

Planning Committee Meeting

**Council Chamber, Town Hall, High Street,
Colchester, CO1 1PJ**

Thursday, 30 July 2015 at 18:00

The Planning Committee deals with planning applications, planning enforcement, public rights of way and certain highway matters.

If you wish to come to the meeting please arrive in good time. Attendance between 5.30pm and 5.45pm will greatly assist in noting the names of persons intending to speak to enable the meeting to start promptly.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published five working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services. Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to most public meetings. If you wish to speak at a meeting or wish to find out more, please refer to Your Council> Councillors and Meetings>Have Your Say at www.colchester.gov.uk

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Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to the Library and Community Hub, Colchester Central Library, 21 Trinity Square, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets with lift access, if required, are located on each floor of the Town Hall. A water dispenser is available on the first floor and a vending machine selling hot and cold drinks is located on the ground floor.

Evacuation Procedures

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telephone (01206) 282222 or textphone 18001 followed by the full number you wish to call
e-mail: democratic.services@colchester.gov.uk

www.colchester.gov.uk

Material Planning Considerations

The National Planning Policy Framework highlights that the planning system is plan-led and reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require (in law) that planning applications “must be determined in accordance with the development plan, unless material considerations indicate otherwise”.

Where our Development Plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable development unless otherwise specified.

The following approach should be taken in all planning decisions:

- Identify the provisions of the Development Plan which are relevant to the decision and interpret them carefully, looking at their aims and objectives
- Identify and consider relevant material considerations for and against the proposal
- Consider whether or not the proposal accords with the Development Plan and, if not, whether material considerations warrant a departure from the Development Plan.

A material planning consideration is one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission). The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.

When applying material considerations the Committee should execute their decision making function accounting for all material matters fairly, reasonably and without bias. In court decisions (such as *R v Westminster CC ex-parte Monahan* 1989) it has been confirmed that material considerations must relate to the development and use of land, be considered against public interest, and be fairly and reasonably related to the application concerned.

Some common material planning considerations which the Planning Committee can (and must) take into consideration in reaching a decision include:-

- Planning policies, including the NPPF and our own Development Plan
- Government guidance, case law, appeal decisions, planning history
- Design, scale, bulk, mass, visual appearance and layout
- Protection of residential amenities (light, privacy, outlook, noise or fumes)
- Highway safety and traffic issues, including parking provisions
- Heritage considerations; archaeology, listed buildings and conservation areas
- Environmental issues; impacts on biodiversity, trees and landscape, flooding
- Economic issues such as regeneration, job creation, tourism and viability
- Social issues; affordable housing, accessibility, inclusion, education, recreation

The above list is not exhaustive

The following are among the most common issues that are **not** relevant planning issues and cannot be taken into account in reaching a decision:-

- land ownership issues; private property rights, boundary disputes and covenants
- effects on property values
- loss of a private view
- identity of the applicant, their character, previous history, or possible motives
- moral objections to a development, such as may include gambling or drinking etc
- competition between commercial uses

- matters specifically controlled through other legislation

Strong opposition to large developments is a common feature of the planning process but whether or not a development is popular or unpopular will not matter in the absence of substantial evidence of harm (or support from the policies within the Development Plan). It is the quality of content, not the volume that should be considered.

The law also makes a clear distinction between the question of whether something is a material consideration, and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case but provided it has given regard to all material considerations, it is for the Council to decide what weight is to be given to these matters. Subject to the test of “reasonableness”, the courts (or the Local Government Office) will not get involved in the question of weight. Weight may be tested at appeal.

Planning Obligations

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are:

1. necessary to make the development acceptable in planning terms
2. directly related to the development, and
3. fairly and reasonably related in scale and kind.

These legal tests are set out as statutory tests in the Community Infrastructure Levy Regulations and as policy tests in the National Planning Policy Framework.

Human Rights, Community Safety and Equality and Diversity Implications

All applications are considered against the background and implications of the:

- Human Rights Act 1998
- Crime and Disorder Act 1998 (and in particular Section 17)
- Equality Act 2010
- Colchester Borough Council Equality Impact Assessment (EIA) Framework

In order that we provide a flexible service that recognises people's diverse needs and provides for them in a reasonable and proportional way without discrimination.

Using Planning Conditions or Refusing Planning Applications

The Planning System is designed to manage development, facilitating (not obstructing) sustainable development of a satisfactory standard. The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (PPG) reinforce this, stating that “Planning should operate to encourage and not act as an impediment to sustainable growth”. Therefore, development should be considered with a positive approach. Where a condition could be used to avoid refusing permission this should be the approach taken.

The PPG sets out advice from the Government regarding the appropriate use of conditions, and when decision makers may make themselves vulnerable to costs being awarded against them at appeal due to “unreasonable” behaviour. Interpretation of court judgments over the years is also an important material consideration. Reasons why a Planning Authority may be found to have acted unreasonably at appeal include lack of co-operation with applicants, introducing fresh evidence at a later stage, introducing a new reason for refusal, withdrawal of any reason for refusal or providing information that is shown to be manifestly inaccurate or untrue.

In terms of the Planning Committee, Members are not bound to accept the recommendations of their officers. However, if officers’ professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority.

Whenever appropriate, the Council will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed. Therefore, before refusing any application the Planning Committee should consider whether it is possible to resolve any concerns by use of conditions before refusing permission. Failure to do so on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead.

Any planning condition imposed on a development must pass 6 legal tests to be:

- | | |
|--|-------------------------|
| 1. Necessary | 2. Relevant to planning |
| 3. Relevant to the development permitted | 4. Reasonable |
| 5. Precise | 6. Enforceable |

Unless conditions fulfil these criteria they are challengeable at appeal as ultra vires (i.e. their imposition is beyond the powers of local authorities).

If no suitable condition exists that can satisfy these tests a refusal of planning permission may then be warranted. In considering the reasons for that refusal, the Council must rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason. In all matters relating to an application it is critically important for decision makers to be aware that the courts will extend the common law principle of natural justice to any decision upon which they are called to adjudicate. The general effect of this is to seek to ensure that the Council acts fairly and reasonably in executing our decision making functions, and that it is evident to all that we have done so.



Colchester Borough Council Development Management

Highway Safety Issues

When considering planning applications, Colchester Borough Council consults Essex County Council Highways Authority on all highway safety issues. They are a statutory consultee, and a recognised expert body. This means that they must be consulted on planning applications, by law, where the proposed development will involve a new access to the highway network, create “material” changes in traffic movement, or where new roads are to be laid out. Where developments affect the trunk road network Highways England become a statutory consultee.

When the Highway Authority is consulted they are under a duty to provide advice on the proposal in question as the experts in highway matters. Their opinion carries significant weight upon which the Local Planning Authority usually relies. Whilst this Council could form an opinion different to the Highway Authority, it would need to provide counter-evidence to justify an argument that the expert body was incorrect. That evidence would need to withstand challenge in appeal or through the courts. Failure to do so would result in a costs award against the Council for acting unreasonably (see other notes pages within this Agenda). Similarly, if the Highway Authority were unable to support their own conclusions they may face costs being awarded against them as the statutory consultee.

Officers of Essex County Council Highway Authority conduct their own site visits to each site in order to take account of all highway safety matters. They also consult their own records and databases, traffic flow information and any other relevant material that may be available, including any submitted documents within planning applications.

Parking Standards

Although the Highway Authority has some remit over parking in so far as it relates to highways safety issues, parking itself is a matter for the Local Planning Authority to determine against national policy and our own adopted standards. Like the other Essex Authorities, Colchester Borough Council has adopted the Essex Planning Officer's Association Parking Standards. These standards set out that:

- A parking space should measure 2.9 metres by 5.5 metres. A smaller size of 2.5 metres by 5 metres is acceptable in special circumstances.

For residential schemes:

- The residential parking standard for two bedroom flats and houses is two spaces per unit.
- The residential parking standard for one bedroom units is one space per unit.
- A garage should have an internal space of 7 metres by 3 metres. Smaller garages do not count towards the parking allocation.
- One visitor space must be provided for every four units.

Residential parking standards can be relaxed in areas suitable for higher density development and where there is good walkable access to shops, service and public transport, such as town centres.



Colchester Borough Council Environmental Control

Advisory Notes for the Control of Pollution during Construction and Demolition Works

The following information is intended as guidance for applicants/developers and construction firms. In order to minimise potential nuisance to nearby existing residents caused by construction and demolition works, Environmental Control recommends that the following guidelines are followed. Adherence to this advisory note will significantly reduce the likelihood of public complaint and potential enforcement action by Environmental Control.

Best Practice for Construction Sites

Although the following notes are set out in the style of planning conditions, they are designed to represent the best practice techniques for the site. Therefore, failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974)

Noise Control

1. No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holiday days.
2. The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:1984.
3. Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
4. Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

Emission Control

1. All waste arising from the ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
2. No fires to be lit on site at any time.
3. On large scale construction sites, a wheel-wash facility shall be provided for the duration of the works to ensure levels of soil on roadways near the site are minimised.
4. All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Best Practice for Demolition Sites

Prior to the commencement of any demolition works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Planning & Protection Department. In addition to the guidance on working hours, plant specification, and emission controls given above, the following additional notes should be considered when drafting this document: -

Noise Control

If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Planning & Protection prior to the commencement of works.

The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.

Emission Control

All waste arising from the demolition process to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.

The Town and Country Planning (Use Classes) Order 1987 (as amended)

Class A1. Shops

Use for all or any of the following purposes—

- (a) for the retail sale of goods other than hot food,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other cold food for consumption off the premises,
- (e) for hairdressing,
- (f) for the direction of funerals,
- (g) for the display of goods for sale,
- (h) for the hiring out of domestic or personal goods or articles,
- (i) for the washing or cleaning of clothes or fabrics on the premises,
- (j) for the reception of goods to be washed, cleaned or repaired,
- (k) as an internet café; where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet where the sale, display or service is to visiting members of the public.

Class A2. Financial and professional services

Use for the provision of —

- (a) financial services, or
 - (b) professional services (other than health or medical services), or
 - (c) any other services (including use as a betting office)
- which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

Class A3. Restaurants and cafes

Use for the sale of food and drink for consumption on the premises.

Class A4. Drinking establishments

Use as a public house, wine-bar or other drinking establishment

Class A5. Hot food takeaways

Use for the sale of hot food for consumption off the premises.

Class B1. Business

Use for all or any of the following purposes—

- (a) as an office other than a use within class A2 (financial and professional services),
 - (b) for research and development of products or processes, or
 - (c) for any industrial process,
- being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2. General industrial

Use for the carrying on of an industrial process other than one falling within class B1 above

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.

Class C2. Residential institutions

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.

Class C3. Dwellinghouses

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

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.

Class D1. Non-residential institutions

Any use not including a residential use —

- (a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,
- (b) as a crèche, day nursery or day centre,
- (c) for the provision of education,
- (d) for the display of works of art (otherwise than for sale or hire),
- (e) as a museum,
- (f) as a public library or public reading room,
- (g) as a public hall or exhibition hall,
- (h) for, or in connection with, public worship or religious instruction, (i) as a law court.

Class D2. Assembly and leisure

Use as —

- (a) a cinema,
- (b) a concert hall, (c) a bingo hall or casino,
- (d) a dance hall,
- (e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

Sui Generis Uses

Examples of sui generis uses include (but are not exclusive to):

theatres, amusement arcades or centres, funfairs, launderettes sale of fuel for motor vehicles, sale or display for sale of motor vehicles, taxi businesses or a business for the hire of motor vehicles, a scrapyard or the breaking of motor vehicles, hostels, retail warehouse clubs (where goods are sold, or displayed for sale, only to persons who are members of that club), night-clubs, or casinos.

Interpretation of Class C3

For the purposes of Class C3(a) “single household” shall be construed in accordance with section 258 of the Housing Act 2004.

Interpretation of Class C4

For the purposes of Class C4 a “house in multiple occupation” does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004

Deferral and Recommendation Overturn Procedure (DROP) Flowchart

If Councillors require more information, or minor amendments to be explored, then the item should be deferred.

If no more information or amendment is desired Councillors will proceed to propose a motion.



COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 30 July 2015 at 18:00

Member:

Councillor Jon Manning
Councillor Jessica Scott-Boutell
Councillor Peter Chillingworth
Councillor Helen Chuah
Councillor Jo Hayes
Councillor Pauline Hazell
Councillor Brian Jarvis
Councillor Mike Lilley
Councillor Jackie Maclean
Councillor Patricia Moore
Councillor Rosalind Scott
Councillor Laura Sykes

Chairman
Deputy Chairman

Substitutes:

All members of the Council who are not members of this committee and who have undertaken the required planning skills workshop:-

Councillors Christopher Arnold, Lyn Barton, Tina Bourne, Roger Buston, Kevin Bentley, Nigel Chapman, Barrie Cook, Robert Davidson, Beverly Davies, Andrew Ellis, Annie Feltham, Bill Frame, Ray Gamble, Dominic Graham, Annesley Hardy, Marcus Harrington, Dave Harris, Julia Havis, Peter Higgins, Theresa Higgins, Cyril Liddy, Sue Lissimore, Fiona Maclean, Kim Naish, Nigel Offen, Gerard Oxford, Philip Oxford, Will Quince, Peter Sheane, Paul Smith, Dennis Willetts, Julie Young and Tim Young.

AGENDA - Part A

(open to the public including the press)

Members of the public may wish to note that Agenda items 1 to 6 are normally brief and agenda items may be considered in a different order if appropriate.

An Amendment Sheet is available on the Council's website by 4:30pm on the day before the meeting (see Planning and Building, Planning Committee, Planning Committee Latest News). Members of the public should check that there are no amendments which affect the application in which they are interested. Members of the public please note that any further information which they wish the Committee to consider must be received by 5pm two days before the meeting in order for it to be included on the Amendment Sheet. With the exception of a petition, no written or photographic material can be presented to the Committee during the meeting.

1 Welcome and Announcements

- a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to silent;
- the audio-recording of meetings;
- location of toilets;
- introduction of members of the meeting.

2 Have Your Say! (Planning)

The Chairman to invite members of the public to indicate if they wish to speak or present a petition on any of the items included on the agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

These speaking provisions do not apply in relation to applications which have been subject to the Deferral and Recommendation Overturn Procedure (DROP).

3 Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

4 Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent, to give reasons for the urgency and to indicate where in the order of business the item will be considered.

5 Declarations of Interest

The Chairman to invite Councillors to declare individually any interests they may have in the items on the agenda. Councillors should consult Meetings General Procedure Rule 7 for full guidance on the registration and declaration of interests. However Councillors may wish to note the following:-

- Where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest, whether or not such interest is registered on his/her register of Interests or if he/she has made a pending notification.
- If a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting, he/she must not participate in any discussion or vote on the matter at the meeting. The Councillor must withdraw from the room where the meeting is

being held unless he/she has received a dispensation from the Monitoring Officer.

- Where a Councillor has another pecuniary interest in a matter being considered at a meeting and where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgement of the public interest, the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

6 Minutes of 25 June 2015 17 - 20

To confirm as a correct record the minutes of the meeting held on 25 June 2015.

7 Planning Applications

In considering the planning applications listed below, the Committee may choose to take an en bloc decision to agree the recommendations made in respect of all applications for which no member of the Committee or member of the public wishes to address the Committee.

7.1 151298 Castle Park, High Street, Colchester 21 - 36

Provision of a Winter Wonderland and Ice Rink with germanic chalets selling traditional Christmas items. The site will open on the 26th November 2015 and close on 3rd January 2016. Opening times to be 10am till 10pm each day apart from Sundays when it will close at 9pm.

7.2 150391 Fairfields Farm, Fordham Road, Wormingford 37 - 56

Erection of farm based Biogas digester and associated works

7.3 150213 Land west of 58 Queens Road, Wivenhoe 57 - 84

Erection of a detached dwelling with associated parking facilities – resubmission of 112284

7.4 143704 Rowhedge Business Park, Fingringhoe Road, Rowhedge 85 - 104

Change of use of land to plant hire business

- | | | |
|-----|--|--------------|
| 7.5 | 150923 31 Marlowe Way, Colchester | 105 -
112 |
| | Front extension and single storey rear extension | |
| 7.6 | 150605 129 High Road, Layer de la Haye | 113 -
120 |
| | First floor extension to existing bungalow | |

8 Exclusion of the Public (not Scrutiny or Executive)

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

Part B

(not open to the public including the press)

Planning Committee

Thursday, 25 June 2015

Attendees: Councillor Peter Chillingworth (Group Spokesperson), Councillor Jackie Maclean (Member), Councillor Helen Chuah (Member), Councillor Jon Manning (Chairman), Councillor Laura Sykes (Group Spokesperson), Councillor Pauline Hazell (Member), Councillor Brian Jarvis (Member), Councillor Michael Lilley (Member), Councillor Jessica Scott-Boutell (Deputy Chairman), Councillor Rosalind Scott (Group Spokesperson), Councillor Jo Hayes (Member)

Substitutes: Councillor Christopher Arnold (for Councillor Patricia Moore)

174 Site Visits

The following members attended the formal site visit: Councillors Chillingworth, Chuah, Hayes, Hazell, Jarvis, Maclean, Manning, Scott, Scott-Boutell and Sykes.

175 Minutes of 11 June 2015

The minutes of the meeting held on 11 June 2015 were confirmed as a correct record.

176 150115 Garage Site 1, Monkwick Avenue, Colchester

The Committee considered an application for the variation of condition 2 (Approved Plans) and condition 8 (Landscape) of planning permission 131967. The application had been referred to the Committee because Colchester Borough Council was the applicant and because the application was a major application to which an objection had been received.

The Committee had before it a report in which all information was set out.

RESOLVED (UNANIMOUSLY) that the application be approved subject to the variation of condition 2 and condition 8 to reflect the new drawing numbers submitted, as set out in the report by the Head of Professional Services.

177 150809 St Johns C of E Primary School, Clay Lane Grove, Colchester

The Committee considered an application for the variation of conditions 3 and 4 of planning permission 090126 to allow 30 pupils to use the building and to allow opening of the building from 0745 to 1800 hours Monday to Friday during term time. The

application had been referred to the Committee because it had been called in by Councillor Paul Smith.

The Committee had before it a report in which all information was set out together with comments on the Amendment Sheet.

The Committee made a site visit in order to assess the impact of the proposal upon the locality and the suitability of the proposal for the site.

Nadine Calder, Planning Officer, presented the report and attended to assist the Committee in its deliberations.

Francis Wright addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He considered that the application was disingenuous in terms of the property, opening times and numbers of children and that the previous concerns that had been expressed by residents had been validated by the application. Parking problems, noise and pollution from the site would increase. There was insufficient parking on site even for the nursery workers. Therefore parents parked in Clay Lane Grove or stood in the road near the gates, causing inconvenience to residents and a highway safety issue. The site was used in excess of the allowed capacity suggesting this was a retrospective application. There was already considerable noise disturbance from the site, such as shouting, crying and banging. Increased numbers would only increase the noise levels. Earlier starting times would conflict with residents' resting time and right to quiet enjoyment. There were direct views to and from his property into the building and it was possible to see into his front room from the ground floor of the building. The site was so close that he could hear names and addresses of users of the site. A petition against the application had been submitted together with a letter of support for the views of residents from Sir Bob Russell.

The Planning Officer explained that the application was not retrospective. Whilst the site had been used in contravention of the planning permission, the applicant had changed practice and was no longer breaching the conditions. The proposed variation in the conditions would not increase the numbers of journeys to the site. The petition referred to related to a previous application. Whilst it was possible to see into the neighbour's front room from the road, it was not possible to do so from the building.

Members of the Committee expressed their support for the application. There was a clear need for this type of provision. Members felt that the applicant had made a number of compromises to accommodate concerns of residents. The application should not lead to an increase in traffic, and might slightly improve the parking issue by spreading the times at which children were dropped off. The request for an additional 15 minutes opening was considered to be reasonable. In terms of overlooking, the view from the neighbours property to the site was somewhat blocked by the shed. It was appreciated that this would not screen noise, but the numbers of children using the outdoor areas was not proposed to increase. There was no sustainable reason to refuse the

application. One member queried whether condition 3 was practical or necessary. The Planning Officer explained that the condition only related to the windows in the northern elevation of the building to mitigate noise, and that it would be possible for other windows to be opened for ventilation purposes.

The Committee noted that a one year temporary permission was proposed which would give an opportunity to assess the impact of the operation of the revised permission. The Committee indicated that it would be content to delegate the approval of the permission after one year to officers, unless there was overwhelming evidence of impact on the neighbouring property.

In response to a question from a member of the Committee it was confirmed that the increase to the public good through the provision of free school meals to children was not a material planning consideration and should not be taken into account by members in reaching their decision on this application.

RESOLVED (UNANIMOUSLY) that the application be approved subject to the conditions set out in the report.

178 150746 Stanway Rectory, Church Lane, Stanway

Councillor J. Maclean (by reason of the applicant being a family member) declared a pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(5) and left the meeting during its consideration and determination.

The Committee considered an application for the demolition of the existing detached single garage and attached single storey utility room and the erection of single storey and two storey extensions. The application was referred to the Committee because the applicant was related to a member of Council. The Committee had before it a report in which all the information was set out.

RESOLVED (UNANIMOUSLY) that the application be approved subject to the conditions and informatives set out in the report.

179 Changes to the Scheme of Delegation

The Committee considered a report from the Head of Professional Services proposing a change to the Scheme of Delegation to Officers to divide one category of delegated powers into two separate categories. The Committee had before it a report in which all information was set out. Andrew Tyrrell, Planning Manager, attended to present the report and assist the Committee.

RESOLVED (UNANIMOUSLY) that the Scheme of Delegation be amended as set out in paragraphs 5.1 and 5.2 of the Head of Professional Services report.



Committee Report

Agenda item

7

To the meeting of **Planning Committee**
on: **30 July 2015**
Report of: **Head of Professional/Commercial Services**
Title: **Planning Applications**

7.1 Case Officer: Alistair Day

Due Date: 17/08/2015

MINOR

Site: **Castle Park, High Street, Colchester**

Application No: **151298**

Date Received: **22 June 2015**

Applicant: **Mr Ben Payne**

Development: Provision of a Winter Wonderland and Ice Rink with germanic chalets selling traditional Christmas items. The site will open on the 26th November 2015 and close on 3rd January 2016. Opening times to be 10am til 10pm each day apart from Sundays when it will close at 9pm.

Ward: **Castle**

Summary of Representation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the consultation period expires after the deadline for submitting reports to the 30th July Planning Committee and it is not known whether the proposal will generate any objections. Officers do not have delegated power to determine applications of this type where an objection has been received. If the Winter Wonderland event is to proceed this year a favourable decision needs to be made in respect of this application by 31 July 2015. In order to ensure that this deadline is met, the application has been submitted to the Committee on the basis of an objection will be received.

2.0 Synopsis

- 2.1 The key issues explored below are the impact on designated heritage assets and trees and the potential for the event to cause noise and disturbance to local residents. The report concludes that with appropriate mitigation the Winter Wonderland event will not cause significant material harm to the aforementioned planning issues.

3.0 Site Description and Context

- 3.1 Castle Park is located to the north-east of the Town Centre and is effectively divided into two sections by the Roman Wall that traverses it east to west.
- 3.2 The application site is located in the south western quadrant of the Upper Castle Park. Museum Street, Castle Bailey, Cowdray Crescent and the Hollytrees Museum form the southern boundary of the application site. The west boundary of the site is formed by Rygate Road. Surrounding these streets is a mixture of commercial, religious and residential properties. The northern boundary of the site is formed by the earthworks of the castle rampart. The eastern boundary of the site is formed by the castle ramparts and by the footpath that runs adjacent to area of land known as Hollytrees Meadow. The east side of the Upper Castle Park is bounded by residential properties.
- 3.3 Within the application site there are a number of designated heritage assets. The Norman Castle and Hollytrees Mansion Museum are respectively listed grade I and grade II* for their special architectural or historic interest; the main Castle Park gateway and summer house are listed grade II. The majority of the park is a designated scheduled ancient monument (SAM) and this relates to the precincts of the Temple of Claudius and the Norman Castle and its associated ramparts. The Upper Park falls within the Town Centre Conservation Area (Colchester Conservation Area No.1) and the Castle Park is listed in the Register of Historic Parks and Gardens (Grade II). The application site also includes a number of mature trees that make a positive contribution to setting of the listed buildings and the character and appearance of the area. In addition to the heritage assets within the application site, there are numerous listed and locally listed buildings located immediately adjacent to Upper Castle Park.

4.0 Description of the Proposal

- 4.1 The submitted planning application relates to a Winter Wonderland event comprising an ice rink, fairground attractions, food stalls and Germanic style chalets selling traditional Christmas items and associated ancillary equipment. It is proposed that the event will be operation form 26th November 2015 to 3rd January 2016 and will open between 10:00 to 22:00 Monday to Saturday and from 10:00 to 21:00 on Sundays.

5.0 Land Use Allocation

- 5.1 The Upper Castle Park is identified in the adopted Site Allocations Plan as 'Open Space'.

6.0 Relevant Planning History

- 6.1 A preliminary planning enquiry was submitted to the Council in March 2015 in respect of the current proposal.

7.0 Principal Policies

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the adopted development plan comprises the adopted Core Strategy (December 2008, amended 2014), Development Plan Policies (October 2010, amended 2014) and Site Allocations Plan (October 2010)

- 7.2 The Core Strategy sets out strategic planning policies and the following are of most relevance to this application:

SD1 - Sustainable Development Locations

SD3 - Community Facilities

CE2a - Town Centre

UR2 - Built Design and Character

PR1 - Open Space

TA1 - Accessibility and Changing Travel Behaviour

TA2 - Walking and Cycling

TA3 - Public Transport

TA5 - Parking

ENV1 - Environment

- 7.3 The Development Plan Policies provide more detailed planning policy guidance and the following are of relevance to this application:

DP1 Design and Amenity

DP6 Colchester Town Centre Uses

DP10 Tourism, Leisure and Culture

DP14 Historic Environment Assets

DP15 Retention of Open Space and Indoor Sports Facilities

DP17 Accessibility and Access

DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

DP21 Nature Conservation and Protected Lanes

- 7.4 Further to the above, the Site Allocations policies set out below should also be taken into account in the decision making process:

SA TC1 Appropriate Uses within the Town Centre and North Station Regeneration Area

- 7.5 The National Planning Policy Framework (the Framework) must also be taken into account in planning decisions. The Framework makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development and that there are three dimensions to sustainable development namely: economic, social and environmental.

8.0 Consultations

Archaeological Officer

- 8.1 The Council's Archaeological Officer has confirmed that an adequate archaeological assessment has been undertaken for this proposal (CAT report 850, July 2015). The Archaeological Officer also notes that assessment indicates that no archaeological deposits will be disturbed and that the method statement demonstrates that the impact of the proposal should be negligible. In accordance with the *National Planning Policy Framework* (Paragraph 141), any permission granted should be the subject of a planning condition. The following archaeological condition is recommended:

No works shall take place until the implementation of a programme of archaeological recording monitoring and mitigation has been secured, in accordance with a Written Scheme of Investigation that has been submitted to and approved, in writing, by the Local Planning Authority.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development.

- 8.2 The Archaeological Officer has advised that he is willing to provide a brief for the archaeological investigation. In this case, continuous archaeological recording and monitoring (an archaeological watching brief) will be required during all works – both set up and removal. The archaeological monitoring is also required to ensure that the agreed construction methodology, approved by the planning consent, is adhered to and to ensure that the impact of the development is acceptable and that the reinstatement of the site to its former condition is secured.

Landscape Officer

- 8.3 The Landscape Officer has stated the he is satisfied with the landscape concept content of the proposals provided the Trees Officer raises no objections. .

Tree Officer

- 8.4 The Tree Officer has confirmed that he is in agreement with the conclusions and recommendations made within the submitted Tree Report. He notes that, whilst the proposal may potentially affect some of the nearby trees, it is possible to mitigate this with the use of ground protection and sympathetic pruning to facilitate access. The Tree Officer has advised that the extent and type of ground protection and all other associated requirements to manage the trees to facilitate the set up and use of the site for the proposal should be subject to an arboricultural method statement which can be conditioned if the proposal is granted permission.

Environmental Protection

- 8.5 The Council's Environmental Protection Team have made the following comments in respect of the Winter Wonderland proposal:

Further to the pre application discussions with the Environmental Protection Team it has been noted that the decision has been taken by the organiser to locate the food stalls further from residential premises to avoid cooking odours affecting neighbouring properties. In addition, as discussed with the organiser the generators are to be located in an agreed position to prevent generator noise from being heard offsite.

Should planning permission be granted Environmental Protection wish to make the following comments:-

- All lighting should be directed away from residential premises and no light should be permitted to shine into a residential premises. No flashing lights may be used at anytime.
- Music from the site shall not exceed a 15-min Laeq of 55dB at the site boundary. (All music shall be directed away from residential properties and the bass shall not be audible within neighbouring properties).
- The games for the stalls shall be of a quiet nature and must be inaudible at the site boundary

- 8.6 The Environmental Protection Team has also confirmed as the proposed event is for a temporary period it is not considered to have any long term implications for air quality in the town centre.

Planning Policy

- 8.7 No objection has been raised by the Planning Policy Team to this application

Enterprise & Tourism Development Manager

- 8.8 The following comments have been received by the Enterprise & Tourism Development Manager

Assuming that there will be no damage to any archaeological structures and that any surface wear will be reinstated afterwards I believe this temporary attraction for Colchester should be supported. This new attraction will help to drive footfall to the town centre, bring additional spending to the town from visitors from the surrounding area and also help to enhance Colchester's image and reputation in the region. The attraction will also add to the quality of life for those who already live here by offering new choice in how they spend their valuable leisure time. In this respect, there will be retention of spend dimension which might have been spent elsewhere.

Highway Authority

- 8.9 The Highway Authority has made the following comments in respect of this proposal:

Castle Park hosts a number of large events throughout the year which have the potential to attract large amounts of traffic. The location of numerous car parks around the town will ensure that the impact on the highway is minimised. This Authority has assessed the highway and transportation impact of this proposal wishes to raises no objection to this proposal.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

9.0 Parish Council Response

- 9.1 The application site is not located with a parish.

10.0 Representations

- 10.1 At the time of writing this report no letters of representation have been received.

11.0 Parking Provision

- 11.1 No parking is being provided on-site. However, special offers in town centre car parks are planned to support the event and these could be purchased online with tickets. The ice rink would have a capacity of 150 persons only and it is anticipated that this demand would not impact materially on parking demand. The Castle Road gateway into the park will be locked during the evening and this should discourage opportunist parking in the Roman Road/Castle Road area. The residential areas in closest proximity to the site are also subject to residents parking restrictions.

12.0 Open Space Provisions

- 12.1 N/a

13.0 Air Quality

- 13.1 The site is located within the town centre Air Quality Management Area but is not considered to have any significant impact on air quality in the long term

14.0 Development Team and Planning Obligations

- 14.1 As a part of the preliminary enquiry consultation the Development Team considered that no planning obligations were necessary to mitigate the impact of this development proposal. This application is scheduled to be reported to the Development Team on 30th July 2015 and their comments will be reported to the Planning Committee.

15.0 Report

The Proposal

- 15.1 The submitted planning relates to a Winter Wonderland event comprising an ice rink, fairground attractions, food stalls and Germanic style chalets selling traditional Christmas items and ancillary equipment. It is proposed that the event will operate from 26th November 2015 to 3rd January 2016 and will open between 10:00 to 22:00 Monday to Saturday and from 10:00 to 21:00 on Sundays.

The Principle of Development

- 15.2 The application site is located in the south western quadrant of the Upper Castle Park; the Castle Park is located immediately to the east of the heart of the town centre.
- 15.3 The proposal to hold a Winter Wonderland event in Colchester town centre accords with Core Strategy Policy SD1 and the Framework which promote development in sustainable locations.
- 15.4 The Upper Castle Park is identified in the Site Allocations Plan as 'Open Space'. The proposal to hold a Winter Wonderland for a limited period is not considered to conflict with this land-use designation or the function of the park.

Heritage and Design Considerations

- 15.5 Castle Park forms part of the grounds of Colchester Castle and the Hollytrees Mansion and is divided into an upper and lower park by the town wall. The Upper Castle Park includes the following listed buildings: the dual designated Norman castle (listed grade I for its special architectural or historic interest and a schedule ancient monument), Hollytrees Mansion Museum (listed grade II*) and the main entrance gates to the Park and summer house (both listed grade II). The grounds of the Upper Castle Park are designated a Schedule Ancient Monument which covers the precincts of the Temple of Claudius and the Norman Castle with its associated ramparts. The Upper Castle Park also falls within the town centre conservation area and is a Registered Historic Park and Garden. In addition to the above heritage features, there are numerous listed and locally listed buildings that surround the Castle Park site.
- 15.6 Under s.66 and s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (P(LBCA)A) there is a statutory duty to protect from harm listed buildings and their settings and to preserve or enhance the character or appearance of a conservation area. The Ancient Monuments and Archaeological Areas Act 1979 and subsequent amendments make provision for the Secretary of State to protect Scheduled Ancient Monuments (SAMs). The Core Strategy Policy ENV 1 and Development Plan Policy DPD14 seek to protect the historic environment and thus reflect the provision of the P(LBCA)A. The aims of the Framework are also generally consistent with the requirement of the P(LBCA)A. With regard to design, CS Policy UR2 and Development Plan Policy DP1 seek to promote and secure high quality design. Section 12 (paragraphs 126 to 141) of the Framework deals with conserving and enhancing the historic environment

- 15.7 The application site is one of the most historically sensitive locations in Colchester and, therefore the potential impact that the proposal will have on the identified heritage assets (both direct and indirect) is a fundamental consideration.
- 15.8 In terms of direct impacts, the primary consideration is whether the proposal will result in damage being caused to features of archaeological importance notably the remains precincts of the Temple of Claudius and/or the Norman Castle and its associated earthworks. Given the potential archaeological implications associated with the proposed Winter Wonderland event, the scheme has been subject of detailed negotiation between the applicant, Council Officers and Historic England. These discussions have helped to inform the content of Archaeological Assessment and mitigation strategy that has been submitted in support of this planning application.
- 15.9 The Archaeological Assessment notes that there five notable archaeological interventions that provide specific information about the depth of below ground remains. From analysis of this data, the assessment concludes that significant archaeological remains within the area of proposed event are deeply-buried (generally at 0.80m below modern ground) and, as such, the surface-building of the proposed Winter Wonderland will have no significant effect on the buried archaeological remains. With regard to the standing monuments of Colchester Castle and its ramparts, the assessment notes that the only place where the proposed Winter Wonderland has a potential impact is the south-eastern corner of the Ice Rink and the eastern side of the Skate Exchange, both of which rest on the Norman rampart. The assessment report notes that mitigation will be necessary in these areas to prevent damage to the ramparts. A mitigation strategy has been put forward for the protection of the archaeological features and the Council's Archaeological Officer has confirmed that this is acceptable in principle. Conditions have been recommended relating to archaeological monitoring during the set-up and during and after the event to identify impacts and any necessary remedial works.
- 15.10 All works affecting a SAM or its setting require scheduled ancient monument consent (SAMC). Members may wish to note that an application for SAMC has been submitted to Historic England.
- 15.11 The indirect impacts associated with this application relate to the setting of the identified heritage assets. The proposed Winter Wonderland event will change the existing setting of the castle and its immediate environment during the course of its operation. That said the change to the setting of the Upper Castle Park will be of a temporary nature and provided appropriate controls are put in place to prevent damage to features of acknowledged importance, it is considered that the proposal will not result in any significant harm being caused.

Trees and Landscape

- 15.12 Upper Castle Park contains a number of mature trees and ornamental flower beds that make a positive contribution to the setting of the nearby listed and other buildings and the character and appearance of the area.
- 15.3 CS Policy ENV1 states that the Borough Council will conserve and enhance Colchester's natural and historic environment. Central Government guidance on conserving the natural environment is set out in Section 11 of the Framework.

- 15.14 A Tree Survey has been submitted as part of this planning application. This identifies 21 individual trees and one group of trees within the operative area of the Winter Wonderland event. The submitted report notes that for the temporary structures to be delivered and erected some low level pruning work will be required. The Tree Survey also notes that the ice skating rink, food stalls, market stalls and site compound/offices are all situated within the root protection areas of trees and that pedestrian areas of high usage also has the potential to impact on tree roots. In order to minimise the disruption to the soil and the root system, the Tree Survey recommends the installation ground protection.
- 15.15 The Council's Tree Officer has reviewed the submitted Tree Survey and has confirmed that he is in agreement with the conclusions and recommendations of this report. The Tree Officer has advised that the extent and type of ground protection and all other associated requirements to manage the trees to facilitate the set up / use of the site for the proposal should be subject to an arboriculture method statement. This can be the subject of a condition if the proposal is granted permission.
- 15.16 The Council's Landscape Officer has confirmed that the proposal will not have an adverse impact on the landscape of Castle Park.
- 15.17 Given the above, it is considered that the proposal would not result in harm to the landscape of Castle Park and would not result in the loss of important trees. The current planning application is therefore considered to accord with Core Strategy Policy ENV1 and policies DP1 and DP21 that require development schemes to protect existing landscape features.

Residential Amenity

- 15.18 Development plan policy DP1 states that all development must be designed to avoid unacceptable impacts on amenity. Part III of this policy seeks to protect existing public and residential amenity, particularly with regard to (amongst other things) noise and disturbance, pollution (including light and odour pollution).
- 15.19 It is acknowledged that large scale events in Castle Park have the potential to cause disturbance to nearby residents. The type of operations, the layout of the event and the proposed opening hours were discussed at an early stage with the Environmental Protection Team. The siting of the proposed activities shown on submitted layout plan reflects the advice provided by the Environmental Protection Team as part of the preliminary planning application submission. The Environmental Protection Team has confirmed that they do not wish to raise an objection to this application and consider that the amenity of local residents can be safeguarded by imposition of selected condition / informatives.
- 15.20 For the reasons given above, it is considered that the proposed development would not have a significant adverse effect on the living conditions of the neighbouring residential properties. In view of this, the proposed development is not considered to conflict with DPD Policies DP1

Parking and Highway Matters

- 15.21 Castle Park's position in the heart of the Town Centre means that that it is highly accessible by a various modes of transport. The Highway Authority has confirmed that they have no objection to this proposal in terms of its impact on highway safety or capacity.
- 15.22 The applicant notes in their Design and Access Statement that access and traffic flow to the site will be key to both the event working as well as the good will of the people of the town. It is proposed that during the day all entrances and exits to the park will be open. At night the site will be closed down so that the only two entrances are through Museum Street and Cowdray Crescent. This is intended to keep as much foot traffic to the High Street and away from the surrounding streets. The surrounding streets are subject to residents parking restrictions and will be less accessible at night as the relevant gateways will be locked.
- 15.23 Whilst no conditions are recommended in respect of highway matters or parking, Members may wish to note that the applicant is working with this Council and the Essex County Council on a transport and parking strategy for this event. The applicant has confirmed that in terms of servicing, the stall operators etc will have vehicular access prior to the event being open to members of the public and they will have to park their vehicles off site after loading / unloading. With regard to visitors to the Winter Wonderland event, the Design and Access Statement states that car users will be encouraged to use the Park and Ride site during the day and in the evening use the town centre car parks. Where possible local residents will be encouraged to walk to the site or use local buses. The applicant proposes to install temporary cycles parking within the application site.

Tourism

- 15.24 Development Plan Policy DP10 seeks to promote tourism, leisure and cultural activities within the Borough. The proposal to hold a Winter Wonderland Festival with an ice rink and other attractions has the potential to attract significant numbers of visitors to Colchester. The proposed festival would serve to raise the regional profile of Colchester, boost the town centre economy and create potential jobs. The potential economic benefits of this proposal for the town are considerable.

Other Issues

- 15.25 From an operational point of view, the Street Services have advised that the following:
- the Event Application Process for the Park will need to be followed
 - the event will need to comply with the Council's Event Policy and the Castle Park Events Licence
 - An adequate bond will need to be put in place for reinstatement of the Park after the event.
- 15.26 Whilst the above are not planning matters, they will help to ensure that the event is well managed and that the grounds are restored after the event.

16.0 Conclusion

- 16.1 The proposal to hold a Winter Wonderland event at the Upper Castle Park accords with local and national planning policies and with appropriate conditions it is considered that any potential harm caused by this proposal can be suitably mitigated. The application is therefore recommended for a conditional approval.

17.0 Recommendation

- 17.1 APPROVE subject to the following conditions

18.0 Conditions

1 - Non-Standard Condition/Reason

The period of this permission for the operation of the Winter Wonderland event is from 26th November 2015 to 3rd January 2016 only.

Reason: For the avoidance of doubt as to the scope of this permission.

2 - Non-Standard Condition/Reason

The development hereby permitted shall be carried out in accordance with the details shown on the A4 layout drawing (1:1250) and layout plan (1:200) superimposed onto topographical survey (submitted with application) and portapath matting drawing submitted on 6 July 2014 unless otherwise agreed in writing with the Local Planning Authority.

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

3 - Non-Standard Condition/Reason

No works shall take place until the implementation of a programme of archaeological recording monitoring and mitigation (which may include the minor repositioning the attractions) has been secured, in accordance with a Written Scheme of Investigation that has been submitted to and approved, in writing, by the Local Planning Authority.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development.

4 - Non-Standard Condition/Reason

No works shall take place until all all trees, shrubs and other natural features shown on the approved plans shall have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity

5 - Non-Standard Condition/Reason

All trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site, to the satisfaction of the Local Planning Authority in accordance with its guidance notes and the relevant British Standard. In the event that any trees (or their replacements) die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, by the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

6 - Tree and Hedgerow Protection: General

No works or development shall be carried out until an Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan in accordance with BS 5837, have been submitted to and approved, in writing, by the Local Planning Authority (LPA). Unless otherwise agreed, the details shall include the retention of an Arboricultural Consultant to monitor and periodically report to the LPA, the status of all tree works, tree protection measures, and any other arboricultural issues arising during the course of development. The development shall then be carried out strictly in accordance with the approved method statement.

Reason: To adequately safeguard the continuity of amenity afforded by existing trees.

7 -Tree Canopy Hand Excavation

During all construction work carried out underneath the canopies of any trees on the site, including the provision of services, any excavation shall only be undertaken by hand. All tree roots exceeding 5 cm in diameter shall be retained and any pipes and cables shall be inserted under the roots.

Reason: To protect trees on the site in the interest of visual amenity.

8 - Non-Standard Condition/Reason

No works or development shall take place until a scheme of supervision for the arboricultural protection measures required by condition 6 has been approved in writing by the local planning authority. This scheme will be appropriate to the scale and duration of the works and will include details of:

- a. Induction and personnel awareness of arboricultural matters
- b. Identification of individual responsibilities and key personnel
- c. Statement of delegated powers
- d. Timing and methods of site visiting and record keeping, including updates
- e. Procedures for dealing with variations and incidents.
- f. The scheme of supervision shall be carried out as agreed.
- g. The scheme of supervision will be administered by a qualified arboriculturist instructed by the applicant and approved by the local planning authority

Reason: To protect trees on the site in the interest of visual amenity.

9 - *Restriction of Hours of Operation

Unless otherwise agreed in writing with the Local Planning Authority, the use hereby permitted shall not be open to customers outside of the following times:

- Monday to Saturday 10:00 to 22:00
- Sundays and Public Holidays: 10:00 to 21:00

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site and for the avoidance of doubt as to the scope of this permission.

10 - *Restricted Hours of Delivery

Unless otherwise agreed in writing with the Local Planning Authority, no services deliveries shall be received at the site outside of the following times:

- Monday to Sunday 08:00 to 10:00

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from delivery vehicles entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

11 - Non-Standard Condition/Reason

No flashing lighting shall be used at anytime and all lighting associated with this permission shall be directed away from residential premises and shall shine into a residential premises.

Reason: In order to safeguard the amenity of the surrounding area by preventing the undesirable, disruptive and disturbing effects of light pollution.

12 - Non-Standard Condition/Reason

All music shall be directed away from residential properties and any music from the site shall not exceed a 15-min Laeq of 55dB at the site of boundary with residential properties.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance.

13 - Non-Standard Condition/Reason

All games for the stalls shall be of a quiet nature and shall not be inaudible at the site boundary.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance.

19.0 Informatives

(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

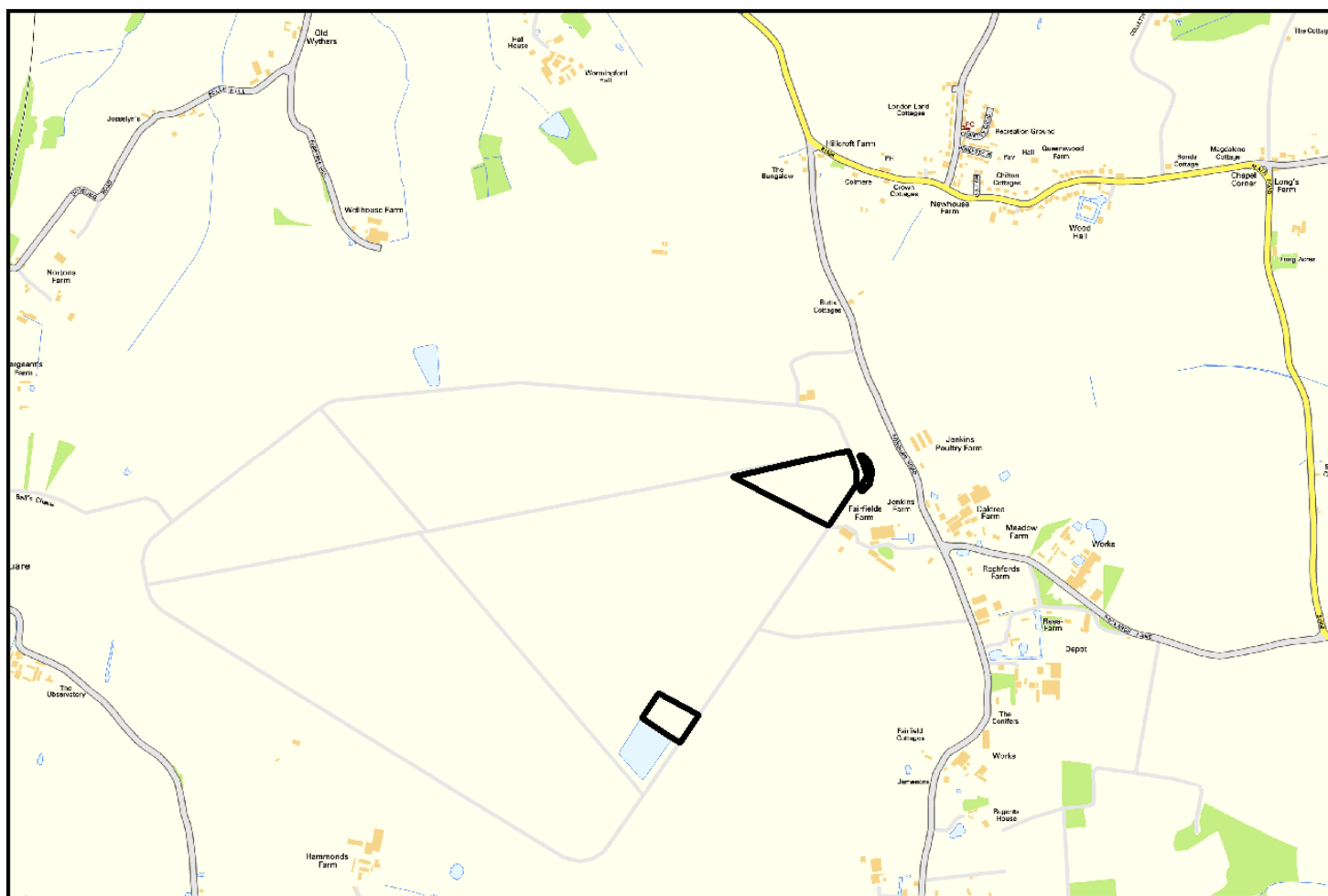
(3) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

(4) For clarification the hours of operation relate to the Winter Wonderland event and not the opening of the park for casual use.

20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



Application No: 150391

Location: Fairfields Farm, Fordham Road, Wormingford, Colchester, CO6 3AQ

Scale (approx): NOT TO SCALE

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7.2 Case Officer: Mark Russell

MAJOR

Site: Fairfields Farm, Fordham Road, Wormingford, Colchester, CO6 3AQ

Application No: 150391

Date Received: 10 March 2015

Agent: Mr Guy French, Whirledge and Nott

Applicant: Fairfields Biogas Ltd

Development: Erection of Farm Based Biogas Digester and associated works

Ward: Fordham & Stour

Summary of Application: Conditional Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it is a major application and material objections have been received.

2.0 Synopsis

- 2.1 This report describes a proposed Biogas Digester at Fairfields Farm in Wormingford. It is explained that the proposed plant would use agricultural feedstock crops which would be digested with resultant gas feeding the National Grid.
- 2.2 Buildings of up to 13 metres in height are described and it is explained that these have been reduced as a result of consultations and discussions with your Officers.
- 2.3 The landscape impact, in common with the setting of the nearby listed buildings, is considered and it is explained that these issues have been resolved through negotiation and amendment.
- 2.4 Objections principally based on visual blight, odour and HGV movements, are listed and considered and it is held that the application (as amended) overcomes all of these concerns.
- 2.5 Finally, approval is recommended, with conditions.

3.0 Site Description and Context

- 3.1 The site consists of a 2.9ha field at the eastern edge of Fairfields Farm. This is located close to an existing group of farm buildings and is within the perimeter of the former airfield. Around the eastern edge and wrapping itself around to the north is Public Right of Way no 48. Across an intervening field the Grade II* listed Jenkins Farm is 200 metres away.

4.0 Description of the Proposal

- 4.1 The proposal is described as a “Farm Based Biogas Digester and associated works”. This consists of agricultural feedstock (typically maize, rye and grass) grown by the applicant or neighbouring farmers, which is broken down in an oxygen-free environment. This results in the production of methane and carbon dioxide and the process is carried out in a sealed vessel and the gas produced is collected and fed into the National Grid through an existing pipeline which runs through the farm.
- 4.2 The remaining material, the “digestate”, which is left over is a high quality soil conditioner or fertiliser. This is to be used on the farm in lieu of imported, inorganic fertilisers.
- 4.3 Left over water is to be stored in the digestate storage tanks adjacent to the reservoir to the west of the airfield, and then trickle irrigated onto the potato crops grown on the airfield between May and August.
- 4.4 The output of the biogas digester is said to be 546 m³ per hour of gas at its peak, equating to 1.2MW of energy providing a supply of gas for approximately 3,218 homes.
- 4.5 The built form of the proposal comprises two digester units (one with a diameter of 26 metres, the other 28 metres) originally at a height of 12.5 and 13 metres and both coloured grey.
- 4.6 These two items are the most dominant in elevation. Meanwhile, on the ground, half of the site (over one hectare) would be filled with silage clamps of up to four metres in height.
- 4.7 Other items of some height are a feeder tank/hopper (4.48 metres + conveyor up to 9 metres); a flare at 8.27 metres (including a 300mm concrete plinth); surface water tank (6 metres); separator and digester (5.45 metres) and Gas Upgrader (3.9 metres at eaves, 4.859 metres at apex).
- 4.8 In the interests of completeness, the remaining items are as follows (heights in brackets):
- Diesel Tank (1.84 metres);
 - Carbon Filter (3 metres);
 - Back-up Generator (3 metres);
 - CHP [Combined Heat and Power generator] (10 metres);
 - LV Distribution (2.5 metres);
 - Compressor (2.7 metres);
 - GEU Unit (2.5 metres);
 - Propane Storage (2.5 metres);
 - LV National Grid Compound (2.5 metres);
 - National Grid Switch (2.5 metres);
 - LV Switching Compound (2.5 metres);
 - Reception Tank (4 metres);
 - Control Room (2.5 metres).

- 4.9 In addition to the above are proposed digestate lagoons by the existing farm reservoir, which would measure approximately 0.47ha.

5.0 Land Use Allocation

- 5.1 Agricultural

6.0 Relevant Planning History

- 6.1 C/COL/03/0322 - Retrospective application - Change of use of agricultural building to Class B2 (General Industrial) Use.
- 6.2 071023 - Agricultural building, potato grading and storage. Approved 16th May 2007.
- 6.3 071971 - Continued change of use for B2 use as previously granted by application no. COL/03/0322 together with portacabin for office use B1. Approved 10th September 2007.
- 6.4 101767 - Change of use of land from agriculture to composting of green waste with enabling development comprising: installation of weighbridge; installation of a modular office/staff amenity building; installation of a green chain mesh weld fence 2.4m in height; creation of a leachate pond (lagoon); construction of a new hard surface; and installation of a shredder (County Matter). Refused 18th October 2010.
- 6.5 110516 - The change of use of land from agriculture to composting of green waste with enabling development comprising; installation of weighbridge; installation of a modular office/staff amenity building; installation of a green chain mesh weld fence 2.4m in height; creation of a leachate pond (lagoon); construction of a new hard surface; and installation of a shredder. Resubmission (County Matter). Refused 8th June 2011.
- 6.6 121150 - Change of use of potato store to potato crisp manufacturing, addition of extract cowlings to roof and changes to the size and elevations of the building (approved under Planning permission 102064).

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
SD2 - Delivering Facilities and Infrastructure
SD3 - Community Facilities
UR2 - Built Design and Character
ENV1 - Environment
ENV2 - Rural Communities
ER1 - Energy, Resources, Waste, Water and Recycling

- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):

DP1 Design and Amenity
DP8 Agricultural Development and Diversification
DP9 Employment Uses in the Countryside
DP14 Historic Environment Assets
DP21 Nature Conservation and Protected Lanes
DP25 Renewable Energy

- 7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

- Sustainable Construction
- External Materials in New Developments

8.0 Consultations

- 8.1 Highway Authority: The Highway Authority would not wish to raise an objection to the above subject to the following;

Note: The public's rights and ease of passage over public footpath no48 (Wormingford) shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way. Any unauthorised interference with the route will constitute a contravention of the Highways Act 1980.

- 8.2 Essex County Council (SUDS): Initially objected to the application for lack of information, then responded to revisions on 1st June 2015 as follows:

"Having reviewed the revised FRA and Outline Drainage Strategy in response to our earlier objection (23rd April 2015), we now consider that outline planning permission could be granted to the proposed development, if the following planning conditions are included:"

A condition relating to the drainage strategy was proposed and is included at the end of this report.

- 8.3 Environmental Control: Environmental Protection is aware that the applicant site is a sensitive site in that there is an open odour complaint regarding smells from the production of crisps. The nature of the application process is completely different from crisp manufacture.

A site visit has been made to a farm that has a biogas digester and is comparable to the Fairfield's Farm application. Very little odour was noticeable within a few metres of the clamps, feed hopper or the lagoon.

The ADAS Odour Assessment dated 2 March 2015 bases its calculations on worst case and is very cautious, certainly the use of pig slurry as opposed to cow slurry would give higher predictions of European Odour Units and we would expect actual levels to be lower.

Several conditions were also requested – these are at the end of the report.

- 8.4 Environmental Control (Contaminated Land):

This is an acceptable report for Environmental Protection purposes. I note that it is concluded that intrusive land quality assessment is not considered likely to be required but would benefit from some further assessment during any subsequent geotechnical investigation. Based on the information provided, and given the proposed use of this site, this approach would appear reasonable. Consequently, should permission be granted for this application, Environmental Protection would recommend inclusion of the following condition (relating to the reporting of unexpected contamination).

- 8.5 Landscape Planner: Regarding the landscape content/aspect of the proposals lodged on 11.03.15.

With reference to the 'Landscape & Visual Impact Appraisal' dated 22.02.15; the following point need to be considered:

Under clause 8.8; the Council's Coast & Countryside Planner has advised that:

'The Review of the Countryside Conservation Areas document is no longer valid. In the inspectors report for the 2004 Local Plan CBC was encouraged by the inspector to review the CCA's. We completed the review as part of the Landscape Character Assessment studies undertaken to support the preparation of the Core Strategy but the proposed Area Landscape Conservation Importance were rejected by the planning inspector for the Core Strategy because he felt that they added an unnecessary layer of protection the countryside/landscape locally on top of the protection afforded by the RSS at the time.

The Coast & Countryside Planner further advises that 'reference to the Review of the Countryside Conservation Areas document should be considered as invalid as part of any planning application.

Otherwise this report concurs with the Summary & Conclusions as detailed under part 13 of the Appraisal.

It is recommended the Council's Historic Buildings & Areas Officer and Coast & Countryside Planner be consulted regarding the acknowledged potential impact on 2

Grade II* buildings and impact on the countryside in Planning Policy terms respectively.

In conclusion, there would be no Planning Projects Team objection to this application on landscape grounds subject to the above.'

8.6 Historic Buildings Officer:

"I visited the site today and have concerns that the impact on designated heritage assets has not been addressed in the submission. In this case, Jenkins farm (II*) and Rochfords (II*) have the potential to be affected by the development in terms of their wider setting. The height of the proposed structures in this elevated and open plateau landscape creates a potential for a significant landscape intrusion in the form of skyline development (despite the conclusions drawn in the Landscape Appraisal that do not appear to be evidenced).

The NPPF requires that:

128. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation."

This work needs to be undertaken by a practice with specialist expertise in this field and I believe this should be supported by winter season photomontages to demonstrate the magnitude of the potential impact and the cumulative impact with existing and planned development. The widely cast definition of setting in the NPPF and its experiential dimension needs to be taken into account. Any assessment should include the impact of HGV movements on tranquility and include issues such as odour as the smell of frying was clearly detectable on my site visit.

Please reconsult once we have received the report."

NOTE – a revised Heritage Impact Assessment was received on 8th June 2015. Our specialist considered this and commented as follows:

"I do not agree. (that views from the farmhouse are likely to be unaffected). The screening is a single hedgerow of deciduous shrubs. The structure could be highly visible by reason of its height and the openness of the wider landscape. There is a cumulative impact here - in terms of industrialisation. Not covered."

"Limited impact (from the addition of a single further agri-industrial structure) - why? What about cumulative adverse impact? Barnwell and Forge Field decisions clearly indicate that all harm is by definition undesirable and to be avoided if possible. Is it possible to avoid here or if not how does the design solution mitigate the adverse impact?"

“This does not logically follow (that the impact of the proposed development on the setting of the listed buildings is low - the setting is already degraded for both by industrialising development. Harm does not justify further harm.”

“The alteration is cumulatively harmful and so why is the harm necessary or desirable?”

NOTE – The height of the proposed buildings has been much reduced and sunk in to the ground and a further assessment has taken place. Our Historic Buildings Officer has now replied: “I am satisfied that in my opinion the revised proposals strike an appropriate balance in terms of heritage impact.”

- 8.7 Urban Designer: “The proposal represents a significant increase in built massing within the countryside, with predominantly structures industrial in nature which would be difficult to mitigate through building/structure design. It might be argued that development is justified as the area already has a surprisingly large loose grouping of industrial-type development for the isolated rural location, though the counter-view is that further incremental development would simply emphasise the perception that such incremental development is at odds with the area’s location. My leaning would be toward the latter, especially considering new/increased visual impacts, the overtly industrial type massing and without a more compelling and evidenced proposal.

Therefore, for the moment I would recommend refusal. With regard to appreciating the full impact of the proposal, I would expect CGI coloured representation. Within the visual impact assessment it would be useful for all interested to see a table showing the grading of views with regard to visual impact and importance of the view. On this issue, it appears development would have a significant detrimental impact on view points 4, 5, 6, 9 and 11 for example. With regard to design, further details on materials and colours should be provided, to help recess the building into its landscape setting. I would also expect to see substantial native tree screen planting and shown in the visual impact images at various stages of growth and for winter and summer. However, on this note, just because it might be screened and therefore not that visible does not mean it won’t be seen at all and therefore be perceived as in conflict with the rural setting.”

NOTE – This matter has now been addressed. An amended Visual Impact Assessment has been received, as have amended drawings (as discussed above). There are no objections from the Urban Designer, Landscape Planner or Historic Buildings Officer.

- 8.8 Planning Policy:
“The Spatial Policy team has been asked to consider this proposal in terms of its impact on the countryside.

This proposed development site is located on unallocated land in the countryside adjacent to the existing Fairfields farm complex.

The proposal supports the objectives of paragraph 28 of the NPPF which seeks to support the rural economy and rural land based businesses. The proposal is a rural diversification initiative and policies DP8 and DP9 are relevant. It requires the construction of several new built structures (anaerobic digesters, combined heat and

power plant and storage tanks/lagoons) and therefore in principle conflicts with criteria (i) and (iv) of policy DP8. The proposal satisfies the remaining policy criteria of DP8. It also potentially conflicts with policy DP9 (part D) which states that new rural employment buildings will only be supported where there are no appropriate existing buildings or where the need is justified. Given the specialist nature of the buildings proposed, it is unlikely that these could be accommodated within existing conventional farm buildings on the farm.

There is an allocated Local Employment Site in Wormingford but the development site falls outside it. Policy DP9 requires proposals outside LEZ's to contribute to the rural economy which this proposal does, however schemes should also be small scale, and respect rural character with regards to the nature and level of activity generated. These are also requirements of Core Strategy policy ENV2.

The proposed development covers an area of 2.9ha (including buildings and storage lagoons) and therefore cannot be considered small scale. The new buildings when viewed from a distance integrate well visually with the existing farm complex. Despite this development management should be satisfied that the **construction** of the new buildings will not adversely impact on local landscape character and where it does ensure that adequate landscaping is carried out to mitigate any landscape impacts. This is necessary to comply with policies DP1, and ENV2.

This scheme as well as being a rural diversification scheme will provide a renewable energy supply to fuel a combined heat and power unit for Fairfield's Farm and energy to the national grid. It therefore does not raise any conflicts with the objectives of policy ER1 in the Core Strategy or policy DP25.

Co-locating the biogas digester adjacent to the farm should reduce the number of trips by large agricultural equipment in the Wormingford area which meet the policy requirements of policies ENV2.

A desk top ecological survey has been carried out but no actual sites surveys have been completed. This is a requirement of policy DP21. The desk top search concluded that the site supported the following farmland birds; Corn Bunting, Yellow Wagtail and Lapwing which are all priority species under the UK Biodiversity Action Plan and also Red List species of high conservation concern, as well as Grey Partridge and Turtle Dove. The latter are protected under the Wildlife and Countryside Act 1981.

While the site is not hugely diverse in terms of the existing habitats and species the proposal provides an opportunity to enhance the biodiversity of this site. New flower rich grassland habitats should be requested as part of detailed landscaping requirements if planning permission is granted to provide foraging and feeding habitats for the birds using this site. This approach accords with criteria (ii) and (iv) of policy DP 21.

While the proposal does not comply with policy DP9 in terms of new buildings in the countryside, overall it delivers a number of wider benefits and is considered to satisfy Local Plan policies in terms of transport, renewable energy, managing climate change, landscape and biodiversity.

- 8.9 Archaeology: “This applications lies on the site of a locally significant heritage asset recorded in the Essex Historic Environment Record. Originally the site of a First World War landing ground for the Royal Flying Corps, Wormingford was reconstructed during 1943 as an American fighter and fighter/bomber base. It was equipped with three runways, perimeter track, 50 loop dispersals and bomb stores. The main technical site lay along the eastern perimeter and there were over 300 huts and domestic facilities in the fields to the east of the airfield.

There will need to be an evaluation (both of the digester site and the reservoir), by consent:

I will, on request of the applicant, prepare a brief for the desk-based assessment.”

A condition was proposed which is included at the end of this report.

- 8.10 Natural England: Natural England has no comments to make regarding this application.
- 8.11 Environment Agency: We have inspected the application, as submitted, and have no objection to the application.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council’s website.

9.0 Parish Council Response

- 9.1 Initial response (25th March 2015) “Wormingford Parish Council discussed this application at its March Meeting and would at present object to this application in its current form

The Council’s current concerns are regarding:

- Odour
- Traffic movement for the construction of the biogas digester along with the long term movements of traffic once operational.
- Hours of Operation.
- Noise.
- The amount of concrete needed for the site in such a rural setting.
- Creation of gas for the National Grid, but currently no gas available for the Village of Wormingford.

The Parish Council is currently seeking advice from other Local Parishes who have had a similar application passed, to seek some guidance on actual impact to the local community.

The Parish Council would like to receive further information from the applicant and would welcome a presentation at its May Parish Council meeting to provide answers to the above concerns. The Chairman of Wormingford Parish Council has spoken to the applicant and he is in agreement to this idea.”

9.2 Following an extraordinary meeting, the Parish responded as follows:

“The Parish Council agreed a majority vote at its April extraordinary meeting to SUPPORT the above planning application.

The Parish Council would encourage the applicant to continue village engagement in this project as the Parish Council are aware of some continued concerns from residents over this project especially regarding possible odour. The council also explained the critical need for the applicant to be a good neighbour in all respects. This was highlighted owing to the ongoing complaints regarding the existing crisp manufacturing operation on Fairfields Farm.”

10.0 Representations

10.1 At the time of writing (15th July 2015) eight letters of objection four of support and three mixed had been received.

10.2 The reasons for objecting were:

- Odour;
- Reliance on the “crust” to prevent odours is uncertain;
- Visual blight to Colne and Stour Valleys, buildings up to 13 metres in height;
- Loss of farmland;
- Extra HGV movements (and lack of clarity on claimed movements);
- Adverse effects on local footpaths;
- Wrongly describing the site as an “airfield.”
- Lagoon will produce odours;
- Ditches will not be able to cope with water run-off;
- It is appropriate for farmland to generate energy?
- Concerns as to the construction and operational phases of the project;
- Out of keeping with traditional farm buildings in this part of rural Essex;
- Potential polluted water seepage into the Colne;
- There is no assurance that neighbouring farmers will agree to supply the required additional feed;
- Soil erosion and compaction;
- Pesticide required for growing maize;
- If potato waste is to be used, this would need the involvement of the Waste Planning Authority at Essex County Council. (NB – no it wouldn’t as not “waste transfer”);

10.3 The reasons for support were:

- Reduction in traffic
- Good for the environment/less reliance on fossil fuels
- New jobs
- The development will be well-screened

10.4 The Essex Bridleways Association also commented, requesting that some of the existing local footpaths be upgraded to bridleways.

NOTE – this was considered by the Development Team. However, the Highway Authority advised that this was not necessary to make the scheme acceptable and, therefore, this could not be insisted upon.

10.5 NOTE – A further letter of consultation was sent out following the receipt of the second set of amended drawings. The deadline for comment falls after the publication of this report. Any additional comments will be reported on the amendment sheet.

11.0 Parking Provision

11.1 Not relevant to this application. The larger Fairfield Farm landholding has ample space for the parking of many vehicles.

12.0 Open Space Provisions

12.1 n/a

13.0 Air Quality

13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Development Team and Planning Obligations

14.1 This application is classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. It was concluded that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

Policy

15.1 One of the twelve key principles of the NPPF is to “support the transition to a low carbon future in a changing climate...and encourage the use of renewable resources (for example, by the development of renewable energy.” The NPPF adds, at paragraph 93: “This is central to the economic, social and environmental dimensions of sustainable development.” Succeeding paragraphs within that document encourage Local Authorities to have “a positive strategy to promote energy from renewable and low carbon sources.”

- 15.2 Explicitly, paragraph 98 states that local authorities should “approve the application if its impacts are (or can be made) acceptable.”
- 15.3 Therefore, at the heart of government guidance is a presumption (all other things being equal) in support of proposals such as this.
- 15.4 Further, Paragraph 28 of the NPPF supports the rural economy and rural land based businesses.
- 15.5 These tenets are passed down through Colchester Borough Council’s own local policies in the core strategy and development policies, both reviewed in 2014. Of particular relevance is Core strategy ER1 which clearly states: “The Council will encourage the delivery of renewable energy projects, including micro-generation, in the Borough to reduce Colchester’s carbon footprint.”

Visual Amenity

- 15.6 As discussed in the consultations section above, there were several concerns raised by specialists in the Planning Projects Team (Commercial Services) and by third parties. These related to landscape impact as well as the setting of listed buildings, particularly Jenkins farmhouse and to a lesser degree Rochfords (both grade II* listed).
- 15.7 Our Historic Buildings & Areas Officer expressed concern at the original proposal with its spread of high buildings and their effect on the wider setting, specifically in relation to the setting of the nearby Jenkins. A Planning Authority has a statutory duty (under s.66(1) of the Listed Buildings and Conservation Areas Act 1990) to ensure that no avoidable harm is caused to the setting of such assets. The NPPF defines setting widely as the whole environment in which the asset is experienced.
- 15.8 The applicant had amended their scheme in June. However, it was held that this was still potentially harmful. Therefore, further amendment was negotiated in terms of building height. As a result, following installation and establishment of the planned landscape mitigation, the bio-digester and Jenkins should not be read together, with Rochfords (Also Grade II*) even further away and not materially affected by the proposal.
- 15.9 The heights of the main buildings are now no more than approximately six metres (for the digester, which is now to be sunk two metres below ground), with the only elements above this height being a very small amount of the gas store dome and a few centimetres of the gas store as well as the slender objects the solid input batch feeder (nine metres high and 1500mm across), the CHP (10 metres high, 500mm across) and the flare (eight metres high, one metre across). The clamps are only about four metres in height.

- 15.10 In further mitigation, it is proposed to introduce additional hedge and tree planting to the immediate east of the site, with thick woodland belt planting (up to 30 m in depth) to the eastern edge of the applicant's larger landholding. This should deliver significant mitigation to protect the setting of Jenkins farmhouse. Further, woodland copse planting is proposed for the northern edge of the landholding to screen views from Fordham Road. Further landscape mitigation is also shown, including gapping up of the roadside hedgerow and the introduction of standard trees along the Fordham Road boundary. These works should mitigate the wider impact on the landscape setting of Rochfords farmhouse.
- 15.11 Cumulatively, the amendments and landscape mitigation are held to overcome any lasting concerns about the wider landscape setting and the effect on the setting of the listed buildings. Whilst there will inevitably be an impact during the construction phase and during the early years of operation, as the landscape mitigation matures, a significant landscape enhancement would be delivered that will address any potential creeping industrialization of the locality.

Residential Amenity

- 15.12 This has several elements to it – potential noise during construction, noise during operation. These are looked at below, but the chief concern relates to odour.
- 15.13 Odour: It must be recalled that our Environmental Control Officer has not objected to the proposal. However, this is a complex matter and several concerns have been raised by objectors. These can be listed as follows:
- i) There are existing odours from the crisp factory;
 - ii) Odour will be constant and not intermittent;
 - iii) There will be odours from liquid digestates;
 - iv) The reliance on the crust to prevent odours cannot be depended upon;
 - v) The Environmental Control Officer did not witness a hopper being filled with feed-stock;
 - vi) Loading would be a daily process taking about 2 hours;
- 15.14 First and foremost, it is recognised that there have been longstanding issues with odour from the crisp factory (including for some dwellings which are at a considerable distance from the factory). However, this should not inform or confuse consideration of the matter at hand.
- 15.15 Turning to the other points raised: Our Environmental Control Officer witnessed activities at the Earls Colne plant and has reported that odours are virtually undetectable other than within a few metres. Given that the nearest residential property (Jenkin's) is about 200 metres away the general concerns about odour are not compelling. The applicant has added: "The odour report from ADAS concluded that there will be not be a negative impact to local receptors from the proposed development. The odour report carried out assumed the worst case scenario. We have visited the two most local running biogas plants to Colchester with both Parish Council members from Wormingford and our local EH Officers. On both occasions it was noted that odour was not an issue. Neither site has ever received a complaint about odour and has potential receptors within similar distances to the proposed Fairfields site."

- 15.16 The separated digestate solids, in terms of odour potential, are biologically relatively inert, and “do not generate significant odour emissions in undisturbed stockpiles”. Storing this material outside will pose a lower risk of odour impact than manure storage in heaps in farm yards. However, the applicant acknowledges that (in common with manure handling) “periodic loading of digestate solids to trailers or spreaders for removal from the site will give short term increases in odour emissions”. Thus, there will be an intermittent – not constant – issue of odour.
- 15.17 The applicant has clarified this last point and that relating to the crust, stating: “The odour from the liquid digestate is very much limited and controlled when in storage in the lagoon. The crust that forms over the top reduces odour escaping or travelling. This was seen by the EH Officers when they attended the site at Elmstead Market. Once the crust forms, the digestate is then pumped out from underneath the crust and dribble fed via an umbilical system, or trickle irrigated onto a growing crop or stubble, thus directly applying the digestate to the soil and not releasing into the open atmosphere. This method of application is non-atomising, so odour from the digestate is prevented because it is dribbled in liquid form, onto the farmland. Liquid digestate for the purpose of agriculture can be applied onto land under an Environment Agency exemption and could be applied to the farmland even if a biogas digester were not present at Wormingford Airfield.”
- 15.18 In reference to concerns about the crust not working, the applicant advises: “Experience from other biogas sites suggests that the crust is sufficient at suppressing odours.”
- 15.19 On the final point relating to smell, the clamp face exposed whilst loading the crop into the hopper is not a high risk odour situation. The clamp face was open when the EH Officers visited the site at Elmstead Market and it was acknowledged that there was no odour from the open clamp face, except when right next to the clamp face. The loading process is with a loading shovel which cuts the clamp face and moves the feedstock to the hopper which is then automatically fed into the biogas digesters.
- 15.20 The applicant has further clarified: “There is no merit in producing a feedstock which is stored and releases odour as all of the energy within the feedstock needs to be conserved and used in the biogas process. Any release of odour (which will be a loss of energy) will affect the productivity of the biogas plant.”
- 15.21 It is concluded that the issue of odour is satisfied.
- 15.22 Noise: It is claimed by the applicant that the digestion process itself is silent. This leaves for consideration the other parts of the operation – principally the construction phase and the delivery and loading of the agricultural feedstock.
- 15.23 Your Environmental Control Officer has requested that hours of both construction and delivery be restricted to the usual times - Weekdays: 8am – 6pm Saturdays: 8am – 1pm Sundays and Bank Holidays: Not at all. This means that any vehicle movements should not occur at sensitive times.

- 15.24 Regarding the loading. This breaks down in to two parts, the first of which has the potential to be the noisiest part of the operation – namely the loading of crops into the clamps. The applicant has clarified that this will occur two to three times a year, namely April-May and June-July for the grasses and September for the maize. This has the potential to make some noise, but is time sensitive according to the day that the crops are at their optimum. Any noise involved would be typical of normal farming activity.
- 15.25 The second element is the loading of the crop in to the digester. This takes up to two hours (possibly as little as one hour) and needs to be done every day. This is a very quiet activity, but for the avoidance of doubt a condition will be in place to restrict this to 07:30 and no later than 18:00.

16.0 Conclusion

- 16.1 Central government guidance and Local Plan policies are supportive of low-carbon proposals such as this, provided other matters are satisfied.
- 16.2 After much negotiation, the issues of visual impact and setting of listed buildings have been satisfied.
- 16.3 Whilst residential amenity concerns are noted, the effects are found to be limited.
- 16.4 There are no issues of Highway safety or efficiency which need to be satisfied.
- 16.5 Therefore, approval is recommended.

17.0 Recommendation

- 17.1 APPROVE subject to the following conditions

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall comply in all respects with the amended approved plans (205341-12-P4, 205341-10-P3 and FIGURE 7a.

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

3 - Non-Standard Condition/Reason

The public's rights and ease of passage over public footpath no48 (Wormingford) shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way. Any unauthorised interference with the route will constitute a contravention of the Highways Act 1980.

Reason: In the interests of highway safety.

4 - Limits to Hours of Work

No construction work shall take outside of the following times;

Weekdays: 8am – 6pm

Saturdays: 8am – 1pm

Sundays and Bank Holidays: Not at all

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

5 - Limits to Hours of Construction Deliveries/Worker Traffic

No construction deliveries to or from the site, worker vehicle movements, or construction work shall take place outside of the following times;

Weekdays: 8am -6pm

Saturdays: 8am -1pm

Sundays and Bank Holidays: Not at all

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

6 - Site Boundary Noise Levels

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

7 -Non-Standard Condition/Reason

The plant shall be installed and maintained in-accordance with the manufacturer's instructions. A log shall be kept detailing any faults and remedial action taken.

Reason: In the interests of residential amenity.

8 - Non-Standard Condition/Reason

A maximum of two clamp faces shall be open at any one time.

Reason: In the interests of residential amenity.

9 - No External Light Fixtures

No external lighting fixtures shall be constructed, installed or illuminated at any time.

Reason: To ensure that there are no undesirable effects of light pollution.

10 - Non-Standard Condition/Reason

The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (13/05/2015, ref 205341, Canham Consulting) and Drainage Strategy (13/05/2015, ref 205341 Rev P5, Canham Consulting) and the following mitigation measures detailed within the FRA:

- Provide a storage volume of 105m³ within the swales for the attenuation of surface runoff from roofs and concrete bases.
- Surface water runoff to be discharged at a maximum allowable greenfield run-off rate of 2.3l/s/ha (1 in 1 year greenfield rate).
- Provide 1 level of treatment for surface water discharge from the roofs and concrete bases.
- Provide details of adoption and maintenance of the SuDS scheme for the lifetime of the development.
- Obtain authorization and submit proof of discharge permit from the Environment Agency for the discharge of waste water generated from the silage storage area, to be discharged via the lagoons.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason

- To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.
- To ensure the effective operation of SUDS features over the lifetime of the development.
- To reduce the risk of pollution as a result of waste discharge from the development.
- To mitigate environmental damage caused by runoff during a rainfall event.

11 - Landscape Management Plan

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 other than small, privately owned, domestic gardens 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.

12 - Earthworks

No works shall take place until details of all earthworks have been submitted to and agreed, in writing, by the Local Planning Authority. These details shall include 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. The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that any earthworks are acceptable in relation to their surroundings.

13 - Tree or Shrub Planting

No works shall take place until details of tree and/or shrub planting and an implementation timetable have been submitted to and approved, in writing, by the Local Planning Authority. This planting shall be maintained for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

Reason: To ensure an appropriate visual amenity in the local area.

14 - Non-Standard Condition/Reason

No works shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation that has been submitted to and approved, in writing, by the Local Planning Authority.

The Scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording
- b. The programme for post investigation assessment
- c. Provision to be made for analysis of the site investigation and recording
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation
- e. Provision to be made for archive deposition of the analysis and records of the site investigation
- f. Nomination of a competent person or persons/organisation to undertake the works

The site investigation shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority. The development shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance with Policy SD1 and ENV1 of Colchester Borough Council's Core Strategy (2008).

15 - Non-Standard Condition/Reason

The feedstock digester shall not be loaded outside of 07:30 – 18:00.

Reason: In the interests of residential amenity.

19.0 Informatives

(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

(3) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**
PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

(4) The applicant is reminded that the transfer of waste on to or off of the site may require separate permission from Essex County Council.

(5) All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to: Essex Highways, Colchester Highways Depot, 653 The Crescent, Colchester, CO4 9YQ.

(6) Any drainage features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.

20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



Application No: 150213

Location: Land west, 58 Queens Road, Wivenhoe, Colchester, CO7 9JJ

Scale (approx): 1:1250

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7.3 Case Officer: Sue Jackson**Due Date: 30/03/2015****Site:** Land west, 58 Queens Road, Wivenhoe, Colchester, CO7 9JJ**Application No:** 150213**Date Received:** 2 February 2015**Agent:** Mr Steve Norman**Applicant:** Mr A Sherwood & Mr T Sherman**Development:** Erection of a detached dwelling with associated parking facilities - resubmission of 112284.**Ward:** Wivenhoe Quay**1.0 Reason for Referral to the Planning Committee**

- 1.1 This application is referred to the Planning Committee because it has been called in by Councillor Scott for the following reasons: flooding risk, suitability of design in or near conservation area, resident's concerns.

2.0 Synopsis

- 2.1 The key issues explored below are the status of the application, impact on the adjacent Conservation Area, the Queens Road vista and Town Drain which are on the Wivenhoe Local List and impact on resident's amenity. Flood and surface water drainage are referred to in the report. Recent planning history, in particular, application 112284 is also explained.

3.0 Site Description and Context

- 3.1 The application site comprises land formerly part of the garden of no 58 Queens Road. No 58 is a corner property and fronts Paget Road. The site is not within the conservation of Wivenhoe but adjacent to it. No.58 Queens Road is a typical modest interwar bungalow.
- 3.2 This section of Queens Road is accessed either via High Street or Park Road. Since the construction of the Cooks shipyard development Queens Road has been closed to through traffic and there is a turning area just to the east of the site. The road slopes down steeply from High Street and the site is at the bottom of the hill.

- 3.3 Queens Road is narrow and as the majority of properties have no provision for on-site parking vehicles park on the road. The south side of Queens Road from High Street to no 56 (the property immediately west of the site) has a distinct character of Victorian terraced and comprises semi-detached houses with small front gardens, this character is reflected on the north side from High Street to Park Road. The character changes at the bottom of the hill where there is a range of modern dwellings and some side gardens face the road. No 58 is a bungalow and other properties in Paget Road are also single storey. The dwellings in Valley Road were erected in the 1960's. Immediately opposite the site is Pump House converted to residential use.
- 3.4 The north side of Queens Road from High Street to Park Road and the south side from High Street to no 56 are within the conservation area. The application site is therefore adjacent to the conservation area.
- 3.5 Queens Road for most of its length, including the application site, is included on the local list of Historic Buildings as a group vista. The Town Drain and the Pump House opposite the site are also on the local list.
- 3.6 The Town Drain (a river) runs along the west boundary of the site. This drain runs under Valley Road down to the former Cooks shipyard site and discharges into the river.
- 4.0 Description of the Proposal
- 4.1 This full application proposes a 2-bed roomed bungalow. The property would be constructed of red brickwork with a pitched slate roof and timber windows. These are typical facing materials for the area.
- 4.2 Two parking spaces are indicated to the side of the dwelling. A rear garden of approximately 80 square meters in area is indicated which exceeds the Council's standard for a 2-bed dwelling of 50 square meters. The plans incorporate a raised slab level, a void under the building and the installation of trash screens. These features are required by the Environment Agency.
- 5.0 Land Use Allocation**
- 5.1 The site is within an area shown for predominantly residential purposes. The west boundary is adjacent to the conservation area. The site is within the Environment Agency flood zone 2 and 3. The site is within the Wivenhoe Local List as part of a group vista.
- 6.0 Relevant Planning History**
- 6.1 080026 Application for a single dwelling - withdrawn
- 6.2 081086 Application for a single dwelling- withdrawn
- 6.3 112284 Erection of a detached dwelling land adjacent 58 queens road application refused permission and an appeal has been lodged. Details of this application are explained in the report –Paragraph 15.1

6.4 145404 - Entrance canopy and internal alterations approved 58 Queens Road

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations

H1 - Housing Delivery

H2 - Housing Density

H3 - Housing Diversity

UR2 - Built Design and Character

PR1 - Open Space

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):

DP1 Design and Amenity

DP3 Planning Obligations and the Community Infrastructure Levy

DP12 Dwelling Standards

DP13 Dwelling Alterations, Extensions and Replacement Dwellings

DP14 Historic Environment Assets

DP15 Retention of Open Space and Indoor Sports Facilities

DP16 Private Amenity Space and Open Space Provision for New Residential Development

DP17 Accessibility and Access

DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

Backland and Infill

Community Facilities

Vehicle Parking Standards

Sustainable Construction

Open Space, Sport and Recreation

Extending Your House?

The Essex Design Guide

External Materials in New Developments

Wivenhoe Town Plan and Executive Summary

8.0 Consultations

Highway Authority

- 8.1 This application differs from previous ones on this site in so much as the access is against the boundary line with the adjoining property and therefore visibility splays cannot be provided as the adjacent property is not within the control/ownership of the applicant. It is noted that for previous applications on this site visibility splays of 17m were requested. However, it is recognised that neighbouring properties have vehicle access points which do not provide this level of visibility. Whilst this does not fall within the terms of current policy standards it is also recognised that there is no accident record for Queens Road and therefore the limited visibility does not cause a safety issue. In this regard the Highway Authority does not wish to raise an objection to the above application subject to conditions.

Environment Agency

- 8.2 We have reviewed the information submitted and are able to remove our objection, subject to the conditions below being attached to any permission. You should ensure that you are satisfied the development would be safe for its lifetime, and you should assess the acceptability of the issues within your remit. Please see our detailed comments below.

Fluvial Flood Risk

Our previous letter, referenced AE/2015/118827/01-L01 and dated 13 February 2015, stated that we were consulted on a previous application at this site, your reference 112284, and that all information on flood risk which was submitted in support of the previous planning application should also be submitted in support of the current application.

We have now received the following information in support of the above planning application:

- Flood Risk Assessment (FRA), produced by JPC Environmental Services, referenced CE11/003/HJ issue 1.1, and dated October 2011
- Supporting letter from JPC Environmental Services, referenced CE11/003 and dated 13 May 2013
- Supporting letter from JPC Environmental Services, referenced CE11/003/RME/le and dated 13 February 2014
- Supporting letter from JPC Environmental Services, referenced CE11/003/RMC/al and dated 24 July 2014
- Drawings titled Elevations and Typical Section for Land Adj Queens Road Wivenhoe

The FRA referenced CE11/003/HJ has demonstrated that the users of the proposed development are above the flood level and have safe access/egress from the site. Accordingly, based upon the FRA, the development itself can be regarded as safe during a 1 in 100 year flood event with the addition of climate change. A model of the watercourse conducted by Amazi Consulting Ltd and referenced AMA163 R2 Rev 0 has been used to demonstrate this with flood depths established across the site. The development site lies within the floodplain and could, potentially, reduce the storage capacity of the floodplain during times of high flows. The additional information supplied shows the potential of creating a void under the development thus creating no loss in floodplain until fluvial flows are already overtopping the downstream obstruction.

We have no objection to the planning application, providing that you are satisfied that the development would be safe for its lifetime and you assess the acceptability of the issues within your remit and subject to the conditions below being attached to any permission.

The proposed development will only meet the requirements of the National Planning Policy Framework if the following measure(s) as detailed in the Flood Risk Assessment, supporting letters, and approved drawings submitted with this application are implemented and secured by way of a planning condition on any planning permission.

Condition

The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) and the following mitigation measures detailed within the FRA:

- Finished floor levels are set no lower than 5.50 m above Ordnance Datum (AOD). The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority. Reasons To reduce the risk of flooding to the proposed development and future occupants. To ensure the proposed void can be set at the required level to compensate for the loss of flood storage Technical Explanation Sources of Flooding

The submitted FRA, along with your council's Strategic Flood Risk Assessment (SFRA) demonstrates to our satisfaction that the site would not be at risk from the River Colne during the 1 in 200 year tidal event inclusive of climate change allowance if the Colne Barrier were to breach/fail.

However, whilst the site is not at risk from this tidal source, it remains at risk from the fluvial Wivenhoe Town Drain adjacent to the site, which is classed as a 'Main River'. The FRA has also identified the site to be at risk of pluvial (surface water) flooding and has acknowledged that the proposed development will increase the impermeable area. During heavy rainfall events, there are known existing flooding issues within the Wivenhoe Town Drain network of inadequately sized culverts, drains on Queen's Street and further downstream at the railway bridge and the culvert under Brook Street. This arises from a number of sources including overland flow and surface water flowing down the roads; this is often unable to enter the highway drains on Queens Street, inadequate culverts, inadequate capacity within the open section of the drain and tide locking.

Proposed Void

As discussed previously, the proposal includes a void beneath the building to compensate for any loss of flood storage and to allow water to flow freely beneath the new building as well as raising the finished floor level.

The 'flashy' nature of this catchment means that it is prone to carrying and depositing significant amounts of silt from the watercourse and from overland flow off the roads; therefore there is potential for the void to become silted up. If the void beneath the building became silted up causing a blockage it could result in offsite impacts through the displacement of water around the building.

In our comments on the previous application at this site, we raised concerns that if the proposed void beneath the building is not maintained in perpetuity then the building of the property at this location could exacerbate any existing problem by reducing flood storage capacity.

It is noted that the developer is willing to enter into a legal agreement, as part of a Section 106 and planning condition, to maintain the void. It is the developer's intention to surface the underside of the void (ground level) with concrete, incorporating a series

of shallow drainage channels designed to facilitate the flow of surface water run-off and flood water. It is confirmed that the surface will be readily cleared by pressure washer or hose pipe, to remove any fine silt or minor debris that makes its way through the 'debris' screens.

Whilst improvements to the drainage system and overland flow route have been made in the area, it remains unknown as to whether the mitigation proposed in the form of a void beneath the building will be effective in ensuring flooding is not exacerbated locally.

We have previously raised the issue of inadequate drainage and the history of flooding of the site. The consultant considers that the historic flooding was caused by a number of factors that are no longer in effect or have been substantially improved, however, we must point out that these factors remain an unknown/ un-quantified risk that you must be aware of – for example – if the main river is un-maintained/ blocked, if the highways drains become silted/ blocked and if the void beneath the building becomes blocked. We acknowledge that there is an awareness of the potential for flooding at this location and that Highway Teams may be more likely to maintain the drains, and the Environment Agency have permissive powers to maintain the 'main river' watercourse: this does not however, take away the underlying flood risk which has been seen historically. Please note that whilst we have 'permissive' powers to undertake maintenance to Main Rivers, this is priority based, and may not be a regular maintenance regime. The landowner will have riparian responsibility for the maintenance of the section of river bank abutting their land. We are satisfied that the applicant has further considered providing adequate underground storage which will be sealed to prevent groundwater entering the tank.

Should you have any questions then please do contact either Lucy Hayward (Flood & Coastal Risk Management Officer) on 01473 706 076 or myself on the details below.

Other Mitigation

The property itself will have raised finished floor levels above the 1 in 100 year level, inclusive of climate change allowance, but the depth of flooding due to surface water/pluvial flooding is unknown. The occupants would have refuge within the building and have safe access/egress from the site during a 1 in 100 year fluvial flood level, including allowance for climate change, but the depth and velocity of surface water/pluvial flooding is unknown and the building could become surrounded by water. Summary of Our Position Based upon all the information provided to date we believe that the 'picture' of flood risk has been provided. Although we have no objection to the application we advise your council, through consultation with your emergency planning officer, to carefully consider whether this proposal can be considered an acceptable, sustainable development.

Summary of Flood Risk Responsibilities for your Council

We have not considered the following issues as part of this planning application as they are not within our direct remit; nevertheless these are all very important considerations for managing flood risk for this development, and determining the safety and acceptability of the proposal. Prior to deciding this application you should give due consideration to the issue(s) below. It may be that you need to consult relevant experts outside your planning team.

- ☐ Sequential Test;
- ☐ Exception Test;
- ☐ Safety of people (including the provision and adequacy of an emergency plan, temporary refuge and rescue or evacuation arrangements);
- ☐ Safety of the building;
- ☐ Flood recovery measures (including flood proofing and other building level resistance and resilience measures);

- ☐ Whether insurance can be gained or not;
- ☐ Sustainability of the development.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

To help you with your decision, we have provided further information within a technical appendix on the characteristics of flooding and the mitigation measures proposed to manage this risk, along with more information on the responsibilities for your council.

Informative – Flood Defence Consent

Under the terms of the Water Resources Act 1991, prior written consent of the Environment Agency is required for any proposed works or structures, in, under, over or within 9 metres of the top of the bank/foreshore of the Wivenhoe Town Drain, designated a 'main river'.

The flood defence consent will control works in, over, under or adjacent to main rivers (including any culverting).

Your consent application must demonstrate that:

- ☐ there is no increase in flood risk either upstream or downstream
- ☐ access to the main river network and sea/tidal defences for maintenance and improvement is not prejudiced.
- ☐ works are carried out in such a way as to avoid unnecessary environmental damage.

Mitigation is likely to be required to control:

- ☐ Off site flood risk

We will not be able to issue our consent until this has been demonstrated.

We are pleased to note the proposed dwelling is further from the Wivenhoe Town Drain than the dwelling proposed in application 112284. Our Asset Performance team have advised that they have no objection to the dwelling being within 9m of the main river at this location, however they request that access for operatives to the channel is maintained. This should be taken into account when considering construction of fences or hedges within the 9m boundary of the main river.

Colchester Borough Council Resilience officer

8.3 If all the below measures are put in place then I would agree that the risk of surface water flooding to the site was minimized, but not removed. I would also be satisfied that the erection of the additional dwelling would not adversely affect the flood risk on existing dwellings.

- Use of permeable surfaces
- Floor level set to a minimum of 5.5m aOD
- Rain water harvesting
- Introduction of attenuation discharge
- Site Entrance positioned at North East Corner offers the safest for access and egress purposes.

I would advise that a maintenance schedule of the sub floor void be clearly identified and detailed along with legal agreement of responsibility of this maintenance, now and for the life of the property. As if this maintenance was neglected this could have adverse effects on the sustainability of the property, increase the flood risk to the property and surrounding properties. This should be agreed and in place before allowing the development to go forward.

Looking specifically at 'summary of risk responsibilities for your council' in the EA's response it suggests that there should be an Emergency plan produced by the developer to review.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

9.0 Parish Council Response

- 9.1 The Town Council has stated that
Some of the Town Council's previous comments for 11/2284 are reiterated, viz: The development is inappropriate in that it is sited in an area prone to flooding. The property is adjacent to the local conservation area and will be out of keeping with the neighbourhood. The Town Council feel that this is over development of the site. Given the location of the driveway any vehicles would have to reverse onto the highway causing a hazard in what is already a narrow street.
- 9.2 Further comments are: The Town Council note that they were not informed in line with other consultees of this application and that notices were originally not put up on the site. The Town Council believe the solution to flooding is untested and question whether it will be adequate given the overwhelming local evidence of flooding in the vicinity. Also as it relies on continued maintenance would ask the Borough what legal powers are available to enforce this maintenance in later years? The Highway concerns remain in terms of access to the site and the site plan is inadequate in demonstrating that the application conforms to parking standards. There is concern that pile driving will have a massive effect on the surrounding properties and their structural integrity. It is doubtful whether 3.2 of Policy DP1 development must positively contribute to the public realm, identifying, preserving or enhancing the existing sense of place can be attributed to this application.
Policy DP1 of the LDF Development Policies Document (adopted October 2010) states that all development should be designed to a high standard that respects and enhances the character of the site, its context and surroundings. The proposal as it stands is contrary to the aforementioned policies, inappropriate and out of keeping with the local scene. Additionally even though the proposal is currently a single storey one, there is sufficient height to convert the loft at a later stage and would ask, if permission is granted, that a condition that it remain a single storey dwelling be placed on that approval. The loss of permeable land is also of concern.

10.0 Representations

- 10.1 6 representations from residents raising objection plus objections on behalf of the Wivenhoe Society and Queens Road Residents Association have been received.

Wivenhoe Society

- 10.2 It is unfortunate that a garden which was an attractive feature of Queens Road has been allowed to become a waste site. Viewed as an infill development the Wivenhoe Society wishes to make four comments
1. The proposed 1960 style bungalow will detract from the appearance of the neighbouring conservation area. The fenestration is out of keeping with the adjacent terraced houses and is an inappropriate neighbour both to the terraced houses and the Pump House opposite the property. The claim that it will have a positive impact on the townscape is questionable. It is positive relative to the current dereliction but negative relative to the situation when it was a garden. It is bad policy that developers should be allowed to create an eyesore and then use some improvement to the situation as a reason for granting planning permission.
 2. The very lengthy correspondence with the Environment Agency on the flooding issue suggests that the proposed system of floodwater void with trash screens is of an experimental nature. The developers are offering to enter into a legal agreement to maintain both the trash screens and the void. Such an agreement would require monitoring. A contribution towards the cost of such monitoring should be required as a part of any planning permission.
 3. Much of the site will either be built on or will provide car parking space. The appropriate surfaces of the car parking should either be designed so that they are water permeable or so that there is adequate drainage into the nearby watercourse.
 4. The existing bungalow and the proposed new bungalow are shown with four parking spaces between them but the layout will result in the loss of one on-street residents' parking space because of the need to keep access clear to the private parking spaces. The Victorian terraced houses have no private parking because of the date at which they were built so require provision for on road parking. A loss of a space will be to their detriment.

Queens Road Residents Association (QRRRA)

- 10.3 Our objection is based upon local knowledge and context of the site and our objective is to prevent the construction of a building which among other things would increase the damage to existing properties during flash flood events and disrupt the fragile natural and man-made surface and foul drainage systems at the bottom of Queens Road.

As explained in my letter 1 March 2015, it has not been clear whether this is a new application or merely a resubmission of planning applications 112284, formerly 080026 and 081086 relating to the same site which has been consistently submitted and withdrawn since January 2008.

If the committee were merely to consider the application as a re-submission and focus only on the suitability based upon building size; a substantial body of relevant opposition, documented in other submissions to this application, based upon knowledge of flooding, insight into the unresolved demarcation differences between the highways agency, environment agency and local government will be ignored.

It is important that the incremental planning process, which can over an extended period, develop cumulative errors in both fact and execution, does not override logic and knowledgeable local insight; with this in mind a complete timeline of all relevant

applications, decisions, re-submissions misunderstandings and subsequent modifications about this site since January 2008 is being prepared in parallel with this objection.

I have been asked to state that the proposed building would be detrimental to the neighbourhood in the following respects.

Flood Risk and Drainage

In November 2013 the Environment Agency made it clear that the quantifiable and unquantifiable flood risk associated with building on the site have been made quite clear to Colchester Borough Council who was in a better position than the Agency to make decisions based upon local advice, I trust that that local advice has been sought and used in your decision making process.

I have been asked to report that the flooding, noted by many others commenting on the application, has still not been resolved. The frequency of flash flood events described in other submissions on this application is predicted to increase in the future due to climate change.

Highways Agency, the Environment Agency and local government disagree on their responsibilities for maintenance and corrective action relating to the brook, culvert and sanitation. Would Colchester Borough Council be content to take on the stewardship overseeing and co-ordinating of any required maintenance and corrective action necessary as a result of events due to the construction or presence of the proposed building?

A report in Wivenhoe News Spring 2013 noted there had been engineering works in Valley Road following serious flooding and that the culvert under Valley Road and Queens Road had been cleared of debris.

No residents have witnessed any inspections nor culvert clearing taking place. The last recorded visit being 14th February 2012 Onsite Drainage Engineers of Worcester – working on behalf of the Environment Agency attempted to carry out a survey of the Queens Road culvert but had to abandon the attempt as it was too silted up to insert their cameras.

Conservation area and Visual amenity

The proposed building is immediately adjacent to the conservation area and does nothing to enhance the environment; rather its influence detracts from the well maintained Victorian terrace it adjoins.

The prized Queens Road vista and Wivenhoe Brook which is now recognised as significant through its adoption on the local list would be spoiled.

The proposed development removes the natural break, provided by the site, between the Victorian terrace to the West of the river and the low rise building and second Victorian Terrace to the East of the river.

Parking

Parking in Queens Road is extremely limited. The road is only wide enough to allow parking on one side, meaning that the number of front doors far exceeds the number of available parking spaces. The additional parking requirement of this proposed property for residents and their visitors will add to an existing problem.

Nuisance

Bringing building materials and machinery required for construction through the narrow street with cars parked along one side will inevitably result in more damage to vehicles and to the brick walls of the properties on the other side of the road which abut the road as there is no pavement.

Construction at the site will have detrimental impact on the foundations of the adjoining Victorian properties and the water table.

The culvert and other under road drains (both clean and foul) are fragile and liable to suffer damage through construction traffic passing over them and disruption due to additional flow from the proposed new property.

10.4 Six letters of objection have been received from residents 3 residents of Queens Road and three residents of Paget Road. Many of the objections reflect those made by the Town council, Wivenhoe Society and Queens Road Residents Association.

10.5 Residents raise the following objections.

- The notification letter is ambiguous because it is unclear whether this is a new planning application or a resubmission of planning application 112284 rejected by CBC Planning Committee in September 2014.
- The fence along the side boundary of 21 Paget Road and the rear boundary of the site belongs to no 21 the fence is 165cm in height anything over this height is foliage. The garden of 21 will be overlooked from the rear windows in the proposed property
- The use of piles will undermine the structural integrity of the adjacent dwellings
- Legal position of future owners regarding maintenance of the void
- The drawings do not indicate the true dimensions of the proposed development
- Why is the applicant allowed to let the site become untidy?
- The letter from the Environment Agency states that maintenance access to the stream must be available; the proposed building does not appear to fit into the space left after allowing for this access

10.5.1 Process

- This application and the processes linked to it (also in terms of the previous application) must be properly scrutinized and in an open and transparent manner
- Why is the applicant allowed to resubmit a new planning proposal potentially without a Planning Committee convening?
- Wivenhoe Town Council did not receive a consultee notification nor was a planning notice displayed on the site which is adjacent to the conservation area until Councillor Rosalind Scott brought this to the Planning Departments attention at the end of February 2015. Whatever happened to transparency in local government? This contentious planning application has dragged on in various guises since 2008 and the planning department would appear to have failed to be impartial, always favouring the developer and not fully taking account of residents genuine concerns. Unfortunately there have been many discrepancies in reports. This and the earlier application 112284 should be investigated further on the grounds of due process and non-compliance with the code of conduct for officer's. This application continues to demonstrate the same issues as the previous application did (112284) with regards to flooding risks. The planning officer's involvement in driving this through raises further concerns over impartiality. We hope this activity will be

investigated for compliance with the Code of Conduct for officers. We believe due process has not been followed as the application page states this is a full application. The planning officer's comments appear biased. The applications for Land West of 58 Queens Road have been riddled with issues, in part displayed by how long the earlier application took to resolve. We would like this and the earlier application referred to the Ombudsman on the grounds of due process and non-compliance with the code of conduct of the planning officer.

10.5.2 Risk of Flooding

Flash flooding incidents at the bottom of Queens Road are well documented by residents going back over 40 years. They are not historical as suggested. This is clearly demonstrated by the Queens Road Flooding and Damage Diary of Events AL1, AL2 and AL3 which Pat Marsden emailed to you on 18th March 2015. It should be noted that 14th February 2012 Onsite Drainage Engineers of Worcester working on behalf of the Environment Agency (EA) attempted to carry out a camera survey of the culvert running under Queens Road. This was aborted because the culvert was heavily silted up. Onsite Drainage Engineers advised me they would report back to EA with a view to de-silting the culvert after which they could carry out the survey. To date (March 2015) there is no evidence of this being done. In December 2012 the culvert underneath Valley Road flooded the highway and the pathway at the back of the Pump House (Queens Road) necessitating the involvement of Anglian Water, EA, Wivenhoe Town Council and the Police.

Whilst the Environment Agency withdrew their objection to the development in November 2013 they emphatically stated in their letter to you dated 24th March 2014:- "Whilst improvements to the drainage system and overland flow have been made in the area, it remains unknown as to whether the mitigation proposed in the form of a void beneath the building will be effective in ensuring flooding is not exacerbated locally".

As far as I can ascertain the technology of an under floor void with associated trash screens to collect flood water is untested in domestic dwellings in full time permanent occupancy. The developer has failed to provide an assessment of the effects of groundwater. Are you suggesting the property owners in the lower part of Queens Road act as guinea pigs for this untested technology?

The planning application offers the same untested technology of an under-floor void to mitigate flooding. The only example given to date is from use on a temporary structure. No assessment of the effects on the groundwater has been provided, especially as building works may well affect the lithology of the sub-strata.

10.5.3 Potential Flooding Problems

Residents have written to the Environment Agency expressing concern that the construction of a house in the natural flood basin which has for years allowed flash flood water to disperse with little consequence, poses a risk to the adjacent properties and describing first-hand experience of flash flood incident mitigation provided by the site along with knowledge of the flood history of the location. This application appears to minimize the importance of the adjacent water course referring to it as the "Town Drain", rather than acknowledging its true Environmental Agency classification as a river. The flood mitigation measures described in application 150213 focus on the protection offered to the proposed new building and do little to mitigate against flash

flood incidents where “The water level was high on the terraced properties opposite and reached tops of the wooden doors of the small garage which at the time was situated on part of the site of the proposed house”. It is important to note that despite appearing that the Environment Agency do not raise any objection to development on this site; in November 2013 they made it absolutely clear that this was because they had put CBC clearly in the picture with regard to the unknown and unquantifiable risks of flooding spelled out in their previous objections and stated that they were unable to advise on this local situation and passed the responsibility for approving any development to CBC, along with any resulting liability.

Over burdening of existing sewer system the application contemplates adding additional input to an extremely fragile drainage system. There have been problems with both the surface water and foul sewerage systems at the bottom of Queens Road. There are on-going capacity problems with the system coping with excess surface water which regularly exits from the drains at the bottom of Park Road and flows on the surface of Queens Road to join the river by way of the car parking area of the proposed building. Remedial repair work which had to be carried out appears to have overcome the difficulties with the foul system. Prior to the work, sewage systems of homes at the bottom of Queens Road regularly backed up. A neighbour regularly called the local council who were obliged to unblock the system by way of the manhole cover in the road. To add to an already fragile situation, ongoing demarcation disputes between the Transport Authority and Environment Agency about the responsibility for clearing the culvert under Queens Road adjacent to the site have resulted in numerous occasions where clearance work has been attempted but abandoned when inadequate equipment had been brought to the location.

Should the property be constructed and the addition of an additional input and construction upset the delicate balance of the ancient sewage system and drainage it would result in considerable nuisance to neighbours and potentially become extremely costly for the entity or entities contributing to that nuisance given the amount of current and archival documentation highlighting the risk.

As has been frequently observed the surface water drainage and other systems in the vicinity are antiquated and fragile and due to poor maintenance prone to collapse¹. There was yet another collapse in the rear gardens of terraced houses on Queens Road, a little way up from the Brook only recently and the garden of No 54 was flooded with sewage. However the developer and the planning officer refer to these problems as though they are historical problems unrelated to the development because it is the responsibility of the various agencies involved to establish an adequate maintenance system. This information is incorrect. There is no regular maintenance scheme to maintain either the Brook or surface water drainage system in spite of numerous appeals by affected residents.

Towards the end of 2012 there was flooding to the rear of the Pump House (opposite the proposed development) and extensive remedial work had to be carried out to the rear of houses on Valley Road west in Spring 2013 to clear out blocked culverts to prevent local flooding.

Is anyone going to want to purchase a house which may end up sitting on top of a water filled void? Will they want to take on the maintenance of the proposed rainwater soak-away sites and trash screens from any debris which might collect there in the future? Is the developer going to inform any prospective buyer of their riparian responsibilities because I don't think fencing the Brook off will absolve any future purchaser from maintaining their riparian bank? The failure of riparian owners (of whom the developer is one) to date has exacerbated the problems with the flow of water along the Brook which has frequently become blocked by overhanging foliage.

10.5.4 Damage and Vehicle Access

Problems construction traffic operating in the very narrow and steep road will be dangerous and cause damage to my boundary walls as has happened in the past. The weak culvert running under the road at the bottom of the hill could also suffer by the passing of construction vehicles. Modern house building machinery may try to minimise the traditional problems of noise and vibration associated with building, but such would not prevent disturbance of the water table and sensitive drainage systems which have traditionally plagued the bottom of this steep valley.

The car access to the plot will make it difficult to access the property opposite as the turn is too tight; there being no room to manoeuvre if there are cars adjoining the entry opposite.

10.5.5 Over Development and Impact on Conservation Area

Residents disagree "that: the new dwelling would enhance the character of the area. The proposed development would place an incongruous dwelling immediately alongside the historic row of Victorian houses. Their notable historic and aesthetic vista has been acknowledged in the Wivenhoe Conversation Area document and the recent Wivenhoe Townscape Forum planned for adoption March 2012. I believe that it is customary to leave appropriate spacing between old and new developments in order to preserve such historical aspects; this development removes an existing natural break.

The proposed type of development is completely unsuitable for an area which is immediately adjacent to a historic road of Victorian houses which are included in the Wivenhoe Conservation Area.² However although it is currently listed as adjacent, the bungalow and plot are included in the Wivenhoe Conservation Area Appraisal carried out by Qube at CBCs request in 2007 and published on CBCs web site. It is only waiting adoption, something which has been pursued many times and put forward for approval again in the ongoing Wivenhoe Neighbourhood Plan. Queens Road is also recognised on the Wivenhoe Local List as Vista when the List was formally adopted by CBC in March 2012:³ The Brook itself is also on the list and this must be taken into account as a material consideration in the planning process. If the revisions to the Conservation Area currently waiting to be adopted are approved the site itself will become part of the Conservation Area

The original dwelling house of 58 Queens Road (same proprietor), has constructed a driveway which crosses a parking bay, which is not in compliance with the planning consent. This is evidence that the applicant has already displayed disregard for the planning rules, and it evidences the planning officer's bias conduct towards the planning process.

10.6. Officer Comment

Clarification of procedural issues

This application is a resubmission of application 112284 which was refused planning permission for a single reason due to the development having an overbearing impact and resulting in a loss of amenity to residents. The current application is a resubmission as it seeks to overcome the reason for refusal by redesigning the dwelling and reducing its height from 11/2 storeys to single storey.

The Council's Professional Support Unit (PSU) sent an acknowledgement in respect of the application to the planning agent on the 9th February 2015 and on the same day PSU also notified the town council, residents and consultees. PSU also published the application in the newspaper on the 20th February (due to the lead in time required for publication). Notices were also displayed at the site.

The case officer has visited the site with the Councils Listed Buildings and Areas Officer (LB&AO) and the Major Development and Projects Manager. The LB&AO considers the proposed dwelling will not adversely affect the character of the Conservation Area and will be an improvement; this view is also shared by the Major Development and Projects Manager.

Planning permission is not required to form a dropped kerb onto a non-classified road these works only require the consent of the Highway Authority.

The full text of all of the representations received is available to view on the Council's website.

11.0 Parking Provision

11.1 Two parking spaces are shown for the new dwelling.

12.0 Open Space Provisions

12.1 A single dwelling is not required to make any provision for open space.

13.0 Air Quality

13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Development Team and Planning Obligations

14.1 This application is not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990

15.0 Report

Planning History

- 15.1 Application 112284 was considered by the Planning Committee on 19th June 2014. At the meeting Members considered the officer report recommending approval, but were minded to refuse planning permission on grounds of flood risk and other issues, subject to there being no significant implications in doing so. The Delayed Decision Protocol was invoked. A report to the Planning committee meeting on the 11th September 2014 considered the implications of refusing planning permission. The report advised Members that the Environment Agency would not support the Council in defending a refusal on flood issues at appeal and in these circumstances the applicant is likely to be successful in having an award of costs against the Council. The site is not a backland site as it has a frontage to Queens Road. The proposal meets the Councils adopted standards for amenity space and parking and the size of the plot is similar to others close by. In terms of negative impacts on residents it was explained that the new property would be slightly elevated on the plot so the rear ground floor windows will appear higher than normal. The report also stated that a site visit had been carried out, by officers including the Historic Buildings and Areas Officer, Planning Project Manager, and previously by the then Conservation Officer. These officers all agreed that the site does not form an important visual gap and that a dwelling on this site would actually improve the vista not detract from it. The report explained the design has been negotiated by one of the Councils Conservation officers and the building design takes references from a converted Pump House on the opposite side of the road.
- 15.2 The report stated that if Members were minded to refuse permission the refusal reason should relate to the overbearing nature of the development and loss of privacy to residents. Members agreed the recommendation and the application was refused for the following reason:

“Due to the limited depth of the site, the height of the dwelling and its raised floor level it is considered the proposed dwelling would have an overbearing impact on and result in a loss of amenity to neighbouring residents in Paget Road contrary to policy DP1 in the adopted Colchester Borough Development Policies (October 2010).”

Design and Layout

- 15.3 The application involves the erection of a slate hipped roof bungalow of red brick. It includes traditional details including a chimney, exposed rafter feet and a brick plinth. The siting of the building respects the building line along Queens Road with the dwelling set close to the road and tandem parking spaces to the side.
- 15.4 The design represents an acceptable transition between the Victorian dwellings on the west side and the more recent bungalows on the east side.

Scale, Height and Massing

- 15.5 A single storey property is proposed. The street scene drawing shows its height in relation to the adjacent dwellings; it is lower than the houses and a similar height to the adjacent bungalow.

Impact on the Surrounding Area

- 15.6 The site is adjacent to the conservation area and the Queens Road vista including the section of road in front of the application site, is in the Wivenhoe local list. The Town Drain is also on the Local List .
- 15.7 As explained in the report to Members on the previous application the criteria applied by officers to the principle of developing this site are those that would be applied in a conservation area namely whether the site is an important gap and whether or not the development will enhance the area. Residents refer to the site previously forming part of an attractive garden to no 58 Queens Road. Your officers consider the site does not form an important visual gap it provides views to rear gardens in Paget Road and is in a road where the main characteristic is buildings enclosing the street. It is consider a dwelling on this site would actually improve the vista not detract from it.

Impacts on Neighbouring Properties

- 15.8 The dwelling is single storey and will not have an adverse impact on the amenity of residents to the side of the site or those on the opposite side of Queens Road. The site is to the north of the dwellings in Paget Road and will not reduce sunlight. The properties on the opposite side of Queens Road are on higher land. No 56 Queens Road is at a slighter higher level and there is approximately 9 metres separation between the buildings. The rear elevation includes a kitchen window and doors to the main living area. Due to the raised floor level these windows will be slightly higher than normal single storey level. Subject to appropriate fencing and screen planting along the rear boundary it is considered overlooking will be reduced.

Highway Issues

- 15.9 The Highway Authority has raised no objection. The parking provision is acceptable and the development provides on-site parking in an area where the majority of residential vehicles park on the street. A turning facility is not required.

Other Matters

Flood Risk/ Surface Water Drainage

- 15.10 The site is at the bottom of a hill next to the Town Drain in an area known to flood. The flooding is a result of several factors. The existing drainage system is described as antiquated. The Wivenhoe Town Drain (a river) is the responsibility of the Environment Agency but it is alleged maintenance has not taken place. In addition land owners along the banks of the Town Drain have riparian responsibilities. The Highway soakaways are the responsibility of the Highway Authority and again it is alleged there has been a lack of maintenance. However; the responsibilities of these bodies and those of individuals will be unaffected by the erection of a dwelling. The maintenance they carry out will also be unaffected. Planning permission should not be refused because of flooding issues resulting from a lack of maintenance by others.

- 15.11 The Environment Agency has confirmed their main concern is the loss of flood storage and displaced flow in an area which has known flooding issues. The Agency has confirmed the occupants of the dwelling would have refuge within the building and have safe access/egress from the site during a 1 in 100 year fluvial flood level, including allowance for climate change. They then go on to comment “but the depth and velocity of surface water/pluvial flooding is unknown and the building could become surrounded by water” however they do not raise an objection. The void under the dwelling will accommodate surface and flood water and the Environment Agency is satisfied that this area will compensate for the footprint of the dwelling. The dwelling will not therefore reduce the storage capacity in times of flood provided the void and trash screens are properly maintained. A legal agreement is required to secure a maintenance regime and to the responsibility for carrying it out.
- 15.12. The applicants drainage consultant has provide the following information “In terms of frequency / programme of maintenance, and our view of the potential costs involved, we do not foresee this being anything other than a post flood treatment as the principal reason for any build-up of debris beneath the building will be silt / soil carried by flood water passing down the Wivenhoe Town Drain. Other than a visual inspection on an annual basis we would not envisage that this maintenance or ‘post-flood’ treatment would be required for than once in every 10 to 20 years. This assessment is based on the design flood level of 5.2m, the depth and capacity of the ditch, and ground levels across the site”.
- 15.13 In summary any lack of maintenance of the Wivenhoe Town Drain and highway soakaways will not be affected by this proposal as these are works that are carried out by third parties. The proposal will not result in a loss of flood storage or displaced flow as the void under the building will accommodate flood and surface water.
- 15.14 The National Planning Policy Framework states that where individual developments are on sites allocated in development plans through the Sequential Test, applicants need not apply the Sequential Test. The Exception Test comprises two elements sustainability benefits to the community that outweigh flood risk, and that it will be safe for its lifetime, without increasing flood risk elsewhere and where possible reduce flood risk overall. The site is in a sustainable location close to Wivenhoe centre and within walking distance of the train station and bus stops. The site when used as garden to no 58 would have benefitted from permitted development rights which include rights to erect outbuildings and construct hard surfacing.
- 15.15 Resilience is included in the design which includes raised floor levels. Occupants of the dwelling have safe access and egress from the site. The Council’s Resilience officer has been consulted and the response set out above. Conditions are proposed to secure the matters referred to including an Emergency Plan.
- 15.16 Other issues raised by residents are not planning matters for example the impact on the building works on adjacent properties. This is a private matter between the various parties in the same way as any one carrying out work whether or not it required planning permission.

16.0 Conclusion

- 16.1 In determining the previous application for a dwelling Members considered the issues relating to flood risk and surface water flooding and accepted these could not be included as reasons for refusal. Permission was refused solely on the grounds of the overbearing impact and loss of amenity to residents. This application is a resubmission proposing a revised scheme to try to overcome the earlier reasons for refusal. The dwelling has been amended from one and a half storeys to single storey and as a result its height is reduced. The dwelling will have a neutral-positive impact on the conservation area and the Queen Street vista. The proposal also meets the Councils adopted amenity and parking standards.

17.0 Recommendation

- 17.1 APPROVE subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Commercial Services to refuse the application, or otherwise to be authorised to complete the agreement to provide the following:

To secure the submission of; and approval to, details of a maintenance schedule for the void and trash screens and agreement of the legal responsibility for implementing the approved maintenance schedule for the life of the property

- 17.2 On completion of the legal agreement, the Head of Service be authorised to grant planning permission subject to the following conditions:

18.0 Conditions

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the approved plans site layout 1:200, floor layout and elevations, street elevation, typical section.

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

3 - Site Levels Plan

No works shall take place until detailed scale drawings by cross section and elevation that show the development in relation to adjacent property, and illustrating the existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill, have been submitted and agreed, in writing, by the Local Planning Authority. The development shall thereafter be completed in accordance with the agreed scheme before the development is first occupied.

Reason: In order to allow more detailed consideration of any changes in site levels where it is possible that these may be uncertain and open to interpretation at present and where there is scope that any difference in such interpretation could have an adverse impact of the surrounding area.

4 - Non-Standard Condition/Reason

Finished floor levels shall be set no lower than 5.50 m above Ordnance Datum (AOD). The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To reduce the risk of flooding to the proposed development and future occupants. To ensure the proposed void can be set at the required level to compensate for the loss of flood storage Technical Explanation Sources of Flooding.

5 - Non-Standard Condition/Reason

The development shall be implemented in accordance with the mitigation measures and details in the following documents Flood Risk Assessment (FRA), produced by JPC Environmental Services, referenced CE11/003/HJ issue 1.1, and dated October 2011, Supporting letter from JPC Environmental Services, referenced CE11/003 and dated 13 May 2013, Supporting letter from JPC Environmental Services, referenced CE11/003/RME/le and dated 13 February 2014, Supporting letter from JPC Environmental Services, referenced CE11/003/RMC/al and dated 24 July 2014, Drawings titled Elevations and Typical Section for Land Adj Queens Road Wivenhoe. These measures shall thereafter be retained.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

6 - Non-Standard Condition/Reason

No works shall take place until the surface material for the parking spaces has been submitted to and approved in writing by the Local Planning Authority. These spaces shall be provided as shown on the submitted plan and constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose prior to the occupation of the dwelling.

Reason: To ensure that vehicles can enter and leave the highway in a controlled in the interest of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

7 -Non-Standard Condition/Reason

No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

8 - Non-Standard Condition/Reason

Any vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space, retained in perpetuity.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

9 - Non-Standard Condition/Reason

No works shall commence until a detailed sustainable transport mitigation package has been submitted to and agreed, in writing by, the Local Planning Authority. This package will provide information on how the applicant proposes to mitigate any increase in private vehicular use associated with the development and will include appropriate information on all sustainable transport modes including bus and rail travel, cycling, walking (including the local Public Rights of Way network), taxi travel, car sharing and community transport in the vicinity of the site. The package shall thereafter be implemented as agreed for each individual dwelling and/or premises within 14 days of the first beneficial use or occupation of that unit.

Reason: In the interests of mitigating the impact of the approved development by seeking to reduce the need to travel by private car through the promotion of sustainable transport choices.

10 - Non-Standard Condition/Reason

No works shall take place until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.

Reason: In order to ensure that suitable materials are used on the development as there are insufficient details within the submitted planning application.

11 - Non-Standard Condition/Reason

No works shall take place until a scheme of hard and soft landscaping works for the site has been submitted to and agreed, in writing, by the Local Planning Authority. This scheme shall include any proposed changes in ground levels and also accurately identify positions, spread and species of all existing and proposed trees, shrubs and hedgerows on the site, as well as details of any hard surface finishes and external works, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission. The hard and soft landscape works shall include the front and rear boundaries.

Reason: In order to ensure that there is a sufficient landscaping scheme for the relatively small scale of this development where there are public areas to be laid out but there is insufficient detail within the submitted application.

12 - Non-Standard Condition/Reason

All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out in full prior to the end of the first planting and seeding season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details.

Reason: In order to ensure that there is a sufficient landscaping scheme for the development where there is insufficient detail within the submitted application.

13 - Non-Standard Condition/Reason

No works shall take place until detailed scale drawings by cross section and elevation that show the development in relation to adjacent property, and illustrating the existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill, have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be completed in accordance with the agreed scheme before the development is first occupied.

Reason: In order to allow more detailed consideration of any changes in site levels where it is possible that these may be uncertain and open to interpretation at present and where there is scope that any difference in such interpretation could have an adverse impact of the surrounding area.

14 - Non-Standard Condition/Reason

Notwithstanding the provisions of Classes A, B, C, D and E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no extensions, ancillary buildings or structures shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interest of visual amenity and to ensure the development avoids an overdeveloped or cluttered appearance.

15 - Non-Standard Condition/Reason

Notwithstanding the provisions of Classes F of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no hard surfaces shall be constructed within the curtilage of the dwelling unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interests of sustainability and to reduce the risk of flooding.

16 - Non-Standard Condition/Reason

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no windows/doors/rooflights/dormer windows or any other form of openings shall be inserted in the any elevation or roof slope of the dwelling except in accordance with details which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: To avoid the overlooking of neighbouring properties in the interests of the amenities of the occupants of those properties.

17 - Non-Standard Condition/Reason

Notwithstanding the provisions of Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no fences, walls, gates or other means of enclosure, other than any shown on the approved drawings, unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interests of visual amenity with regard to the context of the surrounding area.

18 - Non-Standard Condition/Reason

Prior to the commencement of any works, additional drawings that show details of any proposed new windows, window reveals, doors, eaves, verges, cills, arches plinth chimney and rafter feet to be used, by section and elevation, at scales between 1:20 and 1:1, as appropriate, shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved additional drawings.

Reason: There in insufficient detail with regard to this to protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

19 - Non-Standard Condition/Reason

No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for: the parking of vehicles of site operatives and visitors; hours of deliveries and hours of work; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; wheel washing facilities; measures to control the emission of dust and dirt during construction; and a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable.

20 - Non-Standard Condition/Reason

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a

written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

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.

21 - Non-Standard Condition/Reason

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 must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

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.

22 - Non-Standard Condition/Reason

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

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.

23 - Non-Standard Condition/Reason

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 120 "Site Characterisation", and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 21 "Submission of Remediation Scheme", which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 22 "Implementation of Approved Remediation Scheme".

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.

24 - Non-Standard Condition/Reason

Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

25 - Non-Standard Condition/Reason

No works shall take place until a Flood Warning and Evacuation Plan has been submitted to and approved by the Local Planning Authority in writing. The approved Plan shall be implemented and remain in place thereafter.

Reason: To ensure residents are adequately protected in times of flooding.

26 - Surfacing Material to be Agreed

Prior to commencement of the development hereby approved full details of the surfacing materials to be used for all private, non-adoptable accessways, driveways, footpaths, courtyards, parking areas and forecourts shall be submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason: There is insufficient information within the submitted application to ensure that these details are satisfactory in relation to their context and where such detail are considered important to the character of the area.

19.0 Informatives

(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

(2) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

(3) PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.

(4) PLEASE NOTE: This application is the subject of a Unilateral Undertaking legal agreement and this decision should only be read in conjunction with this agreement.

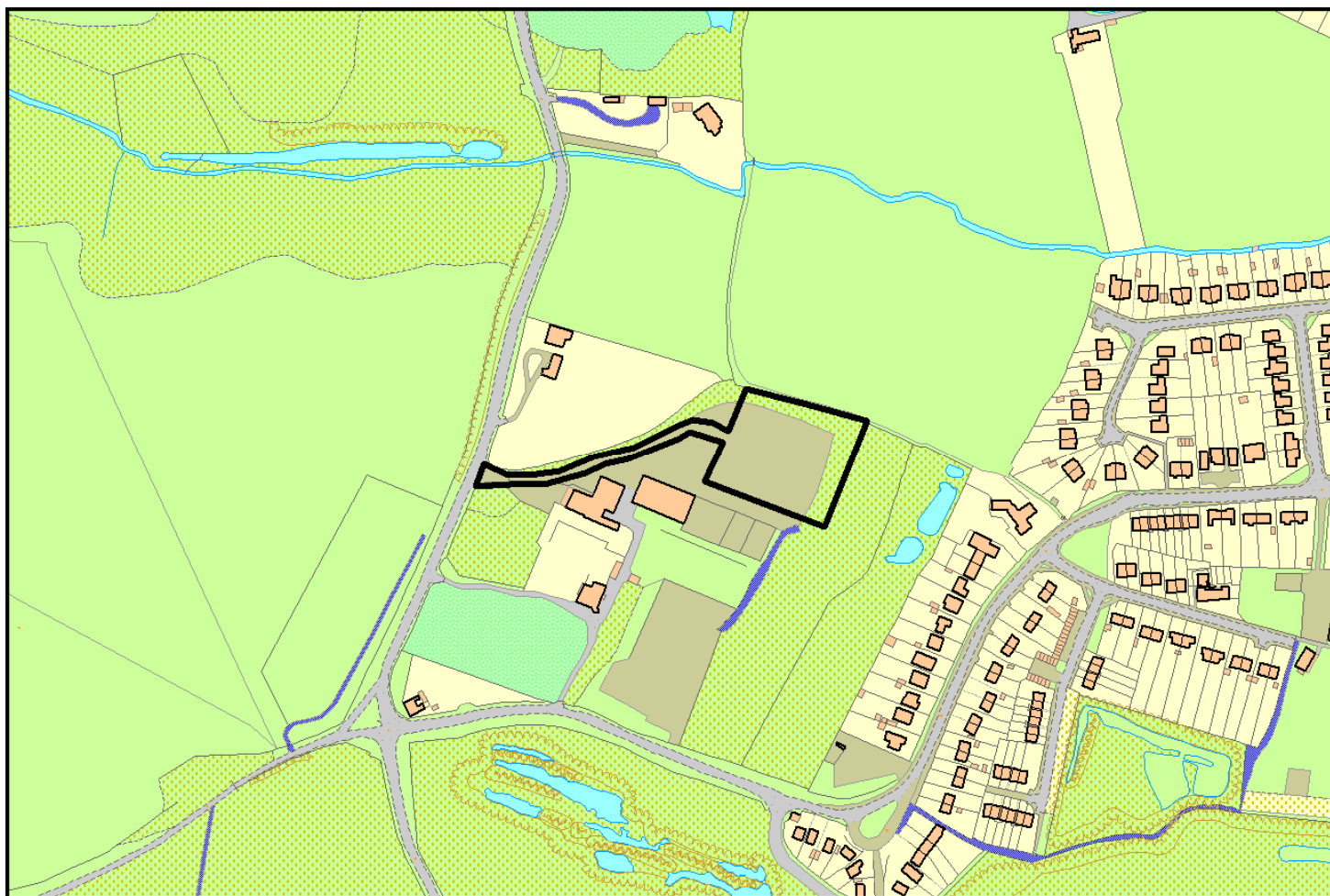
(5) Essex County Council as Highway Authority can assist in the production of appropriate material as packs of information are available for purchase by the developer. Contact the Sustainable Travel Planning team on 01245 436135 or email travelplanteam@essex.gov.uk for more information.

(6) INF01 Highway Works - All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to: Essex Highways, Colchester Highways Depot, 910 The Crescent, Colchester, CO4 9QQ.

(7) INF02 Cost of Works - The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



Application No: 143704

Location: Rowhedge Business Park, Fingringhoe Road, Rowhedge, Colchester, CO5 7JH

Scale (approx): 1:2500

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7.4 Case Officer: James Ryan**OTHER**

Site: Rowhedge Business Park, Fingringhoe Road, Rowhedge, Colchester, CO5 7JH

Application No: 143704

Date Received: 7 April 2014

Agent: Mrs Sharon Smith

Applicant: Mr Graham Rampling

Development: Change of use of land to plant hire business.

Ward: East Donyland

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it has been called in by Cllr Lilley on the grounds of public safety, environmental issues, noise and nuisance.

2.0 Synopsis

- 2.1 The key issues explored below are the principle of development, the impact on the countryside, the impact on neighbours and the impact on the highway network. The scheme was previously discussed at the 16th of April meeting and was deferred by members to seek clarification from the Environment Agency regarding the wash down area and to seek further information from the Highway Authority regarding their recommendation of no objection.

3.0 Site Description and Context

- 3.1 The site is located on the edge of Rowhedge and is accessed off of the Fingringhoe Road. It is broadly rectangular and makes up one part of the larger Rowhedge Business Centre. To the north is an agricultural field; to the east is a small area of mixed woodland with dwellings beyond. To the south is an area of unused land and beyond that is the site that is currently being used unlawfully by Ramplings Plant Hire. To the north-west is Birchbrook House which is a residential dwelling and to the west is the rest of the Business Park and the main Fingringhoe Road beyond that.
- 3.2 At the entrance to the Business Park is a car sales area which has recently been granted retrospective planning consent. Further into the site are more car based uses (eg servicing) and a plant hire compound relating to another company.

4.0 Description of the Proposal

- 4.1 The change of use of this section of the business park to a plant hire business is proposed. A number of buildings to facilitate this use are also proposed.

5.0 Land Use Allocation

- 5.1 The land is not allocated on the Council adopted Proposals Maps. It is therefore brownfield land located in the defined countryside.

6.0 Relevant Planning History

- 6.1 COL/1070/75 – Workshop and toilet to house plant hire and equipment – Colchester Plant Hire – Approved.
- 6.2 COL/217/77 – A 12000 square foot building approved for the storage of building and plant – Colchester Plant Hire – Approved.
- 6.3 COL/1548/77 – Erection of computer room and extension to offices – Colchester Plant Hire – Approved.
- 6.4 COL/1603/79 – Erection of single storey building for use as plant cover – Colchester Plant Hire – Approved.
- 6.5 COL/1402/80 – Erection of walls, cladding and doors to make machinery storage buildings secure and enclosed – Colchester Plant Hire – Approved.
- 6.6 There are also a number of historic refusals but these have no particular relevance to this scheme.
- 6.7 Therefore it is clear that plant hire has taken place on site in the past, however this appears to have stopped some years ago. Another plant hire firm uses a compound on the site for plant storage however it does not actively operate from the site.
- 6.8 The planning history of the site to the south access off of Rectory Road where the use is currently operating from is also relevant. The Council refused an application for the existing use in 2012, application reference 121389. Following this application 131756 was received which was not materially different to the 121389 scheme and the Council declined to determine.
- 6.9 Following this, application reference 144677 was received which the Council did not determine but was accepted for appeal determination by the Planning Inspectorate. This scheme (application reference: 144677 and appeal reference: APP/A1530/A/14/2221633) was dismissed at appeal.
- 6.10 That appeal decision is particularly important as it pertains to the same use that this application proposes and the application site at hand is only located a matter of metres away from the dismissed appeal site to the south. The important issues arising from the Inspector's decision will be set out in a section below.

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

- SD1 - Sustainable Development Locations
- SD2 - Delivering Facilities and Infrastructure
- CE3 - Employment Zones
- UR2 - Built Design and Character
- ENV1 - Environment
- ENV2 - Rural Communities
- ER1 - Energy, Resources, Waste, Water and Recycling

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):

- DP1 Design and Amenity
- DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
- DP8 Agricultural Development and Diversification
- DP9 Employment Uses in the Countryside
- DP17 Accessibility and Access
- DP20 Flood Risk and Management of Surface Water Drainage
- DP21 Nature Conservation and Protected Lanes

8.0 Consultations

Highway Authority

8.1 The access to the Business Park is a matter of fact and is used regularly by larger vehicles. As such the existing highway users in the area are aware of the traffic associated with the site. Whilst the proposal would intensify the use of the access, the original application for this proposal utilised an access onto Rectory Road which necessitated the use of the Rectory Road/Fingringhoe Road junction. It is noted that the Business Park access is provided with better visibility splays than the aforesaid junction and as such the current proposal is less likely to create safety or efficiency issues for the existing highway users. The Highway Authority raises no objection to this proposal.

8.2 As requested by Members at the 16/04/15 meeting further clarification was requested from the Highway Authority. The following email was received from Adam Garland on 9/7/15:

“To confirm....

The Highway Authority assessment of the proposal included the following aspects:

- 1) The current site use and the trip levels associated with it;
- 2) The proposed use and the trip levels associated with it;
- 3) The access including geometry and visibility;
- 4) A comparison between this proposal and the previously proposed use of the access onto Rectory Road.

The developer provided information which showed the geometry of the road and the various conflict points meant that traffic speeds approaching the access were nowhere near the maximum 60mph limit. Associated with this are the following salient points:

- 1) The fact that the access is existing and is signed;
- 2) It already sees large vehicles using it - car transporters for example;
- 3) The Essex County Council 'traffweb' site shows no accidents in the vicinity of this access over the last five years;
- 4) The larger vehicles using the access will be visible for a greater distance over the crest of the hill;
- 5) This application would not see the larger vehicles using the junction of Rectory Road and Fingringhoe Road.

In this regard the Highway Authority is content that the proposal would not be detrimental to highway user safety.”

Essex and Suffolk Water

- 8.3 We note that the Cussen drawing number 1011/03 Rev B shows the revised building positions as a result of our response given in our email dated 30th October 2014, regarding our easement of our two Strategic Trunk Water Mains. We therefore have no objection to the change of use of the land to a plant hire business.

Environmental Protection

- 8.4 No objection subject to conditions to control the storage of oils, groundwater protection and full set of contaminated land conditions.

Natural England

- 8.5 Natural England are satisfied that the proposed development being carried out in strict accordance with the details of the application, as submitted, will not damage or destroy the interest features for which these sites has been notified. We therefore advise your authority that these SSSI's do not represent a constraint in determining this application.

Planning Policy

- 8.6 The team initially stated: 'The main proposal is considered in accordance with adopted national and local policies: the proposal would result in the sustainable relocation of the applicant's business from non-previously developed land (operating without planning permission) to a Business Park with existing and historic plant hire use. However, in order for the development to be policy compliant highway access should be served from Fingringhoe Road only'.
- 8.7 Following the revisions Planning Policy has now stated: 'This application sets out revisions made to the planning application which originally sought to use an existing access directly off Rectory Road. The application is now varied to utilise the existing access into the Business Park, directly off Fingringhoe Road. With the addition of the revised site access it is considered that the proposed development is consistent with national and local planning policy. On this basis, there is no planning policy objection to this application.'

Environment Agency (EA)

- 8.8 No objection to the scheme. **Following the deferral, the EA has amended its consultation response to the following:**

"We refer to the email from LSR Solicitors and Planning Consultants, dated 24 June 2015, and the attached drawing, referenced 1011/12A, and dated May 2015, submitted in support of the above application. The information submitted has provided confirmation that the sump outlet is to be capped off. We are now satisfied that no deterioration to water bodies will occur as a result of this scheme, and are therefore able to remove our request for a condition regarding a foul water drainage scheme to be submitted."

Health and Safety Executive

- 8.9 No particular comments to make subject to pointing the LPA towards its online advice.

Ramblers (not a statutory consultee)

- 8.10 At present the whole site is hidden behind a bund from the adjacent Public Footpath. Will this continue? How will it look in future? I also note that a bunded fuel store is planned. Will this be regulation distance from walkers? Will it offer additional dangers?

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

9.0 Parish Council Response

- 9.1 'East Donyland Parish Council objects to this proposal on the grounds of noise pollution and increased traffic movement detrimental to the area and residential village environment.'

10.0 Representations

10.1 30 objections have been received. One of which was a lengthy representation that responded point-by-point to the applicant's supporting statement. It is beyond the scope of this report to replicate every point of the objector's response to the applicant's statement however the full text of that and all of the other representations are on the website.

10.2 In summary the representations received objected to the scheme on the following grounds:

- >The applicant has been operating on the site next door without consent for years.
- >What are the Council doing about this unlawful development?
- >The applicant is dragging mud all over the newly surfaced highway and mounting the verge opposite.
- >We don't know what is in this mud or what contaminants may be present.
- >As the site next door was unacceptable how can this one be acceptable?
- >The scheme will cause noise and pollution to the detriment of our residential amenity.
- >The new access will be harmful to highway safety.
- >The applicant should be made to work from a site allocated for this kind of use.
- >Strong enforcement action should be taken.
- >The employment figures are incorrect and differ from previous applications.
- >This scheme does not take into consideration the application for residential development at Rowhedge Wharf.
- >The land does not form part of the Business Park.
- >The site is not as well screened as the applicant states.
- >The occupation of the current site is unlawful and the applicant is totally flouting planning regulations.
- >The access proposed is from Rectory Road.
- >The planning history makes no mention of the refusals that the applicant has received on the site.
- >The fact the applicant does work for the Environment Agency is irrelevant.
- >The site is a greenfield site.
- >The site is near a nature reserve.
- >The applicants suggest the Planning Department are in favour of the move to the Business Park site.
- >The previous plant hire stopped 20 years ago and Rowhedge is a different place now.
- >The applicant is a far bigger operation than the smaller scale plant storage use that occurs on site now.
- >This is not the kind of rural business envisaged by the planning policies.
- >The applicant shows no intention of promoting employment.
- >The applicant is interpreting Council policy in a manner which suits him.
- >This use is not small scale.
- >There is no economic justification for this use.
- >The applicant should be relocated to somewhere more suitable like Colchester Business Park.
- >If this application is unsuccessful it is arguable it would actually affect the workforce.
- >The other businesses on site are of a size and scale that are acceptable.
- >The uses can be heard at 5.30 in the morning and even on Sundays.
- >How can moving 0.3kms create new employment?

- >Where do the staff actually live?
- >Fingringhoe Road is narrow, hilly and twisty and therefore unsuitable, this site should be near a trunk road.
- >The site was not chosen for a specific planning reason.
- >The bus stop nearby is irrelevant.
- >The noise survey was taken at the wrong time of the day.
- >The site does not enhance the entrance to Rowhedge.
- >The owner of the skip hire company is very helpful.
- >The site is much noisier than the skip hire company.
- >Sometimes plant misses the site entrance and heads into Rowhedge with nowhere to turn around.
- >The business park access is not suitable for the proposed use.
- >There are a number of issues with the Rectory Road access including mud on the road and the churning of the verge.

10.3 A letter from Bernard Jenkin MP was also received, this was accompanied by a letter from one of his constituents. The issues raised have been included above.

10.4 In response:

The issue of the unlawful site to the south is being dealt with by the enforcement team and a prosecution is imminent.

The issues relating to the impact on highway safety and neighbouring amenity will be dealt with in the main body of the report.

The employment figures must be taken at face value. The NPPF is supportive of all economic development as long as any harmful impacts can be mitigated against and as set out in the report this is achievable.

This site is materially different to the refused scheme to the south and therefore must be assessed on its own merits. The fact that there are other sites that may be more acceptable to neighbours does not warrant a refusal of this scheme.

As will be set out in the relevant section of the report, the access has been moved from Rectory Road to the existing access on Fingringhoe Road. This will remove the issues currently experienced with this access.

The land does form part of the Business Park and will be read as such visually.

It is considered that this scheme benefits from more screening than the previously refused site to the south. It is also set well back from the road unlike the unlawful site.

The refusal mentioned relate to the site the applicant is currently operating on. This was refused by the Council and the resubmission was refused at appeal. It is important to note that the two sites although close to each other are not connected physically and are served by different accesses off of different roads.

The Highway Authority has no objection to the scheme.

This scheme will not cause material harm to nearby nature reserves.

This site is Brownfield land as it is previously developed.

The Policy Team is comfortable with the scale of the development in the context of policy.

If the site is refused it would have an impact on the workforce as the applicant has not identified an alternative site and therefore may have to move out of the Borough altogether.

The Environmental Control team is satisfied with the findings on the noise survey. The hours of working can be controlled by condition and will be restricted in line with the hours on the application form.

Following the deferral amended plans have been received detailing the wash down area. As can be seen from the Environment Agency's amended comments it is now considered that this scheme will not cause contaminants to wash off into the groundwater.

The full text of all of the representations received is available to view on the Council's website.

11.0 Parking Provision

- 11.1 This scheme provides ample opportunity for off-street parking which will be dealt with informally on site. It is expected that staff will park near to the office building. There is no reason that this scheme will force additional on-street parking.

12.0 Open Space Provisions

- 12.1 This scheme does not have an impact on public open space nor does it generate a requirement for one.

13.0 Air Quality

- 13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Development Team and Planning Obligations

- 14.1 This application is not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

Background

- 15.1 At the time of the last Planning Committee meeting Rampling's Plant Hire was operating unlawfully from the site to the south using an access on Rectory Road. An application was made to regularise the use on site which was refused. An enforcement notice was served but the applicant did not comply nor did they appeal. A resubmission was then submitted which was dismissed at appeal. The enforcement notice on the site is therefore still extant and the prosecution process had been commenced as the applicant has not complied with the enforcement notice at that point. It is noted that the trial for failure to comply with the enforcement notice is scheduled for the 3rd August 2015.
- 15.2 The key material change in circumstance since the deferral is that Rampling's Plant Hire has now vacated the site to the south which uses the access on Rectory Road and is operating from the site that is the subject of this application.

Principle of the use.

- 15.3 Whilst officers did not support the scheme in its previous unlawful position, the principle of the same use relocated to this site at the rear of the Rowhedge Business Park is acceptable in principle. This area is already used for a number of industrial activities and has been for many years as set out in the planning history section of this report. Another company that owns HGVs and other plant already has a plant storage compound on site. There is no objection from the Policy Team in this instance.
- 15.4 The existing lawful use of the application site is unclear. It does appear to have been used for plant hire purposes in the past, however that use ceased some years ago – representations state this was 20 years ago. Much of what falls into the application site has been used in the more recent past for informal industrial uses such as the parking of HGVs and external storage of materials. The Council's GIS aerial photographs from 2000, 2006 and 2009 all show much of the land in question as being used for what looks like informal storage. HGVs, cars and the external storage of materials can all be seen. If anything, the external storage use appears to be more intensive in the 2009 photo than in 2000.
- 15.5 Whilst it is clear that this site has been subject to a degree of activity up to, and possibly beyond, 2009, it is important to note that the site does *not* however benefit from a Lawful Use Certificate for any particular use on the site and therefore this scheme must be assessed on its own merits.
- 15.6 Being situated within the Business Park the land is considered previously developed and an extensive planning history confirms this. National and local policy is supportive of the principle of reusing previously developed land. A core planning principle of the NPPF is to: 'encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value...'

- 15.7 In a similar vein, the Council's Core Strategy in policy CE1 states: 'The Council will promote employment generating developments through the regeneration and intensification of previously developed land... at sustainable locations.' The Council's adopted policies DP9 and ENV2 promote employment development schemes where they contribute to the local area and the benefits of the scheme outweigh any negative implications that may be a consequence of the development. DP9 states: 'Employment development proposals within the countryside outside of designated local employment zones must contribute to the local rural economy and help sustain rural communities'
- 15.8 Policy ENV2 states that the Council will favourably consider schemes outside of settlement boundaries that:
'...are appropriate to local employment needs, minimise negative environmental impacts and harmonise with the local character and surrounding natural environment.'
- 15.9 DP9 and ENV2 both ensure that the positive and negative impacts of development must be assessed locally so that those who are negatively impacted by development also enjoy the benefits brought about by development. For this reason the applicant must evidence the employment benefits to the local community if a proper balance is to be determined. It is submitted that the site's operations employ 14-20 people with additional temporary employment of a further 30 people if demand dictates. Employees are considered to be from 'Colchester and the surrounding villages' which does not necessarily mean they are employed 'locally' in respect of DP9, however it is accepted that employees are transitory in nature and this must therefore be viewed in general terms.

Points to note from the Inspector's decision

- 15.10 As this scheme is very close to the site that was dismissed at appeal it has a great deal in common with it and therefore the Inspector's decision is an important material consideration.
- 15.11 The Inspector considered that the site to the south was unacceptable as it constituted unsustainable development on Greenfield land and the wide access point onto Rectory Road afforded views of the starkly industrial appearance. The Inspector did not consider that the appeal site related to the Business Park but related far more to the countryside.
- 15.12 This application proposal actually forms part of the Rowhedge Business Park and therefore visually reads as part of it. It is previously developed land and is therefore classed as Brownfield. It uses the existing access on Fingringhoe Road and will not afford the direct views to the site due to the long access-way through to the rear of the site.
- 15.13 The Inspector noted neighbouring representations that objected to the scheme in terms of noise and disturbance, but did not consider these issues to warrant a refusal of the scheme in their own right. This is a key point as, due to its proximity, the scheme currently before Members would have a very similar impact in terms of noise and disturbance to neighbours.

The evolution of the scheme.

- 15.14 As originally submitted, the scheme before Members used the existing unlawful access on Rectory Road, passed through the site which is the subject of the enforcement notice and entered the site in its south eastern corner. Officers highlighted that this would not overcome the issues of countryside impact that the Inspector put significant weight on as it would not enable the removal of the extremely industrial access point needed for the large and slow moving plant that the applicant deals with. Retaining this access would also afford views right up the access-way and would inevitably be used for the short-term parking of plant as it manoeuvres.
- 15.15 Following the dismissed appeal, the application scheme was amended to take access via the existing business park access point. This means access will be taken from the main Fingringhoe Road which will remove the need for large and slow moving HGVs to turn down Rectory Road and then into the site.
- 15.16 The positions of the buildings on site have also been amended on two separate occasions. This is due to an Essex and Suffolk mains water easement that runs across that section of the site. As Essex and Suffolk Water does not allow buildings to be sited over the mains pipe or within the easement it was necessary to re-jig the layout to get the buildings into positions that were away from the easements and also away from trees on the boundary.

Design and Layout

- 15.17 The proposed buildings comprise a covered workshop of 14.5 metres by 8 metres by 5.5 metres to the ridge and a covered store measuring 15 metres by 7 metres by 4 metres to the ridge. The office, pipe store, parts store and the bunded diesel store are all metal shipping containers and are those that are already situated on the appeal site to the south. A wash-down area is also proposed for the cleaning of plant. The rest of the site will be used for plant storage and parking on an ad-hoc basis depending on which plant is off-site at the time.

Scale, Height and Massing

- 15.18 The proposed buildings are acceptable in terms of scale height and massing. Where one container sits on top of another they are no higher than five metres. The buildings will be visible from the Public Right of Way to the north however in the context of the other structures on the Rowhedge Business Park they are considered to be acceptable in design terms the visual impact the scheme will have is not considered to be demonstrably harmful to the point that warrant a refusal, especially as the site is already used for a number of industrial uses.

Impact on the Surrounding Area

- 15.19 As the scale, height and massing are considered to be acceptable and as the scheme now proposes to use the existing Rowhedge Business Park access, it is not considered that this scheme will have a materially harmful impact on the surrounding area. Relocating the access away from Rectory Road is considered to be a significant improvement for the surrounding area as it will remove the need for HGVs to use the Fringringhoe Road and Rectory Road junction and will also remove the issue of HGVs pulling out across Rectory Road as they currently do. The previous situation was so poor that when heading out of Rowhedge as they do in the main, the large low loaders exited the unlawful access, crossed both carriageways, mounted the highway verge as they swung out and then straightened up. This has resulted in a churned up verge and a great deal of mud on the highway. Removing this issue will be beneficial to the surrounding area. Notwithstanding the comments of the Parish, it is considered that this scheme will not have a materially harmful impact on the village as there will be no need for vehicles to turn into the village in the overwhelming majority of cases.
- 15.20 Following the deferral of this item at the 16th of April meeting, the Highway Authority have provided additional commentary which can be seen in full in the relevant section above.

Impacts on Neighbouring Properties

- 15.21 Policy DP9 refers to the avoidance of detrimental effects of development such as noise. A number of residential dwellings are located beyond the woodland buffer to the east. In particular, the dwellings that front onto Rectory Road and some in Ashurst Close have gardens that back onto this woodland. The scheme is also adjacent to the boundary of the dwelling at Birchbrook House but this dwelling enjoys a large garden and strong boundary planting.
- 15.22 This scheme has the potential to generate noise from the movement of plant around the site and from the pressure washing of vehicles. The scheme has come with a noise survey that demonstrates that the noise generated by this scheme will not be materially harmful to neighbouring amenity as it will be below background levels, subject to the installation of an acoustic fence (two metres in height) on the eastern boundary. The details of this will be secured by condition.
- 15.23 The Environmental Control team has not objected to this scheme but requires conditions which will be imposed. On that basis the scheme is not considered to have a materially harmful impact on neighbouring amenity.
- 15.24 The application form sets out the use will operate from 7am to 6pm Monday to Friday and 7am to 1pm on Saturdays with no working on Sundays or Bank Holidays. This is considered to be acceptable and will be conditioned accordingly.

Impact on the Public Right of Way

- 15.25 This scheme will not have a material impact upon, nor will modify the definitive route of the PRow to the north. The scheme will not change the bund that the Ramblers mention in their response. The fuel store that they mention will not encroach upon the PRow either as it sits within the site.

Highway Issues

- 15.26 The Highway Authority has assessed the scheme and has no objections. The internal turning area is workable and the existing access is also acceptable in highway terms mindful of the size and low speed of the types of vehicles that will be using the access.
- 15.27 Objectors have stated that this access is not appropriate for the types of vehicle movements that this use generates. As the Highway Authority has no objection to the scheme, a refusal on that basis would not be reasonable. An additional statement has been provided by the Highway Authority that clarifies their stance as set out in the relevant section above.

Other Matters

- 15.28 Policy ENV2 refers to the environmental impacts and considerations caused by development. In respect of environmental impacts, the ecological and aboriginal assessments of the land have demonstrated that no significant harm will be caused by the development. Where identified, the ecological report makes appropriate recommendations for the protection of wildlife during development works. This concluded that the site was of limited ecological potential and did not require any further surveys. In this instance, considering the disturbed nature of the site, on balance it is acceptable.
- 15.29 The application also included a tree survey, but this only deals with the previously proposed new access track through the old site which has been removed from the scheme. The buildings on site have been moved to pull them away from any sensitive trees. The trees on the north and east boundaries will need to be protected during the construction phase and the precise details of the methodology pertaining to this will be secured by condition.

16.0 Conclusion

- 16.1 This item was deferred at the 16th April meeting in order to deal with issues raised by the Environment Agency and to seek clarification from the Highway Authority as to the stance they have taken. The Environment Agency are happy with the wash down area and have no objection to the scheme. The Highway Authority also has no objection to the scheme and has set out more detail as to why this is the case. The scheme is therefore acceptable and an approval is warranted.

17.0 Recommendation

- 17.1 APPROVE subject to the following conditions

1 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 1011/03 Rev C, 1011/06 and 1011/12A.

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

2 - Non-Standard Condition/Reason

The site and buildings on it shall be used for the storage of plant and for plant hire purposes only as defined in the Use Class Order and for no other purpose. Reason: For the avoidance of doubt as to the scope of the permission as this is the basis on which the application has been considered and any other use would need to be given further consideration at such a time as it were to be proposed.

3 - *Restriction of Hours of Operation

The use hereby permitted shall not OPERATE - including moving of plant, running of engines and washing down of plant - outside of the following times:

Weekdays: 7.00hrs to 18.00hrs

Saturdays: 7.00hrs to 13.00hrs

Sundays and Public Holidays: No working.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

4 - Non-Standard Condition/Reason

Within two months of the date of this permission, a two-metre high acoustic screen boundary treatment that shall have previously have been approved, in writing, by the Local Planning Authority, shall be erected along the boundary to the east as set out in the acoustic report. The screen boundary treatment shall thereafter be retained as approved.

Reason: To protect the amenities and privacy of occupiers of the adjoining property as set out in the acoustic report.

5 - Tree and Natural Feature Protection: Protected Areas

No works shall take place until all trees, shrubs and other natural features not scheduled for removal on the approved plans have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

6 - Tree and Natural Feature Protection: Entire Site

No burning or storage of materials shall take place where damage could be caused to any tree, shrub or other natural feature to be retained on the site or on adjoining land (see BS 5837).

Reason: To protect the health of trees, shrubs and other natural features to be retained in the interest of amenity.

7 -Tree and Hedgerow Protection: General

All existing trees and hedgerows shall be retained, unless shown to be removed on the approved drawing. All trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site, to the satisfaction of the Local Planning Authority in accordance with its guidance notes and the relevant British Standard. All existing trees shall be monitored and recorded for at least five years following contractual practical completion of the approved development. In the event that any trees and/or hedgerows (or their replacements) die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, by the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

Reason: To safeguard the continuity of amenity afforded by existing trees and hedgerows.

8 - Tree and Hedgerow Protection: General

No works or development shall be carried out until an Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan in accordance with BS 5837, have been submitted to and approved, in writing, by the Local Planning Authority (LPA). Unless otherwise agreed, the details shall include the retention of an Arboricultural Consultant to monitor and periodically report to the LPA, the status of all tree works, tree protection measures, and any other arboricultural issues arising during the course of development. The development shall then be carried out strictly in accordance with the approved method statement.

Reason: To adequately safeguard the continuity of amenity afforded by existing trees.

9 - Non-Standard Condition/Reason

Within two months of the date of this permission, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

10 - External Light Fixtures TBA

No external lighting fixtures shall be constructed, installed or illuminated until details of all external lighting proposals have been submitted to and approved, in writing, by the Local Planning Authority. Thereafter, no lighting shall be constructed or installed other than in accordance with those approved details.

Reason: To reduce the risks of any undesirable effects of light pollution

11 - Contaminated Land Part 1 of 4 (Site Characterisation)

No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

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.

12 - Contaminated Land Part 2 of 4 (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. 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.

13 - Contaminated Land Pt. 3 of 4 (Implementation of Approved Remediation)

No works shall take place other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

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.

14 - Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 11, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 12, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 13.

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.

15 - Non-Standard Condition/Reason

There shall be no discharge of foul or contaminated drainage from the site into either the groundwater or any surface waters, whether direct or via soakaways. This shall be achieved via the construction of the approved wash down area as set out on plan 1011/12A which shall have a capped sump outlet.

Reason: To ensure satisfactory arrangements are made for the disposal of foul and surface water drainage in order to prevent pollution of the water environment and to protect the groundwater quality in the area in the interests of Health and Safety.

16 - *Protecting Public Rights of Way

The public's rights and ease of passage over PUBLIC FOOTPATH 29 shall be maintained free and unobstructed at all times.

Reason: To ensure the continued safe passage of the public on the definitive right of way and accessibility.

17 - Non-Standard Condition/Reason

Within two months of the date of this permission details of a wheel washing facility within the site and adjacent to the egress onto the highway must be submitted to and approved, in writing, by the Local Planning Authority. The wheel washing facility shall be provided prior to any use taking place and shall be maintained at all times thereafter unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that loose materials and spoil are not brought out onto the highway, in the interests of highway safety.

18 - Storage of Oils etc.

Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls where the volume of the bund compound shall be at least equivalent to 110% of the capacity of the tank. If there is a multiple tankage, the compound volume shall be at least equivalent to 110% of the capacity of the largest tank or 110% of the combined capacity of any interconnected tanks, whichever is the greatest. All filling points, vents, gauges and sight glasses shall be located within the bund and the drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipe work shall be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund.

Reason: To prevent unnecessary pollution of the groundwater or nearby water courses.

19.0 Informatives

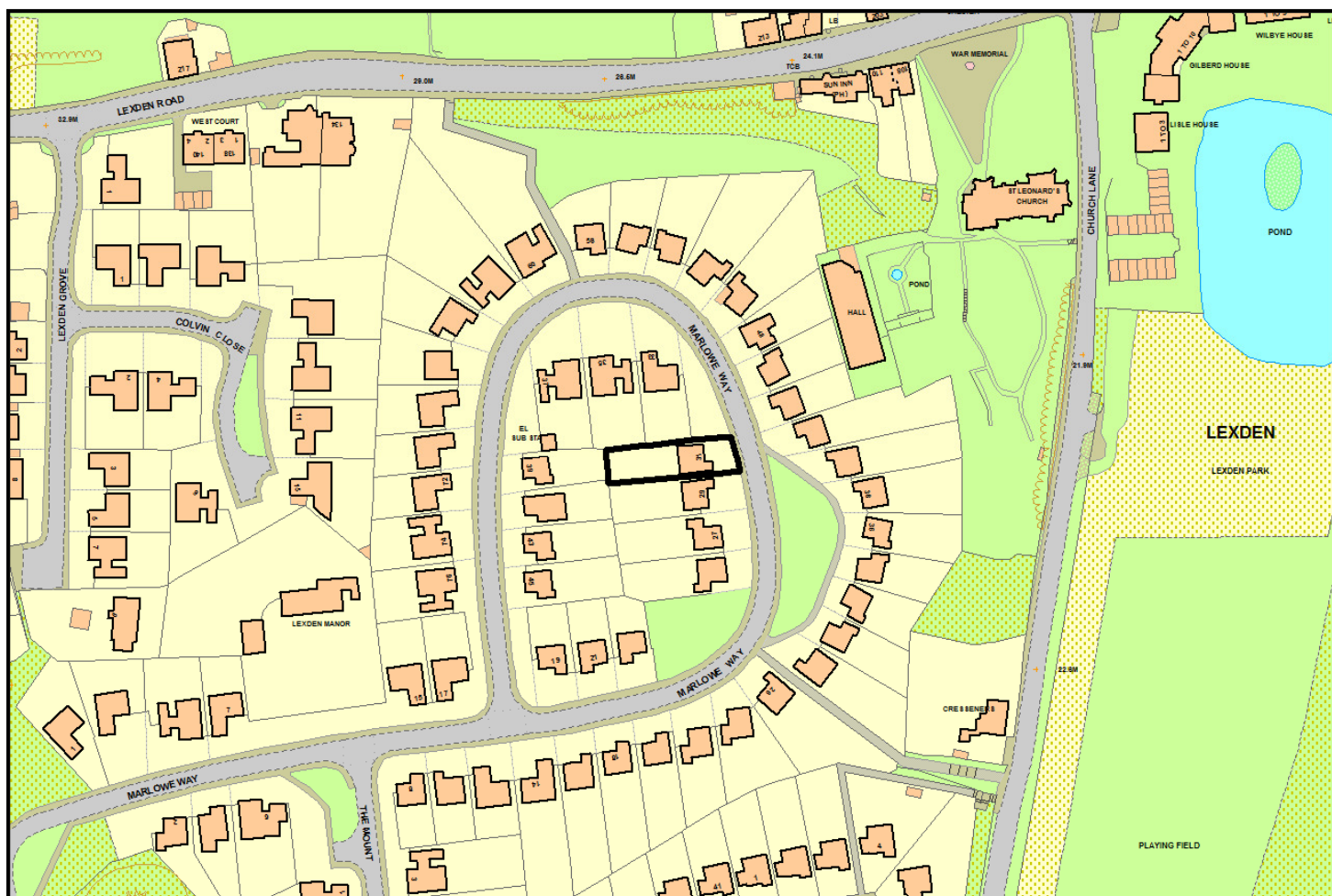
(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

(3) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**
PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



Application No: 150923

Location: 31 Marlowe Way, Colchester, CO3 4JP

Scale (approx): 1:1250

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7.5 Case Officer: Eleanor Moss Due Date: 31/07/2015

HOUSEHOLDER

Site: **31 Marlowe Way, Colchester, CO3 4JP**

Application No: **150923**

Date Received: 7 May 2015

Agent: Stour Valley Design

Applicant: Mr & Mrs Smith

Development: Front extension and single storey rear extension.

Ward: Lexden

Summary of Representation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because Councilor Buston requested this application to be determined at Committee for the following reasons:

- The size, scale and design of the property are disproportionate to the size of the plot and out of keeping with the surrounding properties
- The proposed extension is overly dominant on the frontage
- The location of the extension proposed in the Application impacts on the privacy and outlook of the adjoining property
- The proposed extension is out of character for Marlowe Way
- The external design of the proposed building has little or no architectural merit , and would not provide the required high standard of design or the appropriate architectural approach and would not lead to an enhancement of the area's character

2.0 Synopsis

2.1 The key issues explored below are that of design and amenity. The proposal is considered to have an acceptable design that would not result in any amenity issues – such as overlooking or overshadowing. Approval is recommended.

3.0 Site Description and Context

- 3.1 The application site is a two storey detached dwelling within Marlowe Way. The existing house incorporates deliberate asymmetry into its design and the asymmetrical roof is a key element of the building's character. The next door dwelling has the same design, again with an asymmetrical gable fronting the street. Similar asymmetry can be found in other dwelling designs in the area, however the area is made up of various designs. In addition, the existing dwelling is characterised by a single attached flat roof garage to the front elevation, similarly the next door dwelling also mirrors this.

4.0 Description of the Proposal

- 4.1 This application seeks planning permission for the erection of a first floor extension and single storey rear extension. It is worth noting that the rear extension has already been granted permission under application 146375. The proposed first floor front extension measures 5.1 metres wide by 3.6 metres, effectively retaining 1.1 metres of existing flat garage roof. This is in order to provide an additional bedroom on the first floor. The amended scheme incorporates asymmetry into its design and includes an asymmetrical roof in order to appear as a natural addition to the property which does not conflict with the original. In addition, the proposed design has been amended to include panelled render on the front elevation, in order to harmonise with the original dwelling.

5.0 Land Use Allocation

- 5.1 Residential

6.0 Relevant Planning History

- 6.1 This application site has previously been refused a front extension under application 146375. Under this scheme the asymmetry of the original dwelling would have been disturbed by the symmetrical and conventional gable end proposed to the front extension which did not respect the architecture of the original building. The depth of the extension caused it to dominate the composition. The extension largely obscured the rendered element of the first floor behind it, leaving just a small, triangle visible behind it and intruding a third material (hardiplank cladding) to the front elevation. This use of materials appeared incoherent and failed to respect the architecture of the building. The front balcony was more generally harmful to local character, being a feature that is alien to the local area.

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
UR2 - Built Design and Character

- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):

DP1 Design and Amenity
DP13 Dwelling Alterations, Extensions and Replacement Dwellings

- 7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

Extending Your House?
The Essex Design Guide

8.0 Consultations

- 8.1 None received at the time of writing

9.0 Parish Council Response

- 9.1 N/A

10.0 Representations

- 10.1 One objection has been received from the neighbouring property, a number of concerns were raised and these are summarised as follows:

- Detrimental impact upon residential amenity. Specifically the objection raised concerns regarding six glazed areas, (back door, first-floor patio doors and four windows)
- Poor design with little architectural merit
- Inappropriate for the area and fails to respect the character and appearance of Marlowe Way
- Concerns regarding overlooking into front bedroom windows
- Creating a blank, oppressive elevation to No. 29 Marlowe Way
- Overbearing impact upon first floor front patio area

The full text of all of the representations received is available to view on the Council's website.

11.0 Parking Provision

- 11.1 Parking provision is not affected by this proposal which complies with current car parking standards.

12.0 Open Space Provisions

12.1 N/A

13.0 Air Quality

13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Development Team and Planning Obligations

14.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

Design and Layout

15.1 The proposed single-storey front extension would project by 3.6 metres from the original dwelling and would match the width of the existing garage; as such the resulting extension would be set back and articulated from the front wall of the garage, ensuring the proposal would read as a subservient addition that would not overwhelm the original dwelling.

15.2 The single-storey front extension, whilst projecting forward of the existing dwelling, would not harm the setting of the site, given its setback from the highway, and given that the extension matches the appearance of the original dwelling. It is not in conflict in terms of materials and design and as such would not be read as an addition which is out of keeping.

Impact on Surrounding Area

15.3 Marlowe Way is a residential cul-de-sac characterised by two-storey residential properties which are varied in terms of style and design. The application site itself is large and can accommodate the proposed development comfortably.

15.4 Neighbouring properties are two-storey in form, with single-storey attached and detached additions. The palette of materials on surrounding properties is also mixed. In particular, the design influence has been attributed to 38 Marlowe Way which has previously been given planning permission for a single-storey front extension over the flat roof garage. It is considered that the proposed development will not have any adverse impact on landscape character, the setting of the site, or the wider area.

Impact on Neighbouring Properties

- 15.5 Objections have been received from the neighbouring property which raised concerns regarding the amount of light entering the front elevation of 29 Marlowe Way. Guidance in Supplementary Planning document 'The Essex Design Guide' is that a 45 degree angle from the mid point of windows is required in order to preserve outlook. 'Extending your house?' requires a combined plan and elevation 45 degree zone of protection to be preserved. This proposal complies with both those tests.
- 15.6 Concerns have also been raised regarding the first floor patio on the front elevation of 29 Marlowe Way. The arrangement of a first floor patio on the front elevation is certainly unusual, especially as the flat roof does not contain any balustrading to protect users of the patio from harm. As this non-habitable area is already very open within the cul-de-sac, with direct overlooking from other properties, it is not considered that the proposed extension will cause a detrimental impact upon the amenity of the first floor patio area. The patio door which serves a bedroom will not be impacted upon in terms of outlook and light as the windows and doors on the front elevation all pass the 'tests' as described above. Furthermore, the extension is to the north of its nearest neighbour (29 Marlowe Way) and so direct sunlight will not be affected.

16.0 Conclusion

- 16.1 The design of the proposed replacement dwelling is appropriate and minimises its impacts upon the neighbouring properties. No test for overbearing, overshadowing or overlooking as laid out within the 'Extending Your House?' SPD has been infringed and no unacceptable impacts have been identified. The proposed replacement dwelling would not appear out of character in the street scene or as an overly prominent addition. Your Officer therefore recommends approval.

17.0 Recommendation

- 17.1 APPROVE subject to the following conditions

18.0 Conditions

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in precise accordance with the details shown on the submitted drawing numbers 1043/02 B, 1043/05 A and 1043/TOPO.

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

3 - Non-Standard Condition/Reason

No development shall take place until such times as, precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction, including window, fascia, soffit and porch details, have been submitted to and approved, in writing, by the Local Planning Authority. Such materials and finishes as may be approved shall be those used in the development unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: In order to ensure a high quality finish to the development appropriate to its traditional design.

19.0 Informatives

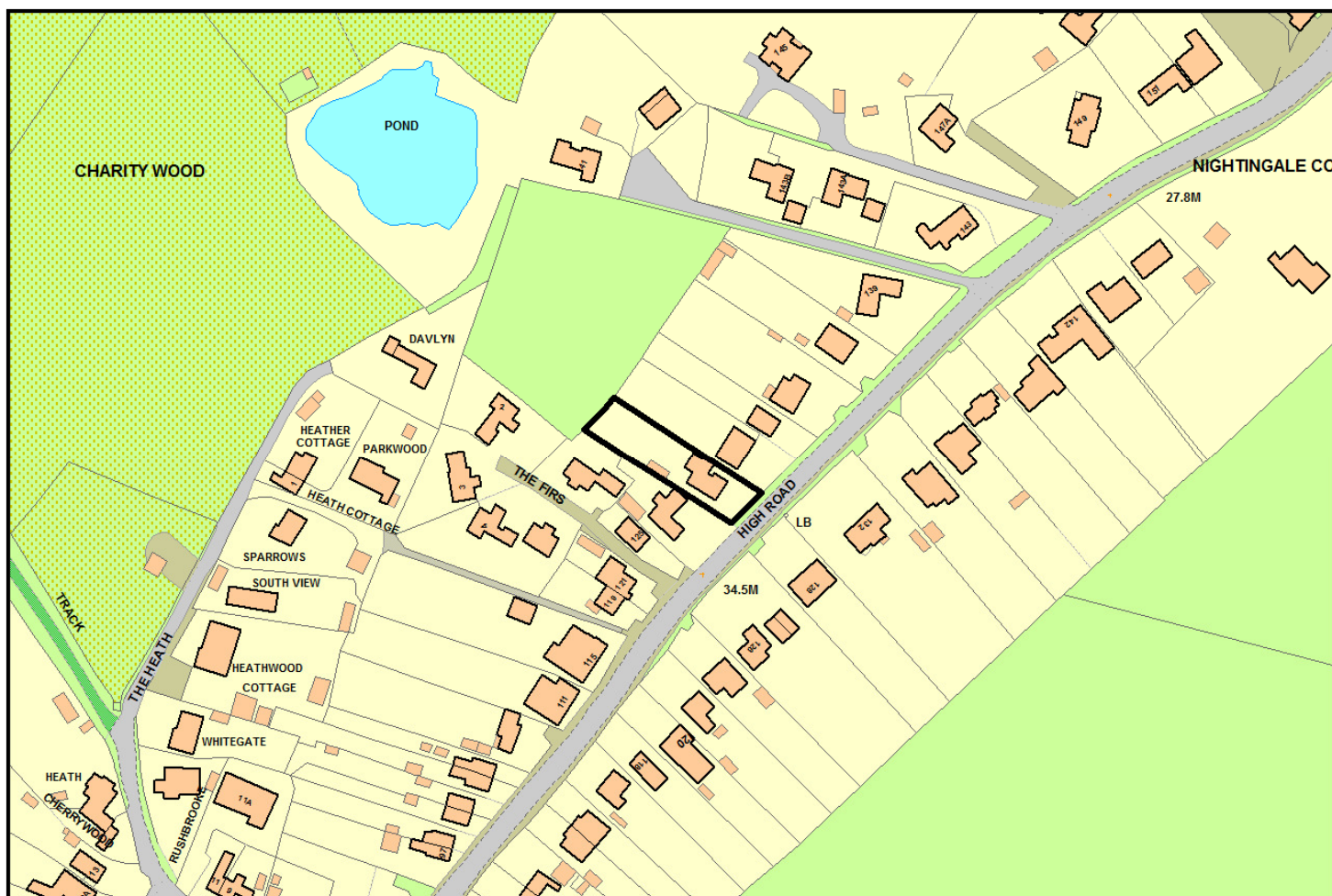
(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

(3) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**
PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



Application No: 150605

Location: 129 High Road, Layer-De-La-Haye, Colchester, CO2 0EA

Scale (approx): 1:1250

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7.6 Case Officer: Chris Harden

HOUSEHOLDER

Site: 129 High Road, Layer-De-La-Haye, Colchester, CO2 0EA

Application No: 150605

Date Received: 23 March 2015

Agent: Mr Peter Tyler

Applicant: Mr & Mrs Andrew Pickard

Development: First floor extension to existing bungalow.

Ward: Birch & Winstree

Summary of Recommendation: Conditional approval subject to consideration of any comments received following the re-consultation exercise

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the agent works as a consultant for Colchester Borough Council.

2.0 Synopsis

- 2.1 The key issues explored below are consideration of the design, scale and form of the extension, its impact upon the character of the street scene and any impact on neighbouring residential amenity. It is explained that amendments have been negotiated and the report concludes that the impacts upon the character of the area the amenity of immediate neighbours are acceptable. Approval is, therefore, recommended.

3.0 Site Description and Context

- 3.1 The site contains a single residential property (see site plan for layout, orientation and relationship to neighbouring properties) within the settlement boundary of Layer-de-la-Haye. The existing dwelling comprises a red brick bungalow, which has a limited amount of accommodation within the roof space. It has previously been extended to the rear with a flat-roofed, single storey, extension. The dwelling has a large rear garden and a substantial forecourt and side drive for vehicular parking. To the south-west of the site lies a bungalow and to the north-east is a chalet-style property. High Road, Layer comprises a varied mix of detached bungalows, chalet-style dwellings and houses on either side of the road.

4.0 Description of the Proposal

- 4.1 The application seeks to add a first floor on to the existing dwelling. The plans originally submitted have been amended – firstly to remove a proposed dormer and rooflights that faced toward the neighbour at No. 131; secondly, the height of the rear first floor element has been reduced from 6.5 metres to 5.3 metres in height.

5.0 Land Use Allocation

- 5.1 Layer-de-la-Haye settlement boundary

6.0 Relevant Planning History

- 6.1 Planning application 122212 for the conversion of the bungalow to a house was refused in 2012. This scheme was bulkier and was refused on the grounds of being visually incongruous, of non-traditional design and due to a detrimental effect on neighbouring residential amenity due to a loss of light and outlook.

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out how the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
UR2 - Built Design and Character

- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):

DP1 Design and Amenity
DP13 Dwelling Alterations, Extensions and Replacement Dwellings
DP19 Parking Standards

- 7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

Backland and Infill
Vehicle Parking Standards
Extending Your House?
The Essex Design Guide

8.0 Consultations

- 8.1 The consultation exercise has not resulted in the receipt of any statutory consultee comments.

9.0 Parish Council Response

- 9.1 Layer-de-la-Haye Parish Council stated: "The Parish Council opposed a previous similar application for this location (122212) because we felt it was an inappropriate over-development of the current site and that is still our view. The proposed extension will overwhelm the existing structure and in scale is generally out of keeping with the neighbouring properties which are bungalows and chalet bungalows. We are pleased to learn that the applicant has reached agreement with one of the neighbours about removing some first floor windows which would overlook his property. An additional concern is the parking of numerous builders vehicles on the busy High Road which would cause an unacceptable level of congestion and is potentially dangerous. A recent development at 149 High Road (132106) showed that it is perfectly possible to avoid major disruption and the Parish Council would like a restriction imposed, requiring contractor's vehicles to be parked on the property, rather than the road.

(Officer Note: The amended plans have reduced the bulk of the proposed additions. There is sufficient room on site to accommodate a number of vehicles off-road.)

Any comments received following re-consultation relating to the amended plans will be reported to the Committee.

10.0 Representations

- 10.1 One letter was received from 131 High Road commenting on the plans originally submitted which objected on the basis of windows overlooking the kitchen, lounge, patio and garden.
- (Officer Note: The amended plans appear to have resolved this.)*

The full text of all of the representations received is available to view on the Council's website. Any comments received following re-consultation relating to the amended plans will be reported to the Committee.

11.0 Parking Provision

- 11.1 The existing dwelling has a large forecourt and drive that can accommodate a number of cars and therefore accords with policy DP19.

12.0 Open Space Provisions

- 12.1 There is no requirement for any public open space provision for this application.

13.0 Air Quality

- 13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Development Team and Planning Obligations

- 14.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

- 15.1 The most significant planning issues are the design of the proposed development, including its impact in the street-scene, as well as its impact on neighbouring amenity in terms of outlook, light and privacy.
- 15.2 The proposal is for the construction of first floor accommodation above the existing bungalow. This is to be achieved within a “chalet-style” roof with two dormer windows fronting onto High Road and bonnet-style hips on either side and, to the rear, side-pitched roofs masking a flat-roofed element. It is acknowledged that it can be difficult to add a first floor on to the footprint of the existing bungalow, without resulting in a poorly-proportioned dwelling. However, in this case, the front view of the resultant dwelling would be in keeping with the general character of other properties along this part of High Road. There are other similar front dormers in the vicinity and the scale and height of the dwelling would be comparable to other properties in the vicinity.
- 15.3 There was concern regarding the originally submitted drawings which included a rearwards projecting element that appeared very dominant and not at all recessive to the main 1 ½ storey front area of the dwelling. This would have represented poor design and would have been detrimental to the character of this part of the street scene. There was also some concern that the height of the rear element would have an overbearing impact upon neighbours (although no objections from neighbours on these grounds was received). The revised scheme, reducing the height of the rear element from 6.5 metres to 5.3 metres, would give the rear extension a far more recessive appearance and would not detract from the character of the street scene. It would also minimise any overbearing impact upon neighbours. Whilst the rear extension would have a central flat-roofed element, this would be masked from side view by pitched roofs either side and would only be visible from the rear garden. The form, scale and design of the proposal are now considered acceptable, although any additional comments received following the re-consultation process will be reported to the Committee. The revised scheme is considered far more visually acceptable than the bulky scheme that was refused under application 122212.
- 15.4 The revised scheme is not considered to represent an overdevelopment of the site. Adequate amenity space and parking and manoeuvring areas would be provided and the dwelling would not appear cramped on the site. A building works management condition could also be applied to minimise disruption in the vicinity.
- 15.5 The existing dwelling is situated between a single storey bungalow to the north and a chalet-style property to the south. The former is set at an angle toward No. 129 and the Planning Officer is satisfied that the proposal would not have a significant impact upon the amenity of that dwelling providing that the side-facing dormers to the bathroom are conditioned to include obscure glazing. This will ensure there is no significant overlooking.

- 15.6 The dwelling to the other side (No. 131) lies generally to the north of 129 and is about 0.5 metres below the land levels of the application site. No. 131 has a kitchen in the rear corner of the building nearest to 129, with a number of windows. The main window has its mid-point about 5 metres away from the shared boundary and the Planning Officer is satisfied that the proposed additions to 129 will not result in the centre of this window being within a combined plan and section 45 degree overshadowing zone. The proposed extension, therefore, does not result in an unacceptable loss of light to this room. The existing dwelling of No. 129 projects about 4.5 metres beyond the rear wall of the kitchen of 131. Consequently, the proposed additions at first floor level will not have an overbearing impact upon the outlook of the neighbour. The neighbours have not objected to the scheme on the grounds of overbearing impact or loss of light and the revision has further reduced the height of the rear extension.
- 15.7 There will be no new windows at first floor level that would offer an unsatisfactory angle of overlooking that would harm the privacy of the neighbouring properties, including their protected sitting out areas as identified in the above SPD.
- 15.8 Finally, there will be no impact upon significant vegetation or upon wildlife.

16.0 Conclusion

- 16.1 To summarise, the proposed development fully accords with the Council's policy requirements. The design and scale of the amended scheme are considered acceptable and would not detract from the character of the street scene. It is also not considered that there would be any detriment to neighbouring residential amenity although any observations received following the re-consultation exercise will be considered.

17.0 Recommendation

- 17.1 Authority to APPROVE with APPROVAL being granted subject to consideration of any comments received following the re-consultation exercise and subject to the following conditions:

18.0 Conditions

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Number 381-5B unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

3 - Materials as Stated in Application

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings.

Reason: To ensure that materials are of an acceptable quality appropriate to the area.

4 - Non-Standard Condition/Reason

Prior to the development hereby permitted coming in to use, the applicant shall provide glazing to a minimum of level four on the Pilkington scale to the side dormers and this glazing shall be retained at all times.

Reason: In the interests of residential amenity.

5 - Non-Standard Condition/Reason

Prior to the commencement of development, a building works management plan shall be submitted to the local planning authority to its satisfaction and all works shall comply with the details of that plan.

Reason: In the interests of residential and highway amenity.

19.0 Informatives

(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

20.0 Positivity Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

