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## Appeal Decision

Inquiry held between 2 and 11 August 2022

Site visits made on 1 and 8 August 2022

**by Mark Dakeyne BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities**

**Decision date: 23<sup>rd</sup> September 2022**

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**Appeal Ref: APP/V1505/W/21/3285386**

**Eastgate Shopping Centre, 85 Southernhay, Basildon SS14 1EB**

- 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 outline planning permission.
  - The appeal is made by InfraRed UK Lion Nominee 1 and InfraRed UK Lion Nominee 2 against Basildon District Council.
  - The application Ref 20/01104/OUT, is dated 28 August 2020.
  - The development proposed is : Outline application (all matters reserved) for the part-demolition and redevelopment of the Eastgate Centre and neighbouring land to provide a mix of town centre uses, including the provision of up to 2800 residential units (Class C3) (including built to rent, open market sale, student accommodation, later living and co-living (Class C3, C2 and sui generis uses)); consolidation and reconfiguration of existing retail and commercial floorspace (Class A1, A2, A3, A4, A5, D1, D2, sui generis and/or B1 uses); introduction of new retail and commercial floorspace (flexible within Class A1, A2, A3, A4, A5, D1, D2, sui generis and/or B1uses); reconfiguration of car parking; new public realm, footpaths and walkways, landscaping, open spaces and other associated physical works.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the part-demolition and redevelopment of the Eastgate Centre and neighbouring land to provide a mix of town centre uses, including the provision of up to 2800 residential units (Class C3) (including built to rent, open market sale, student accommodation, later living and co-living (Class C3, C2 and sui generis uses)); consolidation and reconfiguration of existing retail and commercial floorspace (Class A1, A2, A3, A4, A5, D1, D2, sui generis and/or B1 uses); introduction of new retail and commercial floorspace (flexible within Class A1, A2, A3, A4, A5, D1, D2, sui generis and/or B1uses); reconfiguration of car parking; new public realm, footpaths and walkways, landscaping, open spaces and other associated physical works, at Eastgate Shopping Centre, 85 Southernhay, Basildon SS14 1EB, in accordance with the terms of the application, Ref 20/01104/OUT, dated 28 August 2020, subject to the conditions set out in the attached schedule.

### Application for costs

2. At the inquiry an application for costs was made by InfraRed UK Lion Nominee 1 and InfraRed UK Lion Nominee 2 against Basildon District Council. This application is the subject of a separate decision.

## **Preliminary matters**

3. The application is in outline with all matters reserved. Parameters plans, a design code<sup>1</sup>, and a design and access statement<sup>2</sup> (DAS) form part of the application.
4. Since the application was submitted, the Use Classes Order<sup>3</sup> has been amended. The changes resulted in the creation of Class E (commercial, business and service uses) which subsumed Classes A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes), Class B1 (business) and some uses within Classes D1 and D2 (e.g. gyms, nurseries, and health centres). Use Classes A4 (drinking establishments) and A5 (hot food takeaways) were removed so that such uses would now be 'sui generis' (i.e. not falling within any use class). Similarly, cinemas and concert, dance and bingo halls are also now 'sui generis'.
5. The appeal must be decided with reference to the previous use classes because it was submitted before 1 September 2020. However, the amendments have implications because the development refers to uses which are now contained within Class E. Changes within Class E after the implementation of the development would not now require planning permission.
6. The development falls under Schedule 2 Part 10 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 as an urban development project exceeding the thresholds and criteria in Schedule 2 of the Regulations. An Environmental Statement (ES) was submitted by the appellant together with an update.
7. The ES as a whole complies with the above Regulations. The information provided is sufficient to enable the environmental impact of the proposed development to be assessed. The contents of the statement, comments received on it and all other environmental information submitted in connection with the appeal, including that given orally at the inquiry, have been taken into account in arriving at this decision.
8. As the appeal is against non-determination there is no decision notice. However, the Council resolved that, had it been in a position to determine the application, it would have been refused for the reasons set out in the Minutes of the Planning Committee of 22 June 2022.
9. Of those reasons, three relate in general terms to character and appearance and design. The fourth is concerned with the absence of obligations under Section 106 of the Planning Act (s106) to secure contributions or direct provision on a range of matters. By the close of the inquiry agreement had been reached between the appellants, Basildon District Council (BDC) and Essex County Council (ECC) on obligations such that BDC was satisfied that its fourth putative reason for refusal had been overcome. I will return to the s106 later in this decision.

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<sup>1</sup> Basildon Eastgate Quarter Design Code v7 dated 31 March 2021

<sup>2</sup> Basildon Eastgate Quarter Design and Access Statement dated 17 February 2021

<sup>3</sup> The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020

10. BDC cannot demonstrate a 5-year supply of deliverable housing sites against its housing requirement. As a result paragraph 11 d) of the National Planning Policy Framework (the Framework) is relevant.

### **Main Issues**

11. Taking into account the above and the evidence provided, the main issues are:
- (i) whether the proposal would result in a well-designed place, with particular reference to the height, scale, massing, and layout of the proposal, in the context of the existing buildings and townscape of Basildon Town Centre;
  - (ii) the effect on the designated heritage assets of Brooke House, and associated structures, and the Moat at Basildon Hall; and,
  - (iii) whether the proposals would accord with the development plan overall and whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

### **Reasons**

#### ***Well-designed place***

##### *Site and surroundings*

12. Much of Basildon, including parts of the town centre, was constructed in the 1950s and 1960s as one of the first wave of new towns brought forward under the New Towns Act of 1946. The formative parts of the town centre were reflective of new town planning and the modern movement of architecture. The key elements include a pedestrianised shopping centre, encircled by peripheral car parks and an inner ring road. The pedestrianised area is focused on a strong east-west route linking East Square, Town Square and St Martin's Square. Along this central core are mainly large low rise blocks with ground floor canopies giving a strong horizontal form.
13. Brooke House, a 14 storey building above a 3 storey pilotis, was added in 1962 to introduce residential accommodation into the town centre and as a striking vertical juxtaposition to the prevailing horizontality. The tower, with the nearby sunken square and raised pool and sculpture, provided the new town centrepiece.
14. Further tall buildings have been added to the townscape of Basildon centre, since Brooke House, notably Great Oaks House (11 storeys), Acorn House (7 storeys), Kelting House (9 storeys), Trafford House (8 storeys) and The Icon (10 storeys). Trafford House and The Icon lie to the south of the inner ring road, but form part of the town centre skyline. Some of these buildings are visible from medium and long distance viewpoints within the urban area and from the countryside beyond.
15. In addition, the baseline townscape will further change with the implementation of permitted schemes at Market Square<sup>4</sup> and Town Square<sup>5</sup>. The former includes full planning permission for buildings of up to 17 storeys. The latter, a hybrid permission, includes a building of 23 storeys. Furthermore, permission exists to extend Trafford House by a further 3 floors and develop the Great

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<sup>4</sup> Appeal Ref: APP/V1505/W/21/3279154 dated 17 December 2021

<sup>5</sup> Appeal Ref: APP/V1505/W/21/3281212 dated 30 March 2022

Oaks island site to the north-east of the town centre with buildings of up to 11 storeys.

16. There are a considerable number of empty retail units in the town centre, and the physical fabric of parts of it are worn. There is agreement between the main parties that there is an excess of retail floorspace in the town centre, and that the centre is in need of regeneration through mixed use developments, including an increase in residential accommodation. This is still the case despite the recent investments in the centre with the new college and cinema complexes and the introduction of new housing units through the Market Square and Town Square schemes and office conversions.
17. The inner ring road can be crossed at various points, including near the railway station where recent improvements have made the environment more pedestrian friendly. But overall the ring road is perceived as a barrier between surrounding residential areas and the town centre, being a car dominated route with a poor environment, including at the several underpasses.
18. The appeal site is to the south and south-east of the central east-west axis, much of it beyond the area originally planned as the town centre but now part of it. The site, which is just under 10 ha in size, comprises the 1970's Asda supermarket and associated multi-storey car park and filling station; the Eastgate Centre, a large indoor shopping centre which includes the now vacant former Debenhams Department Store and a multi-storey car park with ramped access; Kelting House, between Asda and the Eastgate Centre; and the bus station and the row of shops which front onto it known as South Walk. Other than South Walk, most of the buildings and structures turn their back on the inner ring road, Southernhay. Moreover, the block has a whole has poor permeability.

#### *The appeal proposal*

19. The appeal scheme would introduce a series of tall buildings set on podiums in the south-eastern segment of the town centre. The development would replace the Asda store and its associated car park and filling station, Kelting House, the eastern mall and Debenhams within the Eastgate Centre, and South Walk. The central core of the Eastgate Centre and the ramped car park access would be retained. The bus station is shown as being rebuilt or refurbished in situ.
20. The parameter plans (vertical limits of deviation) show nine blocks of development (Zones 1 to 9) with the building in Zone 2, to the east of the bus station, having the potential to be the tallest at some 65m or 21 storeys. The other blocks would step up to this marker building<sup>6</sup>, with the smallest buildings at some 15m high (5 storeys) being to the eastern edge of the site, closest to two-storey housing on the opposite side of Southernhay at Nether Priors. To the west, Zone 1 would contain the highest blocks other than the marker building, with maximum heights ranging from 41m to 59m (equivalent to between 13 and 19 storeys).
21. The parameter plans (horizontal limits of deviation) show routes between the blocks running both north to south and east to west. The main thoroughfares would have the potential to range in width from 10m to 35m, albeit with a

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<sup>6</sup> Referred to as Eastgate Tower

pinch point of no less than 8m between Zones 5 and 6. The DAS indicates that the routes would provide pedestrian, cycle and vehicle routes, the latter enabling access to car parking for the residential and commercial development, and servicing areas for, in particular, a more compact replacement Asda. The DAS shows the scope for landscaped streets containing some opportunities for open space together with elevated communal gardens for residents sited on the podiums within the blocks. One of the routes would involve the creation of a new north-south open street linking the bus station with Town Square/East Square<sup>7</sup>.

22. The floor plans show the disposition of the residential and town centre uses and parking referred to in the application. Retail and commercial floorspace would be at ground floor level in Zones 1 and 3 and at first floor level in Zone 9 (potential relocated Asda). Offices are shown at first floor level in Zone 3. Residential uses would predominate at ground floor level in Zones 2, 4 and 5, at first floor level in Zones 1 to 5 and 8 and in the upper floors in all the zones. Parking is shown at basement level in Zones 1 and 9, ground floor level in Zones 6 to 9 and first floor level in Zones 6 and 7. The application seeks flexibility between main town centre uses<sup>8</sup> with detail about the particular uses within zones emerging at reserved matters stages.
23. The provision of 2800 residential units is the maximum number tested by the ES and controlled by the parameter plans. The final illustrative scheme, reflecting negotiations that reduced the heights of many of the blocks, shows around 2250 units.
24. Community engagement prior to the application submission was affected by the Covid 19 pandemic. But there was consultation with Councillors, local stakeholders and the community as set out in the Statement of Community Involvement. The Design Code itself was not subject to pre-application engagement as the application submission preceded the publication of the 2021 Framework and the National Model Design Code, both of which advised that Design Codes should be based on effective community engagement. However, the planning application itself, including the Design Code, was subject to consultation. Moreover, I have not been made aware of any specific criticisms of the Design Code from the public. In any event the extent of consultation is primarily a matter for the Council and not a reason to resist the appeal. That said, concerns about the height of the development were raised by Councillors and the public in response to community engagement and consultation.

#### *Height, scale, and massing*

25. Putative reason for refusal 2 focuses on the height, scale and massing of the buildings proposed for Zones 1 to 4 and 9. But, having regard to the first reason and overall design approach, I will consider the impacts of the scheme as a whole.
26. The grouping of tall towers would significantly change the character of this part of the town centre. Moreover, taken together with the permitted schemes, the centre as a whole would undergo a transformation from a townscape of generally low slung buildings with the occasional taller building to a skyline with

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<sup>7</sup> Referred to as Eastgate Walk

<sup>8</sup> As defined by Annex 2 (Glossary) of the Framework

a significantly greater concentration of higher and bulkier buildings. This would represent a move away from the original design concept for the New Town centre. The material supporting the application underplays the significance of Basildon and does not fully explain the design approach in terms of New Town character. However, having regard to the entirety of the material before me and for the reasons explained later in this decision, the design approach would be acceptable in the context of the need to repurpose the town centre, whilst retaining its crowning features.

27. In assessing the cumulative impact of the appeal and permitted schemes, I have considered the range of viewpoints referred to in the evidence. From medium and longer distance views, such as Gloucester Park, Basildon Hall Park and the Church of St Nicholas, the increased height and massing would result in a significant magnitude of change but no worse than a neutral effect. Indeed, in signposting the transformation of the town centre and distinguishing it more clearly from surrounding low lying development, I would judge the effects to be beneficial.
28. The nearest residential properties beyond the town centre at Nether Priors predominantly face into the housing estate and are currently separated from the development by a service road, tall trees, and the inner ring road. There is no direct link to Southernhay. The greenery would be less effective as a screen during the winter months. The barrier formed by Southernhay would be downgraded. However, significant separation and intervening screening would remain. Moreover, the development at the eastern end would be at its lowest height. As such the visual effects would be acceptable.
29. From closer viewpoints around the inner ring road, such as Southernhay, the train station, Clay Hill Road and Roundacre, the height and massing would be imposing and involve a high magnitude of change. However, current views are dominated by the inner ring road and the utilitarian and uninviting appearance of the back of Asda and its car park and filling station and the low slung form of the bus station, South Walk and Debenhams. The scheme would result in a new townscape but one which would be capable of being of significantly higher quality. A combination of the parameter plans, Design Code, DAS, conditions, and reserved matters process would allow controls to ensure that the mass of the blocks was broken up and architectural treatment and materials were of high quality.
30. From within the original spine of the town centre and viewed from parts of East Walk in particular, the scheme's tall buildings, would form a backdrop to the lower buildings which front the centrepiece route. However, where the east-west axis narrows, the proximity of existing structures would limit views of the new development.
31. The siting of Eastgate Tower would reflect its role as a gateway into the town centre from the railway station. The creation of this focal point, with other buildings stepping up to it, would accentuate its role. It would lead people towards the town centre core through Eastgate Walk. Conversely it would form a suitable design stop in views south along Eastgate Walk from East Square. The Design Code indicates that the tower would be a slender building with a curved oval form. As such the tower has the potential to be a high quality marker building to complement Brooke House and the tallest building permitted at Town Square, thus improving the legibility of the town centre.

32. The move towards taller buildings, higher density, and residential communities in the town centre is supported by guidance and evidence documents produced by the Council over the last 10 years. The Basildon Town Centre Masterplan of 2012 envisaged buildings of up to 12 storeys and the delivery of between 1500 and 2000 new homes in and around the town centre.
33. The Draft Basildon Town Centre Masterplan of 2020 sought to bring about physical transformation and identified the potential to deliver at least 4200 homes in the town centre, with buildings over a range of heights (up to 4 storeys, between 4 and 8 storeys, buildings taller than 8 storeys, and a series of marker buildings and 'town centre point towers')<sup>9</sup>. No maximum height appears to have been specified for the marker buildings or towers. The Masterplan became part of the Basildon Town Centre Regeneration Strategy of 2020.
34. The Basildon Town Centre Urban Capacity Study of 2021, prepared to support the emerging Basildon Borough Local Plan (eBBLP), identified a number of options, including prevailing building heights of up to 15 storeys but some to be taller, and provision of between 3900 and 7800 homes in the town centre. The eBBLP has now been withdrawn by the Council and the 2020 Masterplan and Regeneration Strategy are not being pursued. But it is likely that any future local plan would need to rely on accommodating a large number of homes in the town centre to make effective use of land and protect the Green Belt.
35. I note that the Essex Quality Review Panel (EQRP), in considering the proposal in July 2020 before its submission, were supportive of the principles of the scale of the development for this location.

#### *Layout*

36. The use of large podiums, with tall buildings off them, would be reflective of the coarse grain of the existing town centre. A similar form will result from the implementation of the Market Square and Town Square permissions. The layout includes routes gravitating from the town centre edge towards its core.
37. The disposition of uses, as shown on the floor and active frontage plans, would result in the possibility of housing units, particularly in Zones 1 and 2, being close to service yards, the ramped access to the Eastgate Centre Car Park and the refurbished bus station. However, specific relationships are not embedded in the scheme. There would be sufficient controls through a combination of the Design Code, conditions, and reserved matters to ensure that suitable living conditions and a safe environment were provided. This could entail ensuring that there was no residential access or habitable rooms fronting onto service yards together with associated noise attenuation measures. The Design Code indicates that Eastgate Tower would reflect some of the features of Brooke House, including pilotis, so limiting the lower floors to access, lobby, and communal areas.
38. Active residential frontages within the development would face each other, but in most cases, blocks would be separated by at least 16-18m. Reasonable levels of outlook, privacy and light would be capable of being achieved. The accompanying assessment supports this view. A condition could be imposed to

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<sup>9</sup> See CD 2.28 page 22

- require that reserved matters applications are accompanied by further assessments of daylight and sunlight assessments. For an urban living environment the disposition of the blocks would be acceptable.
39. Existing residential units above the shops in Southernhay and proposed units at the Eastgate Business Centre would be close to buildings of significant height and massing, particularly those in Zone 9. However, the maisonettes in Southernhay appear to face primarily north-south rather than east. Moreover, the overall living environment would be given an uplift with the creation of the residential dominated neighbourhood to the east.
40. As referred to earlier, the layout would facilitate access routes across the site, enhancing links within the town centre and enabling greater permeability with surrounding areas. The potential 'pinch points', given the predominant minimum width of 10m, would not, to my mind, lead to a claustrophobic layout, providing the details to follow create interest and variety in the streetscape and building frontages. As referred to above, there would be sufficient safeguards to ensure that dwellings do not have a poor aspect.
41. The DAS landscape strategy and Design Code indicate that the access routes would also provide opportunities for open space and play areas with a range of soft and hard landscaping typologies. There would be scope to incorporate public art within the public realm. Further open space would be provided in podium and rooftop gardens for residents. There would also be the scope for private gardens where units would be at the same level as open space.
42. The application seeks a range of uses other than residential. There is the possibility that some noisier uses, such as pubs or takeaways, could be close to living space. However, the permission does not make this inevitable. There would be the opportunity to consider specific relationships at reserved matters stage in addition to ensuring that appropriate mitigation is in place. In creating a mixed-use town centre, it has to be expected that the living environment would be different to an out-of-centre housing estate. But the profile of occupiers is also likely to be different, as would their expectations.
43. The mix of uses, together with the increase in public areas with natural surveillance from homes and commercial units, would reduce the potential for crime and anti-social behaviour. There is no evidence before me that the concentration of residential units with a mix of tenures would create an unsafe or anti-social living environment. A condition could be imposed to ensure that development zones meet appropriate Secured by Design standards.
44. The retention of parts of the Eastgate Centre, including its car park access ramp, would lead to an element of poorer quality townscape remaining. However, the opportunities for higher quality buildings either side, an enhanced hard and soft landscaped setting, and improvements to existing facades, all of which could be secured by a permission, would provide the necessary uplift to these parts of the site. In addition, the open Eastgate Walk would improve permeability around the retained covered shopping centre.
45. The creation of routes between the blocks would increase the permeability of this part of the town centre. The downgrading of Southernhay, the formation of level crossing routes and the greening of the site and surrounding highway would create an appropriate setting for the taller buildings and town centre as a whole, as well as enhancing access to it, particularly for pedestrians and

cyclists. The tight collar formed by the inner ring road in the south-east quadrant of the town centre would be released.

46. The layout is reflective of the 2020 Masterplan in terms of the general disposition of uses, including a concentration of residential uses in the Eastgate Area and its key ambition of improving connectivity and movement.

*Detailed design and Design Code*

47. As the application is in outline, there are no details of the architectural treatment and materials before me. However, whilst the documents have some failings which I highlight below, I am satisfied that the DAS and Design Code provide sufficient guidance and direction for the Council such that a high quality scheme can be achieved at reserved matters stage in these respects.
48. The Design Code indicates that all dwelling units would be designed to meet the Nationally Designed Space Standard (NDSS). However, there is reference to smaller typologies needing to be subject to a suitable design justification. But given that the Framework links the use of the NDSS to the provision of a high standard of amenity for future users and achieving well-designed places, the use of the NDSS as a baseline space standard is appropriate. A condition could be imposed to secure this.
49. The Design Code also suggests that all residential units would have direct access to private amenity space in the form of private balconies, a private terrace or a garden or a wintergarden. However, the code also notes that, subject to suitable justification, Juliet balconies may be provided. Whilst the DAS indicates that the use of Juliet balconies could be quite common, particularly where facades are close, in my view, the documents when read together provide the necessary steers for an outline application. The Council, at reserved matters stage, would be able to consider whether Juliet balconies where appropriate for particular units having regard to factors such as the type of flat and the accessibility of communal gardens and other open space. Such an approach would be consistent with the advice in the Essex Design Guide<sup>10</sup>.
50. In terms of sustainability and the transition to a lower carbon future, the Design Code and DAS are light on how this would be achieved by the development. There is reference to the use of lower carbon materials on both the buildings and within the public realm and the use of energy saving technologies. However, the code does not include specific requirements. That said, energy modelling shows the potential for a significant reduction in CO2 emissions compared to the Building Regulations baseline. A condition could be imposed to require a sustainability and energy statement and achievement of Building Research Establishment Environmental Assessment Method standards for the commercial units. It should also be noted that the Government is set to introduce the Future Homes Standard from 2025 which would require new residential buildings to deliver significantly less carbon emissions.
51. The Design Code provides sufficient scope to allow a modernist approach, reflective of New Town principles to be followed at reserved matters stage whilst giving the flexibility for innovative contemporary design. This would include how the massing of buildings would be broken-up and how facades,

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<sup>10</sup> See CD 2.7 para 3.139

including ground level frontages, would be treated, incorporating elements of horizontality.

52. The Design Code purports to be a 'set of rules' to be overlaid on the parameters, but then talks about outline principles and general strategies. Moreover, some of the language is equivocal. In this respect the appellants' submission of an addendum to the Design Code<sup>11</sup> referring to the principles being mandatory instructions, unless otherwise specified, is to be welcomed and could be referenced in a condition.
53. There is no legal requirement for a developer to produce a design code. The Framework and the National Model Design Code point to codes being predominantly a tool for local planning authorities, albeit that developers may contribute to their production or prepare them in support of a planning application. That said a Design Code is highly desirable for a scheme of this scale and nature and was submitted. Therefore, it requires scrutiny. However, in the context of an outline application, the Design Code would provide the appropriate steer alongside tools such as conditions, the obligations, and the ability to control detail at reserved matters stage. In this respect the EQRP would have the opportunity to pick up many of the detailed considerations that they highlighted at reserved matters stage, including the language of the buildings reflecting New Town heritage.

#### *Conclusions on issue*

54. I conclude that the proposal would result in a well-designed place, with particular reference to the height, scale, massing, and layout of the proposal, in the context of the existing buildings and townscape of Basildon Town Centre. My reasoning and conclusions on this issue should be read alongside that relating to Brooke House which I deal with below.
55. The scheme would be transformative for Basildon Town Centre. The significant increased height, scale and massing of buildings and the introduction of significant levels of housing into the town centre should be seen in the context of the Government's objectives of making effective and efficient use of previously-developed urban land.
56. Policies BAS TC1 and BAS BE12 of the Basildon District Local Plan (BDLP) include a test of ensuring 'no material harm'. In terms of Policy BAS TC1 this test is specific to the design, form, scale, and materials being sympathetic and appropriate to the area. With regard to Policy BAS BE12, the reference is to the character of the surrounding area, including the street scene. As I have found that the development would result in a well-designed place, there would be compliance with these policies in respect of character and appearance.
57. The Framework and in particular Section 12 seeks the achievement of well-designed places. I have found that the proposal would add to the overall quality of the area and establish a strong sense of place. The development would be capable of being visually attractive assisted by the principles set by the Design Code and DAS, and the controls that can be ensured through the obligations and conditions and at reserved matters stage.
58. The National Design Guide (NDG) is not referred to in the documents supporting the original application or in the reasons for refusal, notwithstanding

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<sup>11</sup> See ID7

that the 2019 version was in place before the submission of the application. However, looking at the scheme in its entirety, noting the outline stage, and having regard to the controls that can be exercised by conditions, obligations and at reserved matters stage, I see nothing that goes against the principles set out within the NDG.

59. Whilst the scheme would to an extent create a new identity because the existing site has limited positive qualities, it would still be capable of drawing on local distinctiveness by reflecting the best bits of New Town architecture beyond the site<sup>12</sup>. As such I do not consider that the site has been approached as if it were a blank canvas. Moreover, I am satisfied that the factors referred to in paragraph 71 of the NDG in respect of proposals for tall buildings have had special consideration.
60. There is nothing in the development plan, national policy or the NDG that requires an exemplar scheme. That said, an outline permission would provide the framework for that aspiration to be potentially achieved further down the line.
61. The Essex Design Guide and the Historic England Tall Buildings Advice Note are guidance, not policy. The former does not provide specific advice on the type of high density scheme proposed, being primarily written with conventional residential layouts in mind. In terms of the latter, I have had regard to Section 5. The design approach has evolved over time, in the context of the Council's emerging masterplanning, and has included the examination of alternative means of delivering the benefits.

### ***Designated heritage assets***

62. Brooke House, and the sunken square features and raised pool and sculpture designed as townscape in conjunction with Brooke House, are Grade II listed buildings. The Moat at Basildon Hall, some 450m to the east of the appeal site, is a scheduled monument. There is agreement within the Heritage Statement of Common Ground (SOCG) that less than substantial harm would be caused to the significance of Brooke House and the Moat due to the impact on their settings. There would be some inter-visibility between designated heritage assets further afield, such as the Churches of St Nicholas and the Holy Cross, but their settings would not be adversely affected. Similarly, there would be no material impact on the setting of the non-designated heritage assets of Basildon Fire Station, St Martin of Tours Church, and its associated Millennium Bell Tower.
63. The significance of Brooke House is eluded to in paragraph 13 of this decision. It has distinctive bold architectural form and features. Its historic interest is derived from its development as the first tall building in the new town of Basildon, which itself was reflective of a period of social, economic, and political change after the 2<sup>nd</sup> World War. The building also has associations with the architect, Sir Basil Spence, and Henry Brooke, the Minister for Housing and Local Government at the time. The sunken square and raised pool and sculpture, as part of the new town centrepiece, have similar associations.
64. The appeal proposal would have no direct impact on Brooke House and the structures. The relationship between the building and townscape and their immediate setting, which is appreciated from close up in East Square and Town

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<sup>12</sup> See page 16 of the NDG

Square as part of designed views at the heart of the new town, would also not be materially impacted by the development. Moreover, Brooke House would still read as a standout building in these vistas.

65. In terms of the wider townscape setting, Brooke House's role as a landmark has already been affected by the tall buildings described in paragraph 14. The development of the even taller buildings at Market Square and Town Square will further erode the role. In particular the tall towers at the latter, which would be much closer than those of the appeal scheme, would form a backdrop to views along the east-west axis and obscure some views from the west. Brooke House may have begun its life as a singular tall building in the townscape but whether that was the intention is academic given what has transpired since.
66. That said, the proposal would have some further impact on the wider setting of Brooke House by obscuring views of it and diminishing its townscape prominence and status from some viewpoints. This would be particularly the case when looking from the south and east from where, in some views, it would be obscured. In other views the bulk and height of the appeal scheme would form part of the foreground or backdrop to Brooke House, drawing attention away from the original New Town centrepiece. Nevertheless the degree of separation and the interplay of different heights would still allow Brooke House to read as a visually separate entity from many viewpoints. Moreover, away from the east-west axis, we are not in the territory of designed views.
67. Furthermore, in some respects the scheme would enhance the significance of Brooke House in the townscape. For example the opening up of Eastgate Walk would provide views of Brooke House heading south to north from the direction of the railway and bus stations.
68. With regard to the Moat at Basildon Hall, it lies within a suburban housing area with the railway line to the south. There is a concrete play area at one end. These features do not make a positive contribution to the Moat's significance. Further away the town centre forms part of the backdrop. In view of the increased scale of town centre development as a result of the scheme, there would be a very small further adverse impact on the setting of the Moat.
69. All in all there would be less than substantial harm to the significance of Brooke House and the Moat at Basildon Hall due to an erosion of their wider settings. However, the harm to Brooke House is towards the lower end of the scale of less than substantial harm. For the Moat the harm is close to the bottom of the scale. Nevertheless, considerable importance and weight should be given to the desirability of preserving the setting of both the listed buildings and the ancient monument.

### ***Other material considerations***

70. The development would make effective use of brownfield land, achieve appropriate densities in accordance with paragraphs 124 and 125 of the Framework, and make a significant contribution to regenerating the town centre. In doing so it is likely to reduce the need to rely on Green Belt land within the area to meet housing needs, so assisting the Council in examining the options set out in paragraph 141 of the Framework.

71. As noted above, the Council cannot demonstrate a 5-year supply of deliverable housing sites. Indeed the shortfall is substantial even against the Council's latest position on supply (around 2.3 years)<sup>13</sup>. This figure includes around 440 units from sites without planning permission which are disputed by the appellants, including some on sites which are currently open space and 60 units derived from an undetermined application in Southernhay/East Walk. Taking into account the definition of deliverable in the Framework and the advice in the Planning Practice Guidance (PPG), the deliverability of these 440 units has not been demonstrated. Assuming that Market Square is fully completed in the period up to March 2027, the 5-year supply would be around 2470 dwellings or close to 2 years.
72. The proposal would be unlikely to contribute to the current 5-year supply, taking into account likely lead in times. However, it would be able to make a significant contribution of up to 2800 dwellings in the medium-term. This is in the context of a Council that has persistently under-delivered and is without an emerging plan to remedy the shortage of supply. There seems little prospect of the Council getting an adopted plan in place before 2025 and even that seems optimistic given the track record.
73. Although affordable housing provision could be as little as 5%, this figure is supported by viability information. There is a prospect of a mix of tenure types within the development as flagged by the s106. The development would make a significant contribution to meeting housing needs, in the context of a very serious shortfall in supply, resulting in substantial social benefits.
74. The housing would also give rise to significant economic benefits during the construction period and longer term with the increased local spend. The overall development, alongside other schemes, has the potential to diversify uses, including expanding the evening economy, and would act as a catalyst for the town centre as a whole, increasing investor, consumer and resident confidence which would have further knock-on economic benefits. Whilst these economic benefits have not been quantified, they would be substantial.
75. An alternative form of development might also realise similar social and economic benefits. However, there is no guarantee that a different scheme would come forward, particularly in view of the costs and uncertainties of achieving a permission. Moreover, no alternative scheme is before me. The weight to be attributed to the benefits are specific to the appeal proposal.
76. The development would be likely to reduce highway movements, following the construction phase, compared to the present uses. The scheme, taking into account potential obligations and conditions, would support sustainable modes of travel and lead to a number of transport improvements. The likely parking provision would be acceptable given the availability of alternative modes of travel other than the private vehicle.
77. The development would necessitate the relocation of some existing businesses who rent properties in the Eastgate Centre and South Walk. Some disruption to existing businesses is inevitable with a redevelopment scheme of this scale. However, other opportunities are likely to exist in the town centre as a whole given the number of vacant premises. In addition, a condition could be imposed requiring a support and relocation strategy.

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<sup>13</sup> See ID10

78. Although retail floorspace in the town centre would contract, the introduction of a different mix of uses from this proposal and other recent schemes would enhance the vitality and viability of the town centre as a whole.
79. It is common practice for an applicant to apply for planning permission on land that they do not control. Such circumstances are not a reason to withhold permission. It is acknowledged that the scheme does not meet the definition of deliverable. However, the site is in a suitable location for housing and has a reasonable prospect of being available and viably developed. Therefore, the site is developable.

### ***Development plan***

80. As agreed by the main parties in the Planning SOCG, Policies BAS TC1 and BAS BE12 of the Basildon District Local Plan are amongst the most important for determining the application as they contain criteria relating to design and character. As noted above there would be compliance with these policies in respect of the first main issue. The design and character elements of the policies are broadly consistent with the policies of the Framework which seek well-designed places and therefore should attract significant weight and be considered up-to-date.
81. BAS TC6 (Residential Development in Town Centres) is also relevant. There would be a degree of conflict with this policy in that the proposal would lead to the establishment of residential development within existing established shopping frontages. Moreover, in respect of criterion i. of Policy BAS TC1 there would be a significant net loss of retailing floorspace. However, these policies, insofar as they apply to housing in town centres, should only be afforded moderate weight as they are not fully consistent with Sections 7, 11, 12 and 13 of the Framework. Moreover, conflict in these respects was not referred to in the putative reasons for refusal. Policies BAS SH4 and BAS SH5 (Town Centre Shopping Frontages), whilst not directly relevant to the appeal, have limited weight as they are not consistent with national policy.
82. There would be compliance with other relevant development plan policies referred to now that the s106 has been completed and given the scope of conditions and the control that can be exercised at reserved matters stage, including affordable housing (BAS S5), healthcare developments (BAS BE24), public transport (BAS T5), shopfronts (BAS BE17), and crime prevention (BAS BE24). There would be compliance with the development plan overall.

### ***Planning obligations***

83. A s106 agreement between the appellants, the administrators, BDC and ECC was completed after the inquiry<sup>14</sup>. A Deed of Variation providing a clearer site location plan was subsequently entered into<sup>15</sup>. Draft versions of the s106 were before the inquiry, discussions being informed by a Community Infrastructure Levy (CIL) Compliance Statement<sup>16</sup> and supporting documents.
84. The obligations, in summary, include financial contributions for: an employment and skills plan; the town centre cultural strategy; childcare/early years, primary and secondary education, including funding for a new facility for

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<sup>14</sup> Document R3

<sup>15</sup> Document R4

<sup>16</sup> Document ID19

- the former; open space, play and sports provision; town centre highway and pedestrian improvements; sustainable transport, including local walking and cycling; Travel Plan Monitoring; measures to monitor existing on street parking controls in the vicinity of the site; and an overall combined monitoring fee.
85. There are also contributions towards the Essex Coast Recreation Disturbance Avoidance Strategy. This follows on from an appropriate assessment which indicated that the site lies within the zone of influence of Essex Coast European sites, including the Thames Estuary and Marshes Special Protection Area. The development, in combination with other committed and planned development, would increase recreational pressure on the European sites, despite the presence of large areas of open space near the town centre. The contributions would mitigate the cumulative effects by funding appropriate mitigation in the form of physical and management interventions. The mitigation should ensure that the proposal, either alone or in combination with other plans or projects, would not give rise to any significant effects on European designated sites.
86. Other obligations include a requirement to submit an employment and skills plans for construction and occupation phases, the latter to include affordable commercial floorspace; provision of a public art scheme; management and maintenance of open space within the development; the appointment of a design champion; referral of reserved matters schemes to the EQRP; ongoing management of the Eastgate Shopping Centre; and ensuring that historic building recording is undertaken by a suitably qualified body.
87. In terms of the range of uses and housing, there are obligations relating to the submission of site-wide indicative accommodation and residential mixes; and the management of affordable housing, build for rent, student accommodation and co-living units. Private sale and build for rent units would need to be first marketed locally. At least 5% of units would be provided as affordable housing but with review mechanisms to reassess viability at reserved matters stage. 10% of units in reserved matters applications of 600 residential units or over would be designed to be suitable for later living accommodation.
88. The s106 also includes obligations relating to transport and highways, including those connected with travel planning; the provision of car club spaces; the carrying out of highway condition surveys; and the ongoing maintenance of any new bus station and taxi rank.
89. There is also an obligation that requires the provision of a healthcare facility of at least 750 sq m within the development. If the National Health Service do not require the facility there are mechanisms requiring a health care contribution instead.
90. The CIL Compliance Statement, together with supporting documents, set out the justification for the obligations related to the tests set out in the CIL Regulations. There is clear support through development plan policies, national policy, and the use of transparent formulae.
91. The obligations are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. As such, they all meet the requirements of paragraph 57 of the Framework, and CIL Regulation 122(2).

### ***Planning conditions***

92. I have considered the conditions put forward by the parties against the advice set out in the Framework and PPG. I have amended the wording of some conditions as necessary so that they meet the relevant tests.
93. Conditions relating to the scope and timing of the submission of reserved matters are necessary for an outline application (conditions 1-2). The final date for submission reflects the likely build programme. Commencement of the development within a specified period is also required to accord with the Planning Act (condition 3). In view of the scope of the permission and for certainty, the parameter plans, land use plans, Design Code and DAS need to be specified by condition (condition 4). As parts of the Eastgate Shopping Centre are to be retained and there is limited information as to how the remaining areas would be treated, a condition is necessary to ensure that any making good and refurbishment is controlled (condition 5) (paragraph 44 of this decision refers).
94. Taking into account the scale of the scheme and the likely number of development zones, conditions are required to control phasing overall and within each zone as well as how access would be maintained (conditions 6-8). Similarly, the scale of the scheme justifies a construction management condition to protect the environment and nearby homes and businesses (condition 9).
95. Potential contamination needs to be investigated and dealt with to minimise risks to future users of the site and neighbouring land (conditions 10-13). Archaeological investigation and building recording should be secured due to the likelihood of historic deposits and to keep a record of the evolution of the new town (conditions 14-15). As businesses would be displaced, a support and relocation strategy are needed (condition 16) (paragraph 77 refers). A surface water scheme and pipe clearance are required to reduce the risk of flooding (conditions 17-18). Highway improvements are necessary to ensure that access for all users is maintained and improved (condition 19).
96. Conditions 5 to 19 need to be discharged pre-commencement as they are matters that require investigation or need to be in place before works commence; or are details that would affect the layout and design.
97. Certain details need to accompany reserved matters applications to ensure a well-designed development. So conditions 20 to 26 would secure compliance with the Design Code and DAS (paragraph 52 refers); consideration of existing trees; and the submission of fire statements, wind testing, light, thermal comfort, sustainability and energy, and health impact reports (paragraphs 38 and 50 refer).
98. Conditions are also required for accessibility measures for residential and non-residential development in the interests of an inclusive development (conditions 27-28). Preventing residential access onto service yards should be specified to ensure a high standard of amenity for future occupiers (paragraph 37 refers). Conditions relating to bird nesting and bat roosting provisions, living/brown roofs and ecological enhancement are required for biodiversity net gain and to encourage sustainable drainage (conditions 29-31). Conditions are also imposed to control ground levels, noise, materials, and internal space and glazing standards in the interests of the appearance, living environment and

resilience of the development (conditions 32-36) (paragraph 48 refers). Conditions are necessary to require vehicle and cycle parking schemes to ensure provision for a range of transport modes (conditions 37-38).

99. Conditions are needed relating to secure by design, lighting, communal tv systems, servicing, and open space to create a well-designed place (conditions 39-43) (paragraph 43 refers). With regard to open space, the Council's suggestion that a specific standard of private provision is required would, in my view, be too inflexible and would not necessarily take into account the type of residential units or the proximity and typology of communal space.
100. Maintenance requirements for surface water, a refuse and recycling strategy, noise impact assessments for non-residential units, and ventilation for commercial kitchens would reduce flood risk and ensure a suitable living environment (conditions 44-47). Conditions relating to car park management and residential welcome packs would combat parking stress and promote sustainable and healthy lifestyles (conditions 48-49). However, a separate condition relating to publicity for existing on-street parking restrictions is not necessary taking into account the scope to include such information in the welcome packs.
101. Meanwhile uses for commercial floorspace would be catered for by condition 50. Condition 51 would secure directional signage. Ensuring that the bus station and taxi rank area are refurbished would be achieved by condition 52. These conditions are necessary to achieve a well-planned and welcoming development.
102. Ongoing maintenance of landscaping is necessary in the interests of the appearance of the development (condition 53). Controls on the hours of operation of the commercial units and the noise from plant are needed to ensure a suitable living environment (conditions 54-55). Conditions relating to the provision of superfast broadband, accessible and adaptable homes, and water efficiency, reflect modern and sustainable living and are supported by the Framework (conditions 56-58).
103. A separate condition dealing with boundary treatments is not necessary as such structures fall within the definition of landscaping. Whilst the preparation of a shopfront design guide would be desirable, I do not regard it as necessary in view of the scrutiny that can be exercised at reserved matters stage. A condition allowing interchange between certain use classes is not now necessary given the scope of Class E of the Use Classes Order (paragraphs 4 and 5 of this decision refer). A requirement to submit a revised Design Code is not necessary taking into account that the submitted code is suitable to achieve its intended purposes, when taken together with the controls achieved by the obligations and imposed conditions and the need to seek reserved matters approvals.

### ***Planning balance and conclusions***

104. There would be less than substantial harm to the significance of Brooke House due to the effect on its townscape setting. There would also be less than substantial harm to the Moat at Basildon Hall due to the effect on its setting. However, the less than substantial harm would be outweighed by the benefits that would arise from the proposal, notwithstanding the considerable weight

that should be given to the assets' conservation. I have not found any other material harm.

105. The proposal accords with the development plan overall. There are no material considerations which indicate that the development plan should not be followed. Indeed, the policies of the Framework and the economic, social, and environmental benefits that arise provide further support for the development.
106. I have found that some of the policies which are most important for determining the application are not out-of-date. However, because the application involves the provision of housing and due to the lack of a 5-year supply, Footnote 8 of the Framework is engaged. Therefore, the wording of paragraph 11 d) of the Framework comes into play. There are no policies of the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the proposed development. Therefore, moving onto the tilted balance under paragraph 11 d) ii. and taking into account my reasoning earlier, I find that the limited adverse impacts of granting planning permission would not significantly and demonstrably outweigh the substantial benefits, when assessed against the policies in the Framework taken as a whole.
107. For the reasons given above I conclude that the appeal should be allowed and outline planning permission granted subject to conditions.

*Mark Dakeyne*

INSPECTOR

**Attached**

Annex A – Schedule of Conditions

Annex B – Appearances

Annex C – Inquiry Documents

## **ANNEX A – SCHEDULE OF CONDITIONS**

### **Reserved Matters**

- 1) Approval of the details of the access, appearance, landscaping, layout, and scale of the proposed development (hereinafter called 'the reserved matters') shall be obtained from the local planning authority in writing before any development begins and the development shall not be carried out except in accordance with the details so approved.
- 2) The first application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this outline permission. Application for approval of the last reserved matters shall be made to the local planning authority before 1 September 2030.
- 3) The development approved by the first application for approval of the reserved matters permitted pursuant to condition 2 shall commence before the expiration of two years from the date of approval. All other development approved under reserved matters pursuant to condition 2 shall commence before the expiration of two years from the date of its approval.

### **Approved plans**

- 4) A. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
  - Drawing AP(04)3000 P02 - Site Location Plan
  - Drawing AP(04)3001 P02 - Demolition and Site Clearance Plan
  - Drawing AP(04)3009 P01 - Principal Land Use Plan - Basement Floor
  - Drawing AP(04)3010 P04 - Principal Land Use Plan - Ground Floor
  - Drawing AP(04)3011 P04 - Principal Land Use Plan - First Floor
  - Drawing AP(04)3012 P03 - Principal Land Use Plan - Typical Floor
  - Drawing AP(04)3020 P05 - Horizontal Limits of Deviation Plan
  - Drawing AP(04)3030 P09 - Vertical Limits of Deviation Plan
  - Drawing AP(05)3100 P07 - Parameters Elevations & Sections - Sheet One
  - Drawing AP(05)3101 P07 - Parameters Elevations & Sections - Sheet Two
  - Drawing AP(05)3102 P06 - Parameters Elevations & Sections - Sheet Three
  - Drawing AP(05)3103 P08 - Parameters Elevations & Sections - Sheet Four
  - Drawing AP(05)3104 P07 - Parameters Elevations & Sections - Sheet Five
  - Drawing AP(05)3105 P05 - Parameters Elevations & Sections - Sheet SixBasildon Eastgate Quarter Design Code v7 dated 31 March 2021 (incorporating site wide principles, building design and landscape design) as amended by 1A Uses of the Design Code (CD 9.5);  
Basildon Eastgate Quarter Design and Access Statement dated 17 February 2021.
- B. No approval of reserved matters (or other matters submitted for approval pursuant to the planning conditions), which would entail any material deviation from the Parameter Plans, shall be granted unless it is demonstrated as part of the associated application that any such deviation is either unlikely to give rise to any environmental effects which would have required different mitigation measures to ameliorate their effects in the context of the Environmental Impact Assessment (EIA) in comparison with the development as approved (and as assessed in the ES, Volumes I, II and III (August 2020) and the Supplementary Environmental Statement and

Updated Non-Technical Summary (February 2021) for the application) or, where such environmental effects are considered to exist, sufficient information is provided to the local planning authority to enable it to discharge its obligations under the EIA Regulations as part of the consideration or grant of the relevant application.

**Prior to commencement conditions**

- 5) A. Prior to the submission of any applications for reserved matters approval in relation to Zones 1-9 of the outline permission, a scheme of works for the retained Eastgate Shopping Centre buildings and structures, including demolition, construction, and a plan for their ongoing management, shall be submitted to, and approved in writing by, the local planning authority. This shall set out the scope of any internal and external works to the retained parts of the Eastgate Shopping Centre buildings.
- B. Each application for reserved matters approval shall be accompanied by a scheme of works for the relevant Development Zone in accordance with the scheme of works approved at A.
- C. The relevant Development Zone shall not be occupied until the approved details have been implemented.
- 6) A. No development shall commence, including any works of demolition, until a phasing plan showing how the development shall be implemented in a comprehensive manner has been submitted to, and approved in writing by, the local planning authority.
- B. The development shall then be implemented only in accordance with the approved phasing plan.
- 7) A. 'Development Zone' means any part of the site subject to a reserved matters application or approval.
- B. Prior to submission of the first reserved matters application for each Development Zone, a detailed phasing and implementation plan for the relevant Development Zone, including the order and timing of development of individual buildings, landscaped areas, play space, cycle parking and car parking areas, and surface water drainage and measures to prevent flooding, shall be submitted to, and approved in writing by, the local planning authority.
- C. The relevant Development Zone shall be carried out in accordance with the approved phasing and implementation plan.
- 8) A. No development shall commence in a phase of the development (pursuant to the phasing approved in condition 7) until a scheme, including detailed drawings showing the following in respect of the relevant phase has been submitted to, and approved in writing by, the local planning authority:
- (a) access through the site during works and upon completion of works in relation to any phasing, including the connections with any completed phases, and connections to the surrounding area and its network of cycle paths and footpaths; and
- (b) any temporary works, including any boundary treatment around later

phases; and,  
(c) details as to how the retained portions of the Eastgate Shopping Centre shall be accessible and functional during the construction phase(s).

B. Provisions for pedestrians shall be fully accessible to all including people with disabilities.

- 9) A. No development shall commence in a Development Zone, including any works of demolition, until a Construction Environmental Management Plan (CEMP), Site Waste Management Plan (SWMP) and Construction Logistics Plan (CLP) for the relevant Development Zone has been submitted to, and approved in writing by, the local planning authority. The CEMP, SWMP and CLP shall incorporate details of:
- i. construction traffic management;
  - ii. the parking of vehicles of site operatives and visitors;
  - iii. details of access to the site;
  - iv. loading and unloading and the storage of plant and materials used in constructing the development;
  - v. the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
  - vi. wheel washing facilities;
  - vii. measures to control the emission of noise, dust (as set out in ES Chapter 8: Air Quality) and dirt during construction;
  - viii. a scheme for recycling/disposing of waste resulting from demolition and construction works; and
  - ix. details of a nominated developer/resident liaison representative with an address and contact telephone number to be circulated to those residents consulted on the application. This person shall act as first point of contact for residents who have any problems or questions related to the ongoing development. As an alternative the developer of the relevant Development Zone shall provide evidence of the site being registered with the Considerate Constructors Scheme.

B. The approved CEMP, SWMP and CLP shall be implemented for the entire period of the construction works in the relevant Development Zone.

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

- 10) No development shall commence in a Development Zone, including any works of demolition, until a desk-top study has been carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the Development Zone. Within three months of completion of the desk-top study, the desk-top study and a non-technical summary for the relevant Development Zone shall be submitted to, and approved in writing by, the local planning authority.
- 11) If identified as being required following the completion of the desk-top study, a site investigation shall be carried out prior to commencement of development in the relevant Development Zone to characterise the nature and extent of any land contamination fully and effectively and/or pollution of controlled waters. The results of the site investigation for the relevant Development Zone shall be submitted for approval in writing to the local

planning authority within one month of the completion of the site investigation.

- 12) If identified as being required following the completion of the site investigation, a written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site, shall be submitted to, and approved in writing by, the local planning authority prior to commencement of development in the relevant Development Zone and all requirements shall be implemented and completed in accordance with the approved written method statement. If during redevelopment of the relevant Development Zone, contamination not previously considered is identified, then the local planning authority shall be notified immediately and no further work shall be carried out in the relevant Development Zone until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to, and approved in writing by, the local planning authority and all requirements shall be implemented and completed in accordance with the approved method statement.
- 13) Within one month of the completion of the measures identified in the remediation scheme for the relevant Development Zone, a full closure report shall be submitted for approval in writing to the local planning authority. The report shall provide verification that the required works regarding contamination for the relevant Development Zone have been carried out in accordance with the approved method statement(s).
- 14) No demolition or development shall commence in a Development Zone until:
  - A. A programme of archaeological investigation for the relevant Development Zone has been secured in accordance with a Written Scheme of Investigation (WSI) which has been submitted to, and approved in writing by, the local planning authority.
  - B. The satisfactory completion of any fieldwork required in accordance with the submitted WSI approved at A. above.
  - C. The developer shall submit a Final Archaeological Report for the relevant Development Zone to the local planning authority for approval in writing and deposition of a digital archive with the Archaeological Data Service (ADS) within 6 months of the completion of any fieldwork required for the relevant Development Zone.
- 15) No demolition or development (including conversion and alterations) shall commence in a Development Zone until:
  - A. A programme of historic building recording has been secured for the relevant Development Zone in accordance with a WSI which has been submitted to, and approved in writing by, the local planning authority; and
  - B. The satisfactory completion of fieldwork in accordance with the submitted WSI approved at A. above.
  - C. The developer shall submit a Historic Buildings Report for the relevant Development Zone to the local planning authority and deposition of a digital

archive with the ADS within 6 months of the completion of the fieldwork for the relevant Development Zone.

- 16) A. Prior to commencement of development in a Development Zone, a Town Centre Business Support and Relocation Strategy for the relevant Development Zone shall be submitted to, and approved in writing by, the local planning authority.

B. The approved Strategy shall be implemented prior to commencement of development in the relevant Development Zone.

- 17) A. No works except demolition shall take place in a Development Zone until a detailed surface water drainage scheme for the relevant Development Zone, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to, and approved in writing by, the local planning authority. The scheme shall include but not be limited to:

- Discharge from the sites: Eastgate Development, Bus Station and Southernhay Meadows and Eastern Gardens Phase 2 shall be limited to 50% betterment of 1 in 1 year brownfield rates for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change. All relevant permissions to discharge from the site into any outfall shall be demonstrated.
- Discharge from the sites: Southernhay Meadows and Eastern Gardens Phase 1 shall be limited to flow rates that achieve a minimum of 50% betterment of the equivalent brownfield 1 in 1 year, 1 in 30 year and 1 in 100 year rates. All relevant permissions to discharge from the site into any outfall shall be demonstrated.
- Confirmation of proposed discharge rates from the section of highway referred to as Southernhay shall be subject to receiving further information on the detailed design and overall phasing arrangements of the new development.
- Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 year plus 40% climate change critical storm event.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all run-off leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.

Detailed engineering drawings of each component of the drainage scheme.

A final drainage plan which details exceedance and conveyance routes, finished floor level and ground levels, and location and sizing of any drainage features.

A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

B. The approved scheme shall be implemented prior to occupation of the relevant Development Zone and shall be retained at all times thereafter.

C. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment prepared by ARUP dated 21 August 2020 (Issue 4).

18) No development shall commence in a Development Zone until the existing pipes within the extent of the Development Zone, which shall be used to convey surface water, are cleared of any blockage, and are restored to a fully working condition.

19) A. No part of the development hereby approved (other than enabling works) shall be commenced until a scheme of highway improvements required to accommodate the development, and phasing plan drawn to a scale of 1:200 which demonstrates how those improvements shall be implemented, has been submitted to, and approved in writing by, the local planning authority.

B. The approved scheme of highway improvements shall be carried out in full and in accordance with the terms of the phasing and implementation plan referred to in A above.

#### **Details to accompany reserved matters submissions**

20) Each application for reserved matters approval shall include a detailed statement which demonstrates compliance with the Basildon Eastgate Quarter Design Code v7 dated 31 March 2021 (incorporating site wide principles, building design and landscape design) and the principles of the Basildon Eastgate Quarter Design and Access Statement dated 17 February 2021.

21) A. Each application for reserved matters approval which incorporates existing trees shall be accompanied by a Tree Survey and Arboricultural Impact and Method Statement. The details shall have regard to the Arboricultural Report (Pre-Planning) dated 12 June 2020 prepared by Crown Tree Consultancy.

B. The relevant Development Zone shall be carried out in accordance with the approved details.

C. All trees to be retained within the relevant Development Zone shall be protected by secure, stout exclusion fencing erected at a minimum distance equivalent to the branch spread of the trees and in accordance with BS5837:2012 Trees in relation to design, demolition, and construction; and

D. Any works within the branch spread of the trees shall be by hand only. No materials, supplies, plant, or machinery shall be stored, parked, or allowed access beneath the branch spread or within the exclusion fencing. Any trees that are damaged or felled during construction work shall be replaced with semi-mature trees of the same or similar species in the next planting season, if not sooner.

- 22) A. Each application for reserved matters approval shall be accompanied by a Fire Statement produced by an independent third party suitably qualified assessor which shall detail the building(s) construction methods, products and materials used; the means of escape for all building users including those who are disabled or require level access together with the associated management plan; access for fire service personnel and equipment; ongoing maintenance and monitoring; and how provision shall be made within the site to enable fire appliances to gain access to the building(s).
- B. The approved details shall be implemented prior to occupation of the relevant Development Zone and shall be maintained at all times thereafter.
- 23) A. Each application for reserved matters approval shall be accompanied by a detailed wind testing report for the relevant Development Zone. The testing and report shall adhere to the following:
- Wind tunnel testing where building height exceeds 50 metres;
  - Use of Lawson Criteria to present the results;
  - Consideration of minimum of 16 wind directions, and not just the prevailing winds;
  - Combination of long-term London weather statistics (at least 10 years of weather data) with local wind flows obtained from wind tunnel tests;
  - Consideration of mean and gust speeds, and reporting of both winter and summer conditions;
  - The public realm shall be tested including the footways, cycleways and open spaces;
  - Assessment and description of expected pedestrian uses (sitting, standing, walking) in different parts of the site;
  - Proposed mitigation requirements (size, location, porosity).
- B. Any mitigation requirements shall be implemented prior to occupation of buildings in the relevant Development Zone and shall be maintained at all times thereafter.
- 24) Each application for reserved matters approval shall be accompanied by:
- A. A detailed Daylight, Sunlight and Overshadowing Assessment which assesses the proposed residential units and amenity/play spaces within the relevant Development Zone, as well as the impact on surrounding properties and amenity/play spaces, carried out in accordance with the Building Research Establishment (BRE) Site Layout Planning for Daylight and Sunlight (209 2022) (or other BRE document which supersedes this guidance).
- B. A Thermal Comfort Assessment of the proposed residential units to ensure that future occupants shall not be subject to overheating.
- C. The relevant Development Zone shall be carried out in accordance with the details approved under A. and B. above.
- 25) A. Each application for reserved matters approval shall be accompanied by a sustainability and energy statement demonstrating compliance with the Sustainability & Energy Statement dated August 2020 prepared by Icen Projects Ltd.
- B. The sustainability and energy statement shall also include details of the

location and quantum of any photovoltaic panels, Air Source Heat Pumps, or such other relevant infrastructure.

C. Consultation shall be undertaken with London Southend Airport in respect of any renewable energy proposals.

D. The relevant Development Zone shall not be occupied until the approved details have been implemented.

E. Development in each Development Zone shall be future proofed for connection to a district energy centre in accordance with details to be submitted to, and approved in writing by, the local planning authority prior to occupation of the relevant Development Zone.

F. The commercial units shall achieve a minimum Building Research Establishment Environmental Assessment Method rating of 'Good'.

26) A. Each application for reserved matters consent shall be accompanied by a Health Impact Assessment (HIA) Update Statement. The HIA Update Statement shall have regard to the HIA which accompanied the ES (Appendix 6.3).

B. The relevant Development Zone shall be carried out in accordance with the approved details.

**Prior to above ground development conditions**

27) A. No above ground new residential development shall take place in a Development Zone until a detailed Residential Accessibility Statement and Management Plan (including a programme for implementation) for the relevant Development Zone has been submitted to, and approved in writing by, the local planning authority. This shall outline the measures proposed to ensure an accessible and inclusive environment, both internally and externally, including, but not limited to, pedestrian routes, lift specifications, accessible toilet provision, access points and crossings, and Blue Badge spaces.

B. No residential access shall be provided onto service yards.

C. The approved details shall be implemented prior to occupation of the relevant Development Zone and shall be maintained at all times thereafter.

28) A. No above ground new non-residential development shall take place in a Development Zone until a detailed Non-Residential Accessibility Statement and Management Plan (including a programme for implementation) for the relevant Development Zone has been submitted to, and approved in writing by, the local planning authority. This shall outline the measures proposed to ensure an accessible and inclusive environment, both internally and externally, including, but not limited to, pedestrian routes, lift specifications, accessible toilet provision, access points and crossings, and Blue Badge spaces.

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

- 29) A. No above ground new development shall commence in a Development Zone until details of bird nesting and bat roosting bricks/boxes to be incorporated into the relevant Development Zone have been submitted to, and approved in writing by, the local planning authority.
- B. Prior to occupation of the relevant Development Zone the bird nesting and bat roosting bricks/boxes shall be installed on the building(s) or in any trees in accordance with the approved details and shall be retained at all times thereafter.
- 30) A. No above ground new development shall commence in a Development Zone until a detailed scheme for any living / brown roofs for the relevant Development Zone, including maintenance and management arrangements, has been submitted to, and approved in writing by, the local planning authority.
- B. The approved scheme shall be implemented prior to occupation of the relevant Development Zone and shall be maintained at all times thereafter.
- 31) A. No above ground new development shall commence in a Development Zone until a Biodiversity Survey for the relevant Development Zone has been submitted to, and approved in writing by, the local planning authority.
- B. A Biodiversity Enhancement Strategy for any identified protected and priority species within the relevant Development Zone in accordance with the Biodiversity Survey approved at A., following the recommendations made within the ES Chapter 13: Ecology, shall be submitted to, and approved in writing by, the local planning authority before any above ground development.
- For the avoidance of doubt, any such strategy for each Development Zone shall only require actions and works to be undertaken within the relevant Development Zone and not elsewhere.
- C. The works shall be implemented prior to occupation of the relevant Development Zone in accordance with the approved details and shall be retained in that manner thereafter.
- 32) A. Unless details are provided and approved as part of the reserved matters submission(s), no above ground new development shall take place within a Development Zone until details of the existing and finished site levels, the finished floor and ridge/roof levels and the finished external surface levels for the relevant Development Zone have been submitted to, and approved in writing by, the local planning authority.
- B. The relevant Development Zone shall be carried out in accordance with the approved details.
- 33) A. No above ground new development shall commence in a Development Zone until a scheme of noise insulation for any residential units within the relevant Development Zone has been submitted to, and approved in writing by, the local planning authority. The insulation provided shall ensure that the noise levels within the residential units (with windows partially open) does not exceed:

35-40 dB LAeq for living rooms (07.00 hours - 23.00 hours);  
30-35 dB LAeq for bedrooms (23.00 hours - 07.00 hours);  
45 dB L<sub>Amax</sub> for individual noise events in bedrooms (23.00 hours - 07.00 hours);  
50-55 dB LAeq for outdoor living area (07.00 hours - 23.00 hours).

B. The approved scheme shall be fully implemented before the first occupation of the residential unit to which it relates and shall be maintained at all times thereafter.

C. Should predicted noise levels (with partially open windows) exceed the criteria identified above then details of an alternative method of ventilation shall be submitted to, and approved in writing by, the local planning authority and fully implemented prior to the first occupation of the residential unit to which it relates and shall be maintained at all times thereafter.

34) A. Prior to installation of external façade surfaces in a Development Zone, full details, including samples, specifications, annotated plans, and fire safety ratings, of all materials to be used in the construction of the external surfaces in the relevant Development Zone shall be submitted to, and approved in writing by, the local planning authority.

B. The submitted details shall also demonstrate compatibility with the approved Basildon Eastgate Quarter Design Code v7 dated 31 March 2021.

C. The external façade surfaces in the relevant Development Zone shall only be implemented in accordance with the approved details and shall be retained at all times thereafter.

35) A. No above ground new development shall commence in a Development Zone until full details of the internal layout of the residential units within the relevant Development Zone have been submitted to, and approved in writing by, the local planning authority.

B. Notwithstanding the reference to smaller typologies in Section 2.10 of the Basildon Eastgate Quarter Design Code v7 dated 31 March 2021, all residential units shall be designed to comply with the Technical Housing Standards - Nationally Described Space Standard (2015), or such updated guidance.

C. The approved details shall be implemented prior to occupation of the relevant part of the Development Zone and shall be retained at all times thereafter.

36) A. No development comprising external elevational treatments in a Development Zone shall take place until details of the standard of glazing proposed to the ground floor frontages in the relevant Development Zone have been submitted to, and approved in writing by, the local planning authority.

B. The approved details shall be implemented prior to occupation of the relevant part of the Development Zone and shall be retained at all times thereafter.

- 37) A. No above ground new development shall commence in a Development Zone until a detailed scheme for the provision of any car parking/powered two-wheeler parking in the relevant Development Zone has been submitted to, and approved in writing by, the local planning authority. The submission shall include details of the vehicle parking layout, Blue Badge car parking spaces and active and passive electric vehicle charging points for the relevant Development Zone.
- B. The approved vehicle parking layout associated with any residential dwellings, shall be constructed, and marked out, prior to occupation of any residential dwellings within the relevant Development Zone, and thereafter retained permanently for the accommodation of vehicles of occupiers and visitors to the premises and not used for any other purpose.
- C. The approved Blue Badge car parking spaces for the residential dwellings shall be clearly marked with a British Standard disabled symbol prior to occupation of any residential dwellings within the relevant Development Zone and permanently retained for the use of disabled persons and their vehicles.
- D. The approved electric vehicle charging points for the residential dwellings shall be constructed and marked out and the charging points installed prior to occupation of residential dwellings within the relevant Development Zone, and thereafter retained permanently for the use of vehicles of occupiers and visitors to the premises and not used for any other purpose.
- E. The approved vehicle parking layout, Blue Badge car parking spaces and electric vehicle charging points associated with any commercial use shall be provided prior to the occupation of the relevant commercial use.

- 38) A. No above ground new development shall commence in a Development Zone until details of cycle parking for the relevant Development Zone have been submitted to, and approved in writing by, the local planning authority. The submission shall accord with the requirements of the Essex Planning Officers' Association cycle parking standards and shall include details of the appearance, location, layout, security, monitoring, and access arrangements for the cycle parking facilities.
- B. Cycle parking for the residential dwellings shall be implemented in accordance with the approved details prior to the occupation of the associated residential dwellings within the relevant Development Zone and shall be permanently retained thereafter and used for no other purpose. Any public cycle parking for the wider town centre shall be implemented in accordance with the approved details.

### **Prior to occupation conditions**

- 39) A. Prior to the occupation of any buildings in a Development Zone, a Secured by Design Statement for the relevant Development Zone shall be submitted to, and approved in writing by, the local planning authority. Reasonable endeavours shall be made to achieve a Gold award of the Secured by Design for Homes (2019 Guide) and Commercial (2015 Guide) (as relevant), or any equivalent document superseding these Guides.

B. A certificated Post Construction Review, or other verification process agreed with the local planning authority, shall be provided upon completion of the relevant Development Zone confirming that a Gold award has been achieved.

C. In the event that the agreed standards at A. are not achievable then prior to completion of the relevant Development Zone the applicant shall submit to the local planning authority for approval in writing justification for this and details of the highest award of the Secured by Design for Homes (2019 Guide) and Commercial (2015 Guide) or any equivalent document superseding these Guides which is achievable for the relevant Development Zone.

D. A certificated Post Construction Review, or other verification process agreed with the local planning authority, shall be provided upon completion of the relevant Development Zone, confirming that the agreed standards at C. as relevant, have been met.

40) A. Prior to occupation of a Development Zone, a Lighting Strategy shall be submitted to, and approved in writing by, the local planning authority for the relevant Development Zone. The Strategy shall explain:

- Any lighting proposed for amenity spaces and external communal areas.
- The proposed external building lighting.
- Confirmation that lighting shall achieve the standards in BS 5489.
- Details of measures to adequately mitigate light pollution affecting neighbouring residential properties.
- Confirmation that on-site lighting proposals comply with light spill mitigation requirements set out in the ES.

B. The Lighting Strategy shall accord with the Code of Practice for the Reduction of Light Pollution (2021) issued by the Institute of Lighting Engineers.

C. The relevant Development Zone shall be carried out in accordance with the approved Lighting Strategy and shall be permanently maintained thereafter.

41) A. Prior to occupation of a Development Zone, details of any communal television and/or satellite system for the residential dwellings within the relevant Development Zone shall be submitted to, and approved in writing by, the local planning authority.

B. The approved system shall be implemented prior to occupation of the residential units within the relevant Development Zone, maintained in working order and be made available to each residential unit.

C. No antennae or satellite dishes shall be installed on the exterior of buildings within the relevant Development Zone, with the exception of a single antennae or satellite dish per block to support the communal television and satellite system. The proposed antennae or satellite dishes

shall be designed to minimise their visual impact and shall not be mounted on any publicly visible façade.

- 42) A. Prior to occupation of a Development Zone, a Delivery and Servicing Plan for the relevant Development Zone shall be submitted to, and approved in writing by, the local planning authority. The Plan shall identify efficiencies and sustainability measures to be undertaken once the development is operational and shall incorporate details of deliveries to the site, and servicing arrangements, including the size of vehicles, routing and tracking of vehicles and times of deliveries and servicing.

B. The approved Plan shall be implemented on occupation of the development and adhered to thereafter.

- 43) A. No residential unit within a Phase of the development (pursuant to the phasing approved in respect of condition 6) shall be occupied until full details of the private amenity, communal amenity, and open spaces, including any children's playspace, for the relevant Phase have been submitted to, and approved in writing by, the local planning authority.

B. The approved details shall be implemented prior to occupation of the relevant part of the Phase and shall be retained at all times thereafter.

- 44) A. Prior to occupation of a Development Zone, a Maintenance Plan detailing the maintenance arrangements, including who is responsible for different elements of the surface water drainage system, and the maintenance activities/frequencies, for the relevant Development Zone shall be submitted to, and approved in writing by, the local planning authority. Should any part be maintainable by a maintenance company, details of long-term funding arrangements shall also be provided.

B. Drainage maintenance for the relevant Development Zone shall be carried out thereafter in accordance with the approved details.

C. The applicant(s) or any successor(s) in title for a Development Zone shall maintain yearly drainage logs of maintenance for the relevant Development Zone which shall be carried out in accordance with any approved Maintenance Plan. These shall be available for inspection upon request by the local planning authority.

- 45) A. Prior to occupation of a Development Zone, a detailed residential and commercial refuse and recycling strategy for the relevant Development Zone, including the design and location of the refuse and recycling stores, shall be submitted to, and approved in writing by, the local planning authority.

B. The approved refuse and recycling stores shall be provided before the occupation of the relevant Development Zone and thereafter permanently retained.

C. The Development Zone shall also make provision for any future connection to a centralised waste scheme in accordance with details to be submitted to, and approved in writing by, the local planning authority prior to occupation of the relevant Development Zone.

- 46) A. Prior to occupation of any non-residential units in a Development Zone, an additional detailed Noise Impact Assessment for the specific non-residential units within the Development Zone, detailing expected amplified noise levels and any mitigation measures to be introduced to overcome any such issues, shall be submitted to, and approved in writing by, the local planning authority.
- B. The use of the relevant non-residential units shall only commence once any mitigation measures set out in the Noise Impact Assessment have been carried out in accordance with the approved details.
- C. No amplified sound system shall be used in connection with any external areas relating to commercial premises.
- 47) A. Prior to occupation of any non-residential unit with a commercial kitchen, details of any ventilation system for the removal and treatment of odours, which include the location and appearance of external ducting and measures to mitigate system noise, shall be submitted to, and approved in writing by, the local planning authority.
- B. The approved details shall be fully implemented prior to the commencement of the relevant use and shall be maintained as approved at all times thereafter. The external ducting shall be removed when the authorised use of the premises for the sale of hot food ceases.
- C. Where a commercial kitchen is installed in a non-residential unit, a high efficiency activated carbon filtration unit shall be installed for that premises which shall ensure a maximum capture of odour producing chemicals and incorporate 100kg of carbon granules per 1,000 cubic feet per minute air flow. The extract system shall be isolated from the building structure with suitable mountings and shall terminate at a point at least 1 metre above the eaves.
- 48) A. Prior to occupation of a Development Zone, a Car Parking Management Plan for the relevant Development Zone shall be submitted to, and approved in writing by, the local planning authority.
- B. The approved details shall be implemented prior to occupation of the relevant Development Zone and retained thereafter.
- 49) A. Prior to occupation of any residential unit in a Development Zone, the developer shall submit to the local planning authority for approval in writing a Residential Welcome Pack for the relevant Development Zone which includes details relating to the non-availability of on-street parking permits, on-street parking restrictions and penalties for breach of these restrictions, details of Travel Plan measures to encourage the use of sustainable modes of transport, the availability of the car club scheme and health, well-being (including the promotion of local areas of natural green space) and community support information.
- B. The Residential Welcome Pack as approved shall be provided to all new residents in the relevant Development Zone on occupation.

- 50) A. Prior to occupation of a Development Zone, a strategy for providing meanwhile uses for any new commercial units within the relevant Development Zone, upon their completion as part of a wider phasing programme, shall be submitted to, and approved in writing by, the local planning authority.
- B. For a period of 3 years post-completion of the relevant Development Zone meanwhile uses shall be secured and implemented for any vacant commercial units in accordance with the approved strategy.
- 51) A. Prior to occupation of a Development Zone, details of all proposed directional signage within the relevant Development Zone shall be submitted to, and approved in writing by, the local planning authority.
- B. The approved signage shall be implemented prior to occupation of the relevant Development Zone and maintained thereafter.
- 52) Prior to the occupation of the relevant phase of the development, a new bus station and taxi stand shall be provided within the red line boundary (Drawing Ref: AP(04)3000P02 Site Location Plan). Details of these facilities, to include toilet and handwash facilities for drivers and employees, shall be approved as part of a reserved matters application following outline approval relating to the specific phase in which they are being proposed. The new bus station and taxi rank shall be constructed in accordance with the approved plans and retained. Any phase which proposes to demolish or remove the existing bus station or taxi stands shall propose replacement facilities within the reserved matters application for that same phase. The works shall be completed prior to occupation of that phase.

### **Ongoing compliance conditions**

- 53) Any plants, shrubs or trees required as part of the implementation of the landscaping reserved matters for any Phase of the development (pursuant to the phasing approved in respect of condition 7) that die or are removed, damaged or become diseased within a period of five years from the substantial completion of the relevant Phase of the development shall be replaced in the next planting season with others of a similar size and species.
- 54) The commercial uses hereby permitted shall only trade between 07:00 hours and 23:00 hours on any day and at no other time.
- 55) The combined rating level of the noise from any plant installed within a Development Zone (other than plant which is only to be operated in emergency circumstances) shall not exceed the existing background sound level at any time at the outside of noise-sensitive buildings. Any assessment of compliance with this condition shall be made according to the methodology and procedures presented in BS4142:2014.
- 56) All residential, commercial and community units within a Development Zone shall be fitted with superfast broadband capability which shall be maintained at all times thereafter.
- 57) A minimum of 90% of all residential units within a Development Zone shall comply with Building Regulations Optional Requirement Approved Document

M4(2) Category 2: Accessible and adaptable dwellings (2015 edition). Evidence of compliance shall be notified to the building control body appointed for the relevant Development Zone in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.

- 58) All residential units within a Development Zone shall comply with the water efficiency optional requirement in paragraphs 2.8 to 2.12 of the Building Regulations Approved Document G. Evidence of compliance shall be notified to the building control body appointed for the relevant Development Zone in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.

## **ANNEX B - APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY:

Craig Howell Williams of Kings Counsel

Assisted by Michael Feeney Pupil to Counsel

Instructed by Charlotte McKay, Principal Lawyer, BDC

*He called*

Paul Reynolds BA (Hons) PGDip MA CMLI FRSA	Tapestry Urbanism Ltd
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Elizabeth Reynolds BA (Hons) PGDip MRTPI AoU	Tapestry Urbanism Ltd
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*For the roundtable sessions*

Robert Davy BA (Hons) MA CHIM	Principal Planner, BDC
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Christine Lyons BSc (Hons) PGDip MRTPI	Head of Planning, BDC
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Charlotte McKay LLB (Hons) FILEX	Principal Lawyer, BDC
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Adele Lawrence BA MPlan MRTPI	Principal Planner, BDC
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Anne Cook	ECC Infrastructure Planning Team
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FOR THE APPELLANT:

Charles Banner of Kings Counsel

Assisted by Stephanie Hall of Counsel

Instructed by CMS Solicitors

*He called*

Brian Tracey BSc (Hons) B Arch Dip MBA RIBA	Leslie Jones Architecture
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Laurie Handcock MA MSc MIHBC	Iceni Projects
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John Mumby BA (Hons) MRTPI	Iceni Projects
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*For the roundtable  
sessions*

Nick Ireland  
BA (Hons) MTP MRTPI

Iceni Projects

Rebecca Roffe  
BA PG LLB LPC

CMS Solicitors

INTERESTED PERSONS:

Councillor Davida Ademuyiwa

St Martin's Ward, BDC

## **ANNEX C - LIST OF INQUIRY PLANS AND DOCUMENTS**

The Council's website has a link to the Core Documents and other documents **submitted before the inquiry**: <https://www.basildon.gov.uk/article/9287/In-the-news-Public-Inquiry-commencing-on-2-August-2022-Appeal-by-InfraRed-UK-Lion-Nominee-1-Limited-in-administration-and-InfraRed-UK-Lion-Nominee-2-Limited-in-administration>

In addition, the following documents were **submitted at the inquiry**. Most of these are also available via the above web page:

- ID1 Appellant's opening statement (CD 9.1)
- ID2 BDC's opening statement (CD 9.2)
- ID3 Town Centre Context Plans (showing distances of developments from Brooke House) (CD 9.3)
- ID4 Evidence in Chief Townscape Character Presentation (CD 5.20)
- ID5 Basildon Council Local Cycling and Walking Infrastructure Plan (CD 2.32)
- ID6 Statement from Councillor Davida Ademuyiwa (CD 9.4)
- ID7 Possible Addendum to the Design Code – 1A Uses of the Design Code (CD 9.5)
- ID8 Addendum to the Five-Year HLS SOCG (CD 5.21)
- ID9 Note on East Square Development (CD 9.7)
- ID10 Post roundtable HLS Position Note (CD 9.8)
- ID11 Letter from DLUHC setting out expectations on timescale for Basildon Local Plan preparation (CD 9.9)
- ID12 Minutes of BDC Planning Committee 22 April 2021 (CD 5.22)
- ID13 Minutes of BDC Planning Committee 1 December 2021 (CD 5.23)
- ID14 Listed Elements from Cinema scheme condition discharge (CD 9.11)
- ID15 Market Square Ground Floor Masterplan (CD 9.12)
- ID16 Pages from Market Square DAS (CD 9.13)
- ID17 Town Square Proposed Level 00 (CD 9.14)
- ID18 Pages from Town Square DAS (CD 9.15)
- ID19 CIL Compliance Statement and supporting documents
- ID20 Council's closing statement (CD 9.16)
- ID21 Appellants' closing statement (CD 9.17)
- ID22 Appellants' costs application

The following documents were **submitted after the close of the inquiry**, with the Inspector's agreement:

R1 Costs response by BDC

R2 Final agreed draft of s106 (CD 5.24)

R3 Completed s106 agreement dated 26 August 2022 (CD 5.25)

R4 Deed of Variation to s106 agreement dated 13 September 2022



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## Costs Decision

Inquiry held between 2 and 11 August 2022

Site visits made on 1 and 8 August 2022

**by Mark Dakeyne BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 23<sup>rd</sup> September 2022**

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### **Costs application in relation to Appeal Ref: APP/V1505/W/21/3285386 Eastgate Shopping Centre, 85 Southernhay, Basildon SS14 1EB**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by InfraRed UK Lion Nominee 1 and InfraRed UK Lion Nominee 2 for a full award of costs against Basildon District Council.
  - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the part-demolition and redevelopment of the Eastgate Centre and neighbouring land to provide a mix of town centre uses, including the provision of up to 2800 residential units (Class C3) (including built to rent, open market sale, student accommodation, later living and co-living (Class C3, C2 and sui generis uses)); consolidation and reconfiguration of existing retail and commercial floorspace (Class A1, A2, A3, A4, A5, D1, D2, sui generis and/or B1 uses); introduction of new retail and commercial floorspace (flexible within Class A1, A2, A3, A4, A5, D1, D2, sui generis and/or B1 uses); reconfiguration of car parking; new public realm, footpaths and walkways, landscaping, open spaces and other associated physical works.
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### **Decision**

1. The application for an award of costs is refused.

### **The submissions for InfraRed UK Lion Nominee 1 and InfraRed UK Lion Nominee 2**

2. The costs application was submitted in writing at the inquiry. The appellants sought a full award of costs

### **The response by Basildon District Council**

3. With my agreement the Council's response was made in writing after the close of the inquiry.

### **Reasons**

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The Council changed in position between April 2021, when it resolved to grant planning permission, and December 2021 and June 2022, when it twice resolved to refuse planning permission. The latter two resolutions followed the appellants' appeal against non-determination in October 2021. Due to the

- appeal it was necessary for the Council to review its position so that it could determine the stance that it would take at the inquiry, particularly as there had been a change in the constitution of the Council. In the above context, it is necessary to ask whether the Council substantiated its putative reasons for refusal through its evidence in advance of and during the inquiry.
6. As referred to in my appeal decision, the first three reasons for refusal relate to effects on character and appearance and design. The fourth was resolved by the end of the inquiry with final agreement on the terms of the obligations under Section 106 of the Planning Act, a not unusual or unreasonable position.
  7. Looking at matters in the round, the Council substantiated its concerns about the height, scale, and massing of the development by reference to the effects on the townscape in general and the wider setting of Brooke House in particular. As a significant development, it was a matter of planning judgement as to whether the scheme would be transformative in a positive way or would lead to an unacceptable change in the townscape.
  8. The Council provided evidence in support of its misgivings about the layout based on the parameter plans, Design and Access Statement (DAS) and Design Code. In particular, issues about the relationship between residential units and service yards and face to face distances were suitably put.
  9. The Council was entitled to refer to the design process and the failings of the DAS and Design Code. In particular it was reasonable to explain, in the Council's opinion, that these documents did not fully articulate the design approach in the context of the New Town form, architecture, and layout of Basildon Town Centre. Moreover, it was reasonable to point out that the Design Code was ambiguous in relation to matters such as space standards, amenity space, balconies, and a lower carbon future. In some respects I agreed with this analysis<sup>1</sup>, whilst coming to the conclusion that the development would be well-designed overall.
  10. The changed circumstances between April 2021 and June 2022 were reviewed by the Council. Notwithstanding the officers' advice, the Council was entitled to resist the appeal. The developments subject to the appeal decisions at Market Square and Town Square were of a smaller scale and different character. Therefore, whilst changing the baseline, they did not constitute similar cases which meant that the appeal scheme had to be determined in a consistent manner. The withdrawal of the emerging Basildon Borough Local Plan (eBBLP) and the worsening housing supply position were factors which made the case for granting planning permission stronger, but it did not lead to a situation where the appeal should clearly be permitted.
  11. It was also relevant for the Council to take into account the new version of the National Planning Policy Framework (the Framework) and the National Model Design Code, both published in July 2021. The former increased the emphasis on good design, the latter set out parameters to help local planning authorities decide what good quality design looks like in their area. It is also of note that the Council decided not to proceed with the Town Centre Regeneration Strategy which included the 2020 Masterplan in the period between April 2021 and June 2022. These documents, which reflected a move towards much greater concentrations of taller buildings in the town centre and were still

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<sup>1</sup> See in particular paragraphs 26, 48-50 and 52 of appeal decision

relevant as part of the evidence base for the eBBLP, had less weight as a result of the Council's withdrawal of the emerging local plan.

12. The Council was entitled to conclude that the development was not well designed<sup>2</sup> and should be refused and as a result that it would conflict with the most important policies for determining the application<sup>3</sup> and the policies of the Framework. In turn it was reasonable to come to the view that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
13. Ultimately I have not sided with the Council, but its position was substantiated by producing evidence and having regard to the development plan, national policy, and other material considerations. The fact that the first reason for refusal does not refer to development plan policy does not make it unreasonable as it relies on the very important material consideration of the Framework. Moreover, the first three reasons for refusal need to be read together.
14. Conditions could potentially have resolved some of the detailed matters referred to in evidence, but would not have been capable of overcoming the Council's concerns about the height, scale, massing, and layout of the development. Whilst the Inspector in the Town Square appeal imposed a condition requiring the submission of a design code, she was faced with the lack of a code, not whether a submitted code was adequate. As indicated above, the Council was entitled to consider the adequacy of what had been submitted in support of the design approach, whether or not all the documentation was required by legislation or policy.
15. The circumstances in the Stansted Airport costs application referred to by the appellants are different. Uttlesford District Council's evidence at the inquiry was ultimately that the substantive issues could be overcome by conditions or obligations, that the proposal would accord with the development plan, and that the planning balance was favourable. Basildon District Council took a different position on all three counts.
16. I therefore find, for the above reasons, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Mark Dakeyne*

INSPECTOR

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<sup>2</sup> Paragraph 134 of the Framework

<sup>3</sup> Policies BAS TC1 and BAS BE12 of the Basildon District Local Plan