

AMENDMENT SHEET

**Planning Committee
23 August 2018**

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

7.1 172935 – Stane Park Site, Essex Yeomanry Way, Stanway

1. Points of clarification/correction/further information:
 - Paragraph 7.5 The list of guidance documents should include the Colchester Borough Council External Artificial Lighting Planning Guidance Note.
 - Paragraph 8.6 For clarity, this paragraph should read 'hours of opening' not 'house of opening'.
 - Paragraph 11.3 For clarification, the parking deficit referred to relates to the car parking policy maximum of 1,317 car parking spaces. In terms of the proposed level of parking, the proposal has an oversupply of disabled parking (5 spaces); and a deficiency of cycle parking (72 spaces) and powered two-wheeler spaces (by 26 spaces).
 - Paragraph 15.10 As background information, the Colchester Borough Council commissioned Colchester Employment Land Needs Assessment 2015 refers to potential delivery costs associated with the development of Stane Park, with the subsequent Colchester Employment Land Supply Delivery Trajectory Final Report (May 2017) stating that the deliverability of the site is 'marginal/uncertain'.
 - Paragraph 15.16
 - Correction – There are two units within the Tollgate Village site with leases until 2022.
 - Additional information - The revised NPPF, at paragraph 86, discusses 'availability' as being within a 'reasonable period of time'. With leases on the Tollgate Village site until 2022, the site is not considered to be available within a reasonable period of time (in this case the site would not be available for at least 4 years, whereas the application site is available for development in the immediate future).
 - Concluding point – Given the above, there are not considered to be any sequentially preferable sites that are deliverable or available.

- Paragraph 15.22 For clarity, both legal opinions agree that failure of a proposal to satisfy the sequential test should not result in an 'automatic refusal', rather that, in these instances, a 'planning balance' needs to be undertaken in order to ascertain whether the material benefits of the proposed scheme outweigh the breach of the sequential test. In this case, however, the proposal is considered to pass the sequential test.
- Letters from the named operators B&Q, Marks and Spencer, and Aldi were received during the application, the content of which is summarised below:
 - B&Q letter, dated 22nd May 2018: Background information provided in terms of long-term representation in Colchester and current employment of approximately 100 staff, the vast majority of which live in the town. The letter provides an explanation that the current B&Q store is too large to continue to be commercially sustainable given the evolution of the DIY market in recent years. Confirmation provided that B&Q wish to vacate the current store and that the current lease ends in May 2019 (with the premises being handed over to Sainsburys). The B&Q Board have approved Stane Park as the most appropriate location for a replacement store and legally binding agreements have been exchanged with the applicant. The letter also makes comment on the design of the store being able to offer an improved customer experience, the relationship with other uses on the site providing the opportunity for linked trips, the limited choice in the DIY/home improvement market in Colchester, and the need for businesses to adapt in order to respond to evolving customer demand.
 - Marks and Spencer letter, dated 8th June 2018: Confirmation that 'the M&S Board remains committed to siting a food store within the proposed scheme, subject to planning permission being obtained'. The letter goes on to explain that M&S has been seeking an opportunity to develop an M&S Food store in Stanway and that it would be in addition to the existing town centre store. Store closures have demonstrated the importance of expanding in appropriate locations, such as town centres or retail parks. The proposed Stane Park store would create approximately 45 FTE position.
 - Aldi letter, dated 4th June 2018: Confirmation that Aldi is 'wholly committed to the planning application... for Stane Park'. The letter explains that the existing Aldi

store in Lexden (opened in 2010) has become too small to serve the growing customer base, with the car park and access often being overcrowded. The new proposed store would provide a much better level of service to customers in Stanway, Lexden and western parts of Colchester. The letter confirms that legally binding contracts have been exchanged with the applicant and that all of the staff from the Lexden store would be transferred to the new store. The new, larger store would increase staff numbers to approximately 50 staff.

2. Further information submitted:

- The Agent has submitted (via email dated 20th August 2018) a four page document with comments on the Committee Report. In summary, the document provides further information in relation to the sequential test, comments on the Case Officer's approach to decision taking, and a view that the application is not required to be referred to the Secretary of State. **The document is appended to the Amendment Sheet for completeness.** Case Officer comment is as follows:
 - a. Further information in respect of the sequential test: No further comment.
 - b. Comments on Approach to Decision Taking: The Agent comments do not alter the Case Officer's approach to decision taking. The approach taken in the committee report follows that of the Inspector's Report for Stane Park Phase 1 whereby it was concluded that the proposed development was contrary to the provisions of the adopted development plan, leading to a consideration of the material benefits of the proposals and whether they outweigh the conflict with planning policy. Whilst the Inspector acknowledged that some key planning policies were out-of-date with the NPPF, it was maintained that they still carry some weight and that it follows that the conflict with these policies also carry weight against the proposal. Matters of viability and the sequential test were considered as part of the planning balance in this case, as is the case with the Case Officer's assessment of the current planning application. The Case Officer considers that this approach is valid, particularly given the current proposal's conflict with the site allocation for employment.
 - c. Referral to Secretary of State: The Case Officer comments at paragraph 16.9 of the committee report remain unchanged.

3. Further objection received from GL Hearn (dated 20th August 2018) **attached in full to this Amendment Sheet**, summarised as follows:
 - Employment Land: There is potential for the applicant to deliver some office and industrial floorspace on the site as part of a larger mixed-use development and the applicant should demonstrate that the site is not able to viably deliver and element of employment. Until this issue is addressed, the application remains contrary to the Development Plan. [Case Officer comment: See paragraph 15.10 of the committee report]
 - Sequential Approach: Tollgate Village has been dismissed as a sequentially preferable site on the basis that there is an unexpired lease, which runs to 2022. Paragraph 86 of the NPPF states that 'only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered'; given there appears to be no pressing need for the proposal, the unexpired lease terms is not considered to be an 'unreasonable' timescale in which the site could come forward and thereby be available. The application fails to satisfy the requirements of the revised NPPF. [Case Officer comment: See paragraphs 15.12-15.6 of the committee report and point 1 of amendment sheet]
 - Impact Test: British Land's recent application (ref: 181392) is within the Tollgate District Centre and will have a significant effect on Colchester's retail offer and the local highways network. Accordingly, the cumulative effect of both the Tollgate Centre and Stane Park applications should be considered. [Case Officer comment: Both applications will need to be determined on their own merits. The Stane Park application mitigates its highway impact (see paragraphs 15.24-15.27 of the committee report) and the Tollgate Centre application (currently undetermined and being assessed) will be expected to do the same. There is not considered to be any conflict.]
- 4 Amended Conditions:
 - Condition 2 Development to Accord with Approved Plans – Section drawings removed as they have not been amended in accordance with changes to the layout of the scheme.

With the exception of any provisions within the following conditions, the development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers

16384_0201_P-00	Site Location Plan
16384_2000_P-18	Proposed Site Plan
16384_2020_P-01	Unit A1 to A6 GA Ground Floor Plan
16384_2021_P-01	Unit A1 to A6 GA Roof Plan
16384_2022_P-02	Unit A1 to A6 GA Elevations
16384_2010_P-02	Unit B GA Plan Ground and Mezzanine Floor
16384_2011_P-04	Unit B GA Plan Roof Plan

16384_2012_P-05 Unit B GA Elevations
 16384_2040_P-05 Unit C GA Plan Ground Floor Plan
 16384_2041_P-05 Unit C GA Plan Roof Plan
 16384_2042_P-05 Unit C GA Elevations
 16384_2031_P-03 Unit D GA Plan Ground Floor Plan
 16384_2032_P-02 Unit D GA Plan Roof Plan
 16384_2033_P-02 Unit D GA Elevations
 16384_2046_P-02 Kiosk GA Plan and Elevations
 398-PA-05 O Landscape Plan

Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.

- Condition 4 Restriction on Mezzanine Floor Space – Proposed mezzanine at Unit B (B&Q) included.

Notwithstanding the definition of ‘development’, the creation of any mezzanine level or intermediate floorspace within any building or part of a building within the development hereby approved, with the exception of the 4,274sqm of mezzanine space to serve Units A1-A6 and the mezzanine shown within Unit B on drawing 16384_2010_P-02, is not permitted without the further grant of planning permission for the expansion of floorspace from the Local Planning Authority.

Reason: For the avoidance of doubt as to the scope of the permission and because the impacts of the proposal, along with necessary forms and levels of mitigation, have been assessed on this basis.

- Condition 5 Bulky Goods Restriction – amendment to include the sale of materials for construction.

No goods shall be sold from Units A1-A6 or Unit B (as shown on drawing number 16384_2000_P-18) other than: DIY goods, materials for constructing, maintaining and repairing property; furniture and furnishings; tiles, carpets and other floor coverings; household textiles; electrical goods and other domestic appliances; construction tools and associated equipment; garden equipment, plants, flowers and sundries; audio visual, photographic and information processing equipment, accessories and sundries; cycles, motor vehicle and cycle goods; spares and parts (including the repair of cycles); pets, pet food and pet related products and services (with any pet care and treatment services being ancillary only); goods for outdoor pursuits (including for camping and caravanning). The aforementioned units shall be used for no other purpose, including any other use in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended or re-enacted) as well as any use as part of the Town and Country Planning (General

Permitted Development) Order 2015 (as amended or re-enacted).

Reason: In the interests of mitigating the impact on retail premises in designated centres from an out-of-centre location.

- Condition 14 Highway Improvements Local Road Network – Amended to include relevant drawing numbers.

No occupation of the development shall take place until the following have been provided or completed:

- a) Dualling of the Stanway Western Bypass between the A1124 Essex Yeomanry Way 'Teardrop' junction and Sainsbury's roundabout as shown in principle on the approved drawings F171_160 Revision A, F171_110 Revision A, and F171_140;
- b) Dualling of the proposal site access road between the Sainsbury's roundabout and the roundabout which serves Stane Park phase 1a and 1b and the proposal site as shown in principle on the approved drawings F171_160 Revision A and F171_150;
- c) Widening of the Stanway Western Bypass southern arm at the Sainsbury's roundabout as shown in principle on the approved drawings F171_160 Revision A and F171_110 Revision A;
- d) Widening of the Stanway Western Bypass northern arm at the London Road roundabout as shown in principle on the approved drawings F171_160 Revision A and F171_120;
- e) A toucan crossing on the Stanway Western Bypass north of the Sainsbury's roundabout F171_160 Revision A and F171_110 Revision A;
- f) A footway/cycleway between the toucan crossing mentioned above and the proposal site as well as on all sides of the roundabout which serves Stane Park phase 1a and 1b and the proposal site as shown in principle on drawings F171_160 Revision A, F171_110 Revision A and F171_150;
- g) Two bus stops to current Essex County Council specification on the proposal site access road between the Sainsbury's roundabout and the roundabout which serves Stane Park phase 1a and 1b and the proposal site (specification shall be agreed with the Local Planning Authority prior to commencement of the development), the location shown in principle on drawing F171_160 Revision A.

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.

- Condition 16 Detailed Landscape Works – amendment to allow planting to take place in the planting season immediately following occupation (if it cannot be undertaken prior to occupation).

Notwithstanding the approved details, no works shall take place until full details of all landscape works, including details of the compensatory tree planting on the western boundary of the site adjacent to the site service access, have been submitted to and agreed, in writing, by the Local Planning Authority and the works shall be carried out prior to the occupation of any part of the development, or in the planting season immediately following occupation, other than the compensatory tree planting which shall be carried out prior to commencement of development. The submitted landscape details shall include:

- Proposed finished levels or contours;
- Means of enclosure;
- Car parking layouts;
- Other vehicle and pedestrian access and circulation areas;
- Hard surfacing materials;
- Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.);
- Proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. Indicating lines, manholes, supports etc.);
- Earthworks (including the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform)
- Planting plans;
- Written specifications (including cultivation and other operations associated with plant and grass establishment);
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and
- Implementation timetables and monitoring programs.

Reason: To ensure that there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development within its surrounding context in the interest of visual amenity.

- Condition 25 Landscape Management Plan – Correction to remove reference to domestic gardens.

Prior to the first occupation of the development, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved at all times.

Reason: To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area.

- Condition 27 Unexpected Contamination – Amended so as not to prevent the development from progressing unnecessarily.

In the event that contamination, that has not previously been identified in the Mott MacDonald 'Stane Park Phase 2, Phase 1 Geo-environmental Desk Study Rev C (dated 3rd November 2017)', is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and assessment of the nature and extent of the contamination must be carried out in accordance with a scheme which must first be submitted to and approved in writing by the Local Planning Authority. The results of the subsequent site investigation shall then be submitted to and approved by the Local Planning Authority. If any unacceptable contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority and the site shall be remediated in accordance with the approved measures before the development is occupied/brought into use. If, during the course of development, any unacceptable contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures. A verification report shall be submitted to and approved in writing by the Local Planning Authority before the development is occupied/brought into use.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- Condition 28 Outside Storage – Amendment to allow Unit B (B&Q) storage as shown on approved drawings.

No outside storage of goods, materials, or waste shall take place in the open except within the service yard compound to Unit B or otherwise within a designated compound the details of which, including barrier treatment, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of visual amenity.

- Informative 5 Archaeology Informative 1 - Correction

In respect of condition 11 a further (2%) trial-trenched archaeological evaluation is required. Decisions on the need for any further investigation (excavation before groundworks commence and/or monitoring during groundworks) will be made on the basis of the results of the evaluation.

7.2 180873 – Land north of Dyers Road, Stanway

Since publicity given to the committee report the Lead Local Flood Authority (LLFA) has responded, further representations have been received, a revised layout plan has been received and following comment on behalf of the applicant revisions to various conditions and the legal agreement have been agreed as set out below. The revised scheme relates to 57 units

Following publicity given to the committee report 12 representations from Stanway residents (not immediate neighbours) were received. Residents' objections relate to lack of infrastructure; schools and doctors, poor and busy roads, increased crime and development of a wooded area with protected and local species.

LLFA Having reviewed the Flood Risk Assessment & Surface Water Drainage Strategy and the associated documents which accompanied the planning application, acting on behalf of ECC we do not object to the granting of detailed planning permission from a SuDS drainage perspective based on the following conditions:

New condition - Condition 1 SUDS

No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and the 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 detailed design scheme details should include but not be limited to:

- Detailed design drawings (including detailed proposed levels).
- Supporting calculations for the proposed areas of permeable pavement to demonstrate sufficient hydraulic (taking into account proposed gradients) and structural loading capacity.
- Be in keeping with the commitment made within section 3.2 of the FRA and will accommodate a 1in100year storm plus 40% climate change with the additional 10% urban creep.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with 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, FFL 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.

The scheme shall subsequently be implemented prior to occupation.

Reason:

- To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.
- To provide mitigation of any environmental harm which may be caused to the local water environment
- Failure to provide the above required information before commencement of works may result in a system being installed that is not sufficient to deal with surface water occurring during rainfall events and may lead to increased flood risk and pollution hazard from the site.

New condition - Condition 2 SUDS

No works shall take place until 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 (including any potential component replacement requirements), has been submitted to and agreed, in writing, by the Local Planning Authority.

Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided. Where SuDS elements cross various land ownerships, the maintenance plan should confirm how the respective duties for the ongoing shared maintenance responsibilities on the individual property owners will be safeguarded.

Reason: To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk.

New condition - Condition 3 SUDS

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason: To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

New condition - Condition 4 SUDS

No works shall take place until a scheme to minimise the risk of offsite flooding and pollution caused by surface water run-off during construction works has been submitted to, and approved in writing by, the local planning authority.

Reason: The National Planning Policy Framework paragraph 103 and paragraph 109 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution.

CBC Contamination Officer has confirmed condition 18 can be deleted and the wording of condition 19 revised as follows **(as a consequence the numbering of all subsequent conditions will need revising)**

Revised wording condition 19 Contaminated Land (Submission of Remediation Scheme)

No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and then submitted to and agreed, in writing, by the Local Planning Authority, in accordance with the information already approved: that is - Brown2Green Phase 1 Geo-environmental Desk Study Report, Land North and South of Dyers Road, Ref 1653/Rpt 1v2, dated March 2018; Brown2Green Geotechnical and Geo-environmental Site Investigation Report, Land North of Dyers Road, Ref 1653/Rpt 2v2, dated March 2018; additional clarification of ground gas risks, as provided in the phase2planning email of 26/6/18. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

Highway Conditions Revisions to conditions 24/25/26 the applicant has indicated further discussions have taken place with the Highway Authority and revisions have been agreed, however as the Highway Officer is on annual leave it has not been possible to verify this, it is therefore recommend the following wording be added to these three conditions “ or any revision/s to these requirements previously agreed in writing with the Local Planning Authority in consultation with the Highway Authority”

New condition design amendments - Notwithstanding the details shown on the approved drawings prior to commencement of development revised elevation drawings shall be submitted to and approved in writing by the Local Planning Authority which indicate the projecting string course/s to plots 10, 21, 22, 33, 35, 41, 42, 43, 48, 49, 51 and 52 continuing the full length of the return/side elevations. The development shall thereafter be completed in accordance with the approved drawings.

Reason: These details are an important element of the design of these dwellings which are either corner turning or have side /return elevations visible in the public domain.

New condition boundary treatment - Notwithstanding the details shown on the approved drawings prior to the commencement of development a revised scheme of boundary treatment and pedestrian links, in respect of the units adjacent to the open space and green links, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed in accordance with the approved drawings.

Reason: To ensure an organic edge to the open space/green links and to ensure greater permeability.

New condition design amendments - Notwithstanding the details shown on the approved drawings prior to commencement of development revised elevation drawings shall be submitted to and approved in writing by the Local Planning Authority which indicate additional chimneys to plots 5/6 . The development shall thereafter be completed in accordance with the approved drawings.

Reason: These details are an important element of the design of these plots and are required in the interests of visual amenity.

New condition agreement to external materials - Notwithstanding any details shown within the submitted application, this permission expressly excludes the use of the external materials. No external materials shall be used until details of these have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out using these approved materials.

Reason: The materials proposed in the application are not necessarily all considered to be suitable for use on this site and to ensure that appropriate materials are chosen which will secure a satisfactory appearance, in the interests of visual amenity.

New condition approved drawings - The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 3779-0001 P21, 0201 P04, 0201A P03, 0301 P04, 0401 P05, 0601 P04, 0701 P05, 0801 P05, 0901 P05, 1001 P05, 1101 P05, 1201 P06, 1301 P05, 1501 P02, 1601 P04, 1701 P03, 1801 P04, 1901 P03, 2001 P03 except where conditions on this planning permission require the submission and approval of amendments to the elevations.

Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.

Condition 7 deleted as duplicated in condition 28

Revised wording - Condition 9 delete "works " and insert "commencement of the construction of the dwellings" also amend wording so it is clear appropriate play equipment is required along the nature trail.

Legal agreement

As the number of units has increased to 57 and there is a revised mix of units all the financial contributions will be amended to reflect the proposed mix and index linked . Affordable Housing - the requirement for units to meet a minimum of building regulations PartM4 category 2 to be deleted.

7.3/7.4 – Ground Floor, River House, Quay Street, Wivenhoe

Following the publication of the Committee Report, the following comments have been received from the Wivenhoe Society:

The original application appears to have been modified to reduce the number of studio flats proposed but the application form still says the application is for the current office space to be converted to 3 studio flats. The amended drawings for the listed building application dated August 9th on the website are not the same as the amended drawings (dated July 20) shown for application 180805. The 180805 July 20 drawings appear to show the layout of 5 units in total at the ground floor level but only 4 at the mezzanine level and the staircases for the two floors do not match up. The more recent listed building application does have a set of consistent drawings for the two floors and does show 4 units in total. Before this application is approved consistent sets of drawings need to be produced so it is clear exactly what is being approved. If Highways has withdrawn its objection this withdrawal should be shown on the website.

The various inconsistencies may have arisen because of delays in posting on the website.

Officer Comment:

The description of proposed works have been amended on the planning file and the revised drawings have been uploaded to the relevant files. The Highway Authority consultation response has also been uploaded onto the website to the planning file.

7.6 181548 – Former Waiting Room Café, Bus Station, Queen Street, Colchester

A representation has been received from a local resident which stated the following:

Dear Planning Committee, You will need to enquire of the exact content of the wording on any advertising at the Old Waiting Room site as if anything is said which in any way prejudices to outcome of any planning application for future uses of the site such as “ coming soon. student accommodation” or containing illustrations about any speculative planning matter including artists impressions etc. or any information whatsoever about possible future developers of the land who have not received planning approval, this will constitute a contradiction of the planning policies currently in force and may preclude any further involvement in the plan.

In response; the content of the advert is shown on the plans that accompany the application. The adverts simply say ‘Welcome to Colchester Creative Quarter’ and ‘Working in Partnership’ with www.colchesteramphora.com and the logos of Colchester Borough Council, Colchester Amphora and Colchester Ultra Read for Business also displayed.

Our ref: GLH

Your ref:

Attn of: Ms Mondon
Planning
Colchester Borough Council
Rowan House
33 Sheepen Road
Colchester
Essex CO3 3WG

20 August 2018

Dear Ms Mondon

Further objection to the proposals by Churchmanor Estates Company Plc for a proposed mixed use development on land at Stane Park, Tollgate, Colchester (ref: 172935)

Introduction

Our previous objections on behalf of M&G Real Estate (dated 7 February 2018) raised concerns with the applicant's approach to the sequential assessment and impact tests and that the application was contrary to adopted and emerging planning policy. These concerns with the application remain.

Since objecting, amendments have been made to the application, Cushman & Wakefield (C&W) (the Council's consultants) have commented on the application (May 2018), British Land has submitted a planning application on the nearby Tollgate Village (Ref: 181392) and the Government have published the Revised NPPF. In light of these developments, we hereby wish to make further comments in relation to the:

- Employment land policy;
- Sequential test; and
- Impact test.

Employment land

The application site is allocated for Employment in both the Adopted and Draft Local Plans.

The proposal is for approx. 20,700sqm gross of retail floorspace, the majority of which is A1. In considering the application, C&W considers (May 18):

- that the potential exists for the applicant to deliver some office and industrial floorspace on the site as part of a larger mixed-use development; and
- the applicant should demonstrate that the site is not able to viably deliver an element of employment.

Until this issue is addressed, we conclude that the application remains contrary to the Development Plan.

Sequential approach

Our previous objection raised concerns at the lack of flexibility employed by the applicant's when considering sequentially preferable sites. C&W have also raised concern in this regard and their letter of 18 May 2018 concludes that despite further submissions by the applicants this matter remains unresolved.

C&W also conclude that Tollgate Village would be a suitable sequentially preferable site if the applicants demonstrated flexibility in respect of the format of their proposal. The site is dismissed in the Officer's report to Committee (para 15.16) on the basis that it is not available due to an unexpired lease, which runs to 2022.

However in reaching this conclusion the report appears to ignore the wording of the new NPPF which states (para 86): ".....*only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.*" (our emphasis)

Given there appears to be no pressing need for the proposal, the unexpired lease term is not considered to be an 'unreasonable' timescale in which the site could come forward and thereby be available.

In light of the above we remain concerned at the applicant's approach to the sequential test, which we believe fails to satisfy the requirements of the revised NPPF.

Impact test

Many of the applicant's shortcomings in relation to the assessment of impact have also been picked up by C&W who conclude that retail impacts have been underestimated.

British Land's recent application (Ref: 181392) is within the Tollgate District Centre and will have a significant effect on Colchester's retail offer and the local highways network. Accordingly, the cumulative effect of both the Tollgate Centre and Stanes Park applications should be considered.

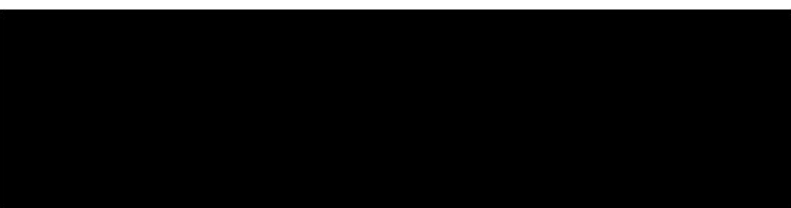
Conclusions

The proposed expansion of the retail offer outside of the existing Tollgate District Centre represents a significant increase compared with the current retail offer and has not been justified. The application is contrary to the development plan and no material considerations have been raised that would outweigh this conflict.

Our client's previous objections remain and we have seen nothing in the latest submissions by the applicant's (or C&W's various responses) to suggest that these shortcomings have been addressed. We therefore conclude that the proposal does not accord with local or national planning policy and should be refused.

We trust these representations have been duly made, but should you wish to discuss any of the issues raised, please do not hesitate to contact me.

Yours sincerely



Nick Diment
Director

cc: Rupert Milne – M&G RE

Comments on Officer's Report Item No 7.1 Stane Park Site, Stanway

1. Introduction

- 1.1 On behalf of our client, the Churchmanor Estates Company plc, we raise three matters of importance that we trust are helpful to officers and members in serving to frame a robust decision. They relate to:
- a) The considerable evidence submitted to address the application of the sequential test to sites at Tollgate which we feel has been inadequately covered at paragraph 5.16,
 - b) The approach to decision taking (notwithstanding the recommendation to grant planning permission) addressed at 16.1-16.8 and,
 - c) Reasoning as to why we consider referral to the Secretary of State is not necessary (dealt with at paragraph 16.9).

2. Sequential Test

- 2.1 A sequentially preferred site needs to be "suitable" in all regards, viable to accommodate the development and deliverable. It also needs to be "available" including "within a reasonable period". Otherwise, no preferable site will be provided and "sustainable development" will not be secured. Thus, the sequential test cannot operate as a means of only defeating less preferably located proposals. There needs to be certainty. There must always be a 'realistic prospect' of a scheme being able to be delivered on that more preferable site, not just that a third party may have suggested a site to be "suitable and available".
- 2.2 A retail warehouse park is not an unusual development proposition. Key occupiers are already contracted. A "reasonable period" to test availability should therefore be no more than two years from the submission of the application.
- 2.3 Below are four justifications as to why there are no sequentially preferable, ie suitable or available, sites at Tollgate. The NPPG advises that "the test should be proportionate and appropriate for the given proposal".
- i. The only Tollgate Village location within the defined Tollgate Centre is currently occupied by four retail warehouses (DZ2), (Staples, B&M Retail, PC World and Hughes Electrical). It would be entirely illogical to assert that another bulky goods scheme (i.e. the 'developer's proposal') would generate a value that would enable the displacement of these tenants. **It is therefore unavailable.**
 - ii. The only other sites at Tollgate, (the DZ1 and DZ3 parts of Tollgate Village), are both outside of the UDC. These sites and the Stane Park site are all 'edge of centre' and have the same policy status and cannot be considered to be more "accessible" or "*well connected to the town centre*".¹ The UDC comprises four separate areas (see attached plan). The Sainsbury's at Tollgate is the strongest retail attraction in the UDC. Stane Park is close to Sainsbury's. Its accessibility to the "*centre*" will be reinforced by the scheme's proposed toucan crossings and other pedestrian/cycle enhancements. Public transport accessibility is also good. **The only vacant sites are not suitable.**
 - iii. Even if these other two sites in Tollgate are assessed, regard has to be had to the judgment in Aldergate that "*...suitable and available generally mean*

¹ Paragraph 87 of the revised NPPF.

suitable and available for the broad type of development which is proposed in the application by approximate size, type and range of goods". There is no evidence that notwithstanding an unevidenced assertion from Tollgate Partnership that this landowner would be so fundamentally willing to reduce their development expectations (having spent significant time and money in securing them) in return for a very much lower value scheme. **The sites are neither suitable nor available.**

- iv. Two of the leases within DZ2 only expire in 2022. The Tollgate Village permission requires (no doubt for good reason) that the service road for the northern parts of the scheme (i.e. DZ2 and DZ1) need to enter and exit from the west of Tollgate West, go behind the units within DZ2 and continue to the east, at the back of the proposed units as part of DZ1. Thus, as two of the leases within DZ2 do not expire until 2022, it would not be possible to achieve the servicing for development on DZ1, by the route proposed in the Tollgate Village consent, until DZ2 becomes available. All this is compounded by the proposed service route requiring the demolition of the unit occupied by Hughes. **Thus, further reasons why the site is not available.**

2.4 There can therefore be no doubt that the sequential test is met.

3. Decision Taking

Commentary on the Officer's approach to decision taking

- 3.1 The Officer's approach to decision taking is found at paragraphs 16.1-16.8 of the Report. The approach that has been taken is not clear. Whilst a balancing exercise (see for instance paragraph 16.8) has been undertaken, this is not the balancing exercise which is set out at paragraph 11 of the NPPF i.e. whether adverse impacts significantly outweigh benefits, when assessed against policies in the NPPF.
- 3.2 At paragraph 16.1, the Officer asserts that the proposal is contrary to the policies of the development plan by virtue of being a retail development on a site allocated for employment. Policy DP5 provides criteria to inform such decision making. Its criteria have been met. Thus the policy is complied with. There cannot therefore be any conflict with respect to the development plan (notwithstanding that relevant policies are out-of-date and can be afforded little weight in any event). Furthermore, although paragraph 16.6 of the Report asserts that the development does not fully meet design policy standards and principles there is no breach of the relevant, policy DP1, when all of its criteria are reviewed.
- 3.3 Thus, there should be no assertion of any conflict with the development plan.

The Applicant's Approach

- 3.4 Notwithstanding compliance with relevant development plan policies, the correct balancing exercise when the most important policies to determining the application have been found to be out-of-date, is set out at paragraph 11 of the NPPF.
- 3.5 The most important development plan policies for determining the application relate to employment land and retailing. Policies relevant to these issues, CE1, CE2 and CE3 of the Core Strategy, DP5 of the Development Policies and SA STA3 of the Site Allocations are "out of date" (see paragraph 10 of Secretary of State's decision to the Tollgate Village Appeal). Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004

require decisions “to be made in accordance with the development plan unless material considerations indicate otherwise”.

- 3.6 The NPPF is an important material consideration as it sets out up-to-date government planning policy. The NPPF advises, at paragraph 11, how decision taking should be made where “the policies which are most important for determining the application are out-of-date”. In such instances, the NPPF directs that permission should be granted unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.
- 3.7 The assessment of NPPF policies as a whole would include retail policies at paragraphs 86 and 89 and employment policies at paragraph 120. Adverse impacts arising from the proposal would be balanced against the scheme’s benefits having been assessed against all of those policies. Here there are no adverse impacts arising from the development (since any are to be mitigated by conditions or obligations). With considerable benefits and no (or at worst minor impacts) and compliance with policies in the NPPF as a whole, paragraph 11 requires that planning permission should be granted.
- 3.8 This approach should be taken notwithstanding the Officer’s approach at 16.1-16.8 comes to the same conclusion, ie that planning permission should be granted.

4. Referral to the Secretary of State

- 4.1 The Town and Country Planning (Consultation) (England) Direction 2009 requires that “*development outside town centres*” should be referred to the Secretary of State for consideration as to whether call-in is necessary, where the development includes retail uses and meets all three criteria below:
- a) *is to be carried out on land which is edge-of-centre, out-of-centre or out-of-town; **and***
 - b) *is not in accordance with one or more provisions of the development plan in force in relation to the area in which the development is to be carried out; **and***
 - c) *consists of or includes the provision of a building or buildings where the floor space to be created by the development is:*
 - i. *5,000 square metres or more; or*
 - ii. *extensions or new development of 2,500 square metres or more which, when aggregated with existing floor space, would exceed 5,000 square metres.” (our emphasis).*
- 4.2 As set out at 3.2 and 3.3 above, the proposal accords with the development plan even those parts which are “*out of date*” (and could reasonably be argued not to be “*in force*”) since although policies, for example, seek the protection of employment land, Policy DP5 permits alternative uses where criteria are all met. The proposal meets these criteria and therefore the policy is complied with. The proposal similarly or otherwise accords with all other relevant development plan policies.
- 4.3 Paragraphs (a), (b) and (c) of the Direction all need to be triggered in order to justify a referral. In this situation (b) is not triggered (the scheme is not “*not in accordance*” with provisions of the development plan in force) and thus the application should not be referred to the Secretary of State.

