

Planning Committee Meeting

**Grand Jury Room, Town Hall, High Street,
Colchester, CO1 1PJ
Thursday, 27 April 2023 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. Usually, only one person for and one person against each application is permitted.

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 (the list of items to be discussed at a meeting), which is usually published five working days before the meeting, and minutes once they are published. Dates of the meetings are available here:

<https://colchester.cmis.uk.com/colchester/MeetingCalendar.aspx>.

Most meetings take place in public. This only changes when certain issues, for instance, commercially sensitive information or details concerning an individual are considered. At this point you will be told whether there are any issues to be discussed in private, if so, you will be asked to leave the meeting.

Have Your Say!

The Council welcomes contributions and representations from members of the public at most public meetings. At Planning Committee meetings, other than in exceptional circumstances, only one person is permitted to speak in support of an application and one person in opposition to an application. If you would like to speak at a meeting and need to find out more, please refer to the Have Your Say! arrangements here:

<https://colchester.cmis.uk.com/colchester/HaveYourSay/HYSPlanning.aspx>.

Audio Recording, Streaming, Mobile phones and other devices

The Council audio records and streams public meetings for live broadcast over the internet and the recordings are available to listen to afterwards on the Council's website. Audio recording, photography and filming of meetings by members of the public is also welcomed. Phones, tablets, laptops, cameras and other devices can be used at all meetings of the Council so long as this doesn't cause a disturbance. It is not permitted to use voice or camera flash functions and devices must be set to silent. Councillors can use devices to receive messages, to access meeting papers and information via the internet. Looking at or posting on social media by Committee members is at the discretion of the Chairman / Mayor who may choose to require all devices to be switched off at any time.

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, using the contact details below and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets with lift access, if required, are on each floor of the Town Hall. A water dispenser is available on the first floor.

Evacuation Procedures

Evacuate the building using the nearest available exit. Make your way to the assembly area in the car park in St Runwald Street behind the Town Hall. Do not re-enter the building until the Town Hall staff advise you that it is safe to do so.

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e-mail: democratic.services@colchester.gov.uk

www.colchester.gov.uk

COLCHESTER CITY COUNCIL
Planning Committee
Thursday, 27 April 2023 at 18:00

The Planning Committee Members are:

Cllr Lilley
Cllr Barton
Cllr Chapman
Cllr Chuah
Cllr Mannion
Cllr MacLean
Cllr McCarthy
Cllr Pearson
Cllr Tate
Cllr Warnes

Chair
Deputy Chair

The Planning Committee Substitute Members are:

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

Councillors:

Tracy Arnold	Catherine Bickersteth	Molly Bloomfield	Michelle Burrows	Roger Buston
Mark Cory	Pam Cox	Adam Fox	Mark Goacher	Jeremy Hagon
Dave Harris	Mike Hogg	Richard Kirkby-Taylor	Jocelyn Law	Darius Laws
Sue Lissimore	Andrea Luxford Vaughan	Patricia Moore	Sam McLean	Kayleigh Rippingale
Lesley Scott- Boutell	Paul Smith	William Sunnucks	Dennis Willetts	Barbara Wood
Julie Young	Tim Young			

AGENDA

THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING

(Part A - open to the public)

Please note that Agenda items 1 to 2 are normally dealt with briefly.

An Amendment Sheet is published on the Council's website by 4:30pm on the day before the meeting and is available to view at the bottom of the relevant Planning Committee webpage. Please note that any further information for the Committee to consider must be received no later than 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.

Live Broadcast

Please follow this link to watch the meeting live on YouTube:

[\(107\) ColchesterCBC - YouTube](#)

1 Welcome and Announcements

The Chairman will welcome members of the public and Councillors and remind everyone to use microphones at all times when they are speaking. The Chairman will also explain action in the event of an emergency, mobile phones switched to silent, audio-recording of the meeting. Councillors who are members of the committee will introduce themselves.

2 Substitutions

Councillors will be asked to say if they are attending on behalf of a Committee member who is absent.

3 Declarations of Interest

Councillors will be asked to say if there are any items on the agenda about which they have a disclosable pecuniary interest which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other registerable interest or non-registerable interest.

4 Urgent Items

The Chairman will announce if there is any item not on the published agenda which will be considered because it is urgent and will explain the reason for the urgency.

5 Have Your Say(Hybrid Planning Meetings)

At meetings of the Planning Committee, members of the public may make representations to the Committee members. This can be made either in person at the meeting or by joining the meeting remotely and addressing the Council via Zoom. These Have Your Say! arrangements will allow for one person to make representations in opposition and one person to make

representations in support of each planning application. Each representation may be no longer than three minutes(500 words). Members of the public wishing to address the Committee either in person or remotely need to register their wish to address the meeting by e-mailing democratic.services@colchester.gov.uk by 12.00 noon on the working day before the meeting date. In addition for those who wish to address the committee online we advise that a written copy of the representation be supplied for use in the event of unforeseen technical difficulties preventing participation at the meeting itself.

These speaking arrangements do not apply to councillors who are not members of the Committee who may make representations of no longer than five minutes each

6 Minutes of Previous Meeting

The Councillors will be invited to confirm that the minutes of the meeting held on the 16 March 2023 and 30 March 2023 are a correct record.

2023-03-16 CCC Planning Committee Minutes 7 - 14

2023-03-30 CCC Planning Committee Minutes 15 - 18

7 Planning Applications

When the members of the Committee consider the planning applications listed below, they may decide to agree, all at the same time, the recommendations in the reports for any applications which no member of the Committee or member of the public wishes to address the Committee.

7.1 230031 Land between, 7 & 15 Marlowe Way, Colchester, CO3 4JP 19 - 42

Application for variation of condition 2 following grant of planning permission of application 212888 (Daylight and Sunlight report received).

7.2 223138 23 Ryegate House, Rent Officer, St Peters Street, Colchester, Essex, CO1 1HL 43 - 58

Change of use from E (c)(ii) (probation services offices) to create managed HMO rooms.

Planning Committee Information Pages v2 59 - 70

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

16 March 2023

<i>Present:-</i>	Councillors Lilley (Chair), Barton, Chapman, Chuah, Davidson, McCarthy, MacLean, McLean, Pearson, Tate
<i>Substitute Member:-</i>	Councillor Davidson substituted for Councillor Mannion Councillor McLean substituted for Councillor Warnes
<i>Also in Attendance:-</i>	Councillor Andrew Ellis

The start of the meeting was delayed by 15 minutes to ensure that all Members of the public in attendance and in the overflow room could view the meeting.

976. Site Visit

A site visit was conducted on the 16 March 2023 and was attended by Councillors Lilley, Barton, Chapman, Chuah, Davidson, McCarthy, McLean and MacLean. Members of the Committee visited the following sites:

- 222151 Land to the North West of, Hardy's Green, Birch, Colchester

977. Minutes

No minutes were presented to the Committee for confirmation.

978. 222151 Land to the north west of, Hardy's Green, Birch, Colchester

Councillors Davidson and MacLean declared that their professions were as farmers but they did not have any interest in the land or proposal before the Committee.

The Committee considered an application for the construction and operation of a solar photovoltaic (PV) farm and associated infrastructure, including batteries, inverters, security cameras, fencing, access tracks and landscaping and cable run. The application was referred to the Planning Committee as the scheme was an EIA development.

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

James Ryan, Planning Manager presented the application to the Committee and assisted the Committee in its deliberations. The Committee were shown the layout of the site with the proposed cable run from the site as well as the elevations of the proposal showing the substations, fencing, and asked members to note the security measures on site which included CCTV. The presentation showed indicative plans of the possible types of solar panels that would be used on site which would be up to 3 metres tall and the approved plan of the development zone. Members were asked to note on the plan that three of the fields on the south of the site had been removed from the proposal which had been facilitated by the applicant and not at the request of officers; a condition confirming this was included within

the recommendation. The Planning Manager detailed that the access to the site would be via the existing farm access and showed the Committee Computer Generated Images of what the panels may look like after 10 years where the screening had been planted and how the panels would be obscured by the trees and hedgerows. It was pointed out that they would not be completely obscured by the screening or hedging and that some panels would still be visible. It was noted that following consultation further archaeological works would be undertaken through condition.

The Planning Manager outlined that a further response had been received from Essex County Fire and Rescue Services who set out that they had assessed the proposal and that they did not object to the proposal but asked that, as per condition 20 in the recommendation, a fire safety risk management plan had to be in place and that the development of the battery storage could not go ahead until this had been signed off by Essex County Fire and Rescue and the Health and Safety Executive. It was outlined that this requirement would ensure that safety measures could be put in place and that the condition would not be discharged unless both parties were satisfied that.

The Planning Manager detailed that a late submission had been received from the Campaign Against Rural Exploitation (CARE) and outlined the following points that were raised within the document:

- The energy creation on the site and whether the site would need to be replaced within 20 years.
- That the proposal was not sustainable development and that building on best and most versatile land should be discouraged and that they would like to see stricter regulations and would like to see further rooftop solar panels.
- That there had been no objection from Essex County Fire and Rescue and that the Rochdale envelope was an example of the worst case scenario.
- That they were not satisfied with the response from the Health and Safety Executive and noted that the Battery Storage Facility would be a hazard on the site.
- That if there was a fire on the site it would cause a toxic cloud of smoke causing risk to residents.
- That they did not agree with the designation of the land being grade 3A and 3B and that 40 years could not be considered as a temporary permission.
- That the potential for energy creation would be less than stated and that offshore wind farms created more energy and would be more productive than use on agricultural land.
- The use of deer fencing rather than palisade fencing with the proposed height being 2m.
- That the risks associated with possible toxic smoke from a fire had not been finalised.
- That both this application and a previously approved scheme in Layer De La Haye were being used to circumvent the planning system and questioned how responsible recycling of the site could be secured.
- That lithium batteries are now used in a wider range of products and that when they caught fire they couldn't be put out and that if there was a fire a 5-mile cordon would need to be instituted and it would be impossible to protect citizens or the animals at the zoo.

Graham Barney (Chair of Copford and Easthorpe Parish Council and on behalf of Birch Parish Council) addressed the Committee pursuant to provisions of Planning Committee Procedure Rule 8 in opposition to the application. The Committee heard that all Parishes had submitted detailed objections to the proposal and asked Members to consider Greg

Barker's (then Minister for Energy and Climate Change) 2013 statement that detailed how solar energy should be thoughtful, sensitive to public opinion, and mindful of wider impacts and not be at any cost of the local communities. It was noted that renewable energy targets should not be at the cost of productive farmland and that the Committee should be aware of wider impacts of the proposal and that there would be a loss of farmland and as the recent food shortages had shown it was needed for such a purpose. The speaker elaborated that the technology in the panels would become obsolete and would not be able to produce the amount of energy as cited in the report and would at times only produce 10-15% of capacity with an expected 1% decline in production every year. The Committee heard that the proposal would cause serious harm to the heritage assets in the area and that if there was a fire then there would be a significant risk of toxic fumes to residents and to the firefighters who would be tackling the blaze. The speaker concluded by detailing that in the event of this it would cause an environmental catastrophe and asked that the application be rejected.

Ed Perrin addressed the Committee pursuant to provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that the proposal would provide enough power for 12,850 Colchester Homes per year saving over 7000 tonnes of Carbon Dioxide and would have a sizeable contribution to the Council's net zero target whilst noting that there were no technical objections to the proposal. The speaker detailed that there had been significant changes to the project with the removal of fields making the project considerably smaller and the inclusion of a scheme that created significant community benefits. It was noted that there would be a biodiversity net gain on site from the planting of hedgerows and understood that there was concern in the local area regarding the proposal but detailed that it would provide electricity for 16% of homes in the area and that without farming the soil would be able to recover. The speaker concluded by confirming that the land would be returned to its current use once the temporary permission lapsed and that there was benefit to the proposal which outweighed the temporary loss of land and asked that the application be approved.

The Democratic Services Officer read out a statement from Councillor Kevin Bentley as follows who was unable to attend the meeting:

"Dear Chair and Members

Firstly, my apologies that I cannot be with you this evening due to other official commitments in Essex.

However, along with my Ward colleague, Cllr Andrew Ellis, I would like to speak about the application before you for a Solar Plant and to register my objection.

I am not against solar energy as it forms part of our sustainable plans to reduce carbon emissions and clearly contributes to our endeavours as a nation to reduce the high risks of climate change that face us and our future families.

In fact in our Ward, we have other sites that function well. However, it is about the siting of this particular application that causes concern.

I would stress that the company involved has been very good and engaged with us as Councillors and we have already expressed our concern about the original plan, and we acknowledge that changes have been made.

It does not however, go far enough and I think the risks very much outweigh the benefits. One area of concern is the location and the roads that lead to the site. This is a very rural area with very rural roads and cars in areas of the road network are not able to pass each other, this is a common feature in the countryside. Therefore, to subject these local roads to

much increased traffic and inevitable and costly damage to surfaces, ironworks and soft verges from large vehicles and the people who live nearby to heavy HGV traffic during construction and ongoing maintenance is unacceptable.

Furthermore, in this case and in my opinion it is an unacceptable risk to the natural environment and pollution caused would counteract any benefits gained from solar energy produced.

Another concern is around the sheer scale of the lithium battery storage system, and I am concerned that this could prove to be a fire risk. I know residents have consulted with the Essex Fire Chief on this matter, but I would urge Members to investigate this point thoroughly.

This site is currently used as arable farmland for growing of food, the majority of which is classified as Best and Most Versatile land in planning terms. I believe it is important that in a post Brexit world and the greater need for home grown cereals and vegetables we should be preserving such land for this use and not turning it over to what amounts to industrial use, albeit for sustainable energy.

I don't object as the local Member lightly and am a great supporter of renewal energy, as I believe many of my constituents and those who are objecting to this application are as well. My objection is based purely on location, size, traffic complications which could lead in my opinion to higher pollution, potential of fire risk with the size of the BESS and very importantly the loss the prime agricultural land.

I am grateful for whoever has communicated this message verbally to you on my behalf and I do hope you will take into consideration my comments and views."

Councillor Andrew Ellis addressed the Committee as Ward Member for Marks Tey and Layer and outlined that the proposals such as this should be on brownfield land and not best and most versatile land and noted that policy ENV1 had engaged and was significant to the proposal that was before the Committee. Members of the Committee heard that there would be some benefits from the proposed planting on the site which would not entirely enclose the area and that the proposal would be in operation for 40 years and would be industrialising the countryside. The Ward Member continued by raising concern that the Council should not ride roughshod over constituent's views to remove fossil fuels and that the proposal did not contribute to the Colchester network. The Committee heard that solar energy was not a magic bullet to the energy crisis and the landowner could not be vilified for diversifying their farm and that it would be up to the Committee to decide whether this was the correct use for the land. The speaker concluded by asking the Committee to preserve the local landscape.

At the request of the Chair the Area Planning Manager responded to the points that had been raised by the speakers. The Committee heard that precise design of the panels had yet to be decided and the details were not before the Committee and that none of the equipment that would be used on site would be approved until it had been agreed with the Fire Service and the Health and Safety Executive. It was noted that if the condition was not discharged for the Battery ESS (BESS) then the proposal would not be able to store energy on site and noted that there had been no technical objections to the proposal so it would be unreasonable to refuse the application on the basis of safety as there was no evidence that it would be so. The Area Planning Manager referenced that a recent Planning Appeal elsewhere had been heard at a Public Enquiry regarding solar panels and storage and had confirmed that where safety concerns had been presented without evidence these could not be neutrally weighted and could not be considered to weigh against a proposal.

The Planning Manager accepted that 40 years was a long time for a temporary permission but reminded the Committee that as detailed in the description of the development that the proposal before them would not be permanent. Members heard that the proposal would be removed from the site in its entirety once the permission elapsed or, as detailed in condition 2, if the site became defunct and was not producing power. It was noted that the proposal would be part of the UK's energy mix which included wind, wave, tidal and nuclear to remove reliance on hydrocarbons and some of the efficiency of the proposal would be from the link into the national grid. It was noted that the impact on the environment had been assessed and had concluded that the impacts of the proposal could be successfully mitigated including an increase in canopy cover and noted that the three fields to the south which had been removed from development area would not benefit from biodiversity net gain. It was confirmed that independent Ecologists had been commissioned for the project and there had been a holding objection on this issue when the application was being assessed but this had been resolved through the conditions detailed in the report. The Committee heard that the Battery ESS (BESS) had been placed near the woodlands so that they could screen the substation area and confirmed that no objection had been received from the Forestry Commission or from the Council's Arboricultural Officer. The Planning Manager confirmed that the use of the land was part of the Committee's deliberations and that the site was made up of type 3a and 3b land and that the quality of the land was a planning consideration when deciding on the temporary permission for the site.

Members heard that there would be a limited increase in traffic in the area with the construction of the site and confirmed the HGV movements would not take place during school pick and drop off times and that Essex County Council's Highways Department had not objected. To ensure complete transparency it was confirmed that the scheme was not from the City Council but emphasised that it would contribute to the zero carbon future of the City. It was noted that Brownfield development proposals were supported and noted that the evidence before the Committee showed that the proposal could be successfully mitigated against in terms of ecology and biodiversity bearing in mind that the proposal was temporary.

The Development Manager outlined that the impact on the Heritage Assets in the area had been outlined in the report on page 63 and that three of the main Assets had been taken out of concern through the removal of the three southern fields. It was detailed that the remaining assets would be indirectly affected by the proposal and the screening provided by the application would not change the significance of the assets as they were examples of pre-industrial architecture and did not have a direct link such as an intentionally designed setting but incidentally formed part of the surrounding agricultural setting.

Members debated the proposal and some Committee Members initially raised concern about the comments from the Development Manager regarding Heritage issues and disagreed with the amount of harm that could be associated with the Listed Assets. Members raised questions about how many solar panels were on Council owned buildings and commented that the road network around the site would never be satisfactory. Questions were raised regarding whether the proposal would be bunded and what would happen with the water run off to the site and the reservoir at Layer if there were any chemical leaks that could be caused by accidents such as a fire.

The Planning Manager outlined that they did not have any data to hand regarding Council owned Solar Panels and detailed that the Council did not have a policy to enforce solar panels on buildings but it was highly encouraged. It was noted that a previously approved Layer de la Haye solar farm was not yet operating as they were currently undertaking archaeological digs as required in their approval. With regards to increased traffic the Committee heard that the site would be accessed and maintained via an existing farm access

and that if any damage was caused to verges then this would be repaired. It was confirmed that the BESS would be bunded and that any water from the site would go into the designated water courses and that any chemicals in the water would be dealt with under the fire management plan.

With the permission of the Chair the Development Manager confirmed that the Turnstone development did have solar PV panels and a hybrid heating solution on the adjacent mixed use site to the east of the VUR. The Committee heard that it would be difficult to sustain a refusal on highways grounds without an objection from Essex County Council's Highways Authority and asked Members to bear in mind that the roads were currently used by farm traffic including combine harvesters which would be bigger than HGV's. Members heard that 3 listed heritage assets would be affected in a minor way by the proposal and had been assessed at the lower end of less than substantial harm. A map was shown to the Committee of where the listed heritage assets were and where they were in relation to the proposed application.

Members debated whether the loss of the farmland was a substantial impact considering that the permission was temporary, and some Members detailed that they did not see beauty on site and that the proposal would serve a functional purpose for the farmer. A proposal was made and seconded that the application be approved as detailed in the officer recommendation.

The Area Manager confirmed that the proposal was not in an Area of Outstanding National Beauty (AONB) and confirmed that there would be a soil management plan on the site which currently produced cereals, vegetables, and green energy crops for biofuel.

Members continued to debate the application on the grading of the land and its productivity and referenced the current data on DEFRA's website which had been evidenced in the 1960s and it was noted that this estate was only one of five irrigated farms in the Colchester Area. Members discussed the use of the land and how there were many sites that would be better suited to the proposal with some Committee Members raising concern about forcing wild animals to go around the site. A question was raised as to whether the proposal was classed as a Nationally Significant Infrastructure Project (NSIP), what the proposed benefits would be to the local community with additional concerns raised over what could happen if there was a fire and the effect that the toxic smoke could have downwind of the proposal and in the immediate area.

A short break was taken between 20:00 until 20:15.

Following the break, the Area Manager showed the DEFRA map as referenced to prior to the break with Members debating the quality of the land between grade 2 and grade 3. Members were asked to note that despite the map DEFRA had not objected to the proposal. Debate continued with Members of the Committee discussing the balance of impacting rural communities and the Climate Emergency and would provide power to over 12,000 homes. Councillors also questioned what would happen if the Committee refused the application.

At the request of the Chair the Area Manager detailed that the energy created from the site would be fed straight into the National Grid and would be used by households in the area and would reduce the need to import energy. Additionally, the Area Manager confirmed that the National Farmers Union supported the application. The Development Manager detailed that the Council's exposure to an appeal would be high and the Committee would need to identify reasons why the application should be refused and why the harms outweigh the public benefits of the proposal bearing in mind that there had been no technical objections

to the proposal. It was noted that the landscape had changed from generation to generation when reviewing the setting of designated Heritage Assets.

Members resumed their debate on issues including the NPPF, the sustainability of the site and taking into account the appeal decision regarding the safety of site such as this. It was noted by Members that the list of conditions was extensive and the letter of support received from the National Farmers Union (NFU).

The Area Manager confirmed that threshold for NSIP's depended on the installed capacity Schemes for under 50 Mega-Watts (MW) of power were determined by the lpa and those that produced over that amount were determined by PINS under the NSIP process. It was and noted that the scheme was below 50 MW. It was noted that this scheme and a previously approved one in Layer de la Haye were completely separate and noted that there would be a £112,000 sum that would be split between the Parish Councils in the area for a community benefit and noted that the water course contamination would on the list that was part of the management safety plan.

The debate continued between Members where they detailed that the current state of the existing landscape and questioned the accuracy of the drawings that had been shown to the Committee. Members discussed the previous Appeal on a separate solar farm elsewhere and whether it was relevant to the application before Members with some of the Committee detailing that they did not consider the proposal as a temporary structure with some Members also expressing concern that they did not have enough information to determine the application.

At the request of the Chair the Area Manager detailed that the Appeal decision as mentioned was comparable to the site before the Committee bearing in mind the relevant factors and it was cited that the fire safety could be dealt with via condition and that it should be given neutral weight. Members heard that the Council's Planning Enforcement Team would be able to seek evidence if the site was not providing power and that the Biodiversity Net Gain plan would be the maximum that could be achieved on the site and that Officers considered that they had enough information and submitted evidence to approve the application in its current form.

Debate continued with Members thanking all those who had contributed to the meeting with Members empathising with the objections that had been made on the proposal. Some Members outlined that there needed to be a balance on energy production with some being on greenfield sites as well as brownfield sites.

In response to questions raised Members heard that condition 13 set out the aftercare and maintenance of the site through the landscaping condition and its subsequent monitoring, that the land beneath could not be considered as developed under the temporary use and would not be considered as a sustainable location for housing or industrial use.

The debate concluded with Members considering the need for alternative energy production with Members asking that solar panels should be put on every building but it was noted that this was beyond the remit of the proposal.

RESOLVED (By SEVEN Votes FOR and THREE Votes AGAINST) that the application be approved subject to the conditions and informatives set out in the report.

PLANNING COMMITTEE

30 March 2023

<i>Present:-</i>	Councillors Lilley (Chair), Bickersteth, Chapman, Chuah, Davidson, Hogg, Mannion, MacLean, McCarthy, McLean,
<i>Substitute Member:-</i>	Councillor Hogg substituted for Councillor Barton Councillor McLean substituted for Councillor Pearson Councillor Davidson substituted for Councillor Tate Councillor Bickersteth substituted for Councillor Warnes
<i>Also in Attendance:-</i>	Councillor Dave Harris

979. Site Visit

A site visit was conducted on the 30 March 2023 and was attended by Councillors Lilley, Chapman, Chuah, Hogg, McCarthy, McLean and MacLean. Members of the Committee visited the following sites:

- 223045 Garrison Building L03, R M P Barracks, Circular Road West, Colchester, CO2 7NZ

980. Minutes

The Minutes of the meeting held on the 9 March 2023 were confirmed as a true record.

981. 223045 Garrison Building L03, R M P Barracks, Circular Road West, Colchester, CO2 7NZ

The Committee considered an application for 2 no. Chinook simulators proposed for training purposes. Resubmission of 222000. The application was referred to the Planning Committee as it had been called in by Councillor Harris for the following reasons:

- Local people in Henry Everett Grove and nearby road have read the document which gives no info of how loud this will be, and indeed the papers seem to give little assurance at restricted times of the day or night.
- To approve this there needs to be answers on how the noise control can be controlled and ways of monitoring disruption to houses near the site.
- Written assurances are needed for all these residents on non-operational hours Call in is in response to calls by residents of the local neighbour association and individual members of Henry Everett Grove.

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

John Miles, Senior Planning Officer presented the application to the Committee and assisted the Committee in its deliberations. The Committee were shown the location of the proposal within the Barracks and its relationship to the surrounding areas which included the closest

residential properties and the aerial plan to illustrate the surrounding terrain and existing development in the vicinity. The Committee were shown detailed drawings of the proposal which had removed the speakers since the previous application and detailed their proposed location. The Senior Planning Officer concluded by outlining that the proposal was recommended for approval as detailed in the report.

Carla Wilson addressed the Committee pursuant to provisions of Planning Committee Procedure Rule 8 in opposition to the application. The Committee heard that the speaker was representing themselves and neighbouring residents and outlined that the proposal would have a negative effect on them due to previously existing health conditions and that the low level of noise created from the proposal would mean that they could not switch off and could lead to mental breakdowns and further issues. Further to this it was noted that there were also a number of people in the area that also had pre-existing health conditions. It was noted that the Garrison did occasionally have bands and festivals in the area but as these were only one off's they did not cause issues. The speaker outlined that the equipment could be used in the night and could be seen from their home and had asked that the equipment be turned on so that the level of noise could be heard.

Rebecca Howard (Agent) addressed the Committee pursuant to provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that the proposal before the Committee would improve the training facilities on the site so that the passengers on the helicopters would be trained to leave the craft in a safe manner and practice this in low light conditions which could be reflective of battlefields and disputed zones. The application had been resubmitted as the speaker system had been refused and had been removed from the application before the Committee. The speaker provided assurance that the proposal would not replicate the noise of a chinook helicopter and the only parts to make sound would be the hydraulics of the rear hatch opening and it was predicted that the noise level would be 4db below background noise during the day and 1db below in the evening. The Agent concluded by noting that the officer recommendation was for approval and asked the Committee to approve the training facility on the base.

The Democratic Services Officer read out a statement from Councillor Martyn Warnes who was unable to attend the meeting. The statement read as follows:

"Dear Councillors,

I am not able to be with you this evening but would like you to consider my following comments in relation to the resubmitted planning application before you this evening, and which relates to the proposed Chinook Helicopter Simulators to be used for training purposes by the Ministry of Defence.

I welcome the concession contained in this resubmitted application, namely the removal of the unnecessary noise pollution that a speaker system would have produced. I also recognise and welcome the proposed condition that would prevent the later installation of such a speaker system if planning permission is granted. I would nevertheless ask members to consider if it is reasonable to impose upon neighbouring residents the potential operational use of these simulators during a sixteen hour period, seven days a week.

I therefore ask members to seriously consider if the proposed hours of operation are strictly necessary for the successful operation of the simulators and the training they would facilitate, or alternatively, if a reduction in those hours would offer a fairer planning balance in the interests of nearby residents. Please therefore consider granting local residents

some respite by removing Sundays and public holidays from the condition regulating the hours of operation.”

Councillor Dave Harris addressed the Committee as Ward Member for Berechurch detailing that the Committee had heard from local residents and from the applicant and confirmed that they had called in the application as there was concern from residents that the proposal would be close to their back fences and gardens. It was noted that there was a very good relationship between local residents and the Barracks and that a lot of the personnel who worked on the base lived in the area. The Committee also heard that the residents wanted to have a demonstration of the equipment and had spoken to fellow ward Member, Councillor Pearson, about this application. The Ward Member concluded by asking that the Committee consider the hours of operation of the proposal especially in the evening and asked that the Committee endorse any enforcement action if the levels did go above those required.

At the request of the Chair the Senior Planning Officer responded to the speakers. The Committee heard that officers understand and appreciate why the proposal was a cause for concern and it had been noted in the noise survey in the non-technical summary that it could cause issues of detectability for people who have certain sensitivities but that this would not be the case on this site. It was noted that there were a number of conditions on the proposal that would ensure that the noise would not have a significant impact on residents. It was noted that there were concerns about the noise and that the agent had provided details of the equipment and subsequent noise surveys. The Senior Planning Officer concluded by detailing that the positioning on site was for the MOD to decide and that it would be difficult to add a restriction for the use of the equipment as the evidence provided showed that it would not need any mitigating measures.

The Committee debated the proposal discussing the issues that could be caused by the proposal and thanked the speakers for attending the meeting. It was accepted by the Committee that there would be noise pollution from the Barracks but that this had to be expected and discussed what they had seen on the site visit and the low level of noise would have a minimal impact.

A proposal was made to approve the application as detailed in the officer recommendation with the additional condition as follows:

- That the working hours of the equipment would be as detailed in the report apart from Sundays and bank holidays where the operational hours would be 7am- 2pm.

The Committee continued to debate the application and discussed the importance of the training that this facility would provide and queried whether any acoustic fencing could be introduced or whether there was any other way that the noise could be controlled. Some Members raised concern that adding limitations was not necessary as the bund next to the site would absorb the noise from the proposal and that incidents that the base had to respond to would not take into account Sundays and bank holidays.

At the request of the Chair the Senior Planning Officer detailed that the site could be seen from residential properties that were over 200 metres away and that the conditions in the report provided security that the noise would not cause issues. The Chair added that the Councils Environmental Health Team would be able to monitor the noise if there were any suspected breaches.

The proposal that was made earlier in the meeting was subsequently withdrawn.

A new proposal was made and seconded that the application be approved as detailed in the

officer recommendation.

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

982. 230235 Shrub End Depot, 221 Shrub End Road, Colchester, CO3 4SA

The Committee considered an application for the partial demolition, alteration and extension to existing Baling Shed. The application was referred to the Planning Committee as the applicant is Colchester City Council.

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

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

983. 230159 “Whitesands”, Keelars Lane, Wivenhoe, Colchester, CO7 9LA

The Committee considered an application for a lawful development certificate for existing studio for personal use ancillary to and within curtilage of owners dwelling house. The application was referred to the Planning Committee as it had been submitted by or on behalf of a Council Officer (or their spouse or partner).

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

RESOLVED (UNANIMOUSLY) that the application be approved and the lawful Development Certificate issued, as set out in the report.

984. 223025 Former St Michael’s Church, Rectory Close, Colchester

The Committee considered an application for the installation of a Heritage Interpretation Panel to former site of the medieval St Michael’s Church. The application was referred to the Planning Committee as the applicant was Colchester City Council on behalf of Myland Community Council.

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

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



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Item No: 7.1

Application: 230031
Applicant: Mr John Beton
Agent: Mr Robert Pomery
Proposal: Application for variation of condition 2 following grant of planning permission of application 212888 (DAYLIGHT AND SUNLIGHT REPORT RECEIVED)
Location: Land between, 7 & 15 Marlowe Way, Colchester, CO3 4JP
Ward: Prettygate
Officer: Chris Harden

Recommendation: Authority to Approve subject to consideration of any further consultation responses received and completion of a new Unilateral Undertaking.

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 Buston who raises the following concerns:

1. Over development

2. Ignoring the Planning Conditions imposed in 21 2888 approved 21 Apr 21

3. Development over a former publicly accessible Open Green Space

4. The previous Application for development on this site (21 0304) was dismissed on 10 Sep 21 , citing , as reason for dismissal (inter alia) :

" 1. The proposed three dwellings, by reason of their detailed design, form and scale (including being higher than the adjacent properties) would be out of keeping with and harmful to the character of the established street scene and surroundings."

Thus that the current buildings have been erected on the site without reference to the plans Approved in 21 2888 , in particular the height of these buildings .

Policies UR 2 and DP1 , and the (Borough) Council's adopted "Backland & Infill Development" SPD, are in particular infringed.

2.0 Synopsis

2.1 The key issue for consideration is the relationship of the new elevations as built with the previously approved dwellings in relation to neighbouring properties, particularly in respect of the comparative height which has been corrected on the street scene drawings to show the neighbouring properties at the correct, lower height (condition 2 of 212888) compared to the previous approval.

2.2 The application is subsequently recommended for authority to approve subject to finalisation of a new Unilateral Undertaking to secure relevant contributions. In summary, the site is within the settlement limits and is in a sustainable location so remains in accordance with latest adopted Local Plan settlement Policy. On the previously approved scheme, the neighbouring properties were drawn taller than they exist and the street scene drawings showed the three new dwellings with roof ridge heights no higher than the neighbouring dwellings. This application corrects the street scene plan to show the neighbouring dwellings at their correct height and the relationship as constructed on site.

2.3 It is considered that the newly constructed dwellings are now shown correctly and modestly higher than the neighbouring dwellings does not undermine the character of the street scene in a significant or material way. They are not considered to be overly dominant in the street scene and remain relatively modest in height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings. Consequently, it is not considered that a refusal can be justified or sustained on the grounds that the new dwellings as built are between 0.587 and 0.715 metres higher than the neighbouring properties.

- 2.4 Other issues relating to the application including impact upon neighbouring residential amenity, layout, design, impact upon vegetation, provision of amenity space and highway issues remain acceptable.

3.0 Site Description and Context

- 3.1 The site lies within the settlement limits and was partly a gap site comprising an open grassed area with two TPO'd trees. It lies within an established housing estate that dates from the late 60's early 70's. Adjacent to the site are two storey dwellings on either side and to the rear is the property known as Lexden Manor which has received permission for extension works and conversion. Residential development on the site for three dwellings approved under 212888 is advanced, including up to roof ridges for each dwelling. The TPO trees have been retained.

4.0 Description of the Proposal

- 4.1 The current application is for variation of condition 2 following grant of planning permission of application 212888. Application 212888, which was approved at the Planning Committee was for the construction of three No. 4-bedroom detached houses, each with an integral garage, plus individual private driveways connecting to Marlowe Way. It included the demolition of a modern brick boundary wall to Lexden Manor, which had already been partly removed. This element was permitted development. The two protected (TPO) trees at the front of the site would be retained. Street scene elevation drawings were submitted that showed the new dwellings were no proposed to be no taller than the existing neighbouring properties on either side of the site, as displayed at the Planning Committee.
- 4.2 During construction of the approved scheme 212888 it has become apparent that the roof ridge heights of the newly constructed dwellings are higher than the ridge height of the neighbouring. Instead of being in line with the roof ridge height of the neighbouring properties the new dwellings appeared higher. This is as a result of the neighbouring property heights not shown correctly on the approved street view drawings.
- 4.3 The agent has submitted front elevation street scene drawings showing the following:
- Plot 1 built to 7.790 m to roof ridge, +0.715m higher than the adjacent No. 7
 - Plot 2 built to 7.790 m to roof ridge
 - Plot 3 built to 7.671 m to roof ridge, +0.587m higher than the adjacent No. 15
- 4.4 As condition 2 of the planning approval states that the development must be built in accordance with the approved drawings this application is now for

variation of condition 2 (approved drawings) in order to reflect what has currently been built on site in relation to neighbouring properties and thusly the accurate height of the existing neighbouring properties.

4.5 In the submitted planning statement the agent states:

“The drawing of relevance to this matter is 6817 / 1606 Rev E, which shows an illustrative streetscene. The drawing illustrates the proposed houses with a height or ridgeline, which is marginally lower than the two dwellings that flank the site, nos. 7 and 15 Marlowe Way. As built, the ridgeline of each house is now slightly taller than was illustrated on the streetscene drawing 6817 / 1606 Rev E, and taller than the two neighbouring dwellings nos. 7 and 15. As the houses have taller ridge lines than those shown in the approved drawing 6817 / 1606 Rev E, it can be said that the dwellings have not been carried out in accordance with the details shown on the submitted drawings. Therefore, this change from the approved plan needs to be regularised via an application to vary condition 02, to substitute approved plan 6817 / 1606 Rev E with the proposed plan 6817 / 1612, which illustrates the houses as built.”

4.6 In additional information submitted the agent also states: “the dimensions from the ridge to the DPC on each of the as built properties is broadly the same as the approved elevation drawings for each plot. That said, there is some minor variation, but it is inconsequential. Plots 1 & 2 are 116mm (4.5 inches) taller, so the height of one brick and Plot 3 is 3.0mm lower than was approved, so de minimis in planning terms.”

4.7 It should also be noted that in addition, through consultation on this application, a resident has highlighted a further inconsistency with the approved drawings in relation to the gap between no. 7 Marlowe Way and Plot 1 of the development. This relates to approved drawing 6817/1105 Revision A, which was a drawing submitted showing the proposed layout of the development, including spaces between neighbouring dwellings.

4.8 In response to this issue the agent states “This drawing was based on a digital Ordinance Survey map (OS map), purchased from a licensed seller of Ordinance Survey data. Since raising this concern, the applicants have looked into the point made by the resident and have discovered that the Ordinance Survey information is inaccurate, this is not unusual, as Officers will know; the OS map data is not a topographical survey. The resident is correct to point out that the gap between properties shown on drawing 6817/1105 Revision A, was 4.888m. The actual as built gap recently measured is actually 4.382m. It has been discovered that no. 7 is not shown on the OS Map in its correct position, it is in fact 506mm closer to the common boundary than is shown on the OS Map. This accounts for the discrepancy identified by the resident, however, what is important, is that Plot 1, is positioned no closer to the common boundary with no. 7, than was approved and that the gap remains consistent with the spaces between dwellings in the location.”

4.9 A Daylight/Sunlight report has also been submitted.

5.0 Land Use Allocation

5.1 Settlement Limits

6.0 Relevant Planning History

6.1 212888 Construction of three 4-bedroom detached houses, each with an integral garage, plus individual private driveways connecting to Marlowe Way. Retention of two TPO trees. - Approved

6.2 210304 Demolition of brick boundary wall to Lexden Manor. Construction of three 4-bedroom detached houses, each with integral garage, plus individual private driveways connecting to Marlowe Way. Retention of two TPO trees.

Refused: *"The proposed three dwellings, by reason of their detailed design, form and scale (including being higher than the adjacent properties) would be out of keeping with and harmful to the character of the established streetscene and surroundings."*

6.3 210331 land adj Lexden Manor – Erection of 1 No.5 bed house. Approved & implemented.

6.4 192337 Conversion of Lexden Manor to create 5 flatted units. Approved

6.5 COL/89/1308, Conversion of the main dwelling into flats and additional cottages and apartments in the grounds. Refused. Appeal dismissed

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 be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

7.2 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP4 Meeting Housing Needs
- SP6 Infrastructure & Connectivity
- SP7 Place Shaping Principles

7.3 Local Plan 2017-2033 Section 2

Section 2 of the Colchester Local Plan was adopted in July 2022. The following policies are of relevance to the determination of the current application:

SG1 Colchester's Spatial Strategy
SG2 Housing Delivery
SG5 Centre Hierarchy
SG6a Local Centres
SG7 Infrastructure Delivery and Impact Mitigation
SG8 Neighbourhood Plan
ENV1 Environment
ENV3 Green Infrastructure
ENV5 Pollution and Contaminated Land
CC1 Climate Change
PP1 Generic Infrastructure and Mitigation Requirements
DM1 Health and Wellbeing
DM2 Community Facilities
DM3 Education Provision
DM4 Sports Provision
DM9 Development Density
DM10 Housing Diversity
DM12 Housing Standards
DM15 Design and Amenity
DM16 Historic Environment
DM17 Retention of Open Space
DM18 Provision of Open Space and Recreation Facilities
DM19 Private Amenity Space
DM20 Promoting Sustainable Transport and Changing Travel Behaviour
DM21 Sustainable Access to development
DM22 Parking
DM23 Flood Risk and Water Management
DM24 Sustainable Urban Drainage Systems
DM25 Renewable Energy, Water Waste and Recycling

7.4 Some "allocated sites" also have specific policies applicable to them but this is not applicable to this site.

7.5 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

The Essex Design Guide
External Materials in New Developments
EPOA Vehicle Parking Standards
Backland and Infill
Affordable Housing
Community Facilities
Open Space, Sport and Recreation
Sustainable Construction
Cycling Delivery Strategy
Urban Place Supplement
Sustainable Drainage Systems Design Guide
Street Services Delivery Strategy

7.6 5 Year Housing Land Supply

Section 1 of the Colchester Local Plan 2017-2033 was adopted by the Council on the 1 February 2021, with Section 2 being adopted in July 2022. The complete Local Plan carries full statutory weight as the development plan.

Section 1 includes strategic policies covering housing and employment, as well as infrastructure, place shaping and the allocation of a Garden Community. Policy SP4 sets out the annual housing requirement, which for Colchester is 920 units. This equates to a minimum housing requirement across the plan period to 2033 of 18,400 new homes.

The Tendring Colchester Borders Garden Community is allocated in Section 1, all other site allocations are made within Section 2 of the Plan. Within Section 2 the Council has allocated adequate sites to deliver against the requirements set out in the strategic policy within the adopted Section 1. All allocated sites are considered to be deliverable and developable.

In addition and in accordance with the NPPF, the Council maintains a sufficient supply of deliverable sites to provide for at least five years' worth of housing, plus an appropriate buffer and will work proactively with applicants to bring forward sites that accord with the overall spatial strategy. The Council has consistently delivered against its requirements which has been demonstrated through the Housing Delivery Test. It is therefore appropriate to add a 5% buffer to the 5-year requirement. This results in a 5 year target of 4,830 dwellings (5 x 920 + 5%).

The Council's latest published Housing Land Supply Annual Position Statement (July 2022) demonstrates a housing supply of 5,074 dwellings which equates to 5.25 years based on an annual target of 920 dwellings (966 dwellings with 5% buffer applied) which was calculated using the Standard Methodology. This relates to the monitoring period covering 2022/2023 through to 2026/27.

In accordance with paragraph 73 of the NPPF, the adoption of the strategic housing policy in Section 1 of the Local Plan the adopted housing requirement is the basis for determining the 5YHLS, rather than the application of the standard methodology.

Given the above, it is therefore considered that the Council can demonstrate a five year housing land supply.

8.0 Consultations

8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

8.2 Highway Authority states:

The Highway Authority does not object to the proposals as submitted.

Informative1: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall 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.

8.3 Environmental Protection has “No comments.”

8.4 Tree Officer has raised no concerns.

8.5 Archaeologist has raised no concerns.

9.0 Parish Council Response

9.1 Not parished.

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The full text of all of the representations received is available to view on the Council’s website. However, a summary of the material considerations is given below.

10.2 **11 letters of objection** have been received which make the following points:

- Architectural drawings do not fully represent close proximity of plot 3 to 15 Marlowe Way and don’t clearly state what the measurement differential is for the higher ridge line compared to neighbouring properties.
- Application claims that neighbouring properties are marginally impacted by the revised height but no evidence to support that claim.
- Planners, committee and neighbouring properties need to see the BRE sunlight report before we can comment or decide on this application.
- House on plot 3 is 1 metre from the boundary of the existing neighbouring property (at the front of the build) and is a good 2-3 metres advanced of the living areas of 15 Marlowe Way. The higher ridge line on the gable end building on plot 3 may impact the amount of daylight in the living areas of that house.
- Bricks and design are totally out of keeping with the estate.
- clear when entering the estate that the roofs of the new houses are clearly not in align to the existing houses;
- Not aware that windows were going to be on the side of the first house; again not in keeping with the estate.
- Regulations need to be upheld by the project managers rather than allow new houses to be built which are clearly higher than stated in the plans. They must have known the height before they put the roofs on as now difficult to remove and we are left with their mistake.
- Development on a plot that is far too small.

- House will overlook others
- The plot has been used to hold communal events, since to my knowledge the 1970s this open space would be a great loss to local people.
- Gross, over development. Open spaces are at a premium due to the rising population Should be preserved for future generations.
- Speculative proposal.
- Ruins the open aspect which we now have and promoting more on.
- Street parking
- Houses are currently taller than permitted. Taller than all the other houses in the street.
- Extremely dominating and harmful to the character of the established street scene and surroundings.
- Original plans submitted by the developer featured houses that were taller than all the existing houses. This was refused.
- Enforcement action should now be taken so that these buildings reflect the drawings presented by the developer on which permission was granted.
- Deliberate flouting of the regulations. What are the penalties? Has this company done this before?
- Planning statement completely ignores the Planning Committees rationale for refusal of their original application for this site under reference 210304.
- Height of the three dwellings is closer to original application reference 210304.
- "Daylight and Sunlight Report" does not specifically address the increase in height.
- Report that is commissioned by a developer will favour their position.
- No doubt neighbouring properties had a lot of sunlight throughout the year but have probably now lost 100% of sunlight into back gardens during the winter equinox.
- Why has the report totally ignored the other neighbouring property apart from the overshadowing to garden (ie Garden 5 of Lexden Manor)?
- Single story area at the rear of the properties, which again looks higher than the drawing approved by the Committee.
- Hope the committee stand up and make an example of developer and their professional advisors for blatant reach of planning permissions.
- Drawings are now known to be misleading, evident from the houses ridge heights being considerably higher than those either side.
- Built position of no. 9 is not in accordance with approved documents. The drawing, entitled Proposed site plan dated Sept/2021 revision A 6817/1105, of the planning permission shows a measurement between the houses which promised a distance of 4.888 meters at the closest point. A very specific dimension shown in red. This measurement has now been checked by me and the new house found to be some 0.548 metres (1.8 feet) closer.
- Not known if the daylight calculations were based on actual as built dimensions or those shown on the drawing.

10.3 **One letter of observation** states:

- Question if additional height significantly affects the appearance of the buildings.

- Appreciate that those living immediately adjacent to the site may feel differently, but new ridge line is not excessively above the adjacent roof lines, certainly nothing like the original plans that were refused.
- To make alterations at this stage will both delay period of construction and are likely to affect the simple lines that currently exist. Rather than carry out major alterations could Developer be asked to offer local community an upgrade in landscaping in and around site?

11.0 Parking Provision

11.1 2 car parking spaces per dwelling.

12.0 Accessibility

12.1 With regards to the Equalities Act, the proposal has the potential to comply with the provisions of Policy DM21 (Sustainable Access) which seeks to enhance accessibility for sustainable modes of transport and access for pedestrians (including the disabled), cyclists, public transport and network linkages.

13.0 Open Space Provisions

13.1 N/A

14.0 Air Quality

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

15.0 Planning Obligations

15.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team. A Unilateral Undertaking is required to secure the appropriate contributions.

16.0 Report

Principle

16.1 The principle of three dwellings on this site has previously been approved under application 212888. Since the time of the previous approval, the new Local Plan has been fully adopted and the former Local Plan fully superseded. However, settlement policies remain essentially the same in respect of this application. Thus the site remains within the settlement limits and Policy SP1 of the Local Plan aims to direct such development to the most sustainable locations such as this site. Accordingly the proposal should be judged on its planning merits, having regard to the difference between the current application and the previously approved plans. The differences relate to the neighbouring dwellings not being shown at the correct relative height on the approved street scene drawing and the neighbouring dwelling of No.15 not being correctly plotted, as detailed in the introduction section of this report. The layout, scale and design section of this report below will assess these differences and the planning implications.

16.2 It should be noted that the NPPF indicates a presumption in favour of sustainable development (which includes this site). The Council is able to demonstrate a five year housing land supply and as such paragraph 11(d) of the NPPF is not engaged.

16.3 For information, Appendix 1 contains an extract of the Committee report for the previously approved 212888 which explains why it was considered acceptable to develop on this partly open site with the three dwellings.

Layout, Scale and Design in respect of differences between the approved street scene and layout drawings.

16.4 The heights of the three dwellings is essentially deemed to be virtually the same as previously approved. Just to reiterate, Plots 1 & 2 are 116mm taller, and Plot 3 is 3.0mm lower than was approved. These minor differences are normally considered as de-minimis in planning terms, and generally an allowance of up to 300 mm is considered to be de-minimis and not requiring any enforcement action in respect of compliance with approved plans. Accordingly, the height of the dwellings as constructed is deemed to accord with the approved plans.

16.5 The key issue is therefore consideration of the incorrect height plotting of the neighbouring dwellings shown on the previously approved streetscene drawings. The originally approved drawings showed that the ridge height of the three new dwellings would be no higher and very slightly lower than the ridge height of the neighbouring dwellings either side (numbers 7 and 15 Marlowe Way). To reiterate, the dwellings have now been built as follows:

- Plot 1 built to 7.790 m to roof ridge, **+0.715m** higher than the adjacent No. 7
- Plot 2 built to 7.790 m to roof ridge
- Plot 3 built to 7.671 m to roof ridge, **+0.587m** higher than the adjacent No. 15

16.6 The fact that the new dwellings are higher than the neighbouring dwellings is unfortunate as at the time of the previous approval it was considered that having the dwellings no taller in height than neighbouring properties would help them to relate satisfactorily to the character of the street scene and surroundings and help ensure they were not overly dominant in the street scene.

16.7 However, the extent the newly constructed dwellings are higher than the neighbouring properties is comparatively small and it is considered the dwellings would still visually relate satisfactorily to the character of the area without being visually dominant in the street scene. The dwelling on Plot 1 being +0.715m higher than would still relate well to the scale and height of that neighbouring property and would certainly not tower over it or be overly dominant. Street scenes often contain dwellings that vary in height so there is nothing unusual in a dwelling being slightly higher than an adjacent dwelling. Similarly the dwelling on plot 3 is only +0.587m higher than the ridge of number 15 and this too looks visually acceptable in terms of its height and relationship to the neighbouring dwelling.

- 16.8 The new dwellings are still comparatively modest in height for two storey dwellings, being 7.79 metres to the roof ridge. Often, two story dwellings are approved at around the 8.4-8.5 metres height. Nevertheless, the neighbouring dwellings are lower than this so the context of the site clearly needs to be carefully assessed. The constructed dwellings have been viewed on site and it is considered all three dwellings relate satisfactorily to the character of the street scene and that the different height relationship to the neighbouring property does not materially harm the character of the area. It should be noted that if the ridge height of the new dwellings is lowered, this could result in shallower pitched roofs which would be a retrograde step in aesthetic visual design terms.
- 16.9 Overall it is considered the fact that the newly constructed dwellings are modestly higher than the neighbouring dwellings does not undermine the character of the street scene in a significant way. They would not be overly dominant in the street scene and would still be of relatively modest height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings and is not considered that a refusal can be justified on the grounds that the new dwellings are between +0.587m and +0.715m metres higher to their ridge than the neighbouring properties.
- 16.10 Other issues remain acceptable as outlined in the original committee report précised in Appendix 1. In particular, there will still be visible separation gaps between the dwellings and between the side boundaries notwithstanding the fact that the dwelling (number 15 Marlowe Way) was plotted slightly further away from plot 1 owing to an ordnance survey error. There is no consequential terracing effect. The difference is +0.548m which does not undermine in a significant way the visual separation between the properties. Accordingly, the proposal will still not appear cramped or represent an overdevelopment.
- 16.11 The positioning and layout of the three dwellings remains very similar to the density of other development in the vicinity and garden sizes comply with and indeed exceed the standards outlined in Policy DM19. Glimpses of Lexden Manor beyond will still also be possible. It should be noted that Lexden Manor is neither Listed nor Locally Listed and, as before it is not considered that the proposal could be refused on the grounds of the proposal's impact upon its setting, particularly having regard to the presumption in favour of sustainable development embodied in the NPPF.
- 16.12 As before, two TPO trees at the front will also be retained and protected. A condition to ensure the front areas are not fenced off will once again be applied and so the site would retain a significant element of open, green spaciousness. It was concluded previously that the existing open space is not of such significance in the street scene in terms of its amenity value or contribution to the character of the area that would warrant its retention in its entirety and this view is maintained having regard to the latest adopted Local Plan. The loss of this open space did not form part of the original refusal reason (210304) as the Planning Committee overall did not object in principle to its development.
- 16.13 Overall, in terms of layout, design and impact on surroundings it is still considered the proposal would therefore comply with adopted Local Plan Policies SP7,

DM15 and DM17 which provide that the Borough Council will secure high quality and inclusive design in all developments to make better places for both residents and visitors.

- 16.14 The proposal remains compliant with the provisions of the Backland and Infill SPD and is in general accordance with the Essex Design Guide. It is also considered to comply with the revised NPPF section 12 which promotes well-designed places.

Garden space:

- 16.15 As before, adequate amenity space for the new dwellings has been shown to be provided in accordance with Policy DM19, unchanged from the original approval. Indeed, garden space compares favourably with neighbouring properties. Policy DM19 provides that for dwellings with four or more bedrooms, a minimum of 100m² should be provided and in this case the dwellings are provided with over 100m² each (ranging from 136-150m²) which further emphasises that this is not an overdevelopment of the site.

Impact on Neighbour Amenities:

- 16.16 As previously concluded, it is not considered there is a significant adverse impact upon neighbouring residential amenity from the proposal as built. The dwellings are positioned in the approved location, which is far enough from the side boundaries of neighbouring properties to avoid an overbearing impact. The Council policy sets out that a 45-degree angle of outlook from the mid-point of the nearest neighbouring windows should be preserved and it is considered that this proposal satisfies this requirement. This includes an assessment of the corrected position of number 7 Marlowe Way which is +0.548 closer than as shown on the originally approved plans.
- 16.17 There are also no concerns with regard to loss of light to neighbouring properties. The new dwellings have essentially been constructed as previously approved with only minor differences as previously clarified that are deemed de minimis. The combined plan and elevation tests are not breached, and the proposal therefore satisfies the Council's standards for assessing this issue as set out in the Essex Design Guide.
- 16.18 A Daylight/Sunlight report has been submitted which has been undertaken by a chartered surveying company "following the guidelines of the RICS." The report states that "The assessment is limited to assessing daylight, sunlight and overshadowing to neighbouring windows, gardens and open spaces as set out in section 2.2, 3.2 and 3.3 of the Building Research Establishment (BRE) Guide" further to a site visit undertaken on 9 January 2023.
- 16.19 The report concludes the following: "All neighbouring windows (that have a requirement for daylight or sunlight) pass the relevant BRE diffuse daylight and direct sunlight tests. The development also passes the BRE overshadowing to gardens and open spaces test. In summary, the numerical results in this assessment demonstrate that the proposed development will have a low impact on the light receivable by its neighbouring properties. In our opinion, the

proposed development sufficiently safeguards the daylight and sunlight amenity of the neighbouring properties.”

- 16.20 Given the conclusions of this Daylight/Sunlight report that has been undertaken by Chartered Surveyors in accordance with BRE guidelines, it is not considered that an objection can be raised in terms of the impact from the development upon the amenity provided by daylight and sunlight to the existing neighbouring properties.
- 16.21 As concluded previously, the development does not include any new windows at first floor level that would offer an unsatisfactory angle of overlooking that harmed the privacy of the neighbouring properties, including their protected sitting out areas as identified in the above SPD. There is no change in this respect compared to the previous approval. The first floor windows on the side elevation of plot 3 would face onto the blank gable of the neighbouring property rather than look into private amenity space or habitable rooms. With regard to first floor openings on the side elevation of plot 1, a condition imposed as before can be applied to ensure that openings are obscure glazed and non-opening where they are not above 1.7 m above floor level. These serve a landing and bathroom. The same condition can be applied to the rear first floor openings on Plot 1-3 plot 3 (which have been minimised in any case) in order to avoid overlooking the amenity space of Lexden Manor and its rear windows. The residential amenity of the occupants of the new dwellings would still be acceptable with the application of the obscure glazing condition at 1.7 m.
- 16.22 The comment made by a neighbour about the rear single storey flat roofed kitchens being built taller than approved is being investigated by the enforcement team and the conclusions reached will be reported to the Committee. However, even if the kitchens have been built slightly higher, they would still not breach the 45-degree angle of outlook from the mid-point of the nearest neighbouring windows as they are still single storey and are some way off the neighbouring boundary. The relevant test for impact upon neighbouring properties would consequently be satisfied.
- 16.23 Overall, in term of impact upon neighbouring residential amenity, the development thus complies with Policy UR2 (better places for residents and visitors expected) and DP1 which provides that all development should avoid unacceptable impacts upon amenity, including the protection of residential amenity with regard to noise and disturbance and overlooking. Policy DM15 of the emerging Local Plan has similar provisions.

Highway Matters:

- 16.24 As before, the Highway Authority have raised no objection to the scheme which is unchanged in respect of layout so the previous conditions will be applied. The proposal thus still complies with Policy DM22, with space for 2 car parking spaces for each dwelling.

Impact Upon Vegetation:

- 16.25 As previously concluded, the proposal is considered acceptable in terms of its relationship to the two TPO trees at the front of the site and the scheme is unchanged in this respect. Once again a condition can be applied to secure a schedule of arboricultural monitoring and site supervision.

Wildlife issues:

- 16.26 The application does not have any additional implications for wildlife so does not conflict with Local Plan Policy ENV1 which aims to protect and enhance biodiversity.
- 16.27 A RAMs wildlife payment can be referenced in a new Unilateral Undertaking as new dwellings would be created in a Zone of Influence for coastal sites subject to national designations as required by the Habitat Regulations to mitigate any adverse impacts. This payment will need to be made prior to commencement of development. An appropriate Habitat Regulation assessment has been undertaken.

Unilateral Undertaking:

- 16.28 A new Unilateral Undertaking is required to be completed in order to secure the required SPD compliant developer contributions for community facilities and sport & recreation facilities and any permission should not be issued until this is completed.

Environmental and Carbon Implications

- 16.29 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives. The consideration of this application has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that, on balance, the application can contribute to achieving sustainable development. The site is considered to be in a sustainable location and would minimise carbon emissions from trips generated to access services.

Other

- 16.30 Finally, in terms of other material planning considerations, the proposed development does not raise any concerns.
- 16.31. It should be noted that there has been a reconsultation undertaken on additional plans that have been submitted recently showing the correct footprint plotting of the neighbouring number 7 Marlowe Way and newly annotated heights of the street scene drawings and any further consultation responses received will be reported to the Committee.

17.0 Conclusion

17.1 In conclusion the proposal is considered acceptable for the following reasons:

- The site is within the settlement limits and is in a sustainable location so remains in accordance with latest adopted Local Plan settlement Policy.
- On the previously approved scheme, the neighbouring properties were drawn taller than they exist and the street scene drawings showed the three new dwellings with roof ridge heights no higher than the neighbouring dwellings. This application corrects these inaccuracies in the approved street scene plan. It is considered the fact that the newly constructed dwellings are now shown correctly as modestly higher than the neighbouring dwellings. This does not undermine the character of the street scene in a material or significant way. The dwellings are not overly dominant in the street scene and would still be of relatively modest height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings and is not considered that a refusal can be justified on the grounds that the new dwellings are between +0.587 and +0.715 metres higher than the neighbouring properties.
- Other issues relating to the application including impact upon neighbouring residential amenity, layout, design, impact upon vegetation, provision of amenity space and highway issues remain acceptable.

18.0 Recommendation to the Committee

18.1 The Officer recommendation to the Committee is for:

Authority to Approve subject to consideration of any further consultation responses received and completion of a new Unilateral Undertaking and subject to the following conditions (restated from the previous approval and adapted where necessary to reflect subsequently cleared details.)

1. ZAM – Development In accordance with Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers: 6817/1103B, 1105A, 1108A, 1109A, 1203B, 1204, 1605, 1607, 1608, 1609 Rec'd 17.2.22, Arboricultural Impact Assessment (which shall be complied with throughout the lifetime of the development works) Rec'd 29.10.21 submitted under application 212888 as amended by drawings 6817-1606 Rec'd 12.1.23 and 6817-1109 Rev B & 6817-1611 Rev A Rec'd 11.4.23. Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

2. ZBC- Materials

Only materials approved under condition 3 of 212888 shall be used in the development.

Reason: In order to ensure that suitable materials are used on the development.

3. Non Standard Condition- Vehicular Access

Prior to first occupation of the proposed development, each of the proposed vehicular accesses shall be constructed at right angles to the highway boundary and to a width of 5.5 metres and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway.

4.Non Standard Condition - Visibility Splays

Any new or proposed boundary hedge shall be planted a minimum of 1m back from the highway boundary and 1m behind any visibility splays which shall be maintained clear of the limits of the highway or visibility splays thereafter.

Reason: To ensure that the future outward growth of the hedge does not encroach upon the highway or interfere with the passage of users of the highway and to preserve the integrity of the highway, in the interests of highway safety.

5.Non Standard Condition - Parking/Turning Area

The development shall not be occupied until such time as the car parking areas for each dwelling, indicated on the revised drawings on application 221288 has been hard surfaced and sealed. The car parking area shall be retained in this form at all times and shall not be used for any purpose other than the parking of vehicles related to the use of the development thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety.

6.Non Standard condition - Cycle storage.

The approved bicycle storage facility agreed under clearance of condition application 221184 shall be provided prior to the first occupation of the proposed development hereby permitted within the site and shall be maintained free from obstruction and retained thereafter.

Reason: To promote the use of sustainable means of transport.

7. Non Standard Condition- Travel Information Packs.

Prior to first occupation of the proposed development, the Developer shall be responsible for the provision, implementation and distribution of Residential Travel Information Packs for sustainable transport for the occupants of each dwelling, approved by Local Planning Authority, to include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the Developer to each dwelling free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

8.Non Standard condition- No Unbound Materials

No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.

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

9. ZPA Construction Method Statement

The approved Construction Method Statement agreed under clearance of condition application 221184 shall be adhered to throughout the construction period.

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 and in the interest of highway safety.

10. Non Standard Condition - Construction and Demolition

No demolition or construction work or delivery of materials shall take place outside of the following times;

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

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.

11. Non Standard Condition - Refuse and Recycling

Prior to the first occupation of the development hereby permitted, refuse and recycling storage facilities shall be provided in accordance with the submitted details agreed under clearance of condition application 221184. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times.

Reason: To ensure that adequate facilities are provided for refuse and recycling storage and collection.

12. ZFI- Tree or shrub planting

The tree and/or shrub planting and an implementation timetable agreed under clearance of condition application 221184 shall be complied with and 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.

13. Z00 – Electric Charging Points

Prior to first occupation of the dwellings, one electric vehicle charging point shall be provided for each dwelling and thereafter retained as such.

Reason: To encourage the use of sustainable transport.

14. ZDF- Removal of PD- Obscure Glazing.

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the 1st floor windows in the West side elevation of plot 1, the rearmost first floor window in the East elevation of plot 3 and the rear first floor windows of plots 1-3 shall be non-opening and glazed in obscure glass to a minimum of level 4 obscurity both to a level a minimum of 1.7 m above floor level before the development hereby permitted is first occupied and all shall thereafter be permanently retained in this approved form.

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

15.ZCL- Surface Water Drainage

No part of the development shall be first occupied or brought into use until the agreed method of surface water drainage as approved under clearance of condition application 221184 has been fully installed and is available for use.

Reason: To minimise the risk of flooding.

16. ZDD- Removal of RD Rights-

Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no additions, roof alterations, outbuildings or enclosures or other structures (the latter that are forward of the houses hereby approved) shall be erected except in accordance with drawings showing the design and siting of such structures/alterations res which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: In the interests of avoiding an overdevelopment of the site preserving the open character of the front of the site.

17. Arboricultural Monitoring

Prior to commencement of development, precise details of a shall be submitted to and agreed in writing by the Local Planning Authority. The approved schedule of arboricultural monitoring and site supervision details agreed under clearance of condition application 221184 shall thereafter be complied with in their entirety.

Reason: In the interests of protecting the amenity value provided by the trees on the site.

18.0 Informatives

18.1 The following informatives are also recommended:

1. 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 work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall 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: SMO1 – Development Management
Essex Highways Ardleigh Depot,
Harwich Road,
Ardleigh,
Colchester,
Essex
CO7 7LT

3. 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.

4. ZTB - Informative on Any Application With a Site Notice
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.

5. ****The applicant is advised to ensure that existing verges and grassed areas in the vicinity of the site should not be damaged by vehicles associated with the construction works hereby approved.****

WA1 Positivity Statement

Appendix 1 Extract from previous Committee Report of 212888:

Layout, Loss of open space, Design and Impact on the Surrounding Area

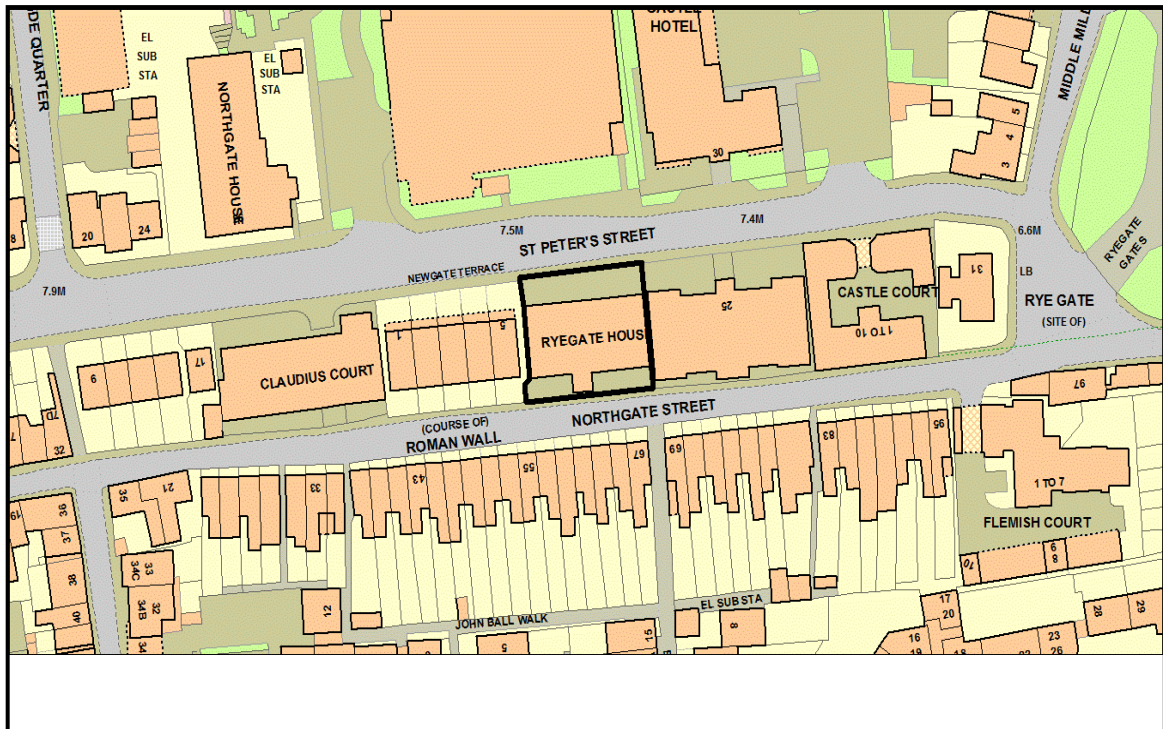
- 16.4 With regard to the planning merits of the proposal, it should be noted that the Planning Committee at the time of the previous refusal (210304) decided to refuse the proposal on the design, scale and form of the dwellings being harmful to the character of the street scene. It did not refuse the scheme on the grounds of the loss of the open space itself or the principle of residential development on the site. It is considered that this revised proposal now represents an acceptable layout that is in keeping with the character of the area and does not represent an overdevelopment of the site. Again, the positioning and layout of the three dwellings is similar to the density of other

development in the vicinity and garden sizes comply with and indeed exceed the standards outlined in Policy DP16 (eLP DM19). The dwellings have been designed and positioned so that there will be visible gaps between the dwellings and between the side boundaries so the proposal will not appear cramped or represent an overdevelopment. Glimpses of Lexden Manor beyond will also be possible. It should be noted that Lexden Manor is not Listed nor Locally Listed and it is not considered that the proposal could be refused on the grounds of the proposal's impact upon its setting, particularly having regard to the presumption in favour of sustainable development embodied in the NPPF.

- 16.5 As with the previously refused scheme, there will clearly be some loss of open space although there will still be significant grassed areas retained at the front of the site, punctuated by the driveways. The two TPO trees at the front will also be retained and protected. A condition to ensure the front areas are not fenced off will also be applied and so the site would retain a significant element of open, green spaciousness. It is not considered that the existing open space is of such significance in the street scene in terms of its amenity value or contribution to the character of the area that would warrant its retention in its entirety. The loss of this open space did not form part of the previous refusal reason as the Planning Committee overall did not object in principle to its development. The proposal would therefore not conflict with Policies DP1 and DP15 (eLP Policies SP7 and DM15) in this respect..
- 16.6 Consideration of the design, scale and form of the dwellings needs particular care given that they are somewhat visually different from the designs of the surrounding properties. Overall, the dwellings are considered acceptable in this respect. The height of the dwellings has been reduced compared to the previous scheme so that the new dwellings would be the same height as the existing dwellings either side of the plot. One of the dwellings has a gable facing the road and the other too have front facades and this is considered to give the dwellings an appropriate level of variety. Gable widths have also been narrowed during this submission so that they are similar to gable widths of existing dwellings in the vicinity.
- 16.7 The dwellings are considered to have their own contemporary detailing and styling whilst still relating well to the overall character and scale of existing dwellings on this part of the estate. With the use of high quality materials, it is considered that these dwellings would represent good design that would not detract from the character of the street scene and surroundings. The precise details of materials can be conditioned and there is the potential to introduce a little variety.
- 16.8 Overall, in terms of layout, design and impact on surroundings the proposal it is considered the proposal would therefore comply with Policy UR2 (eLP SP7) of the Local Plan Core Strategy which provides that the Borough Council will secure high quality and inclusive design in all developments to make better places for both residents and visitors.
- 16.9 The proposal is considered to comply with Policy DP1 of the Local Plan Development Policies document adopted 2010 (with selected Policies revised

July 2014) which provides that all development must be designed to a high standard and respect the character of the site, its context and surroundings including in terms of layout. Policy DM15 of the emerging Local Plan has similar provisions.

- 16.10 The proposal is considered to comply with the provisions of the Backland and Infill SPD and is in general accordance with the Essex Design Guide. It is also considered to comply with the revised NPPF section 12 which promotes well-designed places.
- 16.11 It should be noted that if the scheme is implemented, the previously approved scheme for the conversion of Lexden Manor to flats (192337) could not be implemented as the sites overlap and the required communal garden could not be provided for the flats. However, it is understood that it is the approved dwelling within the grounds (210331) that is being implemented..



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Item No: 7.2

Application: 223138
Applicant: Mr Kenan Karatey
Agent: Mr Steven Mclean
Proposal: Change of use from E(c)(ii) (probation services offices) to create managed HMO rooms.
Location: 23 Ryegate House, Rent Officer, St Peters Street, Colchester, Essex, CO1 1HL
Ward: Castle
Officer: Simon Grady

Recommendation: Approval subject to a s.106 agreement.

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 Goacher due to the significant concerns raised by residents about the density and quality of the proposed accommodation and lack of adequate parking provision.

2.0 Synopsis

- 2.1 The application seeks planning permission for the change of use of a vacant office building into a House in Multiple Occupation (HMO) with 27 ensuite bedrooms/units. 12 of the units would be for 1 person and 15 for 2 people. The key issues for consideration are the principle of development, design and amenity standards of HMOs, safety, environmental protection, impact on the conservation area, impact on neighbour amenity, provision of parking and private amenity space. All relevant planning issues are assessed in the report below.
- 2.2 Having assessed the application against local and national legislation, policy and guidelines it is considered that the proposed conversion of Ryegate House complies with the relevant local plan policies and the Council's standards for HMOs and is acceptable in all other respects as outlined in the report below.
- 2.3 The application is therefore recommended for approval, subject to conditions and S106 Agreement.
- 2.4 There is no Permitted Development fallback position for creating an HMO from existing office use.

3.0 Site Description and Context

- 3.1 The application site features a detached, three storey post war office building that is currently vacant having previously provided office accommodation to the Probation Service. The building's frontage faces St Peters Street but also has a significant presence on Northgate Street to the rear. There are two trees with Tree Preservation Orders to the front and one to the rear of the site and three parking spaces are provided on the front of the site. The site's southern and eastern boundaries are shared with the town centre conservation area boundary. The site is in Floodzone 1. Evidence based on Google Street view suggests that the offices were still in use in Nov 2020.

4.0 Description of the Proposal

- 4.1 Change of use from E(c)(ii) (probation services offices) to create 27 self-contained, managed HMO studio (ensuite) rooms along with communal kitchens, wash room, cycle store and bin store.
- 4.2 There is little change proposed to the external appearance of the existing building, apart from the addition of doors to the bin store and cycle store. The whole building (ground, first and second floors) would be converted to an HMO with the existing main entrance on St Peter's Street being retained.

Seven studio rooms (each with a private bathroom) and a shared kitchen are proposed on the ground floor along with a wash room, bin store and a cycle store that serve the whole building. The first and second floors comprise ten studio rooms on each floor with a communal kitchen located at each end of the building. The studios are designed in accordance with the Essex HMO Amenity Standards. The rooms for one person include a shower room, space for a single bed, a desk and a small utility area. The rooms for two people include a shower room, space for a double bed, a desk and a small utility area. All rooms have direct natural light. The communal kitchens are designed in accordance with the same countywide standards.

5.0 Land Use Allocation

5.1 The Application Site is not within a Town Centre Allocations site, the town centre Primary Shopping Area nor the town centre Secondary Shopping Area.

5.2 The Application site is shown on the Policies Map associated with the Local Plan adopted in 2022 as part of the 'Middleborough Local Economic Area', and therefore zoned for employment use. However, referring to the employment land evidence base which underpins the Local Plan it illustrates more specifically what this LEA is comprised of and it is apparent that this is a printing error and the Site should not be included within the Middleborough Local Economic Area. This means that Policy SG4 does not apply to the Application site or the surrounding sites also shown on the map as being part of this economic area.

6.0 Relevant Planning History

6.1 The site has previously been granted Prior Approval for a proposed change of use from 3 storey office building to 14 self-contained flats (under application reference 150982). This permission has not been implemented but this does mean that the principle of residential use is established on the site.

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 be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies is the Adopted Borough Local Plan comprising a shared Section One plan and Section 2 plan containing Colchester specific site allocations and DM policies as follows below.

7.2 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on

1 February 2021. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP4 Meeting Housing Needs
- SP7 Place Shaping Principles

7.3 Local Plan 2017-2033 Section 2

Section 2 of the Colchester Local Plan was adopted in July 2022. The following policies are of relevance to the determination of the current application:

- SG1 Colchester's Spatial Strategy
- SG2 Housing Delivery
- DM8 Affordable Housing
- DM9 Development Density
- DM10 Housing Diversity
- DM12 Housing Standards
- DM13 Domestic Development
- DM15 Design and Amenity
- DM16 Historic Environment
- DM19 Private Amenity Space
- DM22 Parking

7.5 The application site is not an "allocated site".

7.6 The site is not located within a Neighbourhood Plan area.

7.7 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

- The Essex Design Guide
- External Materials in New Developments
- EPOA Vehicle Parking Standards
- Affordable Housing
- Sustainable Construction
- Cycling Delivery Strategy

8.0 Consultations

8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website. The following stakeholders were consulted:

- Colchester Council's Private Sector Housing Team
- Colchester Council's Environmental Protection Team
- Colchester Council's Historic Buildings and Areas Officer
- Colchester Council's Archaeology Advisor

- Essex Fire Service
- Essex Highway Authority
- Natural England
- Colchester Civic Society

Private Sector Housing

- 8.2 The Council's Private Sector Housing Team (PSH) do not object to this proposal. The floor plans, including the number of and size of the shared kitchens meet the minimum requirements set out in the 'Essex HMO Amenity Standards', which are adopted by CCC. The PSH highlighted some concerns about the design of the kitchens, including provision of waste and recycling bins, fire safety and the potential for Excess Cold hazard (as set out in the Housing Act 2004) due to the type of construction of the application building. The PSH also confirmed that a mandatory HMO Licence will be required. Officer comment: All of the concerns raised by the PSH can be controlled through the HMO licensing regime and planning conditions.

Environmental Protection

- 8.3 Environmental Protection do not object to the proposal. They suggest that noise levels are controlled by condition, the provision of refuse and recycling facilities are controlled by condition and the demolition and construction work should be restricted by condition. An advisory note on the control of pollution during demolition and construction work is also suggested.

Historic Buildings and Areas Officer

- 8.4 Ryegate House is adjacent to a conservation area but is a modern building without any historic or architectural merit. Its interest from a heritage perspective relates to its contribution to the setting of the Conservation Area and the nearby locally listed building. Therefore, the proposed conversion would have a negligible impact on the external appearance of the building and its contribution to its surroundings and as such, there are no heritage considerations for the decision of this application.

Archaeology Advisor

- 8.5 No archaeological issues.

Essex Fire Service

- 8.6 Access for fire service purposes is considered satisfactory and this will be considered further as part of the Building Regulations process. Based on the consultation response from the Essex Fire Service, informatives should be added asking the architect or applicant to contact the Water Section at the Fire Service and even where not required under Building Regulations, a risk-based approach to the inclusion of water sprinklers should be adopted. Officer comment: An informative is suggested.

Essex Highway Authority

- 8.7 From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to controlling the following by way of planning condition, should permission be granted: - prevention of unbound materials being used for any parking surfaces, the dimensions of parking spaces meeting adopted standards, recycling/refuse bins being accessible, details of bike storage facilities being submitted for approval, details of public transport services being made available to occupiers of the development and any work affecting the highway being agreed by the Highway Authority.

Natural England

- 8.8 No objection subject to securing appropriate mitigation for recreational pressure impacts on habitat sites (European sites).

Colchester Civic Society

- 8.9 The Colchester Civic Society would prefer that Ryegate House be demolished due to its visual impact on the conservation area but recognise that they are unable to oppose the application on any grounds other than its inappropriate addition to these residential streets.

Contaminated Land

- 8.10 Given the apparent age of Ryegate House, Environmental Protection raised concerns about the presence of asbestos in the building and the internal photos of the building submitted with the planning application show what looks like tags from a previous asbestos survey. The current occupiers of the building did not have access to the survey so they commissioned a new survey. Any action required will be dependent upon the findings of the asbestos survey and any action arising could be controlled via a condition prior to determination of the application.
Officer comment: Asbestos is not strictly a planning matter but controlled under other legislation.

9.0 Parish Council Response

- 9.1 The site is not within a Parish Council area.

10.0 Representations from Notified Parties

- 10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. Approximately 40 objections have been received from individual members of the public and local groups such as the Dutch Quarter Association following the consultation process. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.
- Lack of parking for occupiers
 - The HMO will attract anti-social behaviour such as noise, littering vandalism, criminality and drug taking.
 - The area will be / feel less safe

- Neighbour amenity would be harmed due to overlooking and light pollution
- The use is not in-keeping or in character with the surrounding area
- The use will put a burden on local services and infrastructure
- Will add further pressure on parking space on street
- Unattractive building should be demolished not converted

11.0 Parking Provision

11.1 The number of spaces provided on site would meet with the relevant parking standards and the Highway Authority have raised no objections. The site is in a highly sustainable, urban location with good public transport links and public car parks close by. The site's former use as an office may well have generated more vehicular movement demand than the proposed use. Accordingly, it is not considered that parking provision can be insisted upon or that the proposal could be refused having regard to policy DM22. There is a parking permit scheme in the vicinity for local residents, but it is understood that demand for the spaces cannot currently be met. There is provision for cycle storage within the proposed scheme. A travel information pack can be conditioned. See parking assessment in the report below.

12.0 Accessibility

12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposed development does comply with this statutory obligation.

For all CBLP allocations the accessibility standard for 10% of market housing and 95% of affordable housing should meet Building Regulations Part M4 Cat 2. 95% (excluding upper floor dwellings). 5% of affordable housing should meet Part M4 Cat 3 (2) (b) as set out in Policy DM12 (vi).

Please also refer to accessibility standards requested by affordable housing strategy at Development Team for scheme specific details. Whilst the existing building is not served by a lift and upper floors would thus not be accessible to those with restricted mobility; nevertheless, the ground floor accommodation could potentially be wheelchair accessible subject to appropriate door widths and room layouts etc. These are matters which may be secured by condition. On this basis, the scheme would comply with our accessibility standards and would provide equality of access to the ground floor accommodation. It is frequently not possible for fully accessible accommodation to be secured to all floors of existing buildings and this is an existing situation with Ryegate House.

13.0 Private Amenity Space Provisions

13.1 There is a modest amount of private amenity space provided to the rear of the site located between the building and the footway running along Northgate Street. This provision is addressed in the assessment below. The site is located in very close proximity to Castle Park and the riverside walk.

14.0 Air Quality

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

15.0 Planning Obligations

15.1 As a “Major” application, there was a requirement for this proposal to be considered by the Development Team. It was considered that Planning Obligations should be sought. The developer contributions that would be secured via s.106 agreement as part of any planning permission would be:

- **Community - £9,120.11:** St Peters Church and Church Hall. Redevelopment of church and church hall Phase 1 will equip the Church with redecorated spaces, new kitchen and toilet facilities, café-style tables and chairs, energy-efficient lighting, and a heating system, providing sorely needed facilities for groups. Phase 2 will be to repair/refurb or rebuild church hall which is currently unusable due to roof collapsing. Phase 1 - Estimated cost £250K.
- **Transport - £11,522:** Provision of a Colchester Car Club car, space and charging and marketing etc - likely to be around £28,000. Financial Contribution + provision of onsite car parking space and electric Charging Unit.
- **Parks and Recreation – Total £20,825.60:** Ward Project 65% - £13,536.64 Castle Park Access and footpath improvements. City Project 35% - £7,289.03 Improvements to Leisure World Swimming facilities.
- **RAMS – Total payment of £1,511.45 has been made.** This equates to 27 units multiplied by £136.03 per unit, divided by 2.43.
- **Unilateral Undertaking payment of £900.00 has been made.** This covers the legal costs and monitoring fee for drafting the UU under s.106 of the Act.

16.0 Report

16.1 The main issues relating to this application are:

- The Principle of Development
- Design and HMO standards
- Impact on the Surrounding Area (including conservation area)
- Impacts on Neighbouring Amenity
- Tree Protection
- Parking Provision (including Cycling)
- Private Amenity Space Provision
- Sustainability and Climate Change Mitigation
- Other Matters

Principle

16.2 The principle of residential use at this site was established through the approval of the Prior Approval application 150982 for a proposed change of use to 14 self-contained flats. The site is located in a predominantly residential area in the Dutch Quarter close to a major town centre hotel.

16.3 The site lies within the settlement limits of Colchester Town and is not within the town centre policy area (central area) although within easy walking distance of the railway station. It is defined as a predominantly residential area on the Local Plan Proposals Map. Accordingly, having regard to settlement policy SG1, which aims to direct residential development to sustainable locations, which this site is, the proposal should be judged on its planning merits. It is not considered an objection can be raised to the loss of the site for office / employment purposes. It is not within the defined town centre and would thus not conflict with Policy TC1, which offers more policy protection to retail units in the town centre. In addition, conversions should not result in unsatisfactory living conditions for future residents, which is addressed below.

Design and HMO standards

16.4 Adopted Plan policies DM12: Housing Standards and DM15: Design and Amenity are both relevant to the consideration of the proposals (in addition to the adopted HMO standards).

16.5 Policy DM12: Housing Standards requires a high standard of design and layout to be provided in all residential development. As confirmed by the Council's Private Sector Housing team (outlined above) the design and layout of the proposed HMO meets the relevant living and amenity standards. The design and layout is therefore considered to be acceptable on its merits. The Essex Fire Service has recommended the building is fitted with a sprinkler system and this should be added as an Informative should be planning permission be granted. Part (x) of DM12 only requires sprinklers to be provided where the building is 4 or more stories in height. This proposal comprises a three-storey building. It is consequently not considered reasonable to require the provision of sprinklers, but this will be recommended via an Informative.

Policy DM12 Part (ii) Requires acceptable levels of daylight to be provided to all habitable rooms. In this case, as well as meeting the adopted standards for room sizes, there is adequate natural light in every bedroom with at least 2 external windows serving every room.

DM12 part (iv) requires a management and maintenance plan to be prepared for multi-occupancy buildings in order to secure the future maintenance of the building and public areas. This can be secured by appropriate planning condition.

DM12 Part (viii) Requires an accessible recycling and refuse area together with an outdoor drying area to be provided. An appropriate refuse/recycling area is shown on the ground floor plan as proposed. There is no outdoor

drying area however given the urban location of the development in an existing building this is not considered possible or practical in this instance.

DM12 Part (vii) requires parking provision in accordance with parking standards referred to in Policy DM22. This matter is discussed further – please see below. Given the highly accessible and central city centre location, this is not considered practical or feasible to provide extensive parking. Parking demand needs to be considered in comparison with the existing lawful use as an office.

16.6 Policy DM15 Design and Amenity requires that all development must be designed to a high standard. As this is an existing building with the changes proposed being principally internal, the proposals are largely neutral in terms of design. In terms of amenity Part (V) requires development to protect and promote public and residential amenity. Many objections have been received on the grounds that the scheme will prejudice local amenities and promote anti-social behaviour. The Councils Private Sector Housing Team and Environmental Protection have not raised any objections on these grounds and confirm that the description of the proposed accommodation as a ‘managed HMO’ within the planning description is appropriate. There is no evidence that the proposed managed HMO would proliferate inappropriate behaviour simply on the basis of the type of accommodation provided.

Impact on Surrounding Area

16.7 There are only minimal proposed changes to the external appearance of the existing building and so there are no concerns in this respect. As confirmed by the Council’s conservation officer, with only minor changes to the external appearance, there are no heritage related concerns with this proposed change of use.

16.8 Concerns were raised by some of the objectors about the impact that this change of use would have on the character of the surrounding area. It is considered that this residential use is in-keeping with the area as it is surrounded by other residential uses including flats and dwellings on all sides.

Impact on Neighbour Amenity

16.8 There is no additional built form proposed with this change of use application and consequently there are no concerns that this proposal would have a harmful impact on the neighbour amenity in terms of appearing overbearing, overshadowing or causing a loss of light or sunlight.

16.9 In terms of privacy, no new windows at first floor level or above are being proposed and the change of use is not considered to bring any changes to the level of overlooking when compared to its current use of the site as office accommodation.

16.10 Some of the concerns raised by the objectors to this application concern the potential for additional noise and anti-social behaviour being generated by the occupiers of the proposed development. It would not be fair and reasonable to assume that the residents of the site will generate more noise than say, the residents of the flats that were given approval in 2015. If any noise nuisance were to occur, then there are effective remedies to deal with this through Environmental Protection and Policing and it is considered inappropriate to seek to control this through the planning process by refusing this application on the grounds of potential noise nuisance. The HMO would be subject to management and licensing and this gives greater reassurance that the use is compatible with this location. There is no evidence to sustain the view that a managed HMO would give rise to antisocial behaviour.

Trees

16.11 With no additional built form proposed and therefore no associated groundworks or changes to the parking arrangements, under or close to the protected trees, it is considered that this proposed change of use would not have an impact on the 3 protected trees on the site.

Parking Provision

16.12 Local Plan Section 2 policy DM22: Parking states that *“In appropriate circumstances, namely urban locations served by sustainable travel options and alternative car parking spaces in public/communal facilities within approximately 400m, parking standards may be relaxed or car-free development may be acceptable in order to reflect accessibility by non-car modes, and/or to enhance the character of sensitive locations.”*

16.13 The site is in a highly sustainable location with town centre car parks within 400m from the Application Site. The highway authority did not raise any concerns about the parking provision. The adopted parking standards refers to the need to provide parking for staff not for residents of hostels, which is taken to reasonably concern HMOs as well.

16.14 The Council's Transport and Sustainability Team has requested a contribution towards the Colchester car club, which will help expand and support the emerging Colchester car club network which is being funded by secured S106 contributions and Defra funding.

16.15 Provision of secure cycle parking (one space per unit) is incorporated into the layout of the ground floor of the site. The level of cycle parking provision is considered acceptable subject to agreement of the details of the racking to be used. These details should be requested for approval prior to first occupation of the accommodation via a condition, should permission be granted.

Private Amenity Space

16.16 Local Plan Section 2 Policy DM19: Private Amenity Space states that the area of amenity space should be informed by the needs of residents and the accessibility of the location. A limited amount of outdoor space is being provided on site and a 'wash room' would be provided on the ground floor of the site for washing and drying clothes. The level of provision complies with the HMO standards and in this urban context it is considered that the amenity space provided for the 27 HMO units is acceptable particularly given Castle Park is close to the site (approximately 100m away), which offers a significant amount of outdoor space for recreation and exercise.

Sustainability and Climate Change

16.17 The reuse of Ryegate House for residential accommodation is in line with the Council's sustainability agenda. Reuse of the existing building serves to sequester the existing embodied carbon where as redevelopment would add to carbon emissions. The proposal is thus inherently sustainable and low carbon.

5 Year Housing Land Supply

16.18 Whilst the Council can demonstrate a 5 year housing land supply, the Local Planning Authority recognises the important contribution can HMO's make to the provision of smaller and more affordable dwellings in the Borough, particularly in urban areas where demand for such units are at their highest. Policy DM10 states a range of housing types and tenures on developments across the Borough in order to create inclusive and sustainable communities.

16.19 Section 1 of the Colchester Local Plan 2017-2033 was adopted by the Council on the 1 February 2021, with Section 2 being adopted in July 2022. The complete Local Plan carries full statutory weight as the development plan. Section 1 includes strategic policies covering housing and employment, as well as infrastructure, place shaping and the allocation of a Garden Community. Policy SP4 sets out the annual housing requirement, which for Colchester is 920 units. This equates to a minimum housing requirement across the plan period to 2033 of 18,400 new homes.

16.20 The Tendring Colchester Borders Garden Community is allocated in Section 1, all other site allocations are made within Section 2 of the Plan. Within Section 2 the Council has allocated adequate sites to deliver against the requirements set out in the strategic policy within the adopted Section 1. All allocated sites are considered to be deliverable and developable.

16.21 In addition and in accordance with the NPPF, the Council maintains a sufficient supply of deliverable sites to provide for at least five years' worth of housing, plus an appropriate buffer and will work proactively with applicants to bring forward sites that accord with the overall spatial strategy. The Council has consistently delivered against its requirements which has been demonstrated through the Housing Delivery Test. It is therefore appropriate to add a 5% buffer to the 5-year requirement. This results in a 5 year target of 4,830 dwellings (5 x 920 + 5%).

16.22 The Council's latest published Housing Land Supply Annual Position Statement (July 2022) demonstrates a housing supply of 5,074 dwellings which equates to 5.25 years based on an annual target of 920 dwellings (966 dwellings with 5% buffer applied) which was calculated using the Standard Methodology. This relates to the monitoring period covering 2022/2023 through to 2026/27.

16.23 In accordance with paragraph 73 of the NPPF, the adoption of the strategic housing policy in Section 1 of the Local Plan the adopted housing requirement is the basis for determining the 5YHLS, rather than the application of the standard methodology.

16.24 Given the above, it is therefore considered that the Council can demonstrate a five-year housing land supply.

17.0 Planning Balance and Conclusion

17.1 The principle of residential use of the Application Site has been established through the granting of prior approval for Ryegate House to be converted to flats. This is a material consideration. The proposed design and layout of the development complies generally with the relevant Development Plan policies and there are no material considerations identified to indicate that the application should be refused for the reasons set out above. The proposal is considered to represent sustainable development.

18.0 Recommendation to the Committee

18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the signing of a s.106 legal agreement (UU) within six months from the date of this committee meeting. In the event that the legal agreement is not signed within six months, to delegate authority to the Lead Planning Officer to refuse the application, or otherwise to be authorised to complete the agreement. The permission will also be subject to the following conditions, for which delegated authority is requested to add to or amend as necessary:

1. 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. The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 1645/LP/01, 1645/P/01 Rev P1, 1645/P/02, 1645/P/03 and 1645/P/04.
Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

3. The external facing 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. No demolition or construction work shall take outside of the following times;
Weekdays: 08:00-18:00
Saturdays: 08:00-13:00
Sundays and Bank Holidays: No working.
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. Prior to the first occupation of the development, the refuse and recycling storage facilities as shown on the approved plans shall have been provided and made available to serve the development. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times.
Reason: To ensure that adequate facilities are provided for refuse and recycling storage and collection.
6. No unbound materials shall be used in the surface treatment of the proposed vehicular access within 6m of the highway boundary.
Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety
7. The parking spaces / vehicular hardstandings shall each be constructed to minimum dimensions of 5.5m x 2.9m and retained thereafter.
Reason: To encourage the use of off-street parking, in the interests of highway safety
8. Prior to first occupation of the proposed development, a (communal) recycling/bin/refuse collection point shall be provided within 10m of the highway boundary or adjacent to the highway boundary and additionally clear of all visibility splays at accesses and retained thereafter.
Reason: To minimise the length of time a refuse vehicle is required to wait within and cause obstruction of the highway, in the interests of highway safety
9. Prior to the occupation of the proposed development, details of the provision for the storage of bicycles sufficient for all occupants and visitors to that development, of a design that shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.
Reason: To promote the use of sustainable means of transport
10. The development shall not be occupied until such time as details of public transport facilities (Taxis, timetables and locations of bus stops

etc), walking and cycling being prominently displayed in public or communal areas and regularly updated and maintained in perpetuity within the site, which shall be approved by Local Planning Authority. Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

11. Notwithstanding the detailed layouts shown on the approved floor plans, the ground floor bedrooms shall be designed to be fully wheelchair accessible insofar as possible in accordance with a detailed scheme to be submitted and in writing by the lpa agreed prior to first occupation of the development.

Reason: To ensure that the accommodation provides for accessible units for those with impaired mobility in accordance with policies DM10 and DM12 of the adopted CBLP 2017-2033

12. Prior to first occupation of the development hereby approved a management and maintenance plan for the building and public areas shall be submitted to, and agreed in writing by, the Local Planning Authority. Such detailed management proposals as shall have been agreed shall thereafter continue to be implemented in perpetuity.

Reason: To ensure the future maintenance of the building and external areas as per Local Plan Policy DM12 (iv).

Informatives

A Mandatory HMO License will be required. The HMO licence will place permitted occupancy levels and conditions in relation to the management of the HMO property. An application can be submitted on our website.

The floor plans, as depicted, meet the minimum requirements within the document 'Essex HMO Amenity Standards'. The kitchens will need to meet the specific amenity requirements set out on page 5, based on the number of proposed occupants. Based on the plans, the physical kitchen room sizes meet the minimum to be used as a kitchen with double facilities, for a maximum of 10 persons per kitchen. However, this is dependent on suitable design of the kitchen to ensure adequate storage, preparation and cooking of food for the number of persons. Appropriate waste and recycling bins will need to be provided within each kitchen prior to disposal in the bin storage area.

The conversion must be in line with current building regulations and Essex Fire and Rescue Service should also be consulted. The LACORS Fire Safety Guidance document must be met, that includes a minimum of 30 minute fire and smoke protection between each individual bedroom/kitchen, and between each individual bedroom/kitchen and the emergency escape route. For this HMO, a Grade A, LD1, Fire Alarm and Detection Panel System, 30 minute fire doors (FD30S) throughout and Emergency Lighting would be required.

The property has cavity walls, single glazed windows and a flat roof – consideration needs to be given to a possible Excess Cold hazard under Part 1 of the Housing Act 2004. Improvement such as cavity wall insulation, roof insulation, double glazing and an appropriate heating system must be considered. Please note compliance with building control approval alone may not be enough to eliminate an excess cold hazard.

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall 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.

The architect or applicant is reminded that additional water supplies for firefighting may be necessary for this development. The architect or applicant is urged to contact Water Section at Service Headquarters, 01376 576000.

There is clear evidence that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. Essex County Fire & Rescue Service (ECFRS) therefore uses every occasion to urge building owners and developers to consider the installation of AWSS. ECFRS are ideally placed to promote a better understanding of how fire protection measures can reduce the risk to life, business continuity and limit the impact of fire on the environment and to the local economy. Even where not required under Building Regulations guidance, ECFRS would strongly recommend a risk-based approach to the inclusion of AWSS, which can substantially reduce the risk to life and of property loss. We also encourage developers to use them to allow design freedoms, where it can be demonstrated that there is an equivalent level of safety and that the functional requirements of the Regulations are met.

A Mandatory HMO License will be required. The HMO licence will place permitted occupancy levels and conditions in relation to the management of the HMO property. An application can be submitted on the Council's website.

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.

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.

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.

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 withhold 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

Supreme Court Decision 16 October 2017

CPRE Kent (Respondent) v China Gateway International Limited (Appellant).

This decision affects the Planning Committee process and needs to be acknowledged for future reference when making decisions to approve permission contrary to the officer recommendations.

For formal recording in the minutes of the meeting, when the Committee comes to a decision contrary to the officer recommendation, the Committee must specify:

- Full reasons for concluding its view,
- The various issues considered,
- The weight given to each factor and
- The logic for reaching the conclusion.

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.

