



Appeal Decision

Site visit made on 22 September 2020

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 9 October 2020

Appeal Ref: APP/D1590/W/20/3245194

Land at Seaway Car Park, Southend on Sea SS1 3DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Turnstone Southend Ltd against Southend-on-sea Borough Council.
 - The application Ref 18/02302/BC4M, is dated 6 December 2018.
 - The development proposed is comprehensive redevelopment of site, including the demolition of 1, 3 and 29 Herbert Grove and an existing toilet block; the erection of 3 no. new buildings comprising a mixed-use leisure building with a cinema (3,590sq.m of Use Class D2 floorspace), 3,256sq.m of floorspace for other assembly and leisure uses (within Use Class D2), 2,323sq.m of floorspace for either restaurant and cafes (Use Class A3) or hot food takeaways (Use Class A5), and a further 1,615sq.m of floorspace for either assembly and leisure (Use Class D2) or restaurants, cafes and hot food takeaways (Use Classes A3 and A5), and a new multi-level car park; an 2,961sq.m 80 bedroom hotel (Use Class C1) with cafe; and, a 580 sq.m building (Use Class A3, A5 or D2) proposals also include alterations to form a new access from Seaway Roundabout, formation of new public open space and associated works and infrastructure including the erection of an electricity sub-station.
-

Decision

1. The appeal is allowed and planning permission is granted for comprehensive redevelopment of site, including the demolition of 1, 3 and 29 Herbert Grove and an existing toilet block; the erection of 3 no. new buildings comprising a mixed-use leisure building with a cinema (3,590sq.m of Use Class D2 floorspace), 3,256sq.m of floorspace for other assembly and leisure uses (within Use Class D2), 2,323sq.m of floorspace for either restaurant and cafes (Use Class A3) or hot food takeaways (Use Class A5), and a further 1,615sq.m of floorspace for either assembly and leisure (Use Class D2) or restaurants, cafes and hot food takeaways (Use Classes A3 and A5), and a new multi-level car park; an 2,961sq.m 80 bedroom hotel (Use Class C1) with cafe; and, a 580 sq.m building (Use Class A3, A5 or D2) proposals also include alterations to form a new access from Seaway Roundabout, formation of new public open space and associated works and infrastructure including the erection of an electricity sub-station at Land at Seaway Car Park, Southend on Sea SS1 3DS, subject to the attached schedule of forty-eight conditions.

Preliminary Matters

2. In the interests of accuracy the description of development in my formal decision is taken from the appeal form.

3. The appellants omitted to serve the appropriate notices on some landowners. The notices have now been served and those landowners in question have had the opportunity to provide comments on the proposal. Thus no party would suffer prejudice in my determining this decision as a result.

Background and Main Issue

4. The Council have confirmed that, had it been in a position to do so, it would have approved the planning application subject to a suite of planning conditions and this position is supported by a resolution of the Council. As such, it is a point of common ground between the Council and the appellants that the appeal scheme is acceptable. However, several interested parties have raised concerns and I have considered these in turn to ascertain whether they justify the refusal of planning permission.

Reasons

The effect of the proposal on the character and appearance of the area

Design

5. The site is predominantly given over to hardstanding, but it also includes several trees and a green space towards the northern boundary of the site and located adjacent to the road. Part of this green area is identified as Protected Green Space in the Southend on Sea Borough Council Development Management Document -2015- (the DMD).
6. The area within which the site is situated generally falls towards the seafront. To the north and east of the site lie areas that are predominantly residential in use whilst to the west and south the uses are more mixed, including retail, hospitality and entertainment. The proposal would introduce substantial buildings, including a landmark building, of modern design into what is currently an open space with minimal landscaping.
7. The development is of a scale that would create its own character within the site. However, it would integrate into the adjoining area by the use of sensitive design reflecting the area around it, through suitable setbacks away from existing development and the imposition of suitable landscaping that would result in a greening of the area and softening of the proposal. Such improvements could be safeguarded by the imposition of a suitable planning condition and provisions within a subsequent planning obligation.
8. The proposal would, therefore, comply with Policy DS3 of the Southend on Sea Borough Council Southend Central Area Action Plan -2018- (SCAAP) in as much as this supports and encourages the creation of new landmarks where development proposals demonstrate a design, detailing and use of materials of exceptional quality and interest and where it helps to reinforce local character and distinctiveness.

Views

9. The appellants' Landscape Visual Impact Assessment has been subjected to peer review by Nicholas Pearson Associates, Chartered Landscape Architects and a Registered Practice of the Landscape Institute and therefore I am content to rely on its findings, particularly as it is consistent with what I observed. It demonstrates that the development would result in moderate adverse and

moderate to slight adverse visual effects on key views (i.e. from Southend Pier, Marine Esplanade and the Eastern Esplanade). Moreover, views to the sea, the Pier, the Palace Hotel and the Kursaal would be adversely changed by the introduction of the building but from positions close to the site.

10. The proposal would be set back from the foreshore behind other development on rising ground. It would be seen amongst other substantial development and so, given the location, topography and scale of surrounding land and development, the openness of the Thames would not be affected by this development. Nonetheless, some key views would be affected both during the transient construction phase and the permanent works, and in this regard, the precise requirement within Policies DM4 and DM6 of the DMD to avoid all detrimental impacts cannot be satisfied.
11. However, the imposition of suitable landscaping would result in a greening of the area, softening of the proposal and integration into the adjoining area. Thus, the localised effects of the proposal would be reduced. In addition, the development would be viewed in context of the surrounding built environment, which includes buildings of significant scale and differing design. In this context the resulting harm to the key views would be moderate.
12. I therefore conclude that the proposal would have a detrimental effect on key views and would, therefore, be in conflict with Policy DS2 of the SCAAP and policies DM4 and DM6 of the DMD in as much as these seek to protect key and other important views within and outside the Borough.

Trees

13. There are several trees within and around the site and many of these benefit from a tree protection order (TPO). The trees fronting onto Chancellor Road, Herbert Road and the Seagate Roundabout make a positive contribution to the verdancy of the area. The proposal would remove a number of trees, including trees identified within the TPO and part of the area designated as Protected Green Space.
14. However, as part of the proposal there would be further landscaping of the area around Chancellor Road. The development overall would increase the area of green space, which would offset the reduction in the extent of Protected Green Space, and the proposal would incorporate a generous level of landscaping that, over time would mitigate for the loss of existing mature trees. This would result in an overall benefit to the verdancy of the area. Such improvements could be safeguarded by the imposition of a suitable planning condition and provisions within a subsequent planning obligation.
15. Thus, the proposal would be compliant with the aims of Policy KP2 of the Southend on Sea Core Strategy -2007- (the Core Strategy), Policies DM2, DM3 and DM4 of the DMD in as much as these seek to protect biodiversity and green resources. The proposal would also accord with the aims of the Southend-on-Sea Borough Council Interim approach for the management and maintenance of Council maintained trees -2019- in as much as this seeks to maintain and manage the existing stock of trees in Council ownership, safeguard existing trees during construction work and ensure that trees lost during development are replaced.

Heritage

The effect of the proposal on the setting of the CA and LLBs

16. The application was accompanied by a Heritage Statement and Historic England commented upon the application, offering advice upon aspects of the proposals and how to assess them.
17. The Palace Hotel, a tall building lying within the Clifftown Conservation Area (the CA) and occupying a prominent position on the skyline would be visible in views encompassing the site. The building is a Locally Listed Building (LLB) and its significance derives from its architectural composition, attractive appearance and prominent landmark position. The appeal would not harmfully alter this because the proposal building would remain separate and distinctive from one it in wider views of the skyline. Moreover, views that would provide a comparison between the proposal and the LLB would be limited by interposing development.
18. The locally listed St John the Baptist's Church also lies within the CA and adjoins the site. It appears in views across the car park, including views from residential properties on Hartington Road. The significance of the church derives from its architectural composition and the attractive appearance of the building.
19. The proposal would close off existing views of the church from within and across the car park. However, the car park is a functional space that does not make an overall positive contribution to the setting of the building. By contrast, in demolishing 29 Herbert Grove and providing an attractive public plaza with appropriate landscaping, the proposal would open up closer views of the church and therefore improve its setting and better reveal its significance from the public realm. Whilst the modern appearance of the proposal would be in contrast to that of the church, the scale, massing and use of materials would be acceptable and would not appear out of place in the context of the varied townscape around the appeal site. Thus the effect of the proposal on the setting of the church would be positive.
20. The proposal would be separated from the CA and two other LLBs, the Cornucopia and Falcon public houses, by existing development of a scale and position that would limit intervisibility. As a result of this, the development would preserve the settings and significance of the CA and the two locally listed public houses.

Whether the proposal would preserve the setting of the Grade II Listed Buildings known as the Hope Hotel, 1-3 Marine Parade, 4 Marine Parade, the Kursaal and the Pleasure Pier (the LBs)

21. The appeal site would be located within the setting of five Grade II Listed Buildings: the Hope Hotel, 1-3 Marine Parade, 4 Marine Parade, the Kursaal and the Pleasure Pier.
22. The heritage significance of the Hope Hotel derives from its historic association with Richard Parker and the Nore mutineers¹, together with the architectural interest of the building, principally relating to features on its street frontage.

¹ The Nore mutiny which took place in 1771

23. The significance in heritage terms of 1-3 Marine Parade and 4 Marine Parade relates principally to the buildings first floor frontages, which in association provide a physical reminder of the late 18th century street scene.
24. That of the Kursaal derives from the pleasing architectural design of the exterior, particularly in regard to the dome, which is a prominent landmark and feature of the skyline, together with its historic links to George Sherrin, a well-known architect of the Victorian period, and as an early amusement park.
25. The heritage significance of the Pleasure Pier derives principally from its architectural interest, despite a series of incidents that have led to the replacement of a significant proportion of its superstructure, as being the longest pleasure pier in the world, and its association with James Brunlees, a prominent railway engineer of the 19th century.
26. The settings of the LBs encompass development that varies extensively in scale and design. In these circumstances the development would preserve the settings of the listed buildings because it would not meaningfully alter how they are experienced within the townscape.
27. In conclusion, the proposal would preserve the setting of the relevant designated and undesignated heritage assets. It would, therefore, comply with the expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990, the aims of Policies CP4 and KP2 of the Core Strategy, Policies DM1, DM5, DM6 and DM14 of the DMD; and Policies DS3, and CS1 of the SCAAP which together, amongst other things, seek to conserve and enhance heritage assets. Similarly the proposal would be in accordance with those aims of the National Planning Policy Framework -2019- (The Framework) which seek to conserve and enhance the historic environment.

The effect of the proposal on living conditions of the occupants of Herbert Grove, with particular reference to outlook and sunlight/daylight

28. The proposal would introduce a building of substantial mass and height to the western part of the site. Dwellings in Herbert Grove have windows in their facades facing the development.
29. There would be a change to the outlook for occupiers of neighbouring properties as a substantial contemporary building would replace what is currently an open car park. This would be most marked on Herbert Grove. Whilst this change will be substantial, the articulated frontage and use of materials would break up the façade and the overall design would create a building which, although recognisably modern, sits well with its surroundings.
30. Given the separation of the buildings and proposed additional landscaping no significant sense of visual enclosure would result and so I conclude that no harmful effect on the occupiers of the neighbouring dwellings would result in regard to outlook or visual enclosure.
31. An updated Daylight and Sunlight Assessment (DSA), has been provided in support of the appellants' case. This demonstrates that the proposal would have adverse effects on the level of daylight entering the windows of the properties in Herbert Grove. A subsequent assessment of the Vertical Sky Component and No Sky line concluded that 23 rooms in Herbert Grove would

experience a reduction in daylight conditions outside of the overall BRE² criteria with the level of the adverse impacts on sunlight likely to range from low to medium.

32. However, the guidance advises that it is not mandatory and should not be seen as an instrument of planning policy. Furthermore, it states that daylight criteria should be 'interpreted flexibly because natural lighting is only one of many factors'. Having regard to the degree of separation between frontages and the scale and massing of the proposed building, the nature and degree of the daylight and sunlight harm to these properties would be moderate.
33. The impacts of overshadowing on open amenity areas (including existing gardens) were assessed in the DSA and found to be compliant with the BRE guidance. Thus, when having had regard to the level of impact predicted, which I have no reason to doubt, I am satisfied that the proposal would not result in unacceptable harm to the amount of light entering open amenity areas.
34. Concerns have been raised regarding noise and disturbance within the area that would be generated by the proposal, principally with regard to customers sitting outside hospitality uses and returning to vehicles or travelling from the development to public transport. The nature of the proposal is such that it would generate late night trips associated with hospitality and entertainment.
35. The site is, at present, a car park serving the surrounding area which contains a variety of hospitality and entertainment uses, some patrons of which are likely to use the car park. There is an existing taxi rank on Lucy Road and to the north of the site lie bus stops and a railway station, providing public transport links which patrons of the existing businesses would access. There is thus a degree of movement and disturbance already occurring within the area.
36. The main accesses to the entertainment and hospitality uses are located facing onto Chancellor Road, channelling movement away from Herbert Road. There would be, however, accesses and outside terraces facing onto Herbert Grove and these have potential to generate noise disturbance to existing residents.
37. Footfall is likely to increase on Herbert Grove and Chancellor Road and there would be additional levels of pick-ups and drop-offs on Herbert Grove and Lucy Road. However, these roads already provide access for customers, both on foot and in vehicles to existing businesses and facilities. The evidence before me does not demonstrate this increase, over and above existing, would result in harm to the living conditions of existing residents and I share the view of the Council's Environmental Health Officer that operational noise could be controlled by a combination of the proposed mitigation embedded within the design, planning conditions and primary legislation.
38. Thus, with appropriate safeguards, the proposal would not have an unacceptable effect on the living conditions of neighbours with regard to noise disturbance. However, there would be moderate harm to the living conditions of occupiers of properties of Herbert Grove in regard to daylight and sunlight. The proposal would, therefore, be in conflict with Policies DM1 and DM4 of the DMD and Policy CS1.2 of the SCAAP in as much as these seek to safeguard amenity.

² BRE Guide: Site Layout Planning for Daylight and Sunlight, A Guide to Good Practice - 2011

The effect of the proposal on biodiversity

39. A Preliminary Ecological Appraisal indicated that three buildings on site had a low potential for bat roosting and recommended further investigation. A subsequent ecological appraisal was carried out and this, following a further bat roost survey, eliminated one of the buildings as having been used by bats for roosting. Subsequent bat activity surveys were carried out and concluded that, whilst common pipistrelle bats were heard and recorded foraging in the churchyard and nearby gardens, no bats were seen to emerge from the other two buildings.
40. The evidence before me demonstrates that appropriate investigation has been undertaken and establish that there is very limited potential for bats to be roosting within the site. It is therefore unlikely that bats would be adversely affected by the proposal. Moreover, the condition suggested by the Council, would ensure that buildings would be checked for roosting bats prior to development commencing. Such a condition would be prudent and ensure the protection of bats, should roosts be discovered at a later time.
41. Given the increase in green space and the number of trees, over time the proposal would be likely to result in a nett increase in foraging habitat for wildlife. I conclude that, taken as a whole, the proposal would not result in harm to the ecology of the area and has potential to provide benefits. The proposal would, therefore, be in accordance with Policies CP4 and KP2 of the Southend on Sea Core Strategy -2007- (the Core Strategy), Policies DM3 and DM6 of the DMD; and Policies DS3, CS1 and CS2 of the SCAAP which together, amongst other things, seek to protect biodiversity. Similarly the proposal would be in accordance with those aims of the Framework which seek to protect and enhance biodiversity.

The effect of the proposal on parking

42. Seaway Car Park is identified as a Primary Visitor's Car Park as defined within the Boroughwide Parking and Access Strategy. Through Policies CS1 and DS5 of the SCAAP the Council seeks to protect the level of car parking provision within the Southend Central Area whilst accommodating additional demand from development. Whilst the car park has recently been remodelled to remove coach parking, resulting in an increase in car parking provision, the proposal would provide in excess of the level of parking provision at the time of adoption of the SCAAP.
43. The proposed additional parking provision of 77 spaces above that established when SCAAP was adopted falls below the maximum car parking provision allowable under the standards set out within the DMD. However I am mindful of the nature of the development and that there would be likely to be a level of linked trips and turnover of spaces. The Essex Planning Officer Association Parking Standards Document accepts the limited applicability of parking standards to developments of this nature and advises that in such circumstances each case should be considered on its merits. This approach is supported by paragraph 105 of the Framework.
44. The site lies within walking distance of bus stops, a mainline railway station and other town centre car parks. I am further mindful of current national policy to manage and reduce reliance on travel using the private car including the advice given in paragraph 108 of the Framework that development should

ensure that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location. Taking these factors into account, including the capacity of the nearby car parks to accept overflow in exceptional periods of peak demand I am satisfied that an appropriate level of key visitor parking is provided by retaining the level established at the time of the SCAAP, together with an appropriate uplift to cater for the development.

45. I note proposed mitigation, to be provided by means of a Planning Agreement, to produce a detailed Travel Plan and provide measures to encourage walking and cycling, together with Variable Message Signing (VMS) to manage demand in the car parks and direct drivers to car parks with capacity. I am satisfied that these, together with other measures to manage car parking and encourage transfer to more sustainable modes address the issue of car parking in an appropriate manner in accordance with development plan and national policy.
46. Concerns have been raised regarding the cumulative effects of construction worker demand on car parking should other development works occur at the same time. This would be a temporary impact and I consider that plans to manage construction impact, including displaced car parking demand, would be able to address such impact effectively and such plans could be required by an appropriate planning condition.
47. I therefore conclude that, subject to appropriate management of car parking and construction work in the area the proposal would accord with Policies CS1, CS1.2 and DS5 of the SCAAP in as much as these require that parking capacity is maintained within the Southend Central Area, including key visitor parking, and that appropriate parking provision is made to accommodate development

The effect of the proposal on coach parking facilities

48. Policy CS1.2 of the SCAAP requires that "Design and layout solutions should allow for: relocation of a coach-drop off point within the site. The relocation of coach parking bays may be provided either on or off-site or a combination of both, provided off- site provision is well connected to the Seaway site and would not significantly adversely impact the local transport network." The coach parking has already been removed from the site and alternative provision made at the Gasworks car park.
49. Although the Gasworks Car Park is operating under a temporary permission, the Council own the land and has committed to retaining the facility for at least one year after the opening of the Seaway proposals.
50. The proposal would provide a new coach drop-off bay on Lucy Road, and is policy compliant in this respect. However, whilst additional coach parking has been provided in the Gasworks car park which offset the loss at Seaway, this is not yet a permanent facility. Whilst the Council ownership of the site makes retention more likely and the Council have demonstrated a flexible parking strategy that could respond to and accommodate changes in demand, it is not a guarantee and for this reason the proposal would not comply with Policy CS1.2.

The effect of the proposal on highway capacity

51. Fears have been expressed regarding the impact of the proposal on highway junction capacity, specifically at the Marine Parade/Hartington Road junction. The appellants have, within the scope of their Transport Assessment and Addendum, evaluated the performance of the junction using a Verkehr In Städten – SIMulationsmodell (VISSIM) model. The scope of the VISSIM model was agreed with the Council as being appropriate and proportionate. From the evidence before me I see no reason to extend the scope of the model.
52. Overall during the Friday Peak the VISSIM model indicates an increase in delay of between 60 and 84 seconds for vehicles travelling through the Marine Parade/Hartington Road junction, this being the only junction on the immediate network that would experience such a level of delay.
53. The Framework advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Overall the delay identified on a single junction would not, in this case, amount to a severe residual cumulative impact on the road network.

The effect of the proposal on highway safety

54. Further concerns have been expressed regarding the safety of the public highway in relation to the junction of Hartington Road with Marine Parade and the Seaways Roundabout.
55. Marine Parade is a busy town centre environment. Within the scope of the Manual for Streets design guidance documents (MfS) the environment would be identified as one in which the “place” function dominates over the “movement” function. To widen the junction bellmouth and reduce the occasional risk of vehicles crossing the centreline would disadvantage pedestrians and infer the domination of the needs of large vehicles over what should, within the design philosophy of MfS, be an area designed to primarily accommodate softer modes. Such measures to accommodate larger vehicles would be inappropriate in this environment. There is good intervisibility available to drivers negotiating the junction at the speeds likely to be encountered on Marine Parade and there is no reason to believe that a safe, well-designed junction could not be provided that would accommodate all users based upon an appropriate user hierarchy.
56. The proposed works at the Seaways Roundabout would result in pedestrians crossing an increased width of vehicular carriageway on the entrance to the roundabout from Queensway.
57. Whilst this would, of itself, increase the risk to pedestrians crossing the road at this point, the proposal relocates the egress from the car park away from the approach to the roundabout.
58. Drivers egressing the car park would be focussing attention on vehicles approaching from the right, rather than looking to the left, to the pedestrian crossing point. The relocation of the car park egress would resolve these conflicting demands upon a driver’s attention. Subject to detailed design, in this respect and taken as a whole, the proposed layout of the Seaways roundabout would have potential for an overall benefit to pedestrian safety.

The proposal would, therefore, satisfy the requirements of the SCAAP in as much as this identifies this location for improvements to pedestrian safety.

59. I therefore conclude that the proposed development would not have an unacceptable adverse effect upon physical capacity of the highway network or road safety and would, therefore, accord with Policy DM15 of the DMD. Similarly it would comply with the aims of those parts of the Framework which seek to promote sustainable travel.

Other Matters

60. The site is located within the zones of influence of the Benfleet and Southend Marshes Special Protection Area (SPA), the Outer Thames Estuary SPA and the Foulness [mid-Essex Coast Phase 5] SPA which are European Designated Sites (EDS) afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
61. In view of the scale, nature and location of the development the proposal is not anticipated, either alone or in combination with other development, to have a significant effect on the features of interest of the Protected Sites. I note that this accords with the conclusions of a Habitat Regulations Assessment (HRA) which accompanied the application and the Council.
62. Concerns have been raised regarding the design of the proposal and its compliance with parts of the Policy CS1.2 of the SCAAP relating to the delivery of the Seaways Opportunity Site. In particular the policy requires the proposal to allow for opportunities for a new link to Marine Parade from the Seaway site designed around 'Spanish Steps' and not prejudice the delivery of such a scheme.
63. To the west, the layout would provide a walkway from Chancellor Road running parallel to Herbert Grove, set back behind landscaping. This would lead to the public space by the church of St John the Baptist. A safe, legible route exists between Lucy Road to Church Road, providing linkage to the town centre. This route would be made more attractive by landscaping and increased natural surveillance in the area and connectivity would be further improved by the provision of footpaths along the north of the site. To the east the proposal would provide a pedestrian route to Lucy Road and Hartington Road. Either option could be improved and augmented at a later date, although requiring access through property outside of the site. The proposal contributes to the provision of a potential route to the west whilst retaining potential for such on either side. The proposal is, therefore, compliant with Policy CS1.2 in this regard.
64. Further, it has been queried whether the proposal would create active frontages to all new and existing streets and spaces: a site-specific requirement of Policy CS1.2. The proposal would provide a proportion of active frontage on all faces of the main leisure building sufficient to comply with the requirements of the policy.
65. It has been suggested that the competition presented by the proposal would undermine the ability of the owners to ensure the future of the Kursaal, resulting in the loss of a heritage asset. However, I have little substantive evidence before to demonstrate that an alternative occupier could not be found in such an event and that such fears would become reality.

- 66. Representations from interested parties have suggested that alternative proposals and uses would be more appropriate. I have, however, determined this appeal on its own merits.
- 67. A representation from a local resident identifies that the site contains Japanese Knotweed. Whilst the appellants' ecological investigations did not identify its presence, I am satisfied that statutory controls exist in regard to this noxious weed to prevent its spread in the event of its presence being confirmed.
- 68. Various representations have been received questioning the actions of the Council in developing the site and their handling of the application. These are matters between the concerned parties and the Council and which lie outside the remit of this appeal.

Conditions and Planning Agreement

- 69. I have had regard to the various conditions suggested by the Council, and the comments on those Conditions provided by the appellant. In addition to the standard commencement condition I have included a condition confirming the approved plans. These are necessary in the interest of certainty.
- 70. The site lies within a residential area and has potential to adversely affect the amenity of neighbours and so conditions controlling demolition and construction activities are necessary. I have thus required a Demolition and Construction Management Plan and Strategy, to include a Dust Mitigation Strategy, and a Construction Noise and Vibration Management Plan and Strategy to be provided and added a condition controlling working hours on the site. As any construction works on site have potential to affect the amenity of neighbours the details to be provided within the plans and strategies are required prior to commencement of such works.
- 71. The works would affect the availability of a significant quantity of town centre parking with potential to affect local businesses and tourism. A condition requiring a strategy to mitigate this is therefore necessary. This strategy would need to be in place prior to the commencement of any works within the site as any such would affect car parking provision.
- 72. A condition requiring provision and approval of details of highway works necessary to manage traffic movements generated by the scheme, together with the delivery of these works is necessary to manage local traffic efficiently and ensure highway safety.
- 73. Conditions are required to control construction and operational noise, odour and lighting to protect the amenity of neighbours. The lighting condition is also required to ensure public safety. I have amended the wording of Condition 10 to clarify the time at which the acoustic barrier would need to be provided. As demolition works can create noise disturbance, this requires the fence to be in place prior to the commencement of all works. The details of the barrier would therefore be required prior to commencement.
- 74. The appellants have proposed an amendment to the wording of Condition 17. I consider that the suggested wording provides greater certainty during the construction of development and so I have substituted the appellants' suggested wording for that of the Council.

75. There are a number of trees within and around the site and some of these would be retained. Loss of, or damage to, these retained trees has potential to affect the character and appearance of the area and so I have included a condition requiring that the development be carried out in accordance with an agreed Arboricultural Method Statement and Tree Protection Plan. As any works on site would have potential to harm the trees these details are, of necessity, required prior to the commencement of any works.
76. Some of the trees within the site would be removed and the loss of verdancy within the area would affect its visual amenity. A condition is therefore required to ensure the delivery and retention of an appropriate landscape scheme and ensure appropriate mitigation in regard to visual amenity and environmental impact.
77. The site has had various uses in the past and so conditions are necessary to ensure that the site would not result in environmental damage through the release of contaminants.
78. A condition is necessary to ensure that surface water runoff from the site is controlled effectively so as to ensure that environmental and amenity problems resulting from flooding are avoided.
79. Conditions controlling delivery and collection, the operational hours of some of the businesses within the development and waste management are necessary to protect the amenity of neighbours and ensure that operations are safe, and waste is managed satisfactorily.
80. Conditions controlling the design of the development and restrict permitted development within the site are necessary to ensure that the scheme is delivered in a way that safeguards the character and appearance of the surrounding area and heritage assets, protects the amenity of neighbours and ensures that the development achieves a satisfactory environmental standard.
81. Various conditions are necessary to ensure that adequate and efficient parking, both for vehicles and bicycles is provided for the development, including the provision of electric vehicle charging points and parking suitable for use by those with disabilities. This is needed to ensure that adequate parking is available to satisfy local demand and safeguard the environment from adverse impact.
82. Whilst no specific Sustainability Statement accompanied the application, the application documents included other documents which encompassed matters of sustainability within their scope. Accompanying the appeal is a Technical Note clarifying the basis upon which the BREAAAM Pre-assessment Report was formulated. The three separate buildings covered by the proposal have been assessed and each found to have the potential to achieve a BREEAM rating of "Very Good".
83. Conditions are necessary to ensure that the development is energy and water efficient, including that it satisfies appropriate BREAAAM requirements, and sustainable so as to safeguard the environment from harm. Conditions are also necessary to safeguard and provide for local ecology to minimise environmental impact and risk to endangered species and other local wildlife.
84. The appellants have suggested an alternative wording for Condition 40, the effect of which would allow occupancy of any of the buildings forming the

development prior to issue of final BREEAM certification. I do not consider that the proposed alteration would be acceptable as it would reduce the degree of control that the Council could exercise and enforcement following occupancy could be problematic.

85. I have added conditions requiring the provision of details of a CCTV scheme to be submitted and approved to protect residential amenity and public safety, together with a condition requiring submission and approval of public art in St John's Square to safeguard the setting of the LLB and comply with development plan policies. A condition to ensure delivery and availability of the public toilets accessed off Lucy Road is necessary in the interest of community amenity.
86. I have amended some of the suggested wording of the Council's conditions for clarity and to ensure that they are precise and enforceable.
87. A draft planning agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) (the draft Section 106 Agreement) has been provided to ensure the delivery of mitigation for development relating to the provision of highway works (both physical works and through the provision of financial contributions), the making of a traffic regulation order, provision of landscaping and open space, and provision of a financial contribution to monitor the above provisions. These matters form the basis of the Heads of Terms in the draft agreement and I am satisfied that the provisions set out in the Heads of Terms of the draft planning agreement are necessary to make the scheme acceptable in planning terms, directly related to the development and are reasonable in scale and kind.
88. However the Council is the freehold owner of the Seaway Car Park and is therefore unable to enter into a Section 106 Agreement with itself. Instead, a planning condition is proposed, that prevents any form of development at the site (or the discharge of any planning conditions) prior to the execution of an appropriate Section 106 Agreement. The condition requires that the details of the agreement must be substantially the same as the draft of this document.
89. This is not a standard approach, but can be appropriate in certain circumstances and, on this occasion, I am satisfied the circumstances justify this method and that it is supported by the Planning practice guidance. I am satisfied that the proposed condition satisfies the six tests set out in paragraph 55 of the Framework. I therefore consider that the condition suggested by the Council, the form and wording of which has been agreed by the appellants, is necessary to address the impacts resulting from the development. I consider that the wording of the draft Section 106 Agreement is robust and appropriately secures the necessary obligations, and I am satisfied that it should form the basis of the final agreement.

Planning Balance and Overall Conclusion

90. The proposal would not comply with the development plan, particularly in regard to its impact upon key views, effect on the living conditions of neighbours and the lack of certainty in regard to the long-term relocation of coach parking.
91. In regard to the harm that I have identified to the living conditions of residents of Herbert Grove in regard to daylight and sunlight, the guidance advises that it

is not mandatory and should not be seen as an instrument of planning policy. Furthermore, it states that daylight criteria should be 'interpreted flexibly because natural lighting is only one of many factors'.

92. The land lies within an urban area where a degree of change would reasonably be anticipated to occur, particularly as the majority of the site is identified within Policy CS1 of the SCAAP as an Opportunity Site for comprehensive redevelopment for a mixed use development of the type proposed. Some degree of change would therefore be inevitable, including some impact upon key views and living conditions.
93. From my reasoning above, the level of harm would be moderate. The proposal would result in the loss of a dwelling, contrary to national policy aims to increase housing numbers significantly. However, given the scale of the development the loss of a single dwelling to the overall housing stock of the borough is limited. Taken together these matters carry moderate weight.
94. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."
95. The applicant submitted an Economic Benefits Assessment (EBA) in support of the application which was subsequently supplemented with an Addendum document. This assessment identified various economic benefits, both short term, in the construction and service sectors, and longer term with the creation of jobs within the site and from the businesses therein and from linked trips resultant from the increased tourism and leisure offer within the town. The appellant has submitted evidence to demonstrate strong demand for the type of accommodation for businesses proposed.
96. The scale of these benefits is disputed by objectors, citing the likely loss of existing jobs as businesses close through increased competition. However, the potential economic effect of business transference and closure as a result of competition has been factored into the EBA. There is little substantive evidence before me to demonstrate that the conclusions of the EBA are erroneous.
97. Whilst the intervention of the Coronavirus pandemic and the effects of the lockdown upon the economy in the long term remain uncertain, there is little evidence to suggest that the aims within the Framework to encourage sustainable economic growth will change. Further, Strategic Objective 1 of the SCAAP for economic growth seeks to improve and transform the economic vitality, viability and diversity of Southend Central Area, providing new opportunities for leisure and tourism. I therefore conclude that the proposal would support these aims. Given the aims of the Framework to build a strong, competitive economy the economic benefits resultant from the proposal provide significant support to the proposal.
98. The majority of the site is identified within Policy CS1 of the SCAAP as an Opportunity Site for comprehensive redevelopment for a mixed use development of the type proposed. The proposal would establish a new landmark building, which would sit comfortably within its site, re-using and making more effective use of brownfield land. The site is in a location with very good access to sustainable transport options and a more active use would

provide significant support to the local economy. The proposal would also provide an improved setting and allow better appreciation of an LLB, St John the Baptist's Church, These are aims supported by the development plan and the Framework and, taken together I allocate them significant weight.

99. Although the proposal is in conflict with the development plan there are material considerations in this instance that indicate that a decision should be made otherwise than in accordance with it. For these reasons I conclude that the appeal should be allowed.

I Dyer

INSPECTOR

Schedule of Conditions

- 1) No development is allowed to commence nor any condition to be discharged prior to the owner and the Council executing a Section 106 obligation in substantially the same form as the obligation annexed to the planning permission granted in respect of the application bearing ref. no. 18/02302/BC4M.
- 2) The development hereby permitted shall be begun no later than 3 years beginning with the date of this permission.
- 3) The development shall be carried solely out in accordance with the approved plans:

S019/P3000.pl2 - Location Plan
submitted September 2019

S019/P3001.pl2 - Existing Site Plan (Topographical Survey)
submitted September 2019

S019/P3002.pl1 - Existing Building Elevations
Submitted January 2019

S019/P3003 - Existing Building Elevations
Submitted January 2019

S019/P3004 - Existing Building Plans
Submitted January 2019

S019/P3005.pl3 - Demolition Plan
Submitted September 2019

S019/P3006.pl2 - Proposed Site Plan
Submitted September 2019

S019/P3007.pl2 - Proposed Lower Ground Level Plan
Submitted September 2019

S019/P3008.pl2 - Proposed Ground Level Plan
Submitted September 2019

S019/P3009.pl2 - Proposed Cinema Level Plan
Submitted September 2019

S019/P3010.pl2 - Proposed Auditorium Level Plan
Submitted September 2019

S019/P3011.pl1 - Proposed Roof Level Plan
Submitted September 2019

S019/P3012.pl1 - Proposed Car Park Plans
Submitted September 2019

S019/P3013.pl1 - Proposed Sections A and B
Submitted September 2019

S019/P3014.pl1 - Proposed Sections C and D
Submitted September 2019

S019/P3015.pl1 - Proposed Sections E and F
Submitted September 2019

S019/P3016.pl1 - Proposed Section G
Submitted September 2019

S019/P3017.pl1 - Proposed Site Sections 1
Submitted September 2019

S019/P3018.pl1 - Proposed Site Sections 2
Submitted September 2019

S019/P3019.pl1 - Proposed Site Sections 3
Submitted September 2019

S019/P3020.pl2 - Proposed North Elevations
Submitted September 2019

S019/P3021.pl2 - Proposed East Elevation
Submitted September 2019

S019/P3022.pl2 - Proposed South Elevation
Submitted September 2019

S019/P3023.pl2 - Proposed West Elevations
Submitted September 2019

S019/P3024.pl2 - Unit R1 Proposed Ground Floor Plan
Submitted September 2019

S019/P3025.pl1 - Unit R1 Proposed First Floor and Roof
Submitted September 2019

S019/P3026.pl5 - Unit R1 - Proposed North and West Elevations
Submitted September 2019

S019/P3027.pl5 - Unit R1 Proposed East and South Elevations
Submitted September 2019

S019/P3028.pl1 - Unit R1 Proposed Section
Submitted September 2019

S019/P3029.pl2 - Hotel Proposed Ground Floor Site Plan
Submitted September 2019

S019/P3030.pl1 - Hotel Proposed Floor Plan
Submitted September 2019

S019/P3031.pl2 - Hotel Proposed North Elevation
Submitted September 2019

S019/P3032.pl2 - Hotel Proposed East Elevation
Submitted September 2019

S019/P3033.pl2 - Hotel Proposed South Elevation
Submitted September 2019

S019/P3034.pl3 - Hotel Proposed West Elevation
Submitted September 2019

S019/P3035.pl1 - Hotel - Proposed Section A-A and B-B
Submitted September 2019

S019/P3037.pl2 – Elevation/Section Detail 1
Submitted September 2019

S019/P3038.pl2 – Elevation/Section Detail 2
Submitted September 2019

S019/P3039.pl2 – Elevation/Section Detail 3
Submitted September 2019

S019/P3040.pl2 – Elevation/Section Detail 4
Submitted September 2019

S019/P3041.pl2 – Elevation/Section Detail 5
Submitted September 2019

S019/P3042.pl2 – Elevation/Section Detail 6
Submitted September 2019

S019/P3043.pl2 – Elevation/Section Detail 7
Submitted September 2019

S019/P3044.pl2 – Elevation/Section Detail 8
Submitted September 2019

S019/P3045.pl1 – Elevation/Section Detail 9
Submitted September 2019

S019/P3047.pl2 - Proposed Substation
Submitted September 2019

S019/P3048 pl1 - Proposed Public Toilet Plan
Submitted September 2019

S019/P3050 - Proposed South Elevation - Marine Parade
Submitted September 2019

S019/P3051 - Proposed South Elevation - Lucy Road
Submitted September 2019

S019/P3052.pl1 - Proposed Cycle Shelters (plans)
Submitted September 2019

S019/P3053 - Proposed Cycle Shelters (Elevations)
Submitted September 2019

S019/P3054.pl1 - Proposed Site Plan (Adopted Highway Boundary)
Submitted September 2019

S019/P3056.pl2 - Proposed Site Plan (with proposed area for stopping-up
and adoption)
Submitted September 2019

S019/P3057 - Proposed Site Sections 1 (Existing Ground Line Overlay)
Submitted September 2019

S019/P3058 - Proposed Site Section 2 (Existing Ground Line Overlay)
Submitted September 2019

S019/P3059 - Proposed Site Sections 3 (Existing Ground Line Overlay)
Submitted September 2019

S019/P3060 - Proposed North Elevations (Existing Ground Line Overlay)
Submitted September 2019

S019/P3061 - Proposed East Elevation (Existing Ground Line Overlay)
Submitted September 2019

S019/P3062 - Proposed South Elevation (Existing Ground Line Overlay)
Submitted September 2019

S019/P3063 - Proposed West Elevations (Existing Ground Line Overlay)
Submitted September 2019

S019/P3066 - Servicing Strategy Diagram – Proposed Site Plan
Submitted September 2019

S019/P3067 - Servicing Strategy Diagram - Proposed Lower Ground Floor
Plan
Submitted September 2019

S019/P3068 - Servicing Strategy Diagram - Proposed Ground Level Plan
Submitted September 2019

S019/P3069 - Servicing Strategy Diagram Service Corridor Plan
Submitted September 2019

S019/P3070 - Servicing Strategy Diagram Service Corridor Section
Submitted September 2019

739_SC_300_P02 - Landscape Sections 1 of 2
Submitted September 2019

739_SC_301_P02 - Landscape Sections 2 of 2
Submitted September 2019

739_PL_001_P07 - General Arrangement Plan
Submitted September 2019

739_PL_002_P05 - Rendered Landscape Masterplan
Submitted September 2019

6113-D-AIA_E – Prelim AIA
Submitted September 2019

- 4) No development shall take place, including any works of demolition, unless and until a Demolition and Construction Management Plan and Strategy to include a Dust Mitigation Strategy has been submitted to, and approved in writing by the Local Planning Authority. The approved Demolition and Construction Management Plan and Strategy shall be adhered to in full throughout the construction period. The Statement shall provide, amongst other things, for:
- i) the parking of vehicles of site operatives and visitors

- ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding
 - v) measures to control the emission of dust and dirt during construction
 - vi) a scheme for recycling/disposing of waste resulting from construction works that does not allow for the burning of waste on site.
 - vii) a dust management plan to include mitigation and boundary particulate monitoring during demolition and construction.
 - viii) details of the duration and location of any noisy activities.
- 5) No development shall take place, including any works of demolition, unless and until a Construction Noise and Vibration Management Plan and Strategy has been submitted to, and agreed in writing by the Local Planning Authority, for the control, mitigation and monitoring of noise and vibration from the construction phase. The approved Construction Noise and Vibration Management Plan and Strategy shall be adhered to in full throughout the construction period.
- 6) Demolition and construction works associated with this permission shall not take place outside 7.30am to 6pm Monday to Friday, 8.00am to 1.00pm Saturdays and at no time on Sunday or public holidays.
- 7) No development shall take place, including any works for demolition unless and until a Car Park Construction Mitigation Strategy, including a communication strategy along with a temporary signage strategy that includes providing supplementary temporary VMS signage linked to the Council's VMS, has been submitted to and approved in writing by the Local Planning Authority. This shall include details of available on-site public car parking during the construction period, which shall be made available where reasonably practicable. The approved Car Park Construction Mitigation Strategy shall be fully adhered to during the period of construction.
- 8) Prior to the first occupation of any buildings hereby approved by this permission or the bringing into use any area of car parking, a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include details of how customer noise and behaviour is managed on and off the premises; staff behaviour including but not limited to opening/closing premises; deliveries; waste disposal and storage; external space management; site maintenance; signage, staff training and dealing with customer complaints. The Noise Management Plan shall be implemented as approved prior to the first use of the development and thereafter retained in perpetuity.
- 9) Notwithstanding the details shown on the documents submitted and otherwise hereby approved, noise as a result of this development, from all noise sources including plant and equipment together with extract ventilation from any A3, A5 and D2 units shall not exceed 10 dB(A) (including tonal elements) below the background noise level as measured and expressed as a LA90, over a 15 minute period, from the boundary of the neighbouring residential properties, in perpetuity. Before the development is

brought into use background noise levels shall be established for the following periods:

Daytime: 0700 to 1900

Evening: 1900 to 2300

Night: 2300 to 0700

In order to establish background noise level a representative baseline noise survey shall be undertaken in accordance with BS 4142:2014+A1:2019 at the boundary of the nearest residential properties. This shall be undertaken by a suitably competent person and shall be submitted for approval prior to the installation of any plant or equipment across the site or the site being brought into use. The background noise level survey shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development hereby approved.

- 10) No development shall be undertaken unless and until details of an acoustic barrier along the eastern boundary of the site adjacent to the rear of the residential properties along Hartington Road, and around the hotel has been submitted to and approved in writing by the Local Planning Authority. The approved acoustic barrier shall be completed in accordance with the approved details prior to any demolition or construction works and shall thereafter be retained in perpetuity.
- 11) There shall be no external speakers installed at any part of the site. There shall be no amplified music played or use of public address systems in any external areas of the site. This shall include any amplified music from speakers in the doorways of all premises of any use hereby approved.
- 12) Notwithstanding the information submitted and otherwise hereby approved, the proposed substation shall not be constructed unless and until full details of the acoustic insulation of this building have been submitted to and approved in writing by the Local Planning Authority. The substation shall be constructed in full accordance with the approved details prior to its first use and shall be retained as such thereafter in perpetuity.
- 13) Notwithstanding the information submitted and otherwise hereby approved, the proposed substation shall not be constructed unless and until full details of the acoustic insulation of this building have been submitted to and approved in writing by the Local Planning Authority. The substation shall be constructed in full accordance with the approved details prior to its first use and shall be retained as such thereafter in perpetuity.
- 14) No development, excluding works of demolition, shall take place unless and until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details must include the following as a minimum:
 - i. Proposed finished levels or contours;
 - ii. Means of enclosure;
 - iii. Car parking layouts;

- iv. Other vehicle and pedestrian access and circulation
- v. Hard surfacing materials;
- vi. Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting, etc);
- vii. Details of the number, size, e.g. semi-mature trees species and location of the trees and shrubs to be planted together with a planting specification and details of the management of the site e.g. the uncompacting of the site prior to planting, the staking of trees and removal of the stakes once the trees are established and details of measures to enhance biodiversity within the site;
- viii. Maintenance Programme;
- ix. Timetable for completion of the soft landscaping and planting.
- x. Evidence of compatibility of landscaping scheme with the proposed drainage and other site services.
- xi. Details of any trees to be retained at the site.

The hard landscaping shall be completed prior to first occupation of the development and soft landscaping/planting shall be completed within the planting season following first occupation of the development. If any trees are removed or found to be dying, severely damaged or diseased within 5 years of planting them, they must be replaced with trees of a similar size and species as may be agreed with the Local Planning Authority.

15) No development shall take place, including any works for demolition, unless and until a detailed Arboricultural Method Statement and Tree Protection Plan has been submitted to and approved in writing by the Local Planning Authority. Details must include:

- (a) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree;
- (b) details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
- (c) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;
- (d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree or of any tree on land adjacent to the site;
- (e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

16) (a) Notwithstanding the details submitted and otherwise hereby approved, no development shall take place, other than that required to carry out additional necessary investigation which in this case may include demolition, site clearance, removal of underground tanks and old structures, and any construction until an investigation and risk assessment has been submitted to and approved in writing by the Local Planning Authority. The risk assessment shall assess the nature and extent of any contamination on the site whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be submitted to and approved in writing by the Local Planning Authority. The report of the findings must include:

- i) A survey of extent, scale and nature of contamination;
- ii) An assessment of the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - groundwaters and surface waters;
 - ecological systems;
 - archaeological sites and ancient monuments; and

An appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.

(b) *Remediation Scheme*: Notwithstanding the details submitted and otherwise hereby approved, no development shall be undertaken, other than where necessary to carry out additional investigation, until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. This must be conducted by a competent person and in accordance with DEFRA and the Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.

- (c) *Implementation of Remediation Scheme:* Notwithstanding the details submitted and otherwise hereby approved, no development shall be undertaken unless and until the measures set out in the detailed remediation scheme approved under part (b) of this condition shall have been implemented. The Local Planning Authority may give approval for the commencement of development prior to the completion of the remedial measures when it is deemed necessary to do so in order to complete the agreed remediation scheme. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced. This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.
- (d) *Reporting of Unexpected Contamination:* In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing within 7 days to the Local Planning Authority. Development must be halted on that part of the site until an assessment has been undertaken in accordance with the requirements of part (a) of this condition, and where remediation is necessary a remediation scheme, together with a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority in accordance with the requirements of part (b) of this condition. The measures in the approved remediation scheme must then be implemented in accordance with the approved timetable. Following completion of measures identified in the approved remediation scheme a validation report must be submitted to and approved in writing by the Local Planning Authority before the development is brought into use.
- 17) Notwithstanding the details submitted and otherwise hereby approved, prior to the commencement of development a strategy for the ventilation of all buildings and the treatment of all smells and fumes including the acoustic attenuation of all equipment for all buildings shall be submitted to and approved in writing by the Local Planning Authority.
- Thereafter prior to occupation of each individual unit a detailed scheme for the ventilation of the unit and the treatment of all smells and fumes including the details of the acoustic attenuation of all equipment for that unit shall be submitted to and agreed in writing with the Local Planning Authority. The schemes shall include details of equipment for the suppression of fumes, odours and/or dust including details of noise and vibration attenuation together with a maintenance schedule for the future operation of that equipment. The approved scheme for each building shall be implemented and completed prior to the first occupation of that building and managed in accordance with the approved maintenance regime in perpetuity
- 18) No drainage infrastructure shall be installed unless and until the detailed design of a surface water drainage scheme incorporating the following measures has been submitted to and agreed in writing with the Local Planning Authority in consultation with the Lead Local Flood Authority. The approved scheme shall be

implemented and completed prior to the first occupation of the development and maintained in accordance with the approved details for the lifetime of the development. The scheme shall address the following matters:

- a. Provide evidence of infiltration tests in accordance with BRE365 and if infiltration is found to be viable provide information in relation to the potential for ground instability or deterioration in groundwater quality because of infiltration.
 - b. Provide an updated drainage layout plan indicating the dimensions, storage volumes, pipe sizes and gradients, manhole cover and invert levels, proposed discharge rates, flow controls and final discharge connection in accordance with the submitted calculations. Updated engineering plans shall be provided for each of the Sustainable Urban Drainage Systems (SuDS) and critical drainage elements, including the flow control features.
 - c. Provide information on the management of health and safety risks in relation to feature design.
 - d. Provide a system valuation (including capital costs, operation and maintenance costs, cost contributions) and a demonstration of long-term economic viability
 - e. Provide a method statement regarding the management of surface water runoff arising during the construction phase of the project.
 - f. Provide a method statement for the management of surface water runoff arising during the construction
 - g. Provide evidence of consent from Anglian Water to discharge at the proposed discharge rate and location.
- 19) No service vehicles associated with the development hereby approved shall be permitted along Herbert Grove between the hours 1900 hours - 0700 hours Monday - Friday, 1300 hours - 0800 hours Saturday and at no time on Sundays and Bank or Public Holidays. No deliveries shall be taken at or dispatched from the approved service bays on Lucy Road, the service area that serves the standalone building on Lucy Road or the service area to the rear of the hotel between the hours of 1900 hours - 0700 hours Monday - Friday, 1300 hours - 0800 hours Saturday and at no time on Sundays and Bank or Public Holidays. During these restricted service hours, all servicing at the site must take place on the service lay by on the main site access, as approved and shown on drawing S019 P3054.pl1.
- 20) Notwithstanding the details submitted with this application no take-away collection or pick-up delivery activities other than by non-motorised vehicles shall be undertaken from the public highway in Herbert Grove associated with the A3, D2 and A5 uses hereby approved at any time.
- 21) The A3, A5 and D2 uses (other than the permitted cinema facility) hereby approved shall not be open to customers outside the hours of 0700 hours - 0000 hours.
- 22) The cinema facility hereby approved shall not be open to customers outside the hours 0700 hours - 0000 hours, with the exception of a maximum of three

screens and the associated circulation space that shall be allowed to operate 0700 - 0300 hours.

- 23) The use of all external seating areas associated with and served by the buildings hereby approved shall be restricted to 1200 - 2000 hours Monday to Thursday, 1200-2100 hrs Friday to Saturday and 1200 - 2000 hours Sunday, Public Holidays and Bank Holidays. The use of the external balcony of the unit on Lucy Road shall be restricted to 1200-2300 hours at all times. No customers shall be seated or served outside, during the excluded hours.
- 24) Notwithstanding the details submitted and otherwise hereby approved, all details of the external lighting to be installed in the development hereby approved shall be submitted to and approved by the Local Planning Authority before any part of the development is commenced, other than demolition. The development shall be carried out in accordance with those approved details before the development is first occupied or brought into use and retained as such thereafter.
- 25) Notwithstanding the details submitted and otherwise hereby approved, a detailed Lighting Management Plan, including measures to reduce unnecessary light pollution and energy uses shall be submitted to and approved by the Local Planning Authority prior to the first occupation of the development hereby approved. The lighting at the site shall be managed in accordance with the approved details of the approved plan and retained as such thereafter.
- 26) Notwithstanding the details submitted and otherwise hereby approved, prior to the first occupation of any part of any building hereby approved a Waste Management Plan and Service Plan for the development shall be submitted to and approved in writing by the Local Planning Authority. The plans shall include full details of the refuse and recycling facilities. Waste Management and Servicing of the development hereby approved shall be implemented prior to occupation in strict accordance with the approved details and carried out in perpetuity thereafter.
- 27) A design code for the ground and lower ground floor units in the leisure building and the café unit in the hotel building, hereby approved, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development (excluding works of demolition). The Design Code shall include details of shopfront treatments and signage strategy for these units. All treatments of the external facades of the units including applications to discharge Condition No. 31 shall be required to be implemented in accordance with the approved Design Code.
- 28) Prior to commencement of development (excluding works of demolition), the details of any external seating areas associated with and served by the development hereby approved, shall be submitted to and approved by the Local Planning Authority. Details are to include layout, details of any temporary or permanent structures and visual containment proposals to protect prevailing residential amenity. The seating areas shall be operated and laid out in accordance with the approved details and shall remain as such in perpetuity.
- 29) No development above ground level shall be undertaken unless and until full details and plans of the cladding on the main leisure building (to include sections of individual panels and larger sections) have been submitted to and approved in writing by the Local Planning Authority. The details shall include

design specifications for the cladding and include details of all fixings, profiles, offsets, angles and edge details. The development shall be carried out in accordance with the approved details before it is occupied and be permanently retained as such thereafter.

- 30) Notwithstanding the details shown on the plans submitted and otherwise hereby approved, the development of the hotel hereby granted permission shall not be occupied unless and until plans are submitted to the Local Planning Authority and approved in writing which clearly specify all the windows and other openings in the development that are to be permanently glazed with obscured glass and fixed shut or provided with only a fanlight (or other similar) opening and the manner and design in which these windows and openings are to be implemented. The development hereby permitted shall be implemented in full accordance with the details approved under this condition before it is first occupied or brought into use and shall be permanently retained as such thereafter. The windows included within such agreed scheme shall be glazed in obscure glass which is at least Level 4 on the Pilkington Levels of Privacy, or such equivalent as may be agreed in writing with the Local Planning Authority. In the case of multiple or double-glazed units at least one layer of glass in the relevant units shall be glazed in obscure glass to at least Level 4.
- 31) Notwithstanding the details submitted and otherwise hereby approved, no development above ground level shall be undertaken unless and until samples, full specifications and details of the materials to be used on all external elevations of all buildings hereby approved, including all cladding, roofs, balconies, balustrades, fenestration and all screen/boundary walls and fences, have been submitted to and approved by the Local Planning Authority. The development shall only be carried out in accordance with the approved details.
- 32) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) or any order revoking and re-enacting that Order with or without modification, no structure such as canopies, fences, loggias, trellises, telecommunication apparatus or satellite or radio antennae shall be installed within the development or on the buildings without the receipt of express planning permission from the Local Planning Authority.
- 33) Notwithstanding the details submitted and otherwise hereby approved, no development above ground level shall be undertaken unless and until full details of the proposed plant enclosures have been submitted to and approved in writing by the Local Planning Authority. The details shall include specification of materials, colours and any lighting proposed. The plant enclosures shall then be implemented and completed in complete accordance with the approved details prior to the first use of the development and thereafter retained permanently.
- 34) Notwithstanding the details submitted and otherwise hereby approved, no development above ground level shall be undertaken unless and until full details of the glazing to the south-western corner of the leisure building have been submitted to and approved in writing by the Local Planning Authority. The glazing shall be implemented and completed in accordance with the approved details prior to the first use of the development hereby approved.
- 35) No part of any building hereby approved shall be occupied and the car park shall not be first opened to the public until a Car Parking Management Plan has

- been submitted to and approved in writing by the Local Planning Authority. The plan shall include details of the layout and number of car parking spaces, timings for the delivery of on-site car parking spaces, the proposed car park charging scheme, and the management of availability of car parking spaces during low and high peak periods. The parking spaces shall be made available in full accordance with this approved Plan from its approval. All parking spaces in the development shall be available for members of the public and shall not be reserved for the use of any particular building or users.
- 36) Prior to first occupation of any part of any building hereby approved or the car park being open to the public, details of the number and location of electric car charging points to be installed in the car park shall be submitted to and approved in writing by the Local Planning Authority. At least 20% of all the car parking spaces shall have an electric charging point provided capable of charging vehicles from the outset and every car parking space shall be future proofed so that electric charging points can be installed when demand requires, e.g. four-way duct and drawpits to all service bays. The development shall be implemented in accordance with the approved details before it is brought into use.
- 37) No part of any building hereby approved shall be first occupied unless and until full details of the covered and secure cycle parking have been submitted to and approved in writing by the Local Planning Authority. This shall include provision for not less than 102 cycle spaces, of which 30 must be made available for staff cycle parking. The development shall be carried out in accordance with those approved details before the development is first occupied or brought into first use and shall be retained as such in perpetuity.
- 38) Notwithstanding the details submitted with this application, no part of any building hereby approved shall be first occupied unless and until full details of the proposed disabled car parking across the site's car parks have been submitted to and approved in writing by the Local Planning Authority. Details shall include the number of spaces, locations and specification of layout. The spaces shall be implemented in full compliance with the approved details prior to the first occupation of the development, or the bringing into use of the surface car park and shall be retained in perpetuity thereafter.
- 39) No development (excluding demolition) shall take place above ground floor slab level until evidence that the development is registered with a BREEAM certification body and a pre-assessment report (or design stage certificate with interim rating if available) has been submitted indicating that the development can achieve Very Good BREEAM level.
- 40) No building hereby approved shall be first occupied unless and until a final Certificate has been issued certifying that BREEAM (or any such equivalent national measure of sustainable building which replaces that scheme) rating "Very Good" has been achieved for that building.
- 41) Prior to the first occupation of any building within the development hereby approved a scheme detailing how at least 10% of the total energy needs of that building is to be supplied using on site renewable sources must be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in full prior to the first occupation of the building in question. This provision shall be made available for use for the lifetime of the development.

- 42) No development above ground level (excluding works of demolition) shall be undertaken unless and until details of the number, location, and specifications of bat and bird boxes have been submitted to and agreed in writing by the Local Planning Authority. The installation of the approved bird and bat boxes shall be carried out before the development hereby approved is first occupied or brought into first use and shall thereafter be retained in perpetuity.
- 43) All clearance, conversion and demolition work in association with the approved scheme shall be carried out outside of the bird nesting season which runs from March to September inclusive, unless it is necessary for works to commence in the nesting season, then a pre-commencement inspection of the vegetation and buildings for active bird nests should be carried out by a suitably qualified ecologist. Only if there are no active nests present shall work be allowed to commence within the bird nesting season.
- 44) Notwithstanding the details submitted and otherwise hereby approved, no demolition hereby approved shall take place in the bat breeding season unless and until all buildings to be demolished have been first checked by a suitably qualified ecologist and it has been demonstrated that there are no signs of any bat roosting activity in the buildings to be demolished.
- 45) Prior to the first occupation of the development hereby approved, details of a CCTV scheme to serve the internal and external areas of the development shall be submitted to and agreed in writing with the Local Planning Authority. The details shall include the location of CCTV equipment (including CCTV to cover the multi-level car park in the leisure building hereby approved), its management, monitoring of activity, policing and maintenance. The installation of the CCTV shall be carried out in accordance with the approved details before the development hereby approved is first occupied or brought into first use. The CCTV shall thereafter be operated in accordance with the approved details and shall be retained permanently thereafter.
- 46) Notwithstanding the details shown on the plans submitted, and otherwise hereby approved, the development shall not be first occupied unless and until full details of the public art to be provided to the north of St John's Square has been submitted to and approved in writing by the Local Planning Authority. The approved public art shall be provided in full prior to the first use of the development hereby approved.
- 47) No development above ground floor slab level shall be undertaken unless and until the Local Planning Authority has approved in writing a full scheme of highway works (including detailed designs and contract details) associated with the development which has previously been submitted to the Local Planning Authority. The development and the associated highway works shall thereafter be undertaken in accordance with the approved details before the development is brought into use.
- 48) The toilet facilities accessed via Lucy Road hereby approved shall be open to the public at all times and shall be retained in public use in perpetuity.

End of Conditions