



## Committee Report

**Planning Committee South** – 25 April 2023

**Application no** DC/23/0539/VOC

**Location**

Former Deben High School  
Garrison Lane  
Felixstowe  
Suffolk  
IP11 7RF

**Expiry date** 15 May 2023

**Application type** Variation of Conditions

**Applicant** East Suffolk Council

**Parish** Felixstowe

**Proposal** Variation of Condition No. 11 of DC/21/0541/FUL (Hybrid Application - Full Application for the construction of 45 apartments and maisonettes and 16 houses in buildings ranging in height from 2 to 3 storeys, conversion of retained assembly hall to provide 250m2 community space, 16 residential car parking spaces, 1 car park space for community hall, 137 cycle parking spaces, highways and public realm works, hard and soft landscaping, access and associated works and Outline application (with all matters reserved except for access, use and scale) for redevelopment and extension of retained sports hall to provide indoor bowls facility and cricket pitch with pavillion, 32 car parking spaces, 24 cycle spaces, landscaping and associated works. All matters reserved except for access, use and building heights) - alter the number of affordable homes.

**Case Officer** Marianna Hall  
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## **1. Summary**

- 1.1. This application seeks to vary Condition 11 of permission DC/21/0541/FUL, granted on 3 June 2021 for the redevelopment of the former Deben High School site on Garrison Lane in Felixstowe. Condition 11 requires a scheme for the provision of affordable housing to be submitted and approved, and requires no less than 42 of the 61 residential units approved to be affordable housing. The proposal is to amend the condition to require the policy compliant amount of 1 in 3 residential units to be affordable, being 20 units, with the additional 22 affordable units provided on a voluntary basis.
- 1.2. The application has come before members as the applicant and landowner is East Suffolk Council.
- 1.3. Although the reduction in the number of affordable homes that would be secured by condition (as amended) consequently reduces this benefit of the scheme, officers consider the development to remain in accordance with the development plan and therefore recommend approval of the application to vary Condition 11. Also whilst there is no certainty over the deliver of the 22 voluntary units being provided, the Council's Housing Team are proposing this in order to enable Homes England funding to deliver the extra 22 homes as affordable housing.

## **2. Site Description**

- 2.1. The application site comprises the site of the former Deben High School in Garrison Lane, Felixstowe. The majority of the former school buildings have been demolished, with the exception of the assembly hall which is to be converted to a community space and the sports hall which will be redeveloped to provide an indoor bowls facility. The site includes the former school playing field which is to be re-purposed as a cricket pitch. The site is located within the settlement boundary of Felixstowe and there are residential properties surrounding the site.

## **3. Proposal**

- 3.1. Application DC/21/0541/FUL was a hybrid application, seeking full planning permission for 45 apartments and maisonettes and 16 houses, conversion of the retained assembly hall to provide a community space, and associated car and cycle parking, highways, access and public realm works and hard and soft landscaping; and outline planning permission for the redevelopment and extension of the retained sports hall to provide an indoor bowls facility and cricket pitch with pavilion, with associated parking and landscaping. For this aspect of the development all matters were reserved except for access, use and building heights.
- 3.2. This application seeks to vary Condition 11 of permission DC/21/0541/FUL, which states:

“The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it and shall remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing.

The scheme shall include:

- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made, which shall consist of not less than 42 affordable dwellings. The details to include a mechanism for delivering an alternative method of providing affordable housing at the same level as approved in the event that no affordable housing provider acquires some or all of the affordable housing within a reasonable timescale.
- ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing,
- iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing;
- iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Reason: In accordance with Policy SCLLP5.10 of the Suffolk Coastal Local Plan (2020) to secure the appropriate provision of affordable housing on the site.”

- 3.3. The statement submitted with the application explains that the East Suffolk Housing Development Team are seeking a variation to this condition to aid the financial viability of the development and to help secure external funding from Homes England. After recent consultation with Homes England, the council are only able to request funding on affordable homes that are considered to be a voluntary over-provision and which are not required by policy or a condition/section 106 agreement. The council are seeking funding under the Homes England Affordable Homes Programme 2021-2026 in order to achieve the full 42 affordable homes.
- 3.4. The condition currently states that 42 affordable properties are required. Policy SCLP5.10 (Affordable Housing on Residential Developments) requires 1 in 3 units to be affordable dwellings, which for this development would equate to 20 affordable homes. The submitted statement explains that due to the current wording of the condition, the council are unable to gain funding for the 22 additional affordable units and without this funding there would be viability pressures on the scheme.
- 3.5. The application therefore seeks to vary Condition 11 to instead state that applicant is required to provide the policy compliant 20 affordable homes and that any increase to this number is a voluntary contribution. This would then allow the potential of Homes England Affordable Homes Programme 2021-2026 funding being achieved on the additional 22 affordable homes. The statement explains that if funding cannot be achieved, the proposal for 42 affordable homes may need to be reconsidered on viability grounds.

## 4. Consultees

### Third Party Representations

4.1. Ten representations of objection have been received, making the following summarised comments:

- Insufficient parking which will lead to more on-street parking.
- Concern regarding increased traffic.
- No mention of EV charging points for parking spaces.
- Is unrealistic that cycle storage of more than two spaces per unit is required.
- Proposed pathways to the 'pocket park' are not wanted by current residents and will only benefit the new residents.
- Amount of affordable housing proposed far exceeds the local planning policy requirement.
- Concern regarding increase in crime and antisocial behaviour as a result of the higher percentage of affordable housing.
- Existing school hall could be swamped by the three-storey buildings proposed; the flat roofed three-storey buildings are out of character with the area.
- Local bat population may be adversely affected by the height and density of the development and by the building works.
- Three-storey flats will be imposing, block views from our garden, result in loss of light and there will be overlooking and noise from the balconies.
- Concerns regarding impact of construction on the condition of our property.
- Proposed yellow bricks are not in keeping with the area.
- Felixstowe is a radon affected area.
- Concerns regarding ground gas migration.

Consultee	Date consulted	Date reply received
Felixstowe Town Council	23 February 2023	8 March 2023
Summary of comments: Committee recommended APPROVAL. We are pleased that this Variation of Condition does not reduce the number of Affordable Homes being delivered at the Deben Fields site. We are in support of the proposed amendment to the planning consent, which enables East Suffolk Council to access Homes England Funding, which will ensure that East Suffolk Council can subsidise the costs of this development and enable more Affordable Homes to be built in the future.		

Consultee	Date consulted	Date reply received
East Suffolk Planning Policy	23 February 2023	6 March 2023
Summary of comments: No objection, proposal would comply with the requirement in Policy SCLP5.10 that 1 in 3 units be affordable.		

Consultee	Date consulted	Date reply received
SCC Flooding Authority	23 February 2023	16 March 2023
Summary of comments: Recommend approval.		

Consultee	Date consulted	Date reply received
Water Management Alliance	23 February 2023	23 February 2023
Summary of comments: No comments to make regarding this variation of condition.		

Consultee	Date consulted	Date reply received
Natural England	23 February 2023	28 February 2023
Summary of comments: Generic advice note provided.		

Consultee	Date consulted	Date reply received
East Suffolk Environmental Protection	23 February 2023	8 March 2023
Summary of comments: Condition 11 relates to the provision of affordable housing which is not an environmental protection concern and as such I would have no comment to make in its regard.		

Consultee	Date consulted	Date reply received
East Suffolk Design And Conservation	23 February 2023	24 February 2023
Summary of comments: No comments.		

Consultee	Date consulted	Date reply received
SCC Fire And Rescue Service	23 February 2023	23 February 2023
Summary of comments: No additional comment to make in regards to the VOC.		

Consultee	Date consulted	Date reply received
SCC Section 106 Officer	23 February 2023	23 February 2023
Summary of comments: No comments on this application.		

Consultee	Date consulted	Date reply received
Ipswich & East Suffolk CCG & West Suffolk CCG	23 February 2023	10 March 2023
Summary of comments: Previous response is still relevant and up to date, no further comments.		

Consultee	Date consulted	Date reply received
East Suffolk Housing Development Team	23 February 2023	7 March 2023
Summary of comments: No objections or comments.		

Consultee	Date consulted	Date reply received
Felixstowe Society	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
Suffolk Preservation Society	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
Suffolk Wildlife Trust	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
East Suffolk Ecology	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
Environment Agency - Drainage	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
SCC Highways Department	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
Disability Forum	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
Network Rail Property (Eastern Region - Anglia)	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
East Suffolk CIL	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
SCC County Archaeological Unit	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
Suffolk Police Design Out Crime Officer	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
SUSTRANS	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
East Suffolk Economic Development	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
East Suffolk Landscape Team	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
Waste Management Services - East Suffolk Norse	23 February 2023	No response
Summary of comments: No response received.		



Consultee	Date consulted	Date reply received
East Suffolk Leisure And Play	23 February 2023	No response
Summary of comments: No response received.		

Consultee	Date consulted	Date reply received
Police - General	23 February 2023	No response
Summary of comments: No response received.		

## Publicity

The application has been the subject of the following press advertisement:

Category	Published	Expiry	Publication
Major Application	2 March 2023	23 March 2023	East Anglian Daily Times

## Site notices

General Site Notice	Reason for site notice: Major Application Date posted: 1 March 2023 Expiry date: 22 March 2023
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## 5. Planning policy

5.1. National Planning Policy Framework (NPPF) 2021

5.2. East Suffolk Council Suffolk Coastal Local Plan 2020:

- SCLP3.1: Strategy for Growth
- SCLP3.2: Settlement Hierarchy
- SCLP3.3: Settlement Boundaries
- SCLP3.5: Infrastructure Provision
- SCLP5.8: Housing Mix
- SCLP5.10: Affordable Housing on Residential Developments
- SCLP7.1: Sustainable Transport
- SCLP7.2: Parking Proposals and Standards
- SCLP8.1: Community Facilities and Assets
- SCLP8.2: Open Space
- SCLP9.2: Sustainable Construction
- SCLP9.6: Sustainable Drainage Systems
- SCLP9.7: Holistic Water Management
- SCLP10.1: Biodiversity and Geodiversity
- SCLP10.3: Environmental Quality

- SCLP11.1: Design Quality
- SCLP11.2: Residential Amenity
- SCLP11.3: Historic Environment
- SCLP11.6: Non-Designated Heritage Assets
- SCLP11.7: Archaeology

### 5.3. East Suffolk Council Supplementary Planning Documents:

- Historic Environment Supplementary Planning Document (2021)
- Affordable Housing Supplementary Planning Document (2022)
- Sustainable Construction Supplementary Planning Document (2022)

## 6. Planning Considerations

- 6.1. This application is made under section 73 of the Town and Country Planning Act 1990 to vary Condition 11 of planning permission DC/21/0541/FUL. Section 73(2) states that on such an application, the local planning authority will consider only the question of the conditions subject to which planning permission should be granted. As such, the sole consideration in this case is whether the proposed variation of Condition 11 is acceptable.
- 6.2. Policy SCLP5.10 requires proposals for residential development (with capacity for ten units or more or sites of 0.5ha or more) to make provision for 1 in 3 units to be affordable dwellings, and to be made available to meet an identified local need, including needs for affordable housing for older people. Proposals which provide a higher amount of affordable housing than that set out above will also be permitted. Of these affordable dwellings, 50% should be for affordable rent / social rent, 25% should be for shared ownership and 25% should be for discounted home ownership. Provision is expected to be made on-site, unless it can be demonstrated in exceptional circumstances that it is not feasible or practical to provide the units on site in which case it may be agreed that a commuted sum could be paid towards provision of affordable housing outside of the site.
- 6.3. The scheme approved under DC/21/0541/FUL included 42 of the 61 residential units to be affordable units (68.8%). Although this is a significantly higher proportion than the 20 required by policy, SCLP5.10 also supports proposals that provide a higher amount of affordable housing than 1 in 3 units. It is also clear that at the time the application was considered, the high proportion of affordable housing proposed was given significant weight in the planning balance in terms of being a benefit of the scheme. It is noted that, as set out in the submitted statement, the East Suffolk Housing Development Team do not intend to reduce the number of affordable homes being provided and that the additional 21 units would still be provided on a voluntary basis. Importantly however, as a result of the proposed variation the council as local planning authority would only retain control over the delivery of 20 affordable dwellings. This would therefore reduce the benefit that was previously attributed to the scheme in terms of affordable housing provision.
- 6.4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The National Planning Policy Framework (2021) is a material consideration in planning decisions, and at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11). For decision-taking this

means approving development proposals that accord with an up-to-date development plan without delay.

- 6.5. The development plan in this case is the Suffolk Coastal Local Plan (adopted September 2020). The national guidance regarding Section 73 applications such as this states that local planning authorities should, in making their decisions, focus their attention on national and development plan policies and other material considerations which may have changed significantly since the original grant of permission. There have been no significant changes to the development plan since application DC/21/0541/FUL was determined, and as set out above, the proposal would continue to accord with policy SCLP5.10 in terms of the amount of affordable housing proposed.
- 6.6. Although the reduction in the number of affordable homes that would be secured by condition (as amended) consequently reduces this benefit of the scheme, officers consider the development to remain in accordance with the development plan and therefore recommend approval of the application to vary Condition 11. As highlighted at the time application DC/21/0541/FUL was considered, the site is located within the defined settlement boundary of Felixstowe, in a sustainable location close to services and facilities required to support additional residential development. The proposals will redevelop the site, which is currently vacant and surplus to education requirements. The site is a suitable location for residential development, with the prevailing character of the surrounding area being residential in nature. The scheme will deliver new housing, together with a community hall, new bowls facility and cricket pitch, and is considered to be of a high quality, contemporary and sustainable design. The number of affordable units to be secured by condition will also comply with the council's affordable housing policy for the former Suffolk Coastal part of the district. In those respect, the over-provision of affordable housing was not an essential component of the scheme to justify its approval, it was a complementary benefit which was given weight but it is not one which is essential to maintain.

#### Conditions

- 6.7. The national guidance (Flexible options for planning permissions) highlights that permission cannot be granted under section 73 to extend the time limit within which a development must be started, or an application for approval of reserved matters must be made. Section 73 also cannot be used to change the description of the development. The residential development aspect of the scheme (with full planning permission) would therefore still be required to commence by 3 June 2024, and reserved matters submitted for the indoor bowls facility, cricket pitch and pavilion, and associated parking and landscaping (with outline permission) also by 3 June 2024.
- 6.8. As set out within the national guidance, permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended, albeit the section 73 consent would be the future implemented consent. The decision notice for the new permission should set out all of the conditions imposed on the new permission and restate the conditions imposed on earlier permissions that continue to have effect.
- 6.9. The East Suffolk Housing Development Team has requested that a number of the conditions attached to DC/21/0541/FUL are re-worded when carried forward to the Section 73

permission, if granted. The amendments to the wording of conditions relate to the trigger points regarding when details need to be submitted for approval by the local planning authority. The national guidance regarding use of planning conditions highlights that care should be taken when considering using pre-commencement conditions that prevent any development authorised by the planning permission from beginning until the condition has been complied with. Such pre-commencement conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission.

- 6.10. There are a number of pre-commencement conditions attached to DC/21/0541/FUL, some of which officers consider should be re-worded when carried forward to this permission (if granted), in cases where it is not necessary for details to be submitted and approved before the development can start on site. There are also several applications to discharge conditions on DC/21/0541/FUL which are under consideration, and as such the final conditions attached to this Section 73 application will need to take this into account.

Other matters raised by third parties:

- 6.11. Concerns have been raised by third parties during the course of this application regarding insufficient parking, increased traffic, lack of information regarding EV charging points, proposed pedestrian routes through the site, and cycle storage. There are however no changes proposed to these aspects of the scheme as part of this application.
- 6.12. It is noted that there is an error in the description of the development on permission DC/21/0541/FUL, which refers to '16' residential car parking spaces in error; this should state '61'. This description has been carried forward to the current application, as a Section 73 application cannot be used to change the description of the development. The plans approved under Condition 9 of permission DC/21/0541/FUL however clearly show 61 residential parking spaces, which equates to one parking space per dwelling. In terms of EV charging points, the extant permission requires all dwellings with off street parking to be provided with a charge point for electric vehicles and at least 10% of car parking spaces in private communal parking areas to be provided with a charge point. This will also be a requirement for the current application. The description error has no effect on how much parking must be delivered.
- 6.13. Concerns have also been raised regarding the scale and form of the three-storey buildings proposed as part of the residential development, the materials to be used, and the impact on nearby properties in terms of residential amenity and the potential for damage caused during construction. As above, these aspects of the scheme are unchanged by this application, and the scale, design, layout and appearance of the residential development are as previously considered and deemed acceptable under application DC/21/0541/FUL.
- 6.14. Similarly, the proposed variation of the condition concerning affordable housing does not affect the previous consideration of the scheme in terms of ecology. Concern has also been raised by third parties regarding radon and ground gas migration. The Desk Study and Preliminary Risk Assessment submitted with application DC/21/0541/FUL did not raise any issues in terms of radon potential; notwithstanding this, the full suite of land contamination conditions was attached to the extant permission and will be carried forward to this application to address any contaminated land matters.

## **7. Conclusion**

- 7.1. Although it is acknowledged that the reduction in the number of affordable homes that would be secured by condition does reduce this benefit of the scheme, for the reasons set out above officers consider the development to remain in accordance with the development plan and therefore recommend approval of the application to vary Condition 11.

## **8. Recommendation**

- 8.1. Approve the Variation of Condition 11 to the following:

11. The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it and shall remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing.

The scheme shall include:

- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made, which shall consist of not less than 20 affordable dwellings. The details to include a mechanism for delivering an alternative method of providing affordable housing at the same level as approved in the event that no affordable housing provider acquires some or all of the affordable housing within a reasonable timescale.
- ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing,
- iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing;
- iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Reason: In accordance with Policy SCLLP5.10 of the Suffolk Coastal Local Plan (2020) to secure the appropriate provision of affordable housing on the site.

### **Other Conditions:**

The final wording of some conditions may be subject to change, as noted above, as there are a number of applications to discharge conditions attached to DC/21/0541/FUL under consideration at the time of writing this report. Conditions will address the following matters:

1. Time limit for commencement of residential development (with full planning permission).
2. Time limit for the submission of reserved matters (with outline permission) and time limit for commencement.
3. Development to be carried out in accordance with the approved plans and documents.
4. External facing and roofing materials to be agreed.
5. Removal of permitted development rights for extensions and alterations, roof alterations and outbuildings in respect of the residential development.
6. Removal of permitted development rights for walls and fences.
7. Removal of permitted development rights for additional windows above ground floor level.
8. Requirement for windows above ground floor level serving bathrooms to be fitted with obscure glazing.
9. Provision of storage areas for bins.
10. Details of external lighting to be agreed.
11. Scheme for provision of affordable housing to be agreed (as set out above).
12. Construction hours to be limited to 7.30am to 6pm Mondays-Fridays, 8am to 1pm on Saturdays and no construction work to take place on Sundays and Bank Holidays.
13. Details of protective fencing for existing trees to be agreed.
14. Noise assessment to be submitted.
15. Air quality assessment to be submitted.
16. Requirement for a minimum of 5% of car parking spaces for staff/visitor use to be provided with EV charging points.
17. Requirement for all dwellings with off-street parking and a minimum of 10% of spaces in private communal parking areas to be provided with EV charging points.
18. Site investigation in respect of land contamination to be carried out.
19. Remediation method statement (RMS) in respect of land contamination to be submitted.
20. RMS to be completed prior to occupation of the development.
21. Validation report in respect of land contamination to be submitted.
22. Landscaping scheme to be submitted for approval.
23. Management plan for maintenance of communal areas to be submitted for approval.
24. Scheme for provision improvements to pre-school and primary school education to be submitted for approval.
25. Strategy for disposal of surface water to be submitted for approval.
26. Details of implementation, maintenance and management of the strategy for the disposal of surface water to be submitted for approval.
27. Surface water drainage verification report to be submitted for approval.
28. Construction Surface Water Management Plan detailing how surface water and storm water will be managed on the site during construction to be submitted for approval.
29. Eastern-most balconies at first and second floors on apartment block D, on the eastern boundary of the site, to be fitted with an obscured glazed privacy panel on their eastern elevation to a height of 1.7m from balcony floor.

#### **Informatives:**

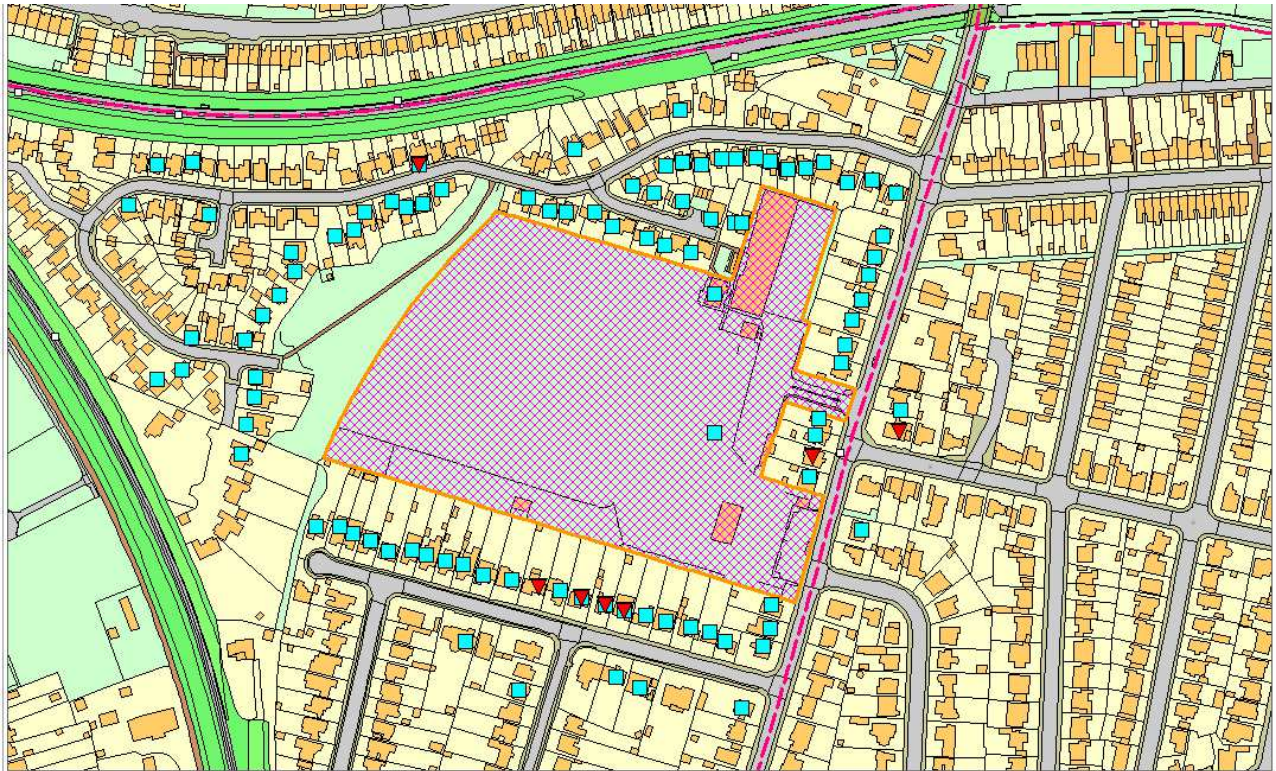
1. The Local Planning Authority has assessed the proposal against all material considerations including planning policies and any comments that may have been received. The planning application has been approved in accordance with the objectives of the National Planning

Policy Framework and local plan to promote the delivery of sustainable development and to approach decision taking in a positive way.

**Background information**

See application reference DC/23/0539/VOC on [Public Access](#)

## Map



### Key



Notified, no comments received



Objection



Representation



Support