require properties that are specifically designed and / or allocated will be supported where:*

- 1) There is a clearly identified need that cannot be addressed elsewhere in the District;*
- 2) The development is located in an area that is sustainable to meet the social as well as housing needs of the intended residents;*
- 3) It will not lead to a concentration of similar uses that would be detrimental to the character and function of an area and/or residential amenity;*
- 4) It will not detrimentally impact on the capacity of public services, including health and social care;*
- 5) It is in close proximity to everyday services, preferably connected by safe and suitable walking / cycling routes or public transport appropriate for the intended occupier;*
- 6) It can be demonstrated that the development is designed and managed to provide the most appropriate types and levels of support to its target resident;*
- 7) It can be demonstrated that revenue funding can be secured to maintain the long term viability of the scheme; and*
- 8) The scheme is supported by the relevant statutory agencies.”*

- 5.1.11 The above requirement is also identified in the Burnham-on-Crouch Neighbourhood Plan. In particular policy HO.3 states that “Housing for retired and elderly persons and people with mobility and sensory impairment will be supported. They should be provided on the strategic housing sites and elsewhere as appropriate”. Policy HO.3 will support general housing or bespoke housing for the elderly close to shops and services.

*Identified need that cannot be addressed elsewhere (criterion 1 of Policy H3)*

- 5.1.12 Policy H3 regarding accommodation for specialist needs as well as Policy H1 regarding affordable housing provision and policy H2 in relation to housing mix have set the foundations for the Council's adopted Specialist Needs Housing SPD. These policies and the recently adopted SPD are based on the findings of the Maldon District Strategic Housing Market Assessment (SHMA) which has concluded that 67.3% of the projected growth of the District's population over the next 15 years (2014 - 2039) will be people aged 65 and over. The SHMA has identified a need for 374 new sheltered units by 2018: of these 254 are needed in the affordable sector and 120 in the private sector, as well as 138 extra care units
- 5.1.13 The current application is for a C2 Use and therefore, does not fall within sheltered accommodation (C3 Use). Furthermore, given that the proposal does not include any affordable housing provision it is not considered that the development would assist in the need for the 254 homes required in the affordable sector. However, the development may contribute towards the need for extra care housing. In relation to this it should be noted that since the publication of the abovementioned SPD the Council has granted outline planning permission under the terms of application 18/00443/OUT at Land North West of 2 Maldon Road, Burnham-on-Crouch for a retirement community which includes 103 market bungalows, a 70-bedroom care home (Class C2) and 55 assisted living apartments (Class C3), which includes affordable housing. In addition to this under the terms of application 14/00356/FUL a 50-60 bed care home was granted outline planning permission within a site allocated within the LDP and application 15/00419/OUT includes outline permission for a residential care home for up to 120 beds within the North Heybridge Garden Suburb, which is also an allocated site. Therefore, the demand for extra care units identified with the SHMA has already been exceeded through the three permissions highlighted above.
- 5.1.14 The Applicant refers to 18/00443/OUT and notes that the Committee Report highlighted that *'due to the identified amount of development to meet specialist accommodation, it is only likely to be able to be provided outside the settlement boundaries'*, but this fails to acknowledge the scale and the development approved under that application, which was much larger than the one single C3 use being proposed as part of this application.
- 5.1.15 The NPPF recognises the need for delivering a wide range of houses including housing for older people and it defines older people as "People over or approaching retirement age, including the active, newly-retired through to the very frail elderly; and whose housing needs can encompass accessible, adaptable general needs housing through to the full range of retirement and specialised housing for those with support or care needs". The Council's Housing Register considers older people as being over 55 years old. On that basis, the proposed development which is limited to people over the age of 60, would meet the needs of the Council's Housing Register.
- 5.1.16 The need for older people accommodation is also identified in the Planning Practice Guidance (2018, 020) recognising a need for diverse range of need from active people who are approaching retirement to the very frail elderly. It states that "authorities need to consider the size, location and quality of dwellings needed in the future for older people in order to allow them to live independently and safely in their own home for as long as possible, or to move to more suitable accommodation if they so wish. Supporting independent living can help to reduce the costs to health and social

services and providing more options for older people to move could also free up houses that are under occupied”.

- 5.1.17 In light of all the above local policies and local and national guidance, it is considered that there is an identified need for older people housing within the District. However, Government guidance advises that schemes should be of a mixture of type of provision and tenure which this development does not provide. Furthermore, guidance encourages that older people should be supported to remain in their own homes before needing to relocate to a C3 Use which this proposal would not facilitate. Therefore, whilst it is acknowledged that there is a need for older people accommodation it is not considered that there is a need for additional C3 Uses. Without any sound or robust assessment putting forward a reasoned argument for the need to provide over the level identified within the SHMA, taking into account the above-mentioned approved schemes and the need for housing in the District, there is a concern that the proposal will result in the inward migration of older people due to an over provision of this type of development. Whilst it is noted that the Market Assessment does consider application 18/00443/OUT, the report does not consider the other developments mentioned above. Furthermore, consideration should be had to whether the benefits of the proposed development, given the identified need for older people housing, would outweigh any potential harm caused to the countryside.

*Accessibility (Criteria 2 and 5 of Policy H3)*

- 5.1.18 The second and fifth requirements of policy H3, which run parallel with policies S1, T1 and D2 of the LDP, seek to make sure that the development is located in a sustainable location to meet the social and housing needs of the future residents.
- 5.1.19 LDP Policy T2 relates more directly to accessibility, by requiring all new development proposals to include “safe and direct walking and cycling routes to nearby services, facilities and public transport where appropriate”. Criterion 6 of policy D1 also encourages maximizing connectivity within the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes. In addition, paragraph 110 of the NPPF sets out that 'applications for developments should a) give priority to pedestrian and cycle movements ... and b) – so far as possible – to facilitating access to high quality public transport’.
- 5.1.20 The accessibility of the site to public transportation and facilities is pertinent to be assessed, as it is one of the requirements of policy H3 and also one of the requirements of local and national guidance for older people housing.
- 5.1.21 The application site lies 72m to the west of the settlement boundary and provides good walking links between the site and the existing town centre via public footpaths. Burnham-on-Crouch is defined under Policy S8 as a main settlement, with a range of services and opportunities for employment, retail and education. It also has good transport links with a bus stop located within 500m of the site which provides direct buses to Chelmsford Town Centre. Therefore, although the development is located outside of the settlement boundary, there would be suitable connectivity with the town centre and due to the provision of local shops, would provide access to everyday services.

*Concentration of similar uses (criterion 3 of Policy H3)*

- 5.1.22 With regard to requirement 3 of policy H3, it is noted that 20 bungalows and a 50-60 bed care home are proposed to be erected on one of the allocated sites known as site S2(i) West of Burnham-on-Crouch. Furthermore, outline permission, as noted above, has been granted at site Land North West of 2 Maldon Road, Burnham-on-Crouch (18/00443/OUT) for 103 bungalows, a 70-bed care home and a 55 bed assisted living apartment. Whilst these developments have not yet been built out, consideration should be given to these extant permissions.
- 5.1.23 Whilst it is noted that the SPD highlights a demand for elderly persons accommodation within Burnham-on-Crouch, as noted above this was prior to the approval of the substantial development granted under 18/00443/OUT. Without a robust assessment taking into account this permission and that granted at site S2(i) it cannot be demonstrated that there would not be a concentration of C2 uses within Burnham-on-Crouch. There is a concern that an over provision within Burnham-on-Crouch would lead to the in-migration of elderly persons which could detrimentally impact on the function of the town.

*Impact on the capacity of public services (criterion 5 of policy H3)*

- 5.1.24 Regarding requirement 4, justification in relation to the impact of the development on existing health and social services is required to be assessed. To do so and in accordance with policy I2, a Health Impact Assessment (HIA) that measures the wider impact upon healthy living and the demands that are placed upon the capacity of health services and facilities arising from the development has been submitted.
- 5.1.25 It is noted that the development is said to have been designed in a way to promote healthy lifestyles, through easy and safe walking distance to town centre services and facilities, amenities and wider public transport links. Furthermore, the development is said to promote a sense of community within the building and grounds through the encouragement of social interaction through the use of both indoor and outdoor communal facilities. It is also stated that integration between communities will be promoted as the public are able to use some elements of the proposal (café/restaurant) and residents will be encouraged to visit the town centre. Whilst this is a positive approach, it is not considered that these incentives would be able to be controlled by the planning system and are therefore of limited weight. However, it is recognised that the scheme has been designed in a way that supports the wellbeing of future residents.
- 5.1.26 The proposed development includes a consultation room for private consultations and to a specification sufficient to allow minor open wound treatments. This provision is supported through the submitted draft Heads of Terms, where it is stated that the consultation room will be provided for visiting medical practitioners.
- 5.1.27 It is noted that NHS England have acknowledged that the development will likely have an impact on the one GP Practice operating within a 2km radius of the application site, which does not have the capacity for the additional growth. They do however acknowledge that the submitted HIA recognises that mitigation measures will be required to help offset the primary healthcare impacts arising from the

development. However, the proposed Draft Heads of Terms do not fully cover the mitigation measures which include:

- 1. Provision on site of a consultation room provided to a specification suitable for use by visiting medical practitioners*
- 2. Contract to agree shared management processes to encourage a seamless link and training between on-site care provided by the applicant and off-site medical care provided by the NHS*
- 3. Provision and maintenance of high quality, secure Wi-Fi link to allow visiting health and care professionals to access patient records remotely.*
- 4. Payment of £17,664 commuted sum.*

5.1.28 The Applicant has acknowledged their willingness to provide the above mitigation measures in an email dated 20.07.2020. On that basis, it is considered that although the development would increase the need of medical services, this would be addressed by means of the requested contributions, which could be secured by a legal agreement.

5.1.29 Policies S2 and S6 of the LDP identify that the infrastructure of Burnham-on-Crouch is limited and therefore development above the identified limit of 450 dwellings will not be supported. This is also supported by the Burnham-on-Crouch Neighbourhood Plan. Whilst provision towards medical services can be secured through a S106 contribution, as stated above there is a concern that an over provision within Burnham-on-Crouch would lead to the in-migration of elderly persons which could detrimentally impact on the function of the town. Without a robust assessment in relation to this matter and other permissions within the area, it is not possible to determine that the development would not detrimentally impact on the function of the town.

*The development is designed and managed to provide the appropriate type and level of support (criterion 6 of Policy H3).*

5.1.30 The development relates to a C2 Use and associated facilities, including a restaurant/bar, café, tv room, wellbeing suite, quiet area, consultation room and ‘other communal facilities.’ The proposal will be managed by McLaren Senior Living and is said to provide appropriate ‘person centered’ care and support to meet specific needs of individual residents. The units will be fully accessible, and the development includes 24-hour on-site care and management support, with a standard minimum car package (2 hours of care per week) tailored to the specific needs of individual residents.

5.1.31 In light of the above, it is considered that the proposed scheme would provide a single tenure of housing but with varying levels of care. The development would be managed by McLaren Senior Living in liaison with the NHS, which could be secured through the S106 agreement. It is therefore considered that the development would comply with criterion 6 of policy H3.

*Secured revenue funding for long term viability of the scheme and support from the relevant statutory agencies (criteria 7 and 8 of Policy H3)*

- 5.1.32 The supporting statement suggests that no external funding is required for the delivery of the development as it would be entirely private sector funded with no burden on the public purse. The development is a full market lead scheme where residents will be required to pay a service charge. However, given that the S106 agreement would secure contributions to mitigate against the development, if no funding was secured for elements such as the consultation room, or the development were found to be unviable, the S106 agreement would prevent the application from carrying out a development which would otherwise be unacceptable in planning terms.
- 5.1.33 In terms of the long-term viability of the scheme, the LPA has only been provided with a Viability Assessment Summary and affordable housing statement rather than the full viability assessment. Whilst the Market Assessment suggests that the scheme has been designed to address the Housing issues in the District's Older Peoples Strategy, which states that all new schemes need to be able to show that they can meet the future needs of older people without revenue funding, to protect future residents should the future business fail and from the possibility of future funding not being able to meet future demand, there is little information provided to support this claim.
- 5.1.34 Notwithstanding the above, it is noted that the NHS supports the scheme subject to mitigation through a S106 agreement. However, although Essex County Council has supported the scheme, this appears to be on the basis that the scheme does not require funding from the public purse. In contrast the Council's Strategic Housing Team are unable to support the scheme for reasons discussed above.

#### *Summary*

- 5.1.35 In light of the above assessment, it is considered that the development would not comply with the requirements of Policies H3, I2 and S8.

## **5.2 C2 or C3 use**

- 5.2.1 The development has been applied for as a C2 Use Class (Residential Institution). However, it is debatable as to whether the development could in fact be considered a class C3 use. The Town and Country Planning (Use Classes) Order 1987 defines a C2 use as:

*'Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).*

*Use as a hospital or nursing home.*

*Use as a residential school, college or training centre.'*

- 5.2.2 A C3 (dwellinghouse) use is defined under the Order as:

*'Use as a dwellinghouse (whether or not as a sole or main residence) —*

*(a) by a single person or by people living together as a family, or*

*(b) by not more than 6 residents living together as a single household (including a household where care is provided for residents).'*

- 5.2.3 Care is also defined in the Order as *"personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder and treatment.*

- 5.2.4 There are a number of key factors relating to this development which puts into doubt whether the development is a C2 use. Those factors are:
- The limited level of care proposed (minimum of 2 hours per week)
  - Only the 'Primary Resident' will be required to have a care need and there is the option for the surviving spouse to remain within the unit.
  - The development proposes units for both sale and rent, and the Applicant confirmed that they would accept residents on housing benefit.
  - It is unclear whether Council tax will be paid directly by the occupants to the District Council or by McLaren for the building as a whole.
- 5.2.5 The Appellant refers to an appeal decision in Devon (APP/U1105/W17/3177340) in order to support their case that the development is a C2 use opposed to C3. The appeal relates to an assisted living community for older people, comprising extra care units, staff accommodation and communal facilities. In assessing whether the development fell within use class C2 or C3 the Inspector noted that *'there is no definitive means by which to establish the use class of Extra Care housing or [that] specific appeal scheme. Ultimately, this is a matter of fact and degree in each individual case.'*
- 5.2.6 The Inspector referred to the Royal Town Planning Institute (RTPI) Good Practice Note 8 and the Housing Learning and Improvement Network (Housing LIN) who deal specifically with Extra Care Housing and offer some guidance on possible distinctions between C2 and C3 Extra Care accommodation. It was noted that key to the distinction is the extent to which communal services are provided and the extent to which care is available to meet the needs of the residents.
- 5.2.7 The Inspector concluded as part of the appeal that the development was offering much more than a dwellinghouse. However, much of this came down to what was included within the S106 agreement, which is far more robust and detailed than the very limited draft heads of terms submitted as part of this application. Although the Applicant has since confirmed that this proposal would require the Primary Resident to have at least two hours of care per week, this has not been detailed within the draft Heads of Terms. In addition, the draft Heads of Terms appears to only require that in a joint resident situation, only one resident needs to be aged 60 or above, with either having the need for care. Furthermore, there is limited detail as to what the care/support would entail. Whilst some of this could be clarified if necessary it weighs against the development.
- 5.2.8 Further to the above, regard should also be had to a more recent appeal decision in Cornwall (APP/D0840/W/18/3199163) which related to the erection of 30 age restricted bungalows. The Inspector concluded as part of that appeal highlighted that the two characteristics that distinguish a C2 residential institution from a C3 dwellinghouse are (i) the provision of personal care and treatment and (ii) that the residents and staff do not form a single household.
- 5.2.9 The proposed bungalows were found to be single, self-contained units containing normal facilities for residential use. They would be occupied separately by persons over 55 who had been assessed as needing a minimum of 2 hours of care per week, and in addition to an on-site warden, residents would benefit from a range of facilities including a communal lounge/recreation hub and on-site hairdresser. All of which,

other than a different age requirement and slightly differing facilities, which due to the lack of hairdressers in this instance, could be considered to be providing less facilities, are applicable in this case. The appeal also included support for bed changing, cleaning, help with shopping, access to disability equipment, the management of heating systems, some personal care and help with cooking.

5.2.10 The Inspector found that many of the services did not fall within the definition of personal care and those which did would be provided in the residents self-contained units at agreed times and are more appropriately described as ‘additional’ or ‘extra care’ services. It was concluded that these services were not substantially different from other forms of support available to older persons living in other C3 accommodation, albeit they may be more accessible. The Inspector also raised concern over the fact that it was unclear what the personal care element would involve and how individual needs would be assessed and what would happen if an individual’s personal care requirement fell below 2 hours. On this basis the Inspector concluded that the development would be considered a C3 use.

5.2.11 The Applicant has provided some information within the supporting statement outlining the nature of the facilities and features to be provided on site which consist of:

- Bespoke designed units to meet the needs of elderly or disabled residents.
- Provision of supportive on-site community.
- Provision of on-site care support including full-time manager to organise and encourage social events, care and transport.
- Night Porter (24hr availability for residents).
- Availability and provision of care package tailored for the changing life needs of residents and provided by a registered Care Quality Commission provider.
- Application of eligibility criteria related to care assessment carried out by a health professional.
- The standard care package will consist of 2 hours per week of personal care.
- Provision of on-site communal facilities. These will include a restaurant/bar, cafe, tv room, wellbeing suite, quiet area, consultation room and landscaped gardens.

5.2.12 Considering the findings of the Inspector within the Cornwall decision, it is considered that the lack of clarity about what the personal care element would involve, that the majority of the ‘extra care’ provisions could be provided within other forms of C3 accommodation for older persons and that there is no assessment as to what would happen if an individual’s personal care requirement fell below two hours, which would happen in cases where a surviving spouse who was not the resident in need of care remains within the development, it is considered reasonable to reach a similar conclusion to the Inspector in relation to the use class of the site.

5.2.13 Further to the above, even if it were deemed that the care element resulted in the development being a C2 use, the surviving spouse clause proposed under the draft Heads of Terms would likely revert the unit to a C3 use if the partner had no requirements for care. This could result in a demonstrable element of the residents requiring no care or assistance. Therefore, there is an argument that the development would in fact be sui generis and highlights the concerns raised by the Inspector in relation to whether the care need fell below the minimum of 2 hours per week.



- 5.2.14 The Applicant also refers to RTPI note 8 which states that in determining whether development would be considered C2 or C3 and also the Housing LIN's Topic Paper Viewpoint 20 (2011), which identifies a list of features that consider a development to be a C2 use. The first one listed is that *"The units are not for sale on the open market but are restricted by a section S106 obligation requiring occupants to be either in need of a specified level of care or in receipt of a specified minimum package of care services and/or above a specified minimum age"*.
- 5.2.15 Given that the Applicant has acknowledged that the site will be made up of both leasehold and rental properties, some of the properties will be available on the open market, falling fail of this criteria.
- 5.2.16 Other requirements are 'Given the additional costs involved in paying for care and accommodation, it makes sense for the units to be occupied by those in genuine need of care' and *'The provision of care is directly linked to the extra care unit, which cannot be occupied unless certain criteria are met.'* Having regard to the surviving partner clause, the lack of consideration as to what would happen if care needs fell below the minimum 2 hours per week and lack of detail as to what the personal care would entail, it is also not considered that this criterion has been met.
- 5.2.17 As raised above, it is also unknown whether Council Tax would be paid directly by the occupants to the District Council or by McLaren as would normally be the case with C2 uses. Without this information it provides further doubt as to whether the development could be considered a C2 use.
- 5.2.18 Furthermore, the layout, level of accommodation and the ability to be totally self-contained further erodes the apparent argument that the development would fall within the C2 Use class.
- 5.2.19 Having regard to the above assessment, it is considered that the development would fall within a C3 or Sui Generis use class and not a C2 use.

### **5.3 Employment**

- 5.3.1 The proposed development would result in the loss of an employment site. From the submitted information it would appear that the site was last in use in 2016. Therefore, although the site may now be vacant, the redevelopment of the site would result in the loss of employment land and would need to be assessed against Policy E1.
- 5.3.2 Policy E1 of the MDLDP states that "Proposals which will cause any loss of existing employment uses, whether the sites are designated or undesignated, will only be considered if:
- 1) The present use and activity on site significantly harms the character and amenity of the adjacent area; or*
  - 2) The site would have a greater benefit to the local community if an alternative use were permitted; or*
  - 3) The site has been marketed effectively at a rate which is comparable to local market value for its existing use, or as redevelopment opportunity for other Class B Uses or Sui Generis Uses of an employment nature, and it can be demonstrated the at the continuous use of the site for employment purposes is no longer viable,*

*taking into account the site's existing and potential long-term market demand for an employment use.*

- 5.3.3 In relation to criterion 1, it is noted that the existing use of the site is not considered to cause harm to the character or amenity of the locality, given that the majority of the neighbouring uses are of a similar nature and whilst the existing building doesn't contribute positively to the surrounding area, it is of a much smaller scale and bulk than that which is proposed and therefore, in some respects is more in keeping with the character and appearance of the area.
- 5.3.4 In relation to the second criteria, whilst the proposal would result in the provision of a C2 Use for the elderly, the Council can demonstrate a five-year supply of housing and therefore, can meet the requirements of the NPPF in terms of housing delivery. Thus, the authority is able to meet its housing needs targets without recourse to allowing development which would otherwise be unacceptable. Furthermore, even if the Council were to consider the development to be a C2 use, given recent approvals for C2 uses across the District, as discussed above, it is not considered that it has been demonstrated that there is a need for further C2 accommodation within Burnham-on-Crouch. In addition, the proposal does not meet Government aims to provide a mixture of type of provision and tenure. Therefore, the public benefits to the existing residents of the District are considered limited and it is likely that the development will result in inward migration of older people which is contrary to Government Guidance and the LDP. Therefore, it is not considered that the proposed use necessarily has a greater community benefit than the existing use of the site.
- 5.3.5 The Applicant has submitted supporting information stating that the existing lawful use of the site presents some concern about the movement of HGV's through the town centre and narrow approach roads to the site and then go on to note that the restricted access was a principal factor in Petticrows boat building business choosing to relocate. The fact that this was a factor in the previous business choosing to relocate demonstrates that the issue is to some degree self-managed. However, this does not prevent the site being brought forward for other employment-based uses, such as office use, which would not require HGV's and would also not involve the loss of an employment facility.
- 5.3.6 The supporting information also suggest that the proposed use would employ more people than the previous use. The proposal would employ 25 full-time equivalent staff. However, there is no evidence to suggest that at full capacity or being used for office purposes that the site could not provide more jobs than this on a full-time basis.
- 5.3.7 Lastly, in relation to criterion three, the application has been supported by information stating that the site was marketed from April 2015 until 27<sup>th</sup> June 2017, which is said to have produced very limited interest. Notification of possible interest was received from three sources, but they did not produce any offers. A short term let was achieved in February 2016 but ceased their occupancy on completion of the specific local infrastructure project they were involved in. It is said that the most recent interest has been from those wishing to develop the site, one being a national housebuilder and one for the development proposed. However, it is now considered the findings of that marketing is outdated given the marketing brochure and advert are dated six years ago and that the site has been in use relatively recently and that the site can be used as a B8 use.

- 5.3.8 It should also be noted that Policy RI.3 of the BCNDP states that land and buildings in primary or directly related river employment uses will be safeguarded. It then goes on to say that insofar as planning permission is required their conversion to a residential use will not be supported. Proposals for the retail, leisure or tourism uses of the buildings concerned will be supported where they would comply with other policies in the development plan and where they would not change the overall character of the riverside.
- 5.3.9 The application building is one of those protected under Policy RI.3 as shown within figure 8 of the BCNDP. Furthermore, the development does not fall into one of the development types considered an exception under the Policy and as demonstrated below the development is considered to detrimentally alter the overall character of the riverside.
- 5.3.10 Having regard to the above assessment it is not considered that the development would meet the aims of Policy E1 of the LDP of Policy RI.3 of the BCNDP.

## **5.4 Housing Mix**

- 5.4.1 Policy H2 of the LDP and its preamble (paragraph 5.2.2), which when read alongside the evidence base from the SHMA, shows an unbalanced high number of dwellings of three or more bedrooms, with less than half the national average for one and two-bedroom units, and around 71% of all owner-occupied properties having three or more bedrooms. The Strategic Housing Market Assessment (SHMA) identifies that there is a need for a higher proportion of smaller one and two-bedroom units to create a better housing offer and address the increasing need for smaller properties due to demographic and household formation change.
- 5.4.2 The Council is therefore encouraged in the approved Policy H2 to provide a greater proportion of smaller units to meet the identified needs and demands. It is stated by the Applicant that the proposal would provide 75 one and two-bedroom units. However, as the development has been applied for as a C2 Use it is not considered that the development can be considered to be able to provide smaller units as they are not C3 units. Therefore, it is not considered that the proposal would provide a significant benefit to the District's identified need for smaller houses.

## **5.5 Affordable Housing**

- 5.5.1 Policy H1 requires that all housing development of more than 10 units or 1,000sqm will be expected to contribute towards affordable housing provision to meet the identified need in the locality and address the Council's strategic objectives on affordable housing. The site falls within the sub-area of Rural South East Higher and therefore, the requirement towards affordable housing has been set at 30% of the total amount of housing provided.
- 5.5.2 Any relaxation in the abovementioned requirement will only be considered where the Council is satisfied, on a site by site basis, that such requirement will render any development proposals unviable. Affordable housing should be provided on-site, the contribution from developers should comprise of free serviced land to provide the number, size, type and tenure of affordable homes required by the Council's policies

in accordance with the Strategic Housing Market Assessment (SHMA), the Council's adopted Maldon District Affordable Housing and Viability Supplementary Planning Document (SPD) 2018 and relevant housing strategies of the Council. In exceptional circumstances the Council may consider accepting financial contribution from the developer where it is justified that affordable housing cannot be delivered on-site, or that the District's need for affordable housing can be better satisfied through this route. Commuted sums will also be charged for an incomplete number of affordable units provided on site. The development of any affordable housing and the calculation of any financial contributions should be in conformity with the details set out in the Maldon District Strategic Housing SPD.

- 5.5.3 The application has been supported by an Affordable Housing Statement, which confirms that proposal does not include the provision of any affordable housing on the basis that the development is being proposed as a C2 use and because the provision of communal facilities, care and support packages and construction costs would render the development unviable if affordable housing were to be proposed.
- 5.5.4 As discussed above, it is considered by the LPA that the development would constitute a C3 or Sui Generis use opposed to C2 and therefore, affordable housing should be provided in this respect. Furthermore, and notwithstanding the above, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. Therefore, regardless of whether it can be demonstrated or not that the development is unviable, and it cannot support any provision towards affordable housing, it is the Council's view that a development that provides less than a minimum 30% affordable housing in this location, in accordance with the policy requirement, would not be considered acceptable.
- 5.5.5 In relation to the above, it is therefore necessary to consider the planning balance of this proposal; this application does not comply with the Council's policy (H1) for affordable housing. The updated five-year housing statement shows that the Council can demonstrate a five-year housing land supply against its identified housing targets. Furthermore, there are currently a number of similar sites for older persons accommodation that have been granted planning permission that have not yet been built out; one in close proximity to this proposal (18/00443/OUT).
- 5.5.5.1 Further to the above, Government guidance advises that schemes should be a mixture of type of provision and tenure which is not the case with this proposal. Guidance also encourages older people to remain as independent in their own properties with support. Having regard to these matters and the lack of assessment taking into account the previously approved schemes and the need for housing within the District the proposal is likely to result in inward migration of older people, contrary to Government guidance and the Local Planning Authorities adopted policies.
- 5.5.6 Generally, there are not considered to be any material considerations that weigh heavily in favour of the development. It must be noted that the site is not a strategically allocated site, is not a site highlighted by the Council for redevelopment, the Council is able to demonstrate in excess of five years' worth of housing supply, the site is a protected employment site and it has not been demonstrated that there is a need for this type of development; so there are no obvious or clear material considerations that weigh in favour of the application. The shortfall in affordable

housing would not meet the social strand of the NPPF and therefore, when taking in to account the tripartite definition of sustainability provided by the NPPF, the scheme cannot be considered sustainable development.

- 5.5.7 On the basis of the above, it is considered that the benefits of an unacceptable development outside the development boundary, which would also result in harm from the loss of employment and the impacts on the character and appearance of the area and does not meet the minimum requirement towards affordable housing provision cannot weigh in its favour. Therefore, it is considered that the lack of affordable housing provision would result in a form of development that does not comply with the development plan as a whole and does not constitute sustainable development in terms of the Framework.
- 5.5.8 It is also worth noting that the Applicant confirmed as part of in-application discussions that they would be willing to accept residents on housing benefit. However, given the significant management/service charges associated with these types of developments it is not considered likely that the proposed rents will be in line with local housing allowance, which will price those on housing benefit out of the scheme. Given that a number of elderly people are often in this situation it is not considered that this weighs in favour of the proposal.

## **5.6 Design and Impact on the Character of the Area**

- 5.6.1 The planning system promotes high quality development through good inclusive design and layout, and the creation of safe, sustainable, liveable and mixed communities. Good design should be indivisible from good planning. Recognised principles of good design seek to create a high-quality built environment for all types of development.

- 5.6.2 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF. The NPPF states that:

*“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.*

*“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents”.*

- 5.6.3 The basis of policy D1 of the approved LDP seeks to ensure that all development will respect and enhance the character and local context and make a positive contribution in terms of:
- a) Architectural style, use of materials, detailed design features and construction methods. Innovative design and construction solutions will be considered where appropriate;
  - b) Height, size, scale, form, massing and proportion;
  - c) Landscape setting, townscape setting and skylines;

- d) Layout, orientation, and density;
- e) Historic environment particularly in relation to designated and non-designated heritage assets;
- f) Natural environment particularly in relation to designated and non-designated sites of biodiversity / geodiversity value; and
- g) Energy and resource efficiency.

- 5.6.4 Policy H4 states that “all development will be design-led and will seek to optimise the use of land having regard to the following considerations:
- 1) The location and the setting of the site;
  - 2) The existing character and density of the surrounding area;
  - 3) Accessibility to local services and facilities;
  - 4) The capacity of local infrastructure;
  - 5) Parking standards;
  - 6) Proximity to public transport; and
  - 7) The impacts upon the amenities of neighbouring properties.”
- 5.6.5 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG (2017).
- 5.6.6 The housing design principles for Burnham-on-Crouch are also identified in Appendix 2 of the Burnham-on-Crouch Neighbourhood Development Plan.
- 5.6.7 The application site lies outside the defined settlement boundaries. According to policies S1 and S8 of the LDP, the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. The policies stipulate that outside of the defined settlement boundaries, the Garden Suburbs and the Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided the development is for proposals that are in compliance with policies within the LDP, neighbourhood plans and other local planning guidance.
- 5.6.8 The proposal will result in the demolition of buildings with a footprint of approximately 1670m<sup>2</sup>, which is proposed to be replaced by a building with a footprint of approximately 2500m<sup>2</sup>. Furthermore, the proposed building would have a maximum height of 20.1m in comparison to the existing building, which has a height of 9.4m. The siting of a building of this scale and bulk, which is substantially larger than the built form that currently exists at the site, and also neighbouring development, is considered to result in an overly large form of development that does not assimilate with the existing landscape. The application site provides a transition between the urban form of the settlement and the countryside and flat landscape of the Dengie Peninsula to the east, which would be disrupted by the provision of a building five storeys in height.
- 5.6.9 It is noted that the application has been supported by a Landscape and Visual Appraisal (LVIA) that concludes that the influence on the urban context would only be great within the immediate vicinity of the site, which is more sensitive and is of a more mixed character and considers that the development may provide added interest to this part of The Quay. However, given the substantial height of the proposed building in comparison to the heights of the existing built form to the west and the gap between the existing built form and the proposal, it is considered that the building

would appear out of place and overly large in relation to the surrounding townscape when viewed from the river and on approaches to the site along The Quay from the west, the height of the building would have an imposing impact on the existing character of the area.

- 5.6.10 In addition to the above, the overall depth of the building when viewed from the east and west, combined with the height of the building will dominate views of the site and beyond and would therefore, not fit in with the context of the site, which as stated above provides a transition into the countryside. Section C19 of the MDDG requires that at the building edge views to important landmarks and/or key buildings are maintained. Given the height of the building it is not considered that when viewing the site from the east that important views of the Burnham-on-Crouch Conservation area will be maintained.
- 5.6.11 The LVIA also concludes that the most significant visual effect is predicted for walkers on the section of sea wall path passing alongside the site. It however, considers it ‘debatable’ how many might find the building harmful. The point that not everyone will find the building harmful to the character and appearance of the area is not a reason to allow inappropriate development in this out of settlement location. As professional decision makers, it is the Council’s role to determine what the impacts will be and in this case it is considered that the proposed building by way of its scale, mass, bulk, height and depth would result in an overly large and dominant addition to this part of the water front and would have demonstrable impacts on the transition between the urban form of the townscape and the Dengie Peninsula beyond.
- 5.6.12 In terms of the individual design of the building, whilst it is acknowledged that the proposal features varied roof lines and architectural detailing such as gable projections, the use of varied materials, balconies and high-level glazing to try and break up the mass of the development, it is considered that the number of roof forms proposed including flat roofs, gable and hip to gable, and the mismatched eaves heights results in a contrived form of development.
- 5.6.13 In addition to the above, as the building would almost fill the width of the plot, the opportunities for soft landscaping along the eastern, western and southern boundaries are limited, which further exacerbates the imposing impacts of the building on the character and appearance of the area.
- 5.6.14 Having regard to the above, it is considered that the development would fail to assimilate into the out of settlement location of the site and would fail to contribute positively to the transition between the townscape and countryside beyond. Furthermore, the substantial height, scale, mass and bulk of the building would not sit well within the context of the wider area due to its dominance in relation to other buildings along The Quay. For these reasons it is considered that the proposal would cause material harm to the character and appearance of the area contrary to Policies S1, D1 and S8 of the LDP and guidance contained within the MDDG and the BOCNDP.

## **5.7 Impact on heritage assets**

- 5.7.1 Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Council to pay special attention to desirability of preserving or enhancing

the character or appearance of the conservation area. Similarly, policy D3 of the approved MDLDP states that development proposals that affect a heritage asset must preserve or enhance its special character, appearance, setting and any features and fabric of architectural or historic interest. Where a proposed development would cause less than substantial harm to the significance of a designated heritage asset, this harm will be weighed against the public benefits of the proposal, including securing its optimum viable use.

- 5.7.2 The application site lies adjacent to the Burnham-on-Crouch Conservation Area and approximately 160m to the east of the Royal Corinthian Yacht Club (RCYC), a Grade II\* Listed Building. Both of these assets have the potential to be affected by the proposed development.
- 5.7.3 The application is supported by a Heritage Statement which concludes that the proposed development would result in a low level of less than substantial harm to the significance of the Grade II\* RCYC. It is stated that the historic value of the building will remain unaffected by the proposal but the addition of the new development, namely as a result of its height, will alter the setting of the listed building, as a result of changes to the way in which the RCYC is seen as the proposal will be larger and more prominent than the existing built form. This is said to result in a shift to the way in which the site and the RCYC are viewed together and thus the less than substantial harm is a result of the uplift in the dominance of the site.
- 5.7.4 In terms of the Conservation Area, the Heritage Statement concludes that there would be no harm in this respect. It is suggested that views from within the Conservation Area and the riverside character associated with it will not change. It notes that the site will be more visible than existing, but considers that the development will be of a far higher quality, distinct from the Conservation Area and will not detract from appreciation of it as a defined area centered around the historic core of the town and the waterfront to the west of the site.
- 5.7.5 The heritage benefits of the scheme are said to be the replacement of a 'neutral and neglected' building with a scheme that 'puts the site into long-term use, enlivens the waterfront and elevations of the overall quality of the development in this part of Burnham-on-Crouch,' which are said to be improvements within the setting of the Conservation Area and RCYC.
- 5.7.6 The Council's Conservation Officer has been consulted on the proposal and notes that the proposal would be unavoidably large and imposing. However, due to the distance between the proposal and the RCYC it was considered that the impact on the Grade II\* listed building would be limited and the prominence of the RCYC would not change. The building would retain a large open space on the land to the east and no important views of or from the building would be detrimentally impacted.
- 5.7.7 In terms of the Conservation Area, it is noted that the proposal, although located outside of the Conservation Area, would affect its setting. The three most impacted views would be from the south-eastern end of Belvedere Road, from the sea wall footpath and from the river.
- 5.7.8 When viewing the development from Belvedere Road, the development would appear over-scaled, although not unduly excessive and the distance between the development



and the nearest buildings within the Conservation Area would prevent the development having an awkwardly overbearing appearance in heritage terms. Furthermore, views from the sea wall and footpath to the east would not detract from the Conservation Area's special character and appearance due to the set back nature of the development. Lastly, in relation to views from the river, due to the divorced nature of the scheme from the historic core of the town, it would be read as a separate context in relation to the Conservation Area.

- 5.7.9 Having regard to the above it is considered that the impacts on the Conservation Area would be limited and the ability to appreciate the architectural and historic character and appearance of the Conservation Area would be maintained. There would be less than substantial harm arising due to the scale of the development, particularly the height, but this is considered to be offset by the architectural quality of the proposal and the moderate public benefits. Therefore, it is not considered that the development would result in harm to the nearby heritage assets that would result in the refusal of the application.
- 5.7.10 Notwithstanding the above, it should be noted that the above assessment is based on the impacts on the setting of the heritage assets and not the overall character and appearance of the area. Therefore, despite it being concluded that the harm to the heritage assets would not warrant a reason for refusal, this does not offset or outweigh the harm identified in the above section. The consideration as to whether a development of this scale would achieve a satisfactory transition between the edge of settlement and drained marshland to the east and whether the overall design of the development would assimilate with the overall character and appearance of the area are not matters to be considered as part of heritage.

## **5.8 Impact on Residential Amenity and Living Conditions of Future Occupiers**

- 5.8.1 The basis of Policy D1 of the LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by Section C07 of the MDDG (2017). Policy H4 requires consideration of the effect of development on neighbouring amenity and safety.
- 5.8.2 In terms of impacts on existing nearby residential uses, despite the provision of balconies and the overall scale of the development, given the distance between the application site and nearest residential properties located within Petticrow Quays (approximately 100m to the west), it is not considered that the proposal would result in demonstrable harm to the amenity of neighbouring occupiers by way of being overbearing, resulting in a loss of light or loss of privacy.
- 5.8.3 In relation to the amenity of future occupiers, the site lies in very close proximity to existing employment sites and the waste water treatment works to the east of the site, which could result in noise, odour and disturbance to a degree that would negatively impact on residential amenity.
- 5.8.4 The application has been supported by a noise assessment, which highlights that the noise level rating from the Rice and Coles Boatyard is above the typical daytime background level and may cause significant adverse impacts, depending on the context. However, Environmental Health have been consulted and note that the noise

from the boatyard forms part of the existing noise environment, which when considered in absolute terms against the LAeq16hr(daytime) meets the guideline values from BS8233:2014. Therefore, it is considered that the noise assessment has demonstrated that the principal of development is appropriate from a noise point of view in respect of existing sources of noise.

- 5.8.5 It should be noted that a previous application at the site (14/01207/OUT) was refused on noise grounds. However, this was based on unacceptable noise levels recognised within the Noise Assessment supporting that application. Given that the Noise Assessment submitted as part of this application is considered satisfactory, it would not be reasonable to object on those grounds.
- 5.8.6 The Environmental Health Officer has also highlighted that there is little information provided with the application relating to noise sources within the proposed development or the design of separating elements and their sound insulating properties, although the contents of the ventilation and extraction statement have been noted. However, it is considered that these matters could be dealt with via a condition requiring further information or through other legislation at the Building Regulation stage. Therefore, there is no objection in this regard.
- 5.8.7 At the ground floor level, a restaurant/bar and café are proposed, which will also be open to members of the public and would generate noise impacts on the residential accommodation above. However, whilst no opening hours have yet been proposed, subject to a condition securing suitable opening hours and the detail outlined above in relation to preventing noise transferring between the two uses, it is considered that the noise impacts can be suitably mitigated against. It is considered that the following hours of operation, which were recommended for a similar development under 20/00387/RES, where there were residential flats above restaurants would be acceptable:
- 07:30 hours – 23:00 hours Monday to Saturday
  - 08:00 hours – 22:00 hours Sundays and Bank Holidays
- 5.8.8 In relation to odour, it is noted that Anglian Water have noted that the development may result in unacceptable impacts to the living conditions of future occupiers due to odours arising from the nearby waste water treatment works. However, the Applicant has submitted an odour assessment, which considers this impact, and following consultation with Environmental Health it is considered that it is reasonable to accord with the findings of the report, in that there will be no significant adverse impacts from odour at the development site. Nevertheless, this does not guarantee that no odour arising from the works will be detectable, but it is not considered the impacts will be demonstrable harmful to the amenity of the future occupiers to a degree which would warrant refusal of the application.

## **5.9 Access, Parking and Highway Safety**

- 5.9.1 Policy T2 aims to create and maintain an accessible environment, requiring development proposals, inter alia, to provide sufficient parking facilities having regard to the Council's adopted parking standards. Similarly, policy D1 of the approved LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council's adopted parking standards and maximise connectivity within

the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.

#### Access and trip generation

- 5.9.2 The submitted transport assessment concludes that the existing use would generate a total of 11 and 10 two-way trips in the morning and evening peak periods respectively, including 4 HGV trips in the morning peak and 2 HGV trips in the evening peak. In contrast it has been concluded that the proposed use would generate a total of 15 and 14 two-way trips in the morning and evening peak periods respectively, with no HGV trips in either of the peak periods. This would equal a net increase of four vehicular trips in both the morning and evening peaks when compared to the existing use of the site. However, the HGV trips would be removed which would be of benefit.
- 5.9.3 Having regard to the above and given the provision of nearby public transport, it is not considered that the development would have a significant impact on both the local and strategic highway network in terms of increase in highway traffic.
- 5.9.4 In relation to highway safety, there is a concern relating to how the site will be safely accessed from the edge of the highway, i.e. the end of Belvedere Road. It is considered that there will be potential vehicular and pedestrian conflict along the private access road as a result of the change of use, which will increase pedestrian movements in this area. Although regard has been had to the submitted Transport Statement and Travel Plan, from the submitted information the proposal does not include any improvements to or to demonstrate that the Applicant has any control over the accessway from Belvedere Road to facilitate safe pedestrian access to and from the site.
- 5.9.5 As part of application 14/01207/OUT, which also proposed a residential use at the site, the area of road in question was included within the red line boundary of the site and therefore, had the application been approved it would have been subject to a condition requiring details of the access into the site from Belvedere Road for vehicles and pedestrians to be submitted to and agreed in writing by the LPA. However, after conducting a Land Registry Search it is noted that the area of Belvedere Road being discussed is not within the control of the Applicant, nor is it within the red line boundary of the site. Therefore, it would not be possible for this matter to be controlled via a condition in the same way as suggested as part of the previous application where the area of land was within the red line boundary of the site.
- 5.9.6 The accessway referred to is busy with vehicles as it serves a boatyard and caravan site and does not have footpaths at its eastern end where the road meets the site, so without assurance that pedestrians will have safe access to and from the site it is considered that the development would be contrary to policies S1 and T2 of the LDP.
- 5.9.7 It should also be noted that the Local Highway Authority were consulted on the application and raised an objection in relation to the abovementioned points.

## Parking Provision

- 5.9.8 The Council's adopted Vehicle Parking Standards SPD contains the parking standards which are expressed as minimum standards. This takes into account Government guidance which recognises that car usage will not be reduced by arbitrarily restricting off street parking spaces. Therefore, whilst the Council maintains an emphasis of promoting sustainable modes of transport and widening the choice, it is recognised that the Maldon District is predominantly rural in nature and there is a higher than average car ownership. Therefore, the minimum parking standards seek to reduce the negative impact unplanned on-street parking can have on the townscape and safety and take into account the availability of public transport and residents' reliance on the car for access, employment, everyday services and leisure. The key objectives of the standards are to help create functional developments, whilst maximising opportunities for use of sustainable modes of transport. This will enable people to sustainably and easily carry out their daily travel requirements without an unacceptable detrimental impact on the local road network, or the visual appearance of the development, from excessive and inconsiderate on street parking.
- 5.9.9 The submitted transport statement states that 41 parking spaces will be provided on site in the form of 21 standard spaces, five disabled and fifteen staff and visitor spaces.
- 5.9.10 The Councils adopted Vehicle Parking Standards do not specify parking requirements for independent living/retirement living (comprising self-contained dwellings) but is based on an individual assessment/ justification.
- 5.9.11 However, it is worth noting that the requirement for residential units are one space per one-bedroom units and two spaces for two-bedroom units, with one visitor space per four properties. Whilst the development has not been assessed as a care home, it is noted that there will be staff associated with the development and so it is also worth noting that care homes required one space per resident staff, one space per two other staff and one space per three bed spaces / dwelling units. The development also includes A3 uses which require 1 space per 5m<sup>2</sup> of floor space.
- 5.9.12 The Transport Statement has also had regard to the above and has based the 41 spaces on the basis that 25 full time equivalent staff for a care home would equate to 13 spaces and 28 spaces for residents; equaling a total of 41 spaces, which is considered a reasonable approach. However, this does not take account of the parking required for the A3 uses.
- 5.9.13 Notwithstanding the above, it is likely that the occupiers of the Independent Living Units are likely to have higher car ownership levels than a residential care home and regard should be had to the proximity of the development to public transport and local services and facilities. Therefore, it is likely that not every unit will require a vehicle parking space as the development is in suitable proximity to the services and facilities required for day to day living. Likewise, although the development itself is not considered to be within the town centre in Policy Terms, there is ample parking within walking distance of the site, located within the town centre which could serve the restaurant/bar. Therefore, based on the above assessment it is considered that the 41 parking spaces provided for the development is justified.

- 5.9.14 The Transport Assessment proposed storage for up to 15 mobility scooters as shown on the ground floor plan. Furthermore, suitable cycle provision for 25 cycles, one for each member of full-time equivalent staff will be provided. On this basis it is considered that suitable parking provision will be provided at the site.

## **5.10 Private Amenity Space Provision**

- 5.10.1 Policy D1 of the approved LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces. In addition, the adopted Maldon Design Guide SPD advises a suitable garden size for each type of dwellinghouse, namely 100m<sup>2</sup> of private amenity space for dwellings with three or more bedrooms, 50m<sup>2</sup> for smaller dwellings and 25 m<sup>2</sup> for flats.
- 5.10.2 The majority of the units would be served by a balcony, although it is noted some units such as units 4, 17, 18, 19, 28, 52, will not be served by any private amenity space. Furthermore, the majority of the proposed balconies would be well below the 25m<sup>2</sup> requirement with some measuring as little as 3.3m<sup>2</sup>. From the submitted plans it would appear that Unit 67 is the only unit that provides sufficient balcony provision at 28m<sup>2</sup>. Therefore, it is considered that the future residents wouldn't be provided with sufficient amenity space provision.
- 5.10.3 Notwithstanding the above, it is noted that there would be an area of open space within the north of the site measuring approximately 1700m<sup>2</sup>, and some landscaped areas immediately to the east of the proposed building, which could be used by the residents. Furthermore, the Maldon District Specialist Housing SPD states that to help ensure charges remain affordable, retirement apartments designed to a high standard, with shared communal private space, would allow the cost of the resident to be reduced, allowing a greater proportion of their resources going towards paying for their car. Likewise, the site is located within 800m of open space as required by the SPD. On this basis it would not be considered reasonable to object on the basis of private amenity space provision as communal amenity space has been provided.

## **5.11 Green Infrastructure and Landscaping**

- 5.11.1 Policy D2 of the LDP requires green infrastructure to be incorporated into developments as a way of adapting and mitigating for climate change through the management and enhancement of existing habitats and the creation of new ones to assist with species migration, to provide shade during higher temperatures and for flood mitigation. Negative impacts on ecology, landscape and green infrastructure should be minimised.
- 5.11.2 Policy N1 of the LDP encourages the enhancement of the green infrastructure network, identifying that "The requirement for new green infrastructure associated with developments will be subject to the legal tests (currently set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010) and subject to the proviso that no obligation or policy burden shall threaten the viability of the development".
- 5.11.3 The greenspace standards for Maldon District are identified in the Green Infrastructure Strategy for Maldon District (2018). This states that 2.28ha per 1,000 people should be provided to meet the total parks and amenity space standards. Based

on the SHMA, average household size by 2021 was calculated at 2.31. The development would result in a population of 161.7 (75 units x 2.31 persons per household). As a result, the requirement for Public Open Space (POS) would be 0.39ha. The proposed open space within the north of the site measures 1700m<sup>2</sup>, which is less than half of the requirement. However, it is noted that given the type of development proposed that it is unlikely that each property will be occupied by more than one or two people and therefore, the population of 161.7 within the building is likely to be excessive. On this basis it is not considered reasonable to object on this basis.

- 5.11.4 The provision of the open space should be secured through a S106 Agreement.
- 5.11.5 In terms of landscaping, it is noted that two groups of trees are to be removed along the western and northern boundaries of the site and three along the southern boundary. Whilst suitable replacement planting is proposed along the southern boundary of the site, it is considered that further planting could be incorporated along the other boundaries of the site, particularly to the north. Whilst this could be secured via a condition, it is not considered that further landscaping could overcome the harm identified in relation to the impacts on the character and appearance of the area.
- 5.11.6 Notwithstanding the above, following consultation with the Council's Tree Consultant it is considered that the tree protection details within the submitted Arboricultural Report are sufficient subject to a condition if the application were to be approved.

## **5.12 Flood Risk**

- 5.12.1 The NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. similar approach is taken by Policy D5 of the LDP which states that the Council's approach is to direct strategic growth towards lower flood risk areas, such as Flood Zone 1 as identified by the Environment Agency. Where development is not located in Flood Zone 1 and in order to minimise the risk of flooding, it should be demonstrated that the Sequential and Exception Tests, where necessary, have been satisfactorily undertaken in accordance with national planning policy.
- 5.12.2 The development is considered as being 'more vulnerable' based on the Flood Risk Vulnerability Classification (NPPG) and in accordance with National Planning Policy requires the Exception Test to be applied in addition to the Sequential Test.
- 5.12.3 The sequential test seeks to steer new development to areas at the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available appropriate sites in an area with a lower risk.
- 5.12.4 The Application has been supported by a Flood Risk Assessment, a separate Sequential Test document and a Flood Management Plan. The Sequential Test was undertaken on sites within an 800m radius from the edges of the Town Centre Areas as shown on the LDP maps in the three main settlements (Burnham, Heybridge and Maldon), following written confirmation from an Officer that given the contents of the Specialist Needs Housing SPD this would be an appropriate approach. The Sequential Tests carried out on that basis, concludes that there are no reasonably available sites appropriate for the proposed development that are able to meet the

needs for elderly persons accommodation in areas with a lower risk of flooding. Whilst planning permissions have been granted elsewhere in the district for various forms of elderly accommodation, they are not in the same form as the accommodation proposed as part of this application. However, as demonstrated in section 5.1 of this report, it is not considered that it has been demonstrated to an acceptable level for the Local Planning Authority (LPA), particularly given the permissions that were granted in previous years within the District. Therefore, the site is considered to fail the sequential test and therefore the outcome of the exception test is of reduced relevance.

- 5.12.5 In respect of the Exception Test, paragraph 160 of the NPPF sets out that it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will where possible reduce flood risk overall. Where the sequential test has been passed, both elements of the exception test will have to be passed for development to be allocated or permitted.
- 5.12.6 Both the submitted Flood Risk Assessment (FRA) and Design and Access Statements provide information in relation to the exception test and the Planning Statement details how the Applicant considered the development would provide wider sustainability benefits to the community that outweigh the flood risk.
- 5.12.7 It is noted that no accommodation will be provided at ground floor level within the development and that safe refuge can be provided within the upper floors of the development if evacuation is not possible under a breach scenario that would inundate Belvedere Road. The Flood Management Plan and Evacuation Plan also highlight that the development will also benefit from the Environment Agencies flood warning service, which the on-site management team will be signed up to, along with the met office severe weather warnings. Site specific sensors are also suggested within the FRA. The FRA also suggests that three Local Flood Coordinators are appointed who will ensure the following:
- Sign up to Met Office severe weather warnings and Environment Agency Flood Alerts and Warnings so they will be aware of a flood event,
  - ensure that staff are made aware of the potential flood risk to the site, the access road and the wider area,
  - make staff and tenants aware of safe refuge areas within the development,
  - prepare and maintain a flood kit of essential items for staff and residents,
  - compiling and maintaining a list of important contact information.
  - switching off critical services such as gas, electricity and water where applicable.
  - organising an evacuation should flooding of the site be expected or take place should it be safe to do so.
  - inspect the site post-event to ensure that the site has returned to normal operation condition, arrange for any necessary clearance and maintenance works to be completed

- review and update the flood management plan regularly,
- If necessary, arrange for the installation and regular maintenance of a site specific water level gauge and alert system on the River Crouch bank, as well as a web portal to allow live flood levels to be monitored.
- Maintain a register of staff and patrons

5.12.8 It must be noted that Government guidance is clear that housing developments should be provided in areas of low flood risks and this is not just in the interest of the future occupiers of the accommodation. It is important to note that Government guidance attempts to direct accommodation away from areas in risk of flooding due to the risk to the emergency services and also that if resources are aimed at rescuing the new developments residents of existing dwellings in flood risk areas will be increased.

5.12.9 Having regard to the above it is considered that sufficient measures have been incorporated into the proposal, to ensure that the development will be safe for its lifetime, without increasing flood risk elsewhere. However, given the loss of protected employment land, the lack of evidenced need for the development within Burnham-on-Crouch, the resultant harm on the character and appearance of the area and the lack of affordable housing mean that the development would provide limited benefits to the community and therefore the benefits are not to a degree which outweighs the flood risk posed and the risk to life. Therefore, it is not considered that paragraph 160 of the NPPF has been fully complied with.

5.12.10 Whilst the Environment Agency have not objected to the development, matters of emergency planning and the sequential and exception tests are for the Local Planning Authority (LPA) to determine.

### **5.13 Ecology and Biodiversity within the site**

5.13.1 Policy N2 of the LDP states that “All development should seek to deliver net biodiversity and geodiversity gain where possible. Any development which could have an adverse effect on sites with designated features, priority habitats and / or protected or priority species, either individually or cumulatively, will require an assessment as required by the relevant legislation or national planning guidance.” Conservation and enhancement of the natural environment is also a requirement of the NPPF.

5.13.2 The submitted Ecological Appraisal (January 2020) concludes that on the basis of the surveys discussed within the document and the precautionary methods proposed, that all significant impacts upon biodiversity, including any potential adverse impacts upon specific protected species and habitats will likely be able to be wholly mitigated.

5.13.3 Despite the submission of the Preliminary Ecological Appraisal (January 2020) the Council’s Ecological Consultant has advised that there is insufficient ecological information available to determine the application.

5.13.4 The Preliminary Ecological Appraisal (SES, February 2020) states that “*the site provides suitable habitat for foraging, commuting and hibernating reptiles within the poor semi-improved grassland in the northern section of the site... These visits should be undertaken between March- September during ‘suitable’ days for reptile activity*”.



5.13.5 The results of these surveys should be provided, prior to determination as paragraph 99 of the ODPM Circular 2005 highlights that: *“It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.”*

5.13.6 Having regard to the above, it is considered that the details included in the Preliminary Ecological Appraisal are insufficient to ensure that the development would not adversely impact on the existing ecological assets and habitats and would not provide ecological enhancement as required by policy N2 of the approved LDP. The impact of the development on the European Designated Sites is further assessed in section 5.14 below.

## **5.14 Impacts on the SSSI and Protected Habitats**

5.14.1 The site is located within a sensitive location, adjacent to the Crouch Estuary, which is an area which is subject to a number of international and national coastal nature conservation designations including:

- Sites of Special Scientific Interest (SSSIs),
- Special Areas of Conservation (SACs),
- Special Protection Areas (SPAs) and
- Ramsar site

5.14.2 The site would therefore be regarded as a “sensitive site” where there are clear policy requirements that aim to conserve and protect nature conservation interests. These principles are reflected within policy N2 of the LDP.

5.14.3 For that reason, the application is supported by a Preliminary Ecological Appraisal (January 2020) identifying the potential ecological constraints as well as a Habitats Regulations Assessment determining whether there are any potential impact pathways that could result in Likely Significant Effects for the proposed development.

5.14.4 Natural England have been consulted on the application and suggest imposing planning conditions to secure the proposed mitigation measures to avoid impacts to the Crouch and Roach Estuaries SPA and Ramsar, from noise, lighting, dust and airborne pollutants, run-off and traffic disturbances, which are to be set out within a Construction Environment Management Plan and also conditions ensuring that all major maintenance works, except essential and emergency repairs, will be scheduled wherever feasible to be undertaken within summer months to avoid the sensitive winter period and a lighting strategy to avoid light spillage to the SPA during winter months.

5.14.5 The LPA has also carried out an Habitats Regulation Assessment (HRA) as the Competent Authority and has concluded that mitigation measures and developer contribution towards RAMS (as discussed below) would be required to mitigate the likely significant effect of the development on any European sites, either alone or in combination with any other plans or projects (in light of the definition of these terms<sup>1</sup>

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<sup>1</sup> The word ‘terms’ refers to the ‘significant affect’ and ‘appropriate assessment’ as defined in the Waddenzee ruling.

in the ‘Waddenzee’ ruling of the European Court of Justice Case C – 127/02). This contribution would have to be secured through a S106 agreement. Subject to a signed legal agreement, the development would comply with Policies S1, and I1 of the MDLDP and the NPPF.

## **5.15 Ecology regarding development within the Zone of Influence (ZOI) for the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS).**

- 5.15.1 Natural England has produced interim advice to ensure new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations. The European designated sites within MDC are as follows: Essex Estuaries Special Area of Conservation (SAC), Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, Crouch and Roach Estuaries SPA and Ramsar site. The combined recreational ‘Zones of Influence’ of these sites cover the whole of the Maldon District.
- 5.15.2 Natural England anticipate that, in the context of the local planning authority’s duty as competent authority under the provisions of the Habitat Regulations, new residential development within these Zones of Influence constitute a likely significant effect on the sensitive interest features of these designated sites through increased recreational pressure, either when considered ‘alone’ or ‘in combination’. Residential development includes all new dwellings (except for replacement dwellings), Houses in Multiple Occupation (HMOs), student accommodation, residential care homes and residential institutions (excluding nursing homes), residential caravan sites (excluding holiday caravans and campsites) and gypsies, travellers and travelling show people plots.
- 5.15.3 Prior to the RAMS being adopted, Natural England advise that these recreational impacts should be considered through a project-level Habitats Regulations Assessment (HRA) - Natural England have provided a HRA record template for use where recreational disturbance is the only HRA issue.
- 5.15.4 The application site falls within the ‘Zone of Influence’ for one or more of the European designated sites scoped into the emerging Essex Coast RAMS. This means that the development could potentially have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure.
- 5.15.5 Natural England has advised that due to the scale of the development it falls below that of which they would provide bespoke advice. However, Natural England’s general advice is that a Habitats Regulations Assessment (HRA) should be undertaken and a ‘proportionate financial contribution should be secured’ from the developer for it to be concluded that the development proposed would not have an adverse effect on the integrity of the European sites from recreational disturbance. The financial contribution is expected to be in line with the Essex Coast RAMS requirements to help fund strategic ‘off site’ measures (i.e. in and around the relevant European designated site(s)) targeted towards increasing the site’s resilience to recreational pressure and in line with the aspirations of emerging RAMS.
- 5.15.6 To accord with Natural England’s requirements, an Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Habitat Regulation

Assessment (HRA) Record has been completed to assess if the development would constitute a 'Likely Significant Effect' (LSE) to a European site in terms of increased recreational disturbance, as follows:

HRA Stage 1: Screening Assessment – Test 1 - the significance test

Is the development within the zone of influence (ZoI) for the Essex Coast RAMS with respect to the below sites? Yes

Does the planning application fall within the following development types? Yes - The planning application relates to 75 residential units

Proceed to HRA Stage 2: Appropriate Assessment to assess recreational disturbance impacts on the above designated sites

Test 2 – the integrity test

Is the proposal for 100 houses + (or equivalent)? No

Is the proposal within or directly adjacent to one of the above European designated sites? Yes

- 5.15.7 As the answer is yes, it is advised that a proportionate financial contribution should be secured in line with the Essex Coast RAMS requirements. Furthermore, consideration of further bespoke recreational disturbance measures may also be required.
- 5.15.8 It is noted that the Coastal Recreational Avoidance and Mitigation Strategy has recently undergone consultation and it therefore constitutes an emerging document for the Council. Given the stage of preparation of the emerging strategy, it is considered that material weight should be given to the document and its requirement to mitigate the impact of the development on the European designated sites. A flat rate tariff of £125.58 per new unit is identified within the submitted Coastal Recreational Avoidance and Mitigation Strategy as the contribution to mitigate the impact of a new residential property. Therefore, as the proposal is for seventy-five dwellings, the fee is calculated at £9418.5.
- 5.15.9 The Applicant proposes to pay 25% of the per unit contribution as opposed to the full £125.58. Due to the nature of the use as an assisted living scheme, they consider that this is a reasonable contribution and reflects the reduced levels of disturbance that may be anticipated. However, given that the LPA has assessed the development to be a C3 use opposed to C2 and given that the development is to be occupied by those aged 60 and over, who many of which will be at retirement age and only require a minimum of two hours care per week, it is not considered that the future residents would have a lesser impact on the designated sites in terms of recreational disturbance than those found within any other form of C3 residential development. In contrast it could be found that due to the retirement age of many of the residents that there could be an increased recreational pressure resulting from the development. Therefore, it is considered that the full contribution should be provided.
- 5.15.10 On the basis of the above, following the screening at stage 1 of the HRA and its Appropriate Assessment at stage 2, it is considered that the insufficient monetary

contribution proposed triggers the ‘assessment of alternatives’, which requires that where a proposal is assessed as having an adverse impact or risk, even with mitigation in place, there should be an examination of alternatives.

5.15.11 In this instance it is considered that an appropriate alternative would be to provide the full £125.58 contribution per unit, which could be agreed through a legal agreement. Therefore, on the basis that an appropriate alternative could be found, subject to the Applicant’s Agreement, no further assessment is required. This contribution would have to be secured through a S106 agreement. Subject to a signed legal agreement, the development would comply with Policies S1, and I1 of the MDLDP and the NPPF. In the absence of a complete and signed legal agreement to secure the mitigation measures and contribution, it is considered that the likely impact of the development would be sufficiently harmful as a result of additional residential activity to justify a refusal of planning permission.

## **5.16 Other Material Considerations**

### Contamination

5.16.1 The application has been supported by a Preliminary Phase 2 Environmental and Geotechnical Site Investigation Report (September 2019) which has identified limited, isolated contamination of soil and briefly outlines some recommended remedial works to bring the site up to a standard suitable for the intended use. Following consultation with Environmental Health, it is considered that subject to conditions requiring a remediation strategy and verification report, ground conditions should not present a barrier to the development.

### Waste Management

5.16.2 Section C09 of the MDDG stipulates that the provision of waste management facilities within developments is fundamental to provide and maintain an attractive and healthy environment. To do so, sufficient space should be provided for storage of bins at a convenient place and access of collection vehicles has been considered.

5.16.3 The ground floor plan which has been submitted with the application shows a residential bin store and a communal bin store within the northern block. Access to the residential store in particular would be from the exterior of the building and it is not well connected to the residential areas and is therefore, not considered convenient. Furthermore, limited information has been provided in relation to the following:

- Internal storage for residents
- Design of any Bin Store(s) including lighting, ventilation, floor surfaces.
- Adequate access and sufficient receptacles for residents
- Access for collection vehicles – road surface, parked cars and health and safety of residents
- Distance that the collection operatives need to transport containers between the waste storage area and the rear of a collection vehicle at the nearest place it can safely stop – this should not exceed 10 metres.
- Dimensions and weights of the collection vehicles

- 5.16.4 Having regard to the above, and considering the comments made by the Waste Officer, it is considered that further information would be required to ensure that the development provides convenient and sufficient bin storage. However, this detail could be sought through a condition.

#### External Lighting

- 5.16.5 Whilst the application has been supported by limited details relating to external lighting, other than the provision of low level bollard lighting, it is considered that this could be addressed by way of a suitably worded condition to eliminate any adverse impact on existing wildlife, given that the site is close proximity to protected sites and to protect the nearby neighbours' amenities.

#### Foul and Surface Water Drainage

- 5.16.6 The application has been supported by a Surface Water Drainage Strategy which confirms that the runoff from the development will be split over two separate sub-catchments. The first will be discharged directly into the Anglian Water combined sewer which bisects the site and the other to an existing drainage ditch adjacent to the northern site boundary.
- 5.16.7 Surface water storage is to be provided in below-ground storage systems within the site and oil interceptors have been incorporated.
- 5.16.8 In terms of foul water, this will be discharged into the existing combined network via a dual pump system.
- 5.16.9 Following consultation with Environmental Health and the Lead Local Flood Authority, there is no objection in this regard, subject to suitable conditions.

### **6. ANY RELEVANT SITE HISTORY**

- **95/00531/OUT** - Erection of building for use as an extension of the boat building enterprise and associated companies and/or associated marine industries. Formation of new access road. Refused
- **95/00565/FUL** - Retention of consent ref. MAL/663/87 without compliance with Condition 10 (boat storage/maintenance use). Area to be used as an extension of boat building enterprise. Approved
- **96/00044/OUT** - Erection of building for use by Petticrows Ltd for boatbuilding and their sister company for sail making. Approved
- **96/00044/OUT1** - Renewal of consent - erection of building for use by Petticrows Ltd for boat building and their sister company for sail making. Approved.
- **01/00680/OUT** - Residential redevelopment of the site to provide 65- one, two, three/four-bedroom flats. Refused
- **03/00272/FUL** - Retention of single storey factory building for a further 3 years. Approved.

- **06/00555/FUL** - Extension of time for the development permitted under consent FUL/MAL/03/00272 for the retention of single storey factory building for a further 3 years. Approved.
- **09/00941/FUL** - Permanent retention of a single storey factory building. Approved
- **14/00251/OUT** - Mixed use redevelopment comprising up to 55 dwellings and up to 300 sq m of Class B1 office floorspace. Withdrawn
- **14/01207/OUT** - Mixed use redevelopment comprising up to 40 dwellings and up to 300 sq m of Class B1 office floorspace. Refused
- **16/00288/FUL** - Change of use to Class B8 storage. Approved
- **16/05207/DET** - Compliance with conditions notifications FUL/MAL/16/00288 (Change of use to Class B8 storage) Condition 3 - Risk Assessment. Condition 4 - Remediation scheme. Condition 5 - Notification of commencement of the remediation scheme. Condition 6 - Contamination. Conditions Cleared.

## 7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

### 7.1 **Representations received from Parish / Town Councils**

| <b>Name of Parish / Town Council</b> | <b>Comment</b>   | <b>Officer Response</b>   |
|--------------------------------------|--|---|
| Burnham-on-Crouch Town Council       | <p>Object:</p> <ul style="list-style-type: none"> <li>- Impacts n the character and appearance of the area as a result of the design, particularly the roofline orientation, which would result in a contrived development within the streetscene.</li> <li>- Flood risk</li> <li>- Needs for elderly accommodation is being met in Burnham through other permissions and should be accommodated elsewhere in the District.</li> </ul> | <ul style="list-style-type: none"> <li>- Addressed at section 5.6</li> <li>- Addressed at section 5.12</li> <li>- Addressed at section 5.1</li> </ul> |

## 7.2 Statutory Consultees and Other Organisations

| Name of Statutory Consultee / Other Organisation | Comment   | Officer Response                      |
|--|---|---------------------------------------|
| Historic England                                 | No response received  | Noted                                 |
| Anglian Water                                    | The foul drainage from the development is in the catchment of Burnham-on-Crouch Tham Water Recycling Centre, which will have capacity for the flows.  | Noted and addressed at section 5.16   |
|  | There is potential for nuisance, associated with the operation of the nearby Burnham-on-Crouch water recycling centre, to impact the development.   | Addressed at section 5.8              |
|  | There is a potential for loss of amenity within the proposed development due to odour emissions from the above. There is little practical mitigation for the short periods of relatively strong odorous emissions that occur. | Addressed at section 5.8              |
|  | The layout should maintain an effective distance between the treatment works and sensitive accommodation.   |                                       |
|  | A further detailed odour risk assessment is recommended to establish the range at which the amenity of the future occupiers is likely to be impaired.   | This could be secured via a condition |
|  | Informatives should be included relating to the connection to the sewage system.  | Noted                                 |

| <b>Name of Statutory Consultee / Other Organisation</b> | <b>Comment</b>  | <b>Officer Response</b>  |
|---|---|--|
|   | The proposed SuDS system is considered acceptable and should be conditioned.  | Addressed at section 5.16  |
| Environment Agency                                      | <p>The site lies within Flood Zone 3a and has a high probability of flooding. The development is classed as more vulnerable and should pass the sequential and exception tests.</p> <p>The FRA has not taken account of the new tidal modelling undertaken in 2018 and the new tidal climate change allowances from UKCP18.</p> | <p>Addressed at section 5.12</p> <p>Given that the EA have assessed the application based on the new tidal modelling, with a worst case scenario and it is not considered that altering the FRA to account for this would alter the outcome, it is not considered necessary to update the FRA at this stage.</p> |
| Lead Local Flood Authority - SuDS                       | No objection subject to conditions requiring a surface water drainage scheme and a scheme ensuring surface water run-off and groundwater pollution during the construction phase.   | Addressed at section 5.16  |
| Public Right of Ways                                    | No response received  | Noted  |
| NHS Property Services                                   | <p>No objection subject to a contribution of £17,664 as the development is likely to have an impact on the one GP Practice operating within a 2km radius of the site, which does not have capacity for the additional growth.</p> <p>Additional mitigation should also be secured through the S106 in the</p>                   | Addressed at section 5.1 and 8.  |



| Name of Statutory Consultee / Other Organisation | Comment  | Officer Response         |
|--|--|--------------------------|
|  | <p>form of:</p> <ul style="list-style-type: none"> <li>• Provision on site of a consultation room to be of a stated specification suitable for use by visiting medical practitioners</li> <li>• Contract to agree shared management processes to encourage a seamless link and training between on-site care provided by the applicant and off-site care provided by the applicant and off-site medical care provided by the NHS</li> <li>• Secure Wi-Fi link to allow visiting health and care professionals to access to patient records remotely</li> </ul> |                          |
| Archaeology                                      | <p>The proposed development has the potential to impact on archaeological remains. The Historic Environment Record (HER) shows that it is located within a landscape rich in Iron Age and Roman remains. Adjacent to the site is a cropmark complex comprising a mix of linear boundary features and possible trackways (HER 11241). To the west is the historic town of Burnham-on-Crouch.</p>  | Addressed at section 5.7 |

| Name of Statutory Consultee / Other Organisation | Comment  | Officer Response                                 |
|--|--|--|
|  | <p>Recent excavations to the north and west of Burnham have recorded extensive archaeological landscapes, largely dating to the iron Age and Roman periods. The site itself is located on the interface between the marshland, the river and the dryland, elsewhere in Essex this has proved to be a prime location for activity relating to the Late Iron Age and Roman salt-making industry. Archaeological deposits are both fragile and irreplaceable and any permitted development on site should therefore be preceded by a programme of archaeological investigation which should be secured by an appropriate condition attached to any forthcoming planning consent. This is in line with advice given in the national Planning Policy Framework.</p> |  |
| Burnham History Society                          | No response received   | noted  |
| Cadent Gas Network                               | <p>Operational gas apparatus has been identified within the application site boundary. The Applicant must ensure that the proposed works do not infringe on Cadent's legal rights and details of easements should be obtained from the landowner in the first instance.</p>  | <p>This could be included as an informative.</p> |

| <b>Name of Statutory Consultee / Other Organisation</b> | <b>Comment</b>  | <b>Officer Response</b>                   |
|---|---|---|
|   | If the development is above the gas apparatus, then it should only take place following the diversion of the apparatus.   |   |
| Local Highway Authority                                 | Object – The impact of the proposal is not acceptable to the Highway Authority as the development will be detrimental to highway safety as a result of potential vehicular and pedestrian conflict along the private access road. The change to residential use will increase pedestrian movements and the development is not proposing any improvements to, or indeed demonstrating any control over, the accessway from Belvedere Road to facilitate safe pedestrian access to and from the site. | Addressed at section 5.9                  |
| Natural England   | A HRA should be undertaken to secure any necessary mitigation.<br><br>Planning conditions should be imposed to secure the mitigation proposed relating to the impacts on the Crouch and Roach Estuaries SPA and Ramsar and a HRA should be undertaken.  | Addressed at sections 5.13, 5.14 and 5.15 |
| Essex Wildlife Trust                                    | No response received  | Noted                                     |
| RSPB  | No response received  | Noted                                     |
| Essex County Fire and Rescue                            | Access is considered acceptable. However, more detailed observations will be considered at the Building Regulations Stage.  | Noted                                     |

| <b>Name of Statutory Consultee / Other Organisation</b> | <b>Comment</b>   | <b>Officer Response</b>  |
|---|--|--------------------------|
| Essex and Suffolk Water                                 | No response received   | Noted                    |
| Essex Police Designing out Crime                        | No response received   | Noted                    |
| Essex County Council Social Services                    | No response received   | Noted                    |
| Essex County Council Housing Growth                     | <p>The applicant's consideration of ECC's Independent Living Design Guidance is welcomed.</p> <p>Whilst the development is not located in an area identified as having sufficient demand for specialist housing, the scheme will be privately run and will not seek nominations or financial support from ECC.</p> <p>The application is supported given its proximity to local amenities.</p> | Addressed at section 5.1 |

### 7.3 Internal Consultees

| <b>Name of Internal Consultee</b> | <b>Comment</b>  | <b>Officer Response</b>   |
|-----------------------------------|---|---|
| Environmental Health              | <p>Satisfied that the noise assessment has demonstrated that the principal of development is appropriate from a noise point of view in respect of existing sources of noise.</p> <p>The development would not result in unacceptable noise impacts from nearby uses, but further assessment is recommended in terms of the passage of sound between residential and non-residential parts and</p> | <p>Addressed at section 5.8</p> <p>Addressed at section 5.8</p> |

| Name of Internal Consultee | Comment  | Officer Response   |
|----------------------------|--|--|
|                            | <p>any plant and machinery forming part of the development.</p> <p>The odour assessment predicts the impacts of odour from the Burnham sewage treatment works. The conclusion that there will be no significant adverse impacts from odour at the development site is considered reasonable. This does not guarantee that no odour arising from the works will be detectable at the development site.</p> <p>The intrusive site investigation has identified limited, isolated contamination of soil and briefly outlines some recommended remedial works to bring the site up to a standard suitable for the intended use. Subject to conditions requiring a remediation strategy and verification report, ground conditions should not present a barrier to the development.</p> | <p>Addressed at section 5.8</p> <p>Addressed at section 5.16</p> |
| Conservation Officer       | <p>The impact on the setting of the RCYC would be limited due to the distance between the sites. The prominence of the RCYC would not change and not important views of the building would be detrimentally impacted.</p> <p>The setting of the conservation area would be affected from three main views:</p>   | Addressed at section 5.7   |

| Name of Internal Consultee | Comment  | Officer Response |
|----------------------------|--|------------------|
|                            | <p>South-eastern end of Belvedere Road<br/>The sea wall footpath<br/>The river.</p> <p>From Belvedere Road the development would appear over-scaled, although not unduly excessive. The separation distance from buildings within the Conservation Area would prevent it having an uncomfortable overbearing presence. The western side would present a good variety of materials and forms and would allow some sense of architectural enclosure to an 'inviting space (BCARCA P.43).</p> <p>Being set back from the sea wall, the development would be a peripheral feature in views of the town and RCYC from the sea wall footpath to the east.</p> <p>Development would appear imposing in certain views from the river but the scheme would be divorced from the historic core of the town and would be read as a separate development.</p> <p>Impact on the conservation area would be limited. A low level of less than substantial harm would arise, due to the scale, but this would be offset by the architectural quality and moderate</p> |                  |

| Name of Internal Consultee | Comment  | Officer Response                       |
|----------------------------|--|--|
|                            | public benefits.   |  |
| Tree Consultant            | <p>No objection to the findings of the tree and landscape visual assessment. The tree protection should be conditioned as per the detail within the arboricultural report,</p> <p>The scheme should have a robust soft landscaping scheme, the demonstrates ecological net gain and considers the suitability for the plant locations and conflict with users of the site.</p> <p>The scheme could provide an opportunity to have a better quality landscaping scheme to benefit both amenity and wildlife.</p>                | Addressed at section 5.11              |
| Ecology Consultant         | <p>Holding Objection – there is not sufficient ecological information available for the determination of the application.</p> <p>The Preliminary Ecological Appraisal states that:</p> <p><i>‘the site provides suitable habitat for foraging, commuting and hibernating reptiles within the poor semi-improved grassland in the northern section of the site... These visits should be undertaken between March-September during ‘suitable’ days for reptile activity’.</i></p> <p>The results of these surveys should be</p> | Addressed at sections 5.13, 5.14, 5.15 |

| Name of Internal Consultee | Comment   | Officer Response          |
|----------------------------|---|---------------------------|
|                            | <p>provided, prior to determination in accordance with paragraph 99 of the ODPM Circular 2005.</p> <p>The LPA will be required to prepare a HRA to assess the likely impacts of the development.</p>  |                           |
| Waste Management           | <p>A statement should be provided confirming that the Maldon Design Guide Planning and Waste Management attached was used in the preparation of this planning application when considering waste management facilities for residents.</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Internal storage for residents</li> <li>• Design of any Bin Store(s) including lighting, ventilation, floor surfaces.</li> <li>• Adequate access and sufficient receptacles for residents</li> <li>• Access for collection vehicles – road surface, parked cars and health and safety of residents</li> <li>• Distance that the collection operatives need to transport containers between the waste storage area and the rear of a collection vehicle at the nearest place it can safely stop – this should not exceed 10 metres.</li> <li>• Dimensions and weights of the collection vehicles</li> </ul> | Addressed at section 5.16 |



| <b>Name of Internal Consultee</b> | <b>Comment</b>   | <b>Officer Response</b>  |
|-----------------------------------|--|--|
|                                   | Refuse bins must be provided by the management company and the Council do not collect commercial waste. Recycling containers are available from the council.   | This can be included as an informative if the application were to be approved. |
| Housing                           | <p>There are currently a number of similar sites for older person accommodation that have been granted planning permission in close proximity to the proposal. Government Guidance advises that schemes should be a mixture of type of provision and tenure which this development does not provide. Guidance encourages older people to remain as independent in their own properties in the first instance with support.</p> <p>Without any sound or robust assessment taking into account the previous mentioned approved schemes and the need within the District, the current proposal is likely to result in inward migration of older people, which contravenes Government Guidance and MDC Policy.</p> | Addressed at section 5.1   |

#### **7.4 Representations received from Interested Parties**

- 7.4.1 **Nine** letters have been received objecting to the application. The reasons for objection are summarised below:

| <b>Objecting Comment</b>   | <b>Officer Response</b>  |
|--|--------------------------|
| Highway safety concerns due to the blind corner in Belvedere Road. | Addressed at section 5.9 |

|   |  |
|---|--|
| Increased traffic through the town centre   | Addressed at section 5.9   |
| Insufficient services and facilities in Burnham to accommodate the new residents      | Addressed at section 5.1   |
| Following the consent of 18/00443/OUT, there is no need for the development.          | Addressed at section 5.1   |
| Flood Risk  | Addressed at section 5.12  |
| Scale of the proposal is unsympathetic to the Burnham Riverscape                      | Addressed at section 5.6   |
| Impacts on the nearby Grade II* Listed Royal Corinthian Yacht Club                    | Addressed at section 5.7   |
| Consultation should not have occurred during 'lock down' as it was not essential work | Planning applications were permitted to be processed during the lockdown period, which included placing site notices. The notices were put up by Community Engagement Officers who could not work from home during lockdown and therefore, the work was permitted. |
| Planning notice was not in a prominent place  | Two site notices were placed within the public realm. One along the seawall and one along Belvedere Road in accordance with the requirements of the Town and Country Planning (Development Management Procedure) (England) Order 2015.                             |
| Neighbouring properties were not informed of the development proposal by the Council  | Two site notices were placed in accordance with the requirements of the Town and Country Planning (Development Management Procedure) (England) Order 2015.   |
| Belvedere Road is a private Road  | This is not a material planning consideration  |
| Lack of capacity at the local Doctor Surgeries  | Addressed at section 5.1   |
| Sewage Capacity issues  | Addressed at section 5.16. Anglian Water have confirmed they have capacity for the flows.  |
| Odour impacts from neighbouring sewage works  | Addressed at section 5.8   |
| Unsuitable access for emergency services  | Essex Fire and Rescue have raised no objection. Access is further addressed at section 5.9   |
| Increases in pollution  | The limited scale of the development is not considered to result in a substantial rise in air pollution  |
| Coronavirus risk to the future residents of these types of facilities.                | This is not a material planning consideration.   |

8. **REASONS FOR REFUSAL, INCLUDING HEADS OF TERMS OF ANY SECTION 106 AGREEMENT**

**HEADS OF TERMS OF ANY SECTION 106 AGREEMENT**

General obligations

- No unit shall be occupied other than by where the Primary Resident is over 60 year of age;
- A cascade mechanism will be agreed to prioritise occupation of all units to residents of the District of Maldon;
- The provision, retention and future management and maintenance of community open space and strategic landscaping;
- To create a Management Company with responsibility for future management and maintenance of the, open spaces, footways, related lighting, street furniture, signage etc. and all landscaping;
- An Extra Care Unit shall not be occupied other than by a Primary Resident and a spouse, or partner of such a person who is need of care services by reason of age, disablement, impaired mobility or medical needs. The care required will be a minimum of 2 hours per week and subject to an assessment.
- The right of a surviving spouse or partner to remain in occupation.
- The restaurant/bar and café facilities together with the communal public space to the south of the building to be available for public community use.
- The development shall include those facilities listed in the application being restaurant/bar, café well-being suite, quiet area, consultation room and landscaped gardens.

Healthcare contributions

- To provide a healthcare contribution of £17,664 for GP places as set out in the NHS consultation response.
- Provision on site of a consultation room to be of a stated specification suitable for use by visiting medical practitioners.
- Contract to agree shared management processes to encourage a seamless link and training between on-site care provided by the applicant and off-site care provided by the applicant and off-site medical care provided by the NHS
- Secure Wi-Fi link to allow visiting health and care professionals to access to patient records remotely

Ecology

- Payment of appropriate and proportionate contribution towards Recreational Avoidance Mitigation Strategy. This should be 100% of the required contribution.

## **REASONS FOR REFUSAL**

- 1 The proposed development would result in the loss of employment land and a Protected Primary River Related Use. Insufficient justification or evidence has been provided for the loss of this land by way of evidence that the existing use demonstrably harms the character and appearance of the area, the proposed use would be of greater benefit to the community, or that the site has been effectively marketed for sale and that there is a confirmed lack of interest. The development would therefore have an adverse impact on the limited supply of employment generating land, contrary to policy E1 of the approved Maldon District Local Development Plan, Policy RI.3 of the Burnham-on-Crouch Neighbourhood Development Plan and guidance contained in the National Planning Policy Framework (2019).
- 2 It has not been satisfactorily demonstrated that there is a need for the development proposed C2 Use, particularly in Burnham-on-Crouch, due to the impacts of other planning permissions for similar developments across the Town and District. Therefore, it is not possible to conclude that the development would not result in an over concentration of C2 uses within Burnham-on-Crouch and an in-migration of the elderly population contrary to Policies S2 and H3 of the Local Development Plan.
- 3 The application site lies outside of the defined settlement boundaries where policies of restraint apply. The Council can demonstrate a five-year housing land supply to accord with the requirements of the National Planning Policy Framework. The site has not been identified by the Council for development to meet future needs for the District and does not fall within either a Garden Suburb or Strategic Allocation for growth identified within the Maldon District Local Development Plan to meet the objectively assessed needs for housing in the District. The proposed development would substantially alter the character of the area and have an unacceptable visual impact on the countryside and the locality as a result of the excessive scale, mass and bulk of the development. Furthermore, the design of the development would create an out of keeping form of development which would exacerbate the impact on the character and appearance of the area and the locality. The development would therefore be unacceptable and contrary to policies S1, S8, D1 and H4 of the approved Maldon District Local Development Plan (2017), Policies HC.2 and HO.8 of the Burnham-on-Crouch Neighbourhood Development Plan and Government advice contained within the National Planning Policy Framework (2019).

- 4 The proposed development has been applied for as a C2 (extra care facility) with no affordable housing being provided. However, the Applicant has not demonstrated, to the satisfaction of the Local Planning Authority, that the development would fall within this Use Class. Based on the evidence and guidance available it is considered the development may result in the creation of separate residential dwellings within the C3 Use Class under The Town and Country Planning (Use Classes) Order 1987 (as amended) or a Sui Generis use. Therefore, the development makes inadequate provision for affordable housing or a financial contribution in lieu of affordable housing contrary to policy H1 of the approved Maldon District Local Development Plan and the National Planning Policy Framework (2019).
- 5 Inadequate information has been submitted to demonstrate that the proposal would not result in negative impacts on important ecological assets and there is a lack of evidence to demonstrate that the development would result in a measurable net biodiversity gain. The proposal would therefore be contrary to Policies S1, D1 and N2 of the Maldon District Local Development Plan and the guidance contained within The National Planning Policy Framework.
- 6 The proposed development is located within Flood Zone 3a and is therefore of a higher probability of flooding. The proposal is for the provision of a C2 Use which is classified as a 'more vulnerable' development. Paragraphs 158 and 160 of the National Planning Policy Framework and policy D5 of the Maldon District Local Development Plan seek to direct development to areas with a lower risk of flooding. The proposal is considered to fail both the sequential test and the exception test and given that the Council can demonstrate a five year housing land supply, and has granted planning permission for a number of C2 Uses above the requirements evidenced through the SHMA, on sites which have been subject of sequential testing and that the wider sustainability benefits to the community do not outweigh the flood risk posed as required by the exception test, the development would therefore be contrary to core planning principles and guidance contained in the National Planning Policy Framework, the National Planning Practice Guidance and policy D5 of the Maldon District Local Development Plan.
- 7 The site would be served by a substandard, contrived and dangerous means of access which would adversely affect the safe and convenient passage of pedestrian users of the access. This would discourage future occupiers to use alternative to vehicle modes of transport and it would be indicative of the unsuitability of the site to accommodate the proposed development. The proposal would be therefore unacceptable and contrary to the National Planning Policy Framework and policies, S1, D1, T1 and T2 of the Maldon District Local Development Plan (2017), and guidance contained within the Maldon District Design Guide (2017).

- 8 In the absence of a completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990, the necessary financial contribution towards Essex Coast Recreational disturbance Avoidance and Mitigation Strategy has not been secured. As a result, the development would have an adverse impact on the European designated nature conservation sites, contrary to Policies S1, D1, N1 and N2 of the Maldon District Local Development Plan and the NPPF.
- 9 In the absence of a completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990, securing the provision of any necessary contribution towards health care provision, the impacts of the development on the existing health care services would not be able to be mitigated contrary to Policies S1, D1, N1 and N2 of the Maldon District Local Development Plan and the NPPF.