

Planning Committee Meeting

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

Thursday, 06 February 2020 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. Attendance between 5.30pm and 5.45pm will greatly assist in enabling the meeting to start promptly.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda (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>.

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Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to the Library and Community Hub, Colchester Central Library, using the contact details below and we will try to provide a reading service, translation or other formats you may need.

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COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 06 February 2020 at 18:00

The Planning Committee Members are:

Councillor Cyril Liddy	Chairman
Councillor Lyn Barton	Deputy Chairman
Councillor Helen Chuah	
Councillor Pauline Hazell	
Councillor Brian Jarvis	
Councillor Derek Loveland	
Councillor Jackie Maclean	
Councillor Philip Oxford	
Councillor Martyn Warnes	

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:

Christopher Arnold	Kevin Bentley	Tina Bourne	Roger Buston
Nigel Chapman	Peter Chillingworth	Simon Crow	Robert Davidson
Paul Dundas	John Elliott	Andrew Ellis	Adam Fox
Dave Harris	Theresa Higgins	Mike Hogg	Mike Lilley
Sue Lissimore	A. Luxford Vaughan	Sam McCarthy	Patricia Moore
Beverley Oxford	Gerard Oxford	Lee Scordis	Lesley Scott-Boutell
Lorcan Whitehead	Dennis Willetts	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 6 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.

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 Have Your Say! (Planning)

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

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

3 Substitutions

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

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 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 pecuniary interest or non-pecuniary interest.

6 Planning Committee minutes 9 January 2020

7 - 8

The Councillors will be invited to confirm that the minutes are a correct record of the meeting held on 9 January 2020.

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 192904 Former Severalls Hospital Site, Boxted Road, Colchester

9 - 20

Application for variation of Condition 2 following grant of planning permission 100502 – site-wide levels.

7.2 191467 Fairfields Farm, Fordham Road, Wormingford, Colchester

21 - 38

Application for removal or variation of a condition following grant of planning permission 172600.

7.3 192671 Garage Site, Hardings Close, Aldham, Colchester

39 - 58

Demolition of existing garages and the construction of new affordable housing to provide 4no. two storey dwellings - 2 x 3 bedroom and 2 x 2 bedroom.

7.4 192893 329 Straight Road, Colchester

59 - 68

Extending and remodelling storage facilities.

8 Exclusion of the Public (not Scrutiny or Executive)

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

Part B
(not open to the public including the press)

Planning Committee

Thursday, 09 January 2020

Attendees: Councillor Lyn Barton, Councillor Pauline Hazell, Councillor Brian Jarvis, Councillor Cyril Liddy, Councillor Derek Loveland, Councillor Philip Oxford, Councillor Martyn Warnes
Substitutes: Councillor Andrea Luxford Vaughan (for Councillor Helen Chuah), Councillor Patricia Moore (for Councillor Jackie Maclean)
Also Present:

770 Site Visits

Councillors Hazell, Jarvis, Liddy, Loveland, Luxford Vaughan and Moore attended the site visits.

771 Deputy Chairman

RESOLVED that Councillor Barton be elected Deputy Chairman of the Committee for the remainder of the Municipal Year.

772 Planning Committee Minutes 28 November 2019

The minutes of the meeting held on 28 November 2019 were confirmed as a correct record.

773 192733 Garage Site, Scarfe Way, Colchester

The Committee considered a planning application for the demolition of existing garages and the construction of new affordable housing to provide six 2 bedroom flats at Garage Site, Scarfe Way, Colchester. The application had been referred to the Committee because the applicant was Colchester Amphora Homes Limited on behalf of Colchester Borough Council with Colchester Borough Homes as the agent.

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

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

RESOLVED (UNANIMOUSLY) that the application be approved subject to the conditions

set out in the report.

774 192777 Garage Site, Buffett Way, Colchester

The Committee considered a planning application for the demolition of existing garages and the construction of new affordable housing to provide six 2 bedroom flats at Garage Site, Buffett Way, Colchester. The application had been referred to the Committee because the applicant was Colchester Amphora Homes Limited on behalf of Colchester Borough Council with Colchester Borough Homes as the agent.

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

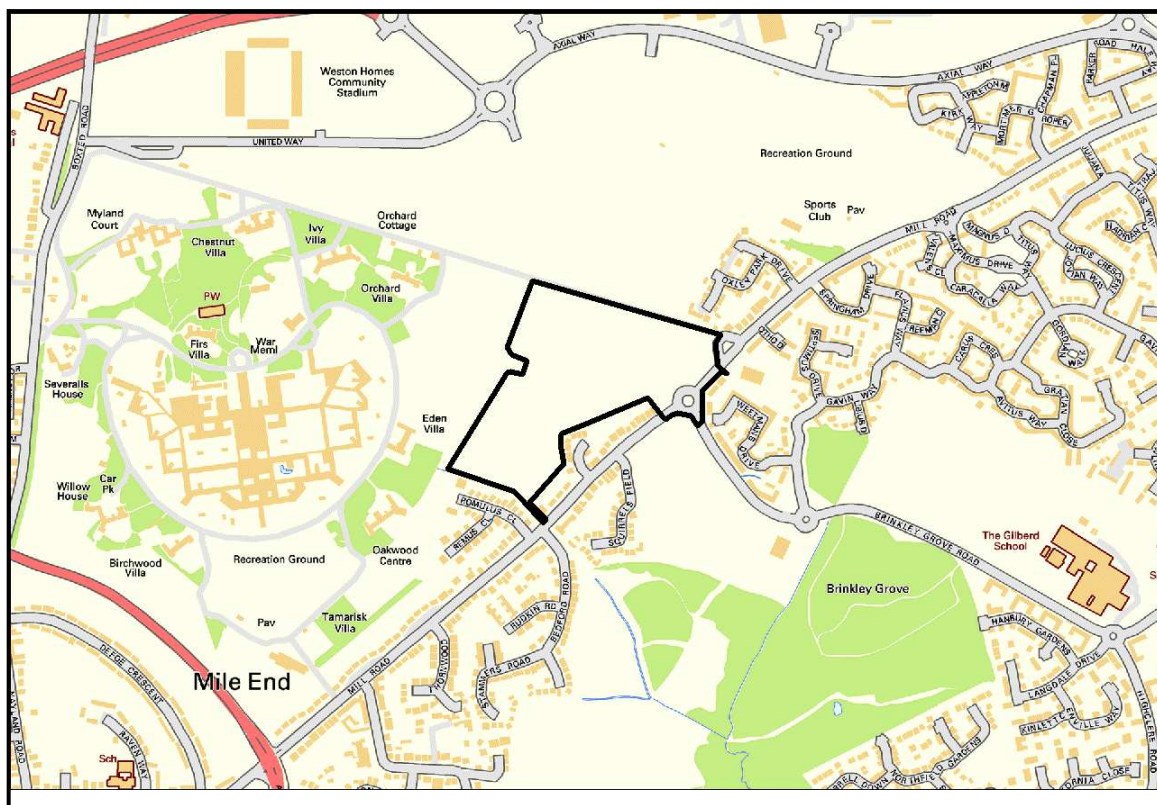
The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

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

775 Amendment to Scheme of Delegation to Officers

The Committee considered a report by the Assistant Director Policy and Corporate concerning amendments to the Scheme of Delegation to Officers from the Planning Committee which required amendment to reflect a change in management for the planning service following a change of responsibility within the Senior Management team.

RESOLVED (UNANIMOUSLY) that the amended Scheme of Delegation to Officers from the Planning Committee to the Assistant Director Place and Client Services as set out in the Appendix to the report be approved for it to come into effect from 6 January 2020.



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Item No: 7.1

Application: 192904

Applicant: Crest Nicholson

Proposal: Application for variation of condition 2 following grant of planning permission 100502 - site-wide levels.

Location: Former Severalls Hospital Site, Boxted Road, Colchester, CO4 5HG

Ward: Mile End

Officer: James Ryan

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee as an officer referral for reasons of transparency.

2.0 Synopsis

- 2.1 The key issues for consideration are the impact difference in the levels as built compared to as approved has on the wider environment and privacy of neighbouring homes.
- 2.2 The application is subsequently recommended for approval.

3.0 Site Description and Context

- 3.1 The site is the recently completed 'Rosewood' housing development accessed from Mill Road and The Northern Approach Road (NAR). This comprises 248 houses, associated roads, footways and shared surfaces, public open space and landscaping. The site is a well-planned residential layout with attractive contemporary house types that includes the bold use of materials and in particular, colour. This gives the area a distinctive feel.

4.0 Description of the Proposal

- 4.1 The scheme seeks to vary the approved plans condition attached to reserved matters application 100502 to regularise the levels across the site. In short, it is to formally approve the development levels as built, with differences in levels across the site when compared to the levels shown on the approved plans. The application does not seek any further changes.

5.0 Land Use Allocation

- 5.1 The land is in residential use.

6.0 Relevant Planning History

- 6.1 The site has a detailed planning history but the application most relevant to this application are as follows:

O/COL/01/1624 – Residential development (approximately 1500 dwellings including conversion of some retained hospital buildings), mixed uses, community facilities, employment and retail, public open space and landscaping, new highways, transport improvements, reserved route of NAR3 and associated development – Approved 21/3/06

100035 – Variation of conditions to outline permission O/COL/01/1624 to allow for changed to phasing – Approved 4/8/11

100502 – Residential development of 248 dwellings and associated infrastructure – Approved 4/8/11

162053 – Variation of condition application to deal with site levels and landscaping – refused 2/2/19

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 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
UR2 - Built Design and Character
TA5 - Parking
ENV1 - Environment
ER1 - Energy, Resources, Waste, Water and Recycling

7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

DP1 Design and Amenity
DP20 Flood Risk and Management of Surface Water Drainage

7.4 Some "allocated sites" also have specific policies applicable to them. The adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

SA NGA1 Appropriate Uses within the North Growth Area

7.5 The Neighbourhood Plan for Myland & Braiswick is also relevant. This forms part of the Development Plan in this area of the Borough.

7.6 Submission Colchester Borough Local Plan 2017-2033:
The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

1. The stage of preparation of the emerging plan;
- 2 The extent to which there are unresolved objections to relevant policies in the emerging plan; and
- 3 The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo a full and final examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

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

The Essex Design Guide
Myland Parish Plan
Myland Design Statement

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 Environmental Protection –

No objection.

- 8.3 Highway Authority –

No objection.

- 8.4 Lead Local Flood Authority –

No objection.

9.0 Parish Council Response

- 9.1 The Parish Council have stated that:

‘MCC Notes this application’.

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties.

One letter from 'The Consortium of Mill Road and Thomas Wakely Close Residents' was received.

An objection from 190 Mill Road was also received and this confirmed agreement with the consortium letter. A further objection was then received from the same address. One letter was also received from 294 Mill Road

One letter of support were received from a resident on the Rosewood Estate. Two representation from one address on the Rosewood Estate was received that requested a further condition be imposed.

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:

- There is an outstanding ombudsman complaint due to the way this site has been dealt with.
- Conditions have not been complied with.
- The proposal causes flooding due to the changes in levels in a clay soil area.
- The surface water drainage in not in accordance with the approved plans.
- The back to back distances are smaller than approved.
- The level change has reduced privacy around footpath 69.
- In some instances the dwellings cause overshadowing and loss of daylight.
- The dwelling that backs on to 190 Mill Road is 850mm higher than as approved and this is harmful in terms of overlooking.
- The houses around Thomas Wakley Close are three storey.
- Please can this be sorted out as soon as possible.
- What are the implications of this application?
- Please insert a new condition to restrict the use of the car ports.

11.0 Parking Provision

11.1 As an application to deal solely with levels, no change in parking provision from what was originally approved is proposed by the applicants.

12.0 Accessibility

- 12.1 The changes in levels have not had a material impact on the accessibility of the dwellings that have been built. As the development was built to (what was then) Code for Sustainable Homes Level 4, all plots had to have level thresholds. Only one plot could not be delivered with a level threshold due to being on a terrace run that just couldn't be altered to make it work. For this plot only, Crest Nicholson agreed with the HCA to deliver this plot with a stepped access. Otherwise, all were delivered to be wheelchair adaptable.

13.0 Open Space Provisions

- 13.1 The changes in levels has not had a material impact on the provision of open space.

14.0 Air Quality

- 14.1 The site is outside of any Air Quality Management Area and the difference in levels will not have generated 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 the applicant's suggestion for a Unilateral Undertaking to link to the previous Legal Agreement is sufficient to ensure any ongoing obligations continue to apply.

16.0 Report

- 16.1 The main issues in this case are:

The Impact of the difference in levels.

- 16.2 The principle of residential development has been previously secured via applications O/COL/01/1624, 100035 and 100502.
- 16.3 In considering the design and layout of the proposal, Core Strategy policy UR2 and Development Plan policy DP1 are relevant. These policies seek to secure high quality and inclusive design in all developments, respecting and enhancing the characteristics of the site, its context and surroundings. Development Plan policy DP1 requires all development to be designed to a high standard that protects existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, and daylight and sunlight.

- 16.4 This application has been made as there are differences in finished slab levels across the site as built when compared to the levels shown on the approved plans. It is important to note that, in effect, this application is looking regularise the situation on the ground as existing today. No further changes are proposed to the scheme. The plots have been sold and are now fully occupied but they are not lawful in planning terms as they do not comply with the approved levels. This has implications for the residents of these dwellings as it makes it difficult to sell their houses should they wish to.
- 16.5 Due to changes during the construction phase (when installing the drainage to allow it to be adopted by the relevant authority and to allow the access to be connected into the Northern Approach Road) a number of the dwellings were not in accordance with one of the approved plans drawings which noted slab levels. This is not something that is always required at planning submission stage but as the slab levels drawing was part of the approved drawings pack this has meant that the changes in levels as built fail to accord with the approved drawings.
- 16.6 The changes in levels cause no concern across the majority of the site. Officers have visited the site throughout the latter part of the construction phase and did not consider the minor changes in levels to be of any particular consequence for the most part.
- 16.7 The boundary with existing residential dwellings to the south of the site is an important consideration however. The pre-existing dwellings that have the closest relationship with the new dwellings are those on Thomas Wakley Close. These new dwellings are marginally lower than was approved. As they are lower it is considered they are acceptable as they have a lesser impact on the surrounding neighbours homes.
- 16.8 The objection from the 'Consortium' (membership unspecified) notes the 25m back-to-back guidance in the Essex Design Guide. This was dealt with in some detail at reserved matters stage. The committee report presented to Members for reserved matters application 100502 (at para 13.1 sub paragraph 5) stated the following with regards to the 25m separation distance and the impact on neighbours:

Thomas Wakley Close is the area of closest relationship between existing and proposed housing owing to the relatively short gardens of those properties. The landscaping strip runs around this boundary and a minimum 25m back-to-back distance is maintained between the 2-2½ elements to these dwellings in accordance with accepted spatial standards. Furthermore the 2 house types utilised in this area, Types 3.4 and 3.7 are fenestrated such that rear walls at upper floor level contain limited windows, many serving landings and for the most part in the form of rooflights. Furthermore, the amended plans show the roofs to those houses turned through 90 degrees so that gables rather than ridge-lines are presented to the existing dwellings in order that a more articulated roofline produces variety and visual relief to existing residents. Additional sectional drawings have also

been submitted to illustrate the relationship between the proposed and existing dwellings.

- 16.9 The new housing also backs on to dwellings that front Mill Road and some of these are higher than was approved. The dwellings that back onto 190 Mill Rd and up to 200 Mill Road vary from 850mm higher to 25mm higher. The dwellings that back onto 280 Mill Road to 298 Mill Road are 25mm higher rising to 775mm higher. The new dwelling that fronts Mill Road and sits next to 298 Mill Road is 225mm higher. This has been carefully considered by officers and due to the more generous back to back distances involved when compared to Thomas Wakley Close, these differences in height are held to be acceptable.
- 16.10 There are also number of dwellings that front onto the backs of Romulus Close. These are all slightly higher (ranging from 225mm to 665mm higher) but these are set back behind an access road and a landscaped area and are not held to be materially harmful to privacy of their neighbours in Romulus Close.
- 16.11 The objection from the 'Consortium' raises issues with the drainage and cites these issues being due to the changes in levels. Core Strategy Policy SD1 and Development Plan Policy DP20 require proposals to promote sustainability by minimising and/or mitigating pressure on (inter alia) areas at risk of flooding. Policy DP20 also requires all development proposals to incorporate measures for the conservation and sustainable use of water, including the appropriate use of SUDs for managing surface water runoff.
- 16.12 The drainage on the site is an estate wide system and there is no evidence to suggest that it is not working effectively. The system has received technical approval from Anglian Water. No changes to this system are proposed as part of this application.
- 16.13 The surface water drainage scheme includes a system of onsite attenuation, swales/ponds for storm events and storage capacity. But the drainage connects via a series of pipes to the sewers within the Northern Approach Road (NAR) trunk road. Consequently, the whole system connects into the NAR. This necessitated changes in levels in order to tie in to the final NAR design and explains why the levels across the site are different in places to those approved in the first place.
- 16.14 Therefore, it is held that the changes in levels across the site are acceptable.

The Landscaping Buffer

- 16.15 The scheme that is before Members has arisen from Enforcement action which has been pursued due to the second outstanding element relating to this site – that being the landscaping buffer/strip between Thomas Wakley Close and Endeavour Way.

- 16.16 As a Section 73 variation of condition application any outstanding conditions from application 100502 will need to be re-imposed or reworded as relevant. The majority are no longer relevant as the scheme is built out and will not be re-imposed.
- 16.17 To that end a bespoke landscaping condition is suggested. This deals with the intervening planting/landscape privacy buffer which has not been installed. The condition will secure appropriate mitigation to be installed in the gardens of Endeavor Way with the agreement of the residents who now live in those dwellings. Crest Nicholson has commissioned (and completed) a full survey of these gardens and has requested access to the neighbours gardens in Thomas Wakley Close. They are in the process of preparing a bespoke solution to soften the impact of the development on the residents in Thomas Wakley Close. This may take the shape of new planting, new boundary treatments or both, dependent on the quality of the existing screening which is variable from plot to plot. It is not considered necessary to install planting in the gardens of the dwellings that back on to Mill Road properties due to the generous back to back distances; which range from 30m to 40m.
- 16.18 If Members wish to approve the final agreed solution to enable this condition to be discharged, this can also be brought to Planning Committee for scrutiny at a later date.

Other conditions

- 16.19 Application 100502 also contained a condition (number 4) that required the installation of parking spaces for disabled people being set out in accordance with the 2009 adopted parking standards. This condition is somewhat at odds with the Adopted Parking Standards as under the minimum requirements for C3 residential uses on page 63, for disabled users it states "N/A if parking is in curtilage of dwelling, otherwise as Visitor/unallocated". In this instance the majority of the parking is set out in within the curtilage of the dwellings as per the standards and those that are not are allocated to each dwelling. For reference there is on site visitor parking provided - 37 visitor spaces in total, and also a number of unallocated on street parking spaces but in this instance they are not marked disabled bays. On balance, it is not considered necessary or reasonable to re-impose this condition.
- 16.20 Application ref:100502 also contained a condition (number 5) that required further details of the rear elevations of the dwellings on Thomas Wakley Close. As these dwellings have been built and the houses are occupied, it is not necessary or reasonable to impose this condition again.

- 16.21 With regards to the request from one resident for an additional condition to restrict the uses of the car ports, the Courts have been clear that Section 73 applications cannot be used to deal with matters that are not the subject of the condition variation and cannot be used to 'mop up' other issues even if it would be desirable to do so in the decisions makers opinion. Therefore it is not possible to add a further condition at this stage.

17.0 Conclusion and Planning Balance

- 17.1 To summarise it is considered that the development is acceptable as built in terms of the site levels. After careful assessment the changes from the approved drawings do not have a materially harmful impact on the wider environment. The landscaping buffer/belt issue will be dealt with via condition that can come back to committee for approval at a later date. The planning balance therefore tips strongly in favour of an approval.

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 linking legal agreement under Section 106 of the Town and Country Planning Act 1990, within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Service to refuse the application, or otherwise to be authorised to complete the agreement. The Permission will also be subject to the following conditions:

1. Non Standard Condition - Approved Plans

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

Phase 1A External Levels Sheet 1 Plots 1-25 – 14418PA/3301 T03
Phase 1A External Levels Sheet 2 Plots 32–75 – 14418PA/3302 T04
Phase 1B External Levels Sheet 1 – 14418-1B-3301 C01
Phase 1B External Levels Sheet 2 – 1441-1B-3302 C01
Phase 1C External Levels Sheet 1 – 14418-1C-3301 T01
Phase 1C External Levels Sheet 2 – 14418-1C-3302 T01
SEVERALLS LEVELS PLAN - A081784-P100 - REV A
SLAB LEVEL COMPARISON - A0817840-P100

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

2. Bespoke Landscape/Boundary Treatment Condition:

Within 3 months of this decision, a scheme showing the following:

➤ Landscaping in the gardens of 23 to 45 Endeavor Way inclusive

OR

>A boundary treatment solution in the gardens of 23 to 45 Endeavor Way inclusive.

OR

>A combination of both landscaping and boundary treatments.

AND

>Plans of landscaping as installed (or to be installed) for the rest of the site.

To mitigate the impact of the development on the residents in Thomas Wakley Close shall be submitted to and approved in writing by the Local Planning Authority.

The landscaping element shall be planted in the next planting season and any trees or shrubs that die in the first five years following the planting must be replaced. Any boundary treatment approved shall be installed within 3 months of approval of the proposal and thereafter so maintained.

Both the approved landscaping belt/buffer and boundary treatment shall be retained and maintained in perpetuity.

With regards to the landscaping for the rest of the site (ie that which does not make up the landscape buffer and is outside of the gardens of Endeavour Way), any trees or shrubs that die in the first five years following the approval must be replaced.

Reason: This condition is needed to ensure the landscaping and boundary treatments needed to soften the impact on the residents of Thomas Wakley Close are of an acceptable quality, are planted/installed and are maintained and retained permanently in the interests of amenity. The section of the condition that relates to the landscaping on the wider site is needed as there is not formally approved landscaping scheme for the wider site and this needs to be rectified.

19.1 Informatives

19.1 The following informatives are also recommended:

1. ZT0 – Advisory Note on Construction & Demolition

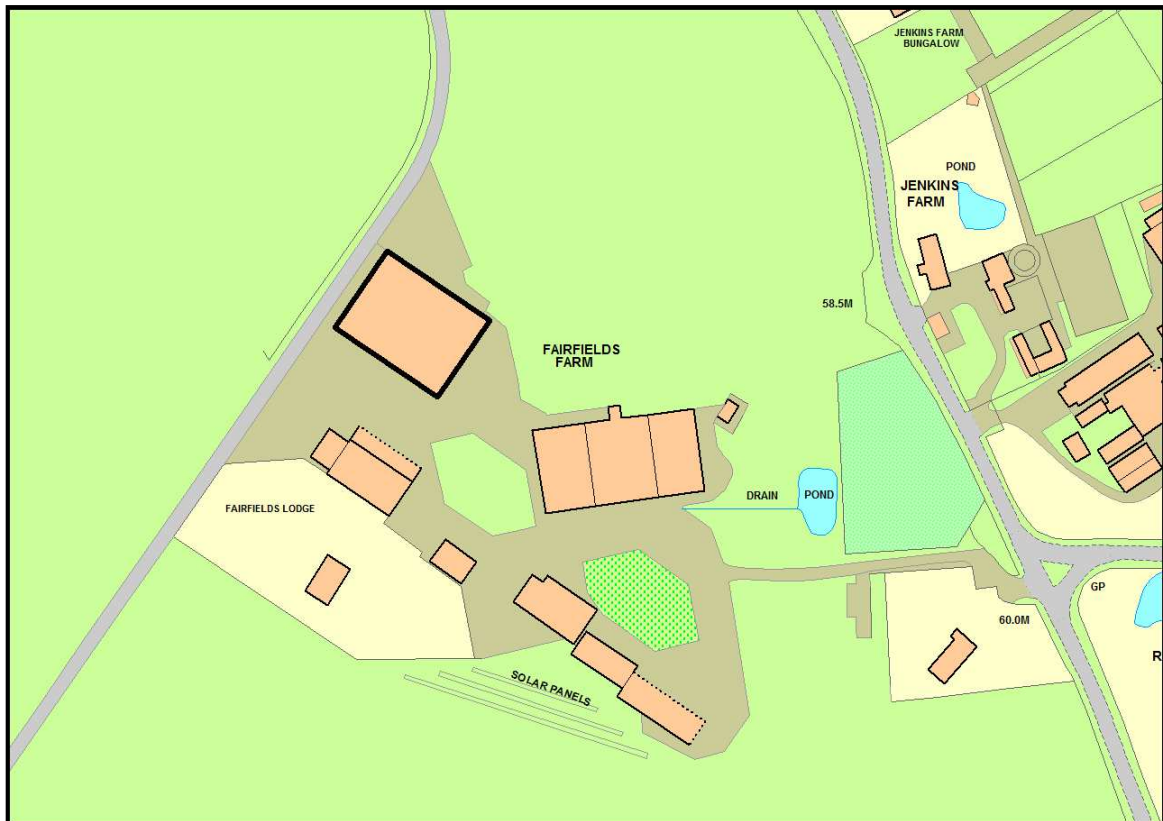
The developer is referred to the attached advisory note *Advisory Notes for the Control of Pollution during Construction & Demolition Works* for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental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

2. ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

3.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.



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Item No: 7.2

Application: 191467

Applicant: Mr Strathern

Agent: Mr Guy French

Proposal: Application for removal or variation of a condition following grant of planning permission. (172600)

Location: Fairfield's Farm, Fordham Road, Wormingford, Colchester, CO6 3AQ

Ward: Rural North

Officer: David Lewis

Recommendation: Refusal

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee at the request of Cllr Chapman. He is of the view that, as with previous Applications regarding the crisp production on this site, a decision should be made by the Committee to ensure that the residents can have confidence that their concerns have been fully and publicly considered. These concerns relate to the emission of odours from the crisping building, complaints about which have been made regularly in recent years by householders in the area. The call-in is regardless of Case Officer recommendation to enable the Applicant to have the same access to Committee as those objecting.

2.0 Synopsis

- 2.1 The application seeks to vary condition 2 of planning permission 172600 (reconfiguration of Crisping Building to accommodate odour control system). Condition 2 required the development to be carried out in accordance with certain drawings, layout and specification of the odour control equipment (negotiated through the course of the application). The current application puts forward an alternative odour control system, as well as omitting the approved separate enclosed area for the fryers from the rest of the process. This effectively would enable the layout and odour control unit that is currently fitted to be retained and also enable the longer working hours, (24 hour working from 6.00 am Monday to 22.00 Saturday, with no working on Sundays or Bank Holidays) which were approved under a separate permission (ref: 170266) on the basis that the odour control equipment was installed.
- 2.2 The key issues for consideration are whether the changes now proposed impact adversely on the amenities of the area, particularly the impact on nearby residences, having regard to the context of the other planning permissions granted that have enabled the crisp manufacture to take place.
- 2.3 The material planning considerations are set out in the remainder of this report, as well as representations received. The application is subsequently recommended for refusal.

3.0 Site Description and Context

- 3.1 Fairfield Farm is a productive arable farm in a rural setting. The application building is adjacent to existing agricultural buildings, several of which have been erected in recent years, including for the storage of potatoes associated with the crisp manufacture. An older agricultural building on the site has permission for B2 industrial use. To the north of the building is a biogas digester. The boundary of the farm with Fordham Road has hedgerows in places. This provides good screening, but there are places where there are views of the complex. A public footpath runs on a track to the north-east of the proposed building. There are vehicular accesses at the junction of Fordham Road and Packards Lane, and to the south of the site opposite Rochford Farm buildings

4.0 Description of the Proposal

- 4.1 The application seeks to vary condition 2 of planning permission 172600 (reconfiguration of Crisping Building to accommodate odour control system). Condition 2 required the development to be carried out in accordance with certain drawings, layout and specification of the odour control equipment (negotiated through the course of the application). The current application puts forward an alternative odour control system, as well as omitting the approved separate enclosed area for the fryers from the rest of the process. The Odour Control System for which they seek permission has been installed for many months, enabling the system's effectiveness to be tested whilst production has continued.
- 4.2 The application 172600 was considered in tandem at Planning Committee with application 170226, which sought to vary the hours of operation of the original permission (ref: 121150). The change sought was to allow 24 hrs operation from Monday 06:00 to Saturday 22:00 and no working on Sundays or Bank Holidays. The application was approved subject to the odour system being installed as approved under 172600.

5.0 Land Use Allocation

- 5.1 Located in the countryside, outside of a settlement boundary.

6.0 Relevant Planning History

- 6.1 There is a long planning history of the farming related buildings and uses for this site. The crisp manufacture was first proposed in 2012, with application 121150 being for a change of use of potato store to potato crisp manufacturing, addition of extract cowlings and changes to the size and elevations of the building (approved under Planning permission 102064). Approved and conditioned as follows:

1. The odour extraction system detailed in specification dated 15.8.2012 shall be installed by 31.10.2012. The control measures shall thereafter be retained and maintained in the agreed specification and working order unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that there is a scheme for the control of fumes, odours and smell in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties.

2. The rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142.

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

3. No machinery shall be operated on the premises outside of the following times: Monday to Friday: 07.00-18.00, Saturday: 08.00- 13.00 or at any time on Sundays or Public Holidays, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the amenities of nearby residential properties.

4. No deliveries shall take outside of the following times; Monday to Friday: 07.00-18.00 Saturdays 08.00-13.00 or at any time on Sundays and Public Holidays, unless otherwise agreed in writing by the Local Planning Authority.

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

5. The hereby approved use shall be used solely for purposes associated with the applicant's farming activities.

Reason: In the interests of residential amenity and to ensure the building remains associated with the agricultural use.

6. Any lighting of the development shall fully comply with the figures specified in the current 'Institution of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Light' for zone E2. This shall include sky glow, light trespass into windows of any property, source intensity and building luminance.

Reason: To reduce the undesirable effects of light pollution on the amenity of neighbouring residential properties and the surrounding countryside.

7. The landscaping details as shown in the agent's letter and drawing dated 22.8.2012 as augmented by the applicant's email of 24.9.2012 shall be carried out in full prior to the end of the first planting season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details.

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

8. The development hereby permitted shall be retained in accordance with the details shown on the submitted site plan and photographs dated 19.7.2012 and the associated landscaping shall be carried out accordance with the agent's letter and drawing dated 22.8.2012 as augmented by the applicant's email of 24.9.2012 unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

- 6.2 The original extraction system had not proved to be very effective and the application put forward under 172600 was intended to provide a remedy. However, as this entailed significant investment, the longer operating hours put forward under 170226 were linked to its consideration. Application 170226 sought to allow 24 hr operation from Monday 06.00 to Saturday 22.00 whereas application 172600 sought a reconfiguration of crisping building to accommodate odour control system.
- 6.3 Both applications were approved as follows;

Application 172600 subject to;

1. Time Limit for Full Permissions

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

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

2. Development to Accord with Approved Plans

The development hereby permitted shall be carried out in complete accordance with the details shown on the submitted Drawing Numbers 7000, 7208-PC-03-10-17A , BPC-16-11-17B (showing amended external extraction system with 11.3m flue discharge stack), BPC – 03-01-17A (in as far as it relates to the internal layout of the building only and excluding the superseded extraction system) and Fabcon Food Systems Ltd report dated 10/9/17 shall thereafter been retained as detailed on these drawings and in the report unless otherwise agreed in writing by the LPA.

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

3 Submission of Odour Management Plan

Prior to the extraction system first coming into operation an Odour Management Plan shall be submitted for the written agreement of the Local Planning Authority. The system shall be operated in full compliance with the agreed Plan.

Reason: In the interest of residential amenity.

4 Scheme of collection and disposal of waste

A system for the collection and disposal of waste from the system must be submitted to, and agreed in writing by, the Local Planning Authority and adhered to thereafter.

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

5 Site Boundary Noise Levels

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dB(A) above the background levels determined at all facades of, or boundaries near to, noise-sensitive premises. The assessment shall have been made in accordance with

the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

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

Application 170226, Subject to;

1) Time scale for commencement of variation of Condition 3

The variation of condition 3 of planning permission 121150 shall not come into effect until:

- a) the extraction system approved under planning permission 170226 has been completed in its entirety and the completed system has been inspected and agreed by Environmental Protection Team*
- b) the Odour Management Plan required to be submitted under planning permission 170226 has been submitted and agreed*

Reason: The variation of the condition is only acceptable if the extraction system has been installed as approved and appropriately maintained in the interests of residential amenity.

2) Removal/Variation of Condition(s) Approval

With the exception of condition 3 of Planning Permission 121150 which is hereby varied, the requirements of all other conditions imposed upon planning permission 121150 remain in force and shall continue to apply to this permission, including the details and provisions of any approved matters discharging any condition(s) of that permission.

Reason: To avoid any doubt that this application only applies for the variation of the stated condition(s) of the previous planning permission as referenced and does not seek the review of other conditions, in the interests of proper planning and so that the applicant is clear on the requirements they need to comply with.

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 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

UR2 - Built Design and Character
ENV1 - Environment
ENV2 - Rural Communities

- 7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

DP1 Design and Amenity

DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses

DP8 Agricultural Development and Diversification

DP9 Employment Uses in the Countryside

- 7.4 Submission Colchester Borough Local Plan 2017-2033:

Submission Colchester Borough Local Plan 2017-2033:

The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

1. The stage of preparation of the emerging plan;
2. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
3. The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo a full and final examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

The most relevant policies of the Emerging Local Plan are;

DM6 Economic Development in Rural Areas and the Countryside

DM7 Agricultural development and Diversification

DM15 Design and Amenity

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 Contaminated Land Officer: No comments.

- 8.3 Environmental Protection team:
(comments reported in full).

This proposal seeks to vary Condition 2 of application no. 172600. This will enable the potato crisp operation at Fairfields Farm to extend its hours of operation, granted under application 170226, in which it is proposed that the

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operating hours of the potato crisp operation within the building forming part of application number 121150 are extended to: Monday 06:00 to Saturday 22:00.

The current hours of operation

The site is currently permitted to operate between the hours of 07:00 and 18:00 Monday to Friday and 08:00 to 13:00 Saturday.

Comments

Planning application 170226 proposed an increase in the working hours. This application was granted providing the reconfiguration of the frying area and the installation of an odour abatement system in application 172600 were carried out.

Environmental Protection (EP) supported application 172600 because it demonstrated a considerable improvement from the system installed and odour complaints were being received.

Application 172600 advised that the proposed odour control system would incorporate four key elements:

- 1) Separating the frying area from rest of the building. *This requires the frying area to separate from the rest of the building.*
- 2) A condenser unit
- 3) A form of filtration removing oil from steam
- 4) A high-level discharge and high velocity discharge

Following this application, an Odour Control System was installed at Fairfields. The system installed is not the same as described in planning application 172600, it does however include elements 2, 3 and 4; a condenser unit, a form of filtration to remove the oil from the steam, a high-level discharge and high velocity discharge unit. However, the Council has received no evidence that the fryer has been separated from the rest of the building. Reconfiguration of the frying area would have ensured that all cooking odours pass through the installed extraction system. Therefore, the planning condition 172600 relating to odour control has not been satisfied and therefore a variation has been submitted.

Currently Fairfields have chosen a constant water loss system (water is used in the cooling process) within the condenser which makes the system expensive to operate.

Despite the improved extract system, the Council is continuing to receive frequent complaints of odour from the cooking process at Fairfields. EP Officers have witnessed these odours, which are directly attributable to the frying process, outside of the factory and, on occasion, a substantial distance from the factory.

EP believes that the odours that are being complained of are fugitive odour - steam/cooking odours which have not been treated by the odour extract system and are escaping through the unsealed building or due to the inadequate or inconsistent abatement performance of the odour extraction system.

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Planning application 172600 advised that the fryers would need to be separated from the rest of the factory in order to achieve the goal of exhausting all steam/cooking odours through the extraction system.

The onus is on the operator to establish the cause of the off-site impact of the odours that are occurring and to then identify suitable additional control measures, if odour impacts are to be more effectively controlled.

Current application 191467, which also proposes to increase the hours of operation, is not equivalent to application 172600. This is because it does not include separation of the frying area from the rest of the building and the Council is continuing to receive complaints.

EP believe that odour from the frying operations at Fairfields continues to have a detrimental impact on the local amenity and recommended that Fairfields carry out an investigation into where the fugitive odours are escaping, and the factory modified to prevent the escape of odours to the surrounding areas.

Land Air Consulting (LAC) – odour assessment November 2019

Fairfields have had an odour assessment carried out to support this planning application.

Assessments such as the one carried out by LAC are frequently used to support planning applications prior to operation. In this case the odour assessment concerns an existing operation and the modelling is supplemented with odour complaint data and the Councils monitoring.

To ensure robustness of the report the Council requested that the report was peer reviewed by an independent odour consultant.

The consultant has highlighted the considerable divergence between the results of LAC modelling assessments and the ‘on the ground’ reality of the complaint history of odour complaints and the sniff tests carried out by Council officers. We have been advised that the disparity between the LAC modelling and the actual off-site odour impacts is such that relatively little weight can be attributed to the findings of the odour modelling. The odour modelling, in their professional opinion, does not provide adequate support to the application to justify removal of the odour related condition.

LAC have proposed the following odour mitigation measures:

‘Continuous’ cleaning of equipment

The odour management plan in Table 2, Appendix 8, sets out a schedule for regular and not continuous cleaning. Whilst regular cleaning is beneficial, Table 4.4 indicates a reduction in airflow through the system by 16%. This reduction in flow may increase the risk of fugitive leaks of higher intensity odour emissions from the processing area as a result of the reduced extraction.

Installation of a timer on high level extraction fans

There is no evidence in the report whether the operators or LAC have investigated the times when odour complaints occur in relation to these high-level fans. The building pressure measurements reported by Gibbons Appendix 5 suggests that the building is kept at negative pressure when the fans are ON, and a reduction in negative pressure increases the risk of fugitive emissions. Therefore, without further evidence on how this recommendation would improve off-site odours, the concerns about fugitive emissions and the loss of high-level extraction, we are advised that it is not possible to conclude that reducing extraction fan use would improve off-site odour impacts.

Proposed fast acting roller – shutter door between flavour storage area and product storage/ dispatch.

There is no evidence in this report to link odour complaints with fugitive leaks through the doorway and therefore it is not possible to evaluate how effective this measure will be.

We have been advised that the dispersion modelling carried out as part of the assessment cannot be assumed to show that there will be any improvement in offsite odour as a result of the proposed increase in operating hours even with recent and proposed changes in odour management and mitigation measures

Current complaints

EP is continuing to receive complaints of cooking odours attributed to the manufacture of crisps at Fairfields.

The Council has been monitoring the odours and although the strength and duration at residential properties has not been sufficient to serve an Odour Abatement Notice, odour which can be directly attributed to the cooking process at Fairfields has been noted by officers in the immediate vicinity and further afield. Since January 2019, EP have made 54 visits to the surrounding area. Officers have noted an odour on 35 of these visits, although on many of these occasions the intensity level was reported to be [intensity level] 1 or 2 (*see Table 1*), there has been an occasional 3 and, on one occasion, a 4 (on 10 occasions odour was noted in more than one location).

Table 1 – Intensity levels

1	very faint
2	faint
3	noticeable
4	very noticeable
5	extremely noticeable

On 2 May 2019 EP received several odour complaints. EP visited the site and noted that the odour control system had been switched off. When approached, Fairfields advised EP that the odour extract system had been switched off owing to the operational cost. Fairfields were reminded of their planning condition and on the 3 May 2019 the system was turned back on.

Residents' complaints

There has been an increase in the number of complaints being received. Residents complain of also being affected by the odour during the evening and weekends. Colchester Planning Enforcement Team have been investigating the complaints of 'out of hours' working and possible breach of planning condition.

Complaints Received (10 households) during July - December 2019

Month	Total number of complaints	Complaints received outside of permitted hours
July	19	14
August	40	18
September	21	3
October	12	1
November	26	7
December	9	1

Environmental Protection team recommend refusal of this application

Reasons

Within the existing operating hours, the Council is receiving a high level of complaints from residents regarding the odour from Fairfields. This provides a high baseline of complaints should the operating hours be increased.

The high level of complaints and the evidence obtained during the 'sniff tests' by EP officers demonstrates that odour distinctly attributable to Fairfields crisp factory is noticeable in the surrounding area. Therefore, within existing operating hours there is impact on the local amenity.

Fairfields have not addressed these concerns, and an independent consultant who peer reviewed the LAC odour report has advised that in their professional opinion the odour modelling carried out by LAC does not provide adequate evidence to support the application to remove the odour related condition. In addition, they have advised that there is insufficient evidence to support the recommendations for improvement made by LAC, and there is some concern that the escape of fugitive odours could be made worse.

Complaints have continued to occur through December 2019, which suggest that suitable robust reductions as recommended by LAC have not yet been implemented or have been unsuccessful in preventing adverse effects on amenity.

We are concerned that if the hours of operation increase, the impact of the odour will significantly harm the amenity and the quality of life and wellbeing of residents. The extended hours of operation will increase the occurrence of odours being experienced at residential properties over a longer time period.

Improvements to emission controls will be required if an increase in operating hours is not to result in further negative impacts on local amenity.

Unless there is a considerable reduction in the number of complaints being received, and odour from the factory is no longer noted regularly by officers in the surrounding area, EP would recommend refusal of the extended frying times until the issue of fugitive odours has been resolved.

9.0 Parish Council Response

- 9.1 The Parish Council have stated that; 'Wormingford Parish Council would like to understand why the internal wall was considered necessary in the first application and why it is no longer needed? The Parish Council were under the impression that the wall was to be put in place in order to help contain the odours.

As the odours from Fairfields Farm continue to affect residents during and outside permitted working hours in the village, the Parish Council feels it must therefore object to this application.'

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;

6 letters of **support** summarised as follows;

- Supports the local economy, both in terms of jobs created and rural services
- Have not noticed any odour issues,
- As an immediate neighbour of the farm, haven't noticed any issues with excessive odour, noise or traffic - have been rare occasions when there has been a minor presence of odour but not since new system installed,
- Proposals do not differ greatly from approved scheme.

There are also 5 letters of **objection** summarised as follows;

- Significant odour issues that have grown worse over the years
- Contravening the hours of operation restriction, showing a lack of consideration for neighbours
- Whilst no objection in principle to commercial diversification, the odours generated are horrific demonstrating that the odour control unit does not work,
- Lives disrupted by deliveries of potatoes and traffic
- Questions whether the 40 employees are local

- Previous approval was on the basis that an odour elimination system would be operable, this hasn't happened. As this expectation has not been fulfilled, longer hours should not be permitted.
- Local residents have made 46 complaints relating to the odour between February 2019 and the end of June 2019 of which 17 related to out of hours, overnight and Sunday working, indicating an absence of regard for the village or residents within it.
- Odour complaints have been made over a period of 6 years, but has worsened in the recent past, since the new equipment has been installed.
- The building constructed originally for agriculture is not designed to operate at negative pressure or be airtight.

11.0 Parking Provision

11.1 There is extensive hardstanding at Fairfield's Farm which can be utilised for parking and therefore the scheme is held to comply with the adopted Parking Standards.

12.0 Accessibility

12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposal does not give rise to any concerns regarding discrimination or accessibility; the site is relatively flat, the building is accessed from ground level, and there is ample car parking in close proximity to the building.

13.0 Open Space Provisions

13.1 Not relevant to the consideration of these applications

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 being a variation of a condition to a non-major permission and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (s.106) of the Town and Country Planning Act 1990.

16.0 Report

16.1 The main issues in this case are:

- The Principle of Development
- Impact on the Surrounding Area
- Impacts on Properties within the Locality
- Highway Safety and Parking Provisions

Principle of Development

- 16.2 The applicant's family have farmed in Colchester since the 1950's and employ 40 local people. The applicant has an established crisp manufacturing business which is expanding with considerable investment being made into the odour control equipment on the expectation of longer working hours being permitted. The reconfigured layout as previously approved (including the separation of the frying process from the rest of the production) has not been carried out yet but is intended to be undertaken in the forthcoming 12-24 months with the further expansion of production. The odour control unit now installed is not that approved under the previous permissions but is intended by the Applicant to be more a more effective solution.
- 16.3 Adopted Policy DP8 gives support for existing agricultural uses including food production together with its processing, packaging and marketing and retailing. This policy also supports farm diversification. Emerging Policy DM7 identifies that the Council will support and encourage appropriate farm diversification proposals that are compatible with the rural environment and help sustain agricultural enterprises. The grant of planning permission in 2012 for the potato crisp operation accepted that this use was appropriate farm diversification directly related to the applicant's farming activities on the site. The permissions granted in December 2017 reinforced this approach, albeit recognising the concerns relating to odours and the intent that this be remedied by the implementation of the permissions.
- 16.4 Employment uses in the rural areas are also supported by Adopted policy DP9; although this Policy does have a number of provisions regarding the impact on the landscape and amenity. Policy DM6 in the Emerging Local Plan indicates that there should be support for the diversification of the rural economy.
- 16.5 Having regard to the background of the proposals and past planning decisions, the principle of the manufacturing process is accepted, however, this needs to be balanced with the detailed considerations to determine if approval to the variations should be granted.

Impact on Surrounding Area

- 16.6 The application building is set with in a group of large modern agricultural buildings. There are public views from the road and a public footpath to the west of the site. The impact of the extraction equipment and in particular the proposed flue which is higher than the ridge of the building does not vary significantly from that previously approved, (the increased flue height was initially requested by the Environmental Protection team). In any of these views the proposed extraction system will be seen against the backdrop of the host building and other structures within the farmyard. Landscaping agreed and conditioned to be undertaken for the adjacent biogas digester (which includes native wood copses to the east and north of the site) will also in time provide some screening from Fordham Road. It is considered that the impact in the landscape of the extraction system is not significantly different to the previously approved scheme and is acceptable.

Impacts on Properties within the Locality

- 16.7 It is evident from reports predominantly to Environmental Protection over several years that the odour from the crisp manufacturing is present at a number of properties; some of which are some distance from the application site. The impact from odour varies from day to day depending on prevailing wind and other climatic conditions. Even with the installation of the latest equipment, the odours have not abated, and some local residents suggest they have got worse. In tandem to the application, complaints have been made directly to the Environmental Protection team of the continued occurrences of odours, including at times when the process should not be in operation. There are no complaints made in respect of noise emissions, and only one comment relating to increased traffic and these two aspects are not considered to be significant.
- 16.8 In addition to the objections made against the application, it is noted that there are also a number of letters of support, including from the property nearest to the site. Weather conditions, including wind directions will, however, have an effect on how the odour is received at resident's properties and changes in atmospheric conditions will have a role in the dispersion of odour. For example, on a fine sunny day, the heating of the land surface causes hot eddies of air to rise and the odour is rapidly dispersed. However, on a cool, still, clear night the air at the surface cools and does not rise. This is because an inversion layer has developed. Little mixing occurs in the atmosphere beneath the inversion layer. Under these circumstances, little dispersion (breaking up) of the odour occurs and odours remain at high intensity at some distance from the source. It is also recognised that sensitivity to the odours will vary from individual to individual. Nevertheless, support for the rural economy is a material consideration, but this must be balanced with the harm being caused.
- 16.9 The comments from the Environmental Protection team, (set out in full in section 8 above), are very thorough and take account of a detailed Odour Assessment prepared by specialist consultants on behalf of the applicants. This was assessed, with the Environmental Protection team seeking independent specialist advice in considering the detail of this report. The conclusions reached are clear with concern that an increase in the hours of operation to those approved under application 170226 would give rise to further negative impacts on local amenity and significantly harm the quality of life and wellbeing of residents. The extended hours of operation will increase the occurrence of odours being experienced at residential properties over a longer time period.
- 16.10 The concerns raised with the applicants by the Environmental Protection team have not been addressed. Despite the consultant's Odour Assessment making further recommendations that could provide some further mitigation, there is no confidence that the recommendations, if carried out, would result in a noticeable benefit.

- 16.11 The harm to local amenity resulting from the proposal are a matter that significant weight is attached to.

Highway Safety and Parking Provisions

- 16.12 The current proposal to vary the condition of the application 172600 does not raise any additional issues that were not considered at the time of the earlier application, as it does not change the likely traffic generation or parking requirements at the site.

17.0 Conclusion

- 17.1 The application seeks to change the drawings as originally approved, with the most significant changes being an alternative odour control unit and the change in layout that does not separate the frying area from the rest of the building.
- 17.2 Although the principle of the farm holding diversifying to a manufacturing process, that makes use of locally grown products, is acceptable and supported in accordance with national and local plan policy, this must be balanced with any adverse impacts.
- 17.3 As the new Odour Control Unit is fully operational, it has allowed its operational effectiveness to be assessed. Given the number of complaints that continue to be received, and date back a number of years, it is evident that unpleasant odours continue to escape, and the intended elimination of odours is not happening. Although the odour report submitted on behalf of the applicants makes further recommendations that might result in some improvement, there is little confidence that these would create significant improvement following an assessment by Environmental Protection.
- 17.4 Notwithstanding the benefits to the local economy, this is outweighed by the harm being caused to some residents in the locality and the proposal is recommended for refusal accordingly.

18.0 Recommendation to the Committee

- 18.1 The Officer recommendation to the Committee is for:

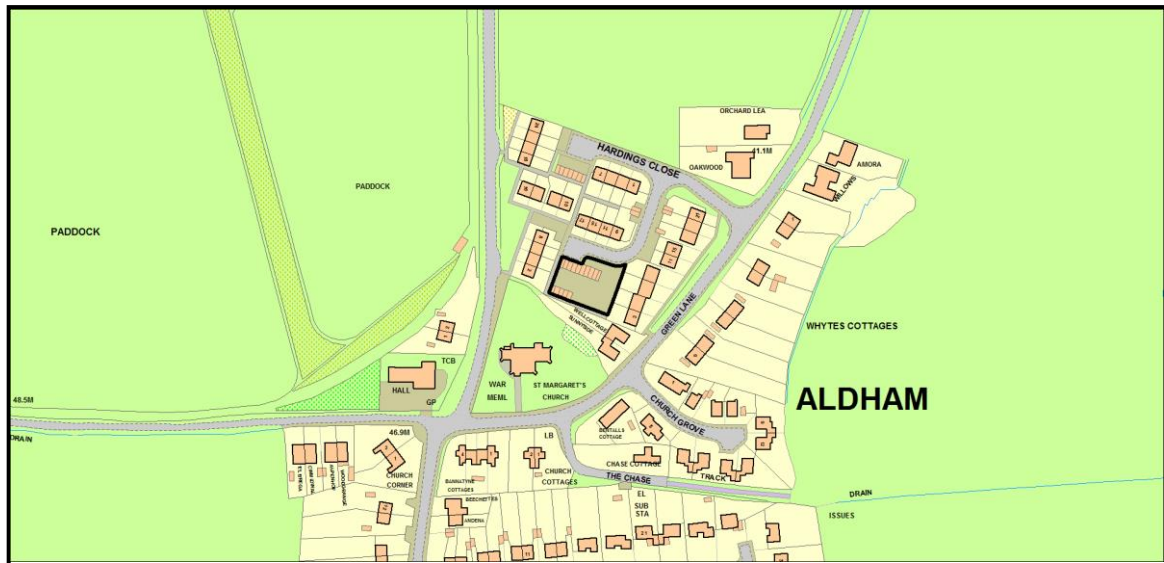
REFUSAL of planning permission for the reasons set out below:

1. The application seeks to vary the condition of a planning permission that results in a different internal layout and alternative odour control unit to that approved under application 172600, effectively retaining the existing situation and enabling longer working hours, (Monday 6.00 to Saturday 22.00). Based on the evidence submitted with the application, and the adverse impacts that are currently being experienced, the Local Planning Authority is not satisfied that the proposed changes would not give rise to continued harmful odour emissions that would impact adversely on the amenity of residents in the locality and over a longer period of time due to increased operating hours especially in the

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evenings and Saturdays when residents would reasonably expect respite from such activities.

Accordingly, the proposals are contrary to policies DP1, DP8 and DP9 of the Adopted Colchester Borough Development Policies, (Adopted October 2010 with selected policies revised July 2014).



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Item No: 7.3

Application: 192671

Applicant: Amphora Homes For Colchester Borough Council

Agent: Mr Lee Spalding

Proposal: Demolition of existing garages and the construction of new affordable housing to provide 4no. two storey dwellings - 2 x 3 bedroom and 2 x 2 bedroom.

Location: Garage site, Hardings Close, Aldham

Ward: Lexden & Braiswick

Officer: Nadine Calder

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the applicant is Colchester Amphora Homes Limited on behalf of Colchester Borough Council with Colchester Borough Homes as the agent.

2.0 Synopsis

- 2.1 The key issues for consideration are the principle of the proposal, the design, scale and form, its impact on neighbouring amenity in terms of outlook, light and privacy and provision of parking. These matters have been considered alongside planning policy requirements and other material matters, leading to the application being subsequently recommended for approval.

3.0 Site Description and Context

- 3.1 The application site lies within the defined settlement limits for Aldham. It currently accommodates two flat-roofed blocks of garages which are offered for rent (managed by Colchester Borough Homes). A total of 15 no. garages are on site. The garages appear to be in a reasonable state of repair. The remainder of the site is used as unallocated open parking spaces.
- 3.2 The site forms part of the wider setting of the grade II* Church of St Margaret & St Catherine.

4.0 Description of the Proposal

- 4.1 The proposal includes the demolition of the existing garages and the construction of two pairs of semi-detached residential dwellings, comprising of 2x 2-bedroom dwellings and 2x 3-bedroom dwellings with associated landscaping, parking and private amenity provision. The proposal is to be 100% affordable and would be owned by Colchester Borough Council and managed by Colchester Borough Homes.

5.0 Land Use Allocation

- 5.1 The site lies within the defined settlement limits for Aldham but has no other allocation.

6.0 Relevant Planning History

- 6.1 There is no planning history that is particularly relevant to this proposal. The proposal was however the subject of preliminary discussions over the summer of 2019 which helped informing the final scheme.

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 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations

H1 - Housing Delivery

H2 - Housing Density

H3 - Housing Diversity

UR2 - Built Design and Character

ENV1 - Environment

7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

DP1 Design and Amenity

DP12 Dwelling Standards

DP14 Historic Environment Assets

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

DP17 Accessibility and Access

DP19 Parking Standards

7.4 Some "allocated sites" also have specific policies applicable to them. The adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

n/a

7.5 The site does not lie in a Neighbourhood Plan area.

7.6 Submission Colchester Borough Local Plan 2017-2033:
The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

1. The stage of preparation of the emerging plan;
2. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
3. The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo a full and final examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

- 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
Open Space, Sport and Recreation
Sustainable Construction

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 The Archaeology Advisor confirmed that the proposed development will not cause any material harm to the significance of below-ground archaeological remains and that there will be no requirement for any archaeological investigation.
- 8.3 The Contaminated Land Officer raises no objection to the proposed development subject to a condition that requires the reporting of unexpected contamination and an informative about asbestos-containing material in existing structures.
- 8.4 Environmental Protection do not object subject to conditions including the submission of a Construction Method Statement and limits to hours of work.
- 8.5 The Landscape Officer raises no objection to the proposal subject to a condition requiring the submission of a detailed scheme of hard and soft landscaping works for the site, prior to commencement of the works.
- 8.6 The Tree Officer is satisfied with the arboricultural content of the proposal.
- 8.7 The Development Manager, in his capacity as a Historic Environment Specialist, raises no objection to the proposal.

8.8 The Highway Authority does not object to the proposal subject to conditions.

8.9 Historic England have no comment to make.

9.0 Parish Council Response

9.1 The Parish Council objects to the proposal.

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 15 households have submitted numerous objections to the proposal. The reasons for objecting can be summarised as follows:

- **Parking**
 - Loss of parking on forecourt;
 - Not enough parking in the area;
 - Residents will have to walk further to their cars if parked in Green Lane, Church Grove and New Road;
 - Suggested parking in Green Lane will add to problems for buses and emergency vehicles;
 - Not enough parking allocated to new dwellings and visitors;
 - Elderly residents in the area who need access to care;
 - Safety issues with cars parked on Green Lane;
- **Design**
 - Proposal is not in keeping with surrounding area;
- **Impact on amenity**
 - Access to rear garden greatly restricted;
 - Overlooking;
 - Loss of sunlight to garden;
 - Construction noise and disruption;
 - Quiet rural residential estate will be disrupted;
 - Loss of view;
- **Sustainability**
 - There are no facilities or amenities in Aldham, no footpath access to station or bus stops;
 - There are more suitable sites for affordable housing;
 - There is no specific demand to live in Aldham;
- **Other Matters**
 - No need for affordable housing;
 - No light survey;
 - Decrease in house values;
 - We do not need more houses in the village;

11.0 Parking Provision

- 11.1 The Vehicle Parking Standards SPD, to which Development Policy DP19 refers, provides the parking standards for residential development. The adopted standard for dwellings of two or more bedrooms is a minimum of two car parking spaces per dwelling; and a minimum of one secure covered cycle space per dwelling (unless a secure area can be provided within the curtilage of the dwelling). Visitor car parking is also required: 0.25 spaces per dwelling (rounded up to the nearest whole number).
- 11.2 The proposal provides two parking spaces per dwelling plus one visitor space and this complies with the adopted standards. However, the scheme affects tenanted garages. This will be further assessed in the main body of the report (paragraphs 17.13 – 17.20).

12.0 Accessibility

- 12.1 With regards to the Equalities Act and compliance with policies DP12 and DP17 that detail requirements in terms of accessibility standards the proposal includes level access to the primary entrance with the dwellings following the general principles of Lifetime Homes. As the development will be owned and managed by Colchester Borough Homes there is the scope and budget to manage the units in accordance with the needs of the occupants.

13.0 Open Space Provisions

- 13.1 The proposed dwellings have adequate amenity space overall.

14.0 Environmental and Sustainability Implications

- 14.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030.
- 14.2 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.
- 14.3 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 represents sustainable development.

15.0 Air Quality

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

16.0 Planning Obligations

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

17.0 Report

Principle of Development

- 17.1 The application site lies within the village envelope of Aldham and an area that is residential in character where development such as that proposed is considered to be acceptable in policy terms; subject to the development satisfying all other aspects of the Development Plan. These are assessed in detail in the following paragraphs.

Affordable Housing Need

- 17.2 Providing more affordable homes is a key corporate strategic priority of the Council, because of the demand that exists. To this extent, the Council has set up a Housing Company, Colchester Amphora Homes Limited (CAHL), to develop mixed-tenure housing schemes with 30% affordable homes alongside private sale property. CAHL have also been appointed to deliver 100% affordable housing on a number of sites, including the development of garage sites.
- 17.3 This application is one of several submitted concurrently by CAHL for affordable housing on under-used Council owned, Colchester Borough Homes (CBH) managed garage sites. These applications are the result of ongoing work by the Council to find innovative ways of enabling more affordable housing to be built, in line with stated Council priority objectives.
- 17.4 The supporting information states that the last affordable housing property in Aldham, which became available in May 2019, received 119 applications from people wanting to move into the property. A larger number of people, 313, have identified Aldham as one of their preferred locations to live. Therefore, the demand for affordable homes in this village is unquestionable.

Design, Layout and Impact on Surrounding Area

- 17.5 At the heart of the National Planning Policy Framework (NPPF), there is a presumption in favour of sustainable development. Good design is a key aspect of sustainable development and the NPPF indicates that new development should respond to local character and should reflect the identity of its surroundings. This is reflected in Development Policy DP1 and Core Strategy Policy UR2. These policies state that all proposals should be well designed, having regard to local building traditions, and should be based on a proper assessment of the character of the application site and the surrounding built and natural environment.

- 17.6 The proposal to create four rectangular plots and provide two pairs of semi-detached properties is in keeping with the character of Hardings Close, which consists of mainly terraced and semi-detached properties set in rectangular plots. Properties in the Close generally benefit from reasonable garden spaces to the rear and generous soft landscaped front gardens; very few of which are used for the parking of vehicles. Both features are an important characteristic of development within Hardings Close and the village of Aldham in general, emphasising the village's rural location and feel.
- 17.7 The development would be arranged in a way that would reflect the character as described above. The properties would be slightly set back from the front boundary of the individual plots to allow for some soft landscaping while a reasonable amount of private amenity space would be provided to the rear. There are some inconsistencies between the proposal and the main pattern of development in Hardings Close in that the front gardens are smaller than most other front gardens and parking arrangements would be more dominant than existing arrangements due to their location to the front of the dwellings. The design of the dwellings also differs from the main pattern of development within the immediate vicinity due to the front gables on the two properties flanking either end of the site and the use of hipped ends. This introduces a new built form that is not found elsewhere within the immediate surroundings of the site. The development would therefore, to some degree, be different from the existing built form of the surrounding area, thus causing some loss of the cohesive character that contributes to the visual amenity of the area.
- 17.8 This limited harm will have to be weighed against the benefits of the proposal, which includes a 100% affordable scheme. It should also be noted that the development would replace existing garage buildings and an area that is used for the parking of vehicles and as such does not make a positive contribution towards the visual amenity of the area. The proposed scheme, subject to an appropriate soft landscaping scheme which could be secured via condition, therefore has the potential to visually improve the character and appearance of the site and this weighs in favour of the proposal.
- 17.9 Having considered the above, it is concluded that, on balance, the benefits of the scheme outweigh the harm the proposal would cause as a result of its design.

Impact on Neighbour Amenities

- 17.10 The proposed development would be located amongst existing residential development. Consideration needs to be given as to how the proposal would affect the occupants of nearby residential properties in terms of loss of light, privacy and overbearing impacts.

- 17.11 The proposed dwellings would be located at a 90 degree angle to existing properties either side of the site. This, coupled with the distance between the proposed properties and the nearest residential development to the east and west, would ensure that there would be no unacceptable impacts in terms of loss of light or overbearing impacts on neighbouring occupiers. The proposal has also been carefully considered with regards to retaining the privacy of existing residents. The properties therefore have no windows in the flank walls facing existing neighbours in Hardings Close. The two 2-bedroom properties would however be provided with one first floor side facing window each. These windows would serve a bathroom and are to be obscured glazed. As such, the two windows would not negatively impact the privacy of future occupiers of the proposed development.
- 17.12 It is therefore concluded that the proposed development is acceptable with regard to impact on the amenities of existing neighbouring occupiers as well as future occupiers of the proposed development.

Parking and Highway Safety

- 17.13 Adopted parking standards require two parking spaces per dwelling, plus cycle parking, for new dwellings. The same standards also require 0.25 visitor parking spaces per dwelling. On this basis, the development would require a total of nine parking spaces, and this is provided as shown on the submitted drawings.
- 17.14 Furthermore, the proposed scheme affects tenanted garages. The proposal results in the loss of 15 garages. The garages are unallocated to local residents. They are managed by CBH and are rented out. The remainder of the site is used by local residents for unallocated open parking. Information submitted by CBH, as the managers of the garages, states that six of the 15 garages are rented out with only three of the six being rented by local residents. It is not known whether the garages are used for storage or parking purposes, although it is noted that at least one of the three garages is not used for the purposes of parking a car. Consequently, a maximum of two additional cars would have to be displaced.
- 17.15 This is in addition to the vehicles that are parked on the remainder of the site. Given that this is unallocated open land with unrestricted access, it is a benefit for local residents that they can park their cars on the site. However, there is no legal right to do so.
- 17.16 The Car Parking Displacement Survey that was submitted in support of this application states that at the time of their visit, which was carried out on a Sunday at 9.30am, 12 cars were parked on the forecourt. Based on this, a total of 14 cars would have to be displaced. The survey concludes that there is sufficient capacity in the immediate surroundings of the site (i.e. within a 100m radius) for the additional roadside parking and that the displaced cars (which was based on a total of 23 cars due to the assumption that 11 garages were used for parking purposes) would not increase the parking stress within the surrounding area to a significant level.

- 17.17 The fact that only a maximum of two garages are used by local residents for the parking of a vehicle results in nine less cars to be displaced than assumed by the above survey. This would therefore result in even less parking stress within the surrounding area.
- 17.18 Due to the local objections relating to parking, your Officer has carried out three site visits in order to survey the site on different times of the day. These visits took place on the following dates and times:
- 19th July 10:25am;
 - 22nd November 8:35am; and
 - 6th December 7:00am
- 17.19 During the first visit, a total of six cars were parked on the site; the second visit recorded another six cars while at the third visit there were nine cars parked on the site with one car leaving Hardings Close as the Officer arrived. It can be reasonably assumed that based on the direction of travel, this car was parked on the site and consequently, a total of 10 cars are expected to have been parked on the site at 7am.
- 17.20 The Car Parking Displacement Survey was carried out early on a Sunday morning. This recorded the most cars parked on the forecourt. The subsequent visits by your Officer, including one early morning visit (as requested by a local resident) recorded less cars than the Sunday morning visit. It can therefore be reasonably assumed that the area is usually used for the parking of around 12 cars by local residents. The conclusions of the above survey therefore remain valid and it is expected that the proposed development would not cause a significant increase in parking stress within the surrounding area.
- 17.21 Notwithstanding the above, should Members of the Planning Committee consider the parking arrangements to be inappropriate, then the Applicant would be willing to provide an additional 5-6no. parking spaces to the north west of the site (as outlined in blue on the submitted drawings). The spaces would be accessed via New Road. This development would involve the tarmacking of an existing grassed area to provide additional unallocated parking spaces to residents.
- 17.22 Hardings Close is an established road where effective provisions for emergency and refuse are already made. The development includes a new turning area to which the Highway Authority does not have any objections on highway safety grounds subject to conditions.

Private Amenity Space

- 17.23 Development Policy DP16 requires that all new residential development shall provide private amenity space to a high standard, with secure usable space that is also appropriate to the surrounding context. The minimum requirement for 2-bedroom houses is 50m² of private amenity space per dwelling, with 3-bedroom properties requiring a minimum of 100m². The submitted layout plan clearly shows that the development provides not only policy compliant private garden spaces, but that the proposed spaces and arrangement are reflective of the gardens associated with other properties in Hardings Close. The proposed arrangement is therefore appropriate in its context.
- 17.24 Existing mature trees along the rear boundary of the site will result in the garden areas being shaded for large parts of the day, thus making the garden areas slightly less attractive and enjoyable. This in itself would however not render the proposal unacceptable as the space would still be secure and usable, as requested by policy.
- 17.25 Policy DP16 also states that “all new residential development will pay a commuted sum towards open space provision and maintenance.” No exception is made in relation to developments of affordable housing. Indeed, Supplementary Planning Document “Provision of Open Space, Sport and Recreational Facilities” specifies that “The standards, outlined above, are to be applied to all additional new residential Units. (...) New development includes most specialised types of housing including agricultural dwellings, affordable housing and also staff accommodation since all will create additional demands for open space.”
- 17.26 No Unilateral Undertaking or Monitoring Fee has been submitted with regard to addressing this policy. Consequently, the proposal presents a minor conflict with adopted policy. However, in similar previous cases at Council owned garage sites given permission in the past, the Council waived the commuted sum in order to make the provision of 100% affordable housing schemes viable. This is based on the pressing need for the delivery of affordable housing being a greater priority. It does not set a precedent for private market housing as this does not provide 100% affordable housing.
- 17.27 In addition, CBC is the provider and maintainer of public open spaces and is also the landowner. In this capacity, it has the power to provide and maintain the land for public benefit for the foreseeable future anyway. As maintenance of public open space is undertaken from the Council’s overall budget, there would be no net gain to the community by requiring payment of open space contributions as it would simply take money from one part of the budget and move it to another.
- 17.28 In conclusion, the scheme provides acceptable private amenity space and open space provisions.

Trees

- 17.29 Development Plan Policy DP1 requires development proposals to demonstrate that they respect and enhance the character of the site, context and surroundings including its landscape setting.
- 17.30 An Arboricultural Impact Assessment (AIA) was carried out in support of the application. The report found that there are some trees of modest amenity value on and immediately adjacent to the site, most of which are B or C category standard trees. The dominant individual tree species adjacent to the site is Hornbeam and Maple.
- 17.31 The AIA concludes that, subject to appropriate controls, the development can be implemented without undue impact on retained trees. As such, the proposal is considered to be acceptable in terms of its impact on trees. Furthermore, a satisfying landscaping scheme would be secured via condition and the development is therefore considered to be acceptable in terms of its landscape impact.

Heritage Impacts

- 17.32 Aldham Parish Church, a Grade II* listed building, lies to the south west of the application site. Consideration will therefore have to be given to the impact of the proposed development on the setting of this listed building.
- 17.33 Development Policy DP14 requires development affecting the historic environment to preserve or enhance heritage. In all cases there will be an expectation that any new development will enhance the historic environment in the first instance, unless there are no identifiable opportunities available.
- 17.34 The application is supported by a Heritage Statement. This explains the history and significance of the Parish Church and provides an assessment of the impact the proposed development would have on the setting of this designated heritage asset.
- 17.35 The application site is visible from within the churchyard to the north of the church, but views are filtered and enclosed by the afore-mentioned trees with an outgrown gappy row of coniferous hedging on the site boundary. The application site is set at a lower level to the yard area and consequently does not have a significant presence.
- 17.36 A significant view of the church and tower is gained from within Hardings Close near to its junction with Green Lane. This view is currently gained across and over the low-level garage buildings where the church is seen in the context of the wider suburban estate of the late 1960's/70's with housing flanking and framing the view. This view is only semi-public in reality as the estate does not provide a through route and hence the majority of those experiencing the view are residents or their visitors. It is unlikely that receptors visit the Close intentionally to experience this view. The contribution of this view to the significance of the church is low or negligible

as it is already substantially altered by the existing housing. All sense of the original rural isolation of the church has been lost and there is no sense of a village as opposed to a suburban setting obtained from this vantage point. Whilst this view would be obscured by the development substantially, it is not considered this would harm the significance of the heritage asset as the view does not contribute to our appreciation of the historic rural setting of the asset or its intrinsic significance derived from its architectural design and medieval fabric

- 17.37 The key public view of the Church obtained from Green Lane would not be materially affected by the proposed development. Views north from the churchyard provide filtered views of essentially suburban housing that does not contribute to the understanding or appreciation of the church as a highly graded historic building. The replacement of the garage block by two pairs of houses of similar design to the existing would block views of the wider estate gained from the churchyard but the visual separation, existing intervening trees and changes in level would in combination result in a neutral impact upon the significance of the listed building in my opinion. A marginal/very low degree of harm could arguably result from the consolidation of the built form of the estate but as all sense of the original rural setting has long since been lost to development and this impact would be at the very lowest end of the 'less than substantial harm' spectrum and clearly outweighed by the public benefits from the provision of 4 units of affordable housing. It is consequently considered that paragraph 196 of the NPPF is satisfied.
- 17.38 The detailed form of the dwellings broadly reflects that of the existing 1960's semi-detached dwellings in scale and form. The scheme has been revised to introduce a hipped roof form to reduce the bulk of each pair of dwellings and to increase a sense of space around the units. Whilst the detailed architecture of the dwelling is undistinguished, it is considered contextually appropriate and reinforces the existing character of the 1960's estate housing in conformity with paragraph 127c) of the NPPF. The proposal is therefore considered to be acceptable with regards to its impact on a designated heritage asset and is thus in compliance with the aims of Policy DP14.

Other Matters

- 17.39 Refuse and recycling storage facilities will be provided within the individual plots. This will therefore not have any adverse impact on the visual amenity of the surrounding area.
- 17.40 The application site is located within Flood Zone 1 and consequently, the site is unlikely to be susceptible to flooding and the development would not contribute to surface water flooding.

- 17.41 The site has been used for garaging for some years and therefore a Ground Contamination Report was submitted with this application. The Contaminated Land Officer is satisfied with this report and concludes that no further action is required, other than vigilance during site clearance and groundworks for any unrecorded contamination. There are therefore no objections to the proposal on the basis of contamination.
- 17.42 A payment of £122.30 per dwelling will be made in contribution towards the measures in Recreational disturbance Avoidance and Mitigation Strategy (RAMS) for the Essex Coast to avoid and mitigate adverse effects from increased recreational disturbance to ensure that Habitat Sites are not adversely affected and the proposal complies with the Habitat Regulations.
- 17.43 The comments made by local residents are noted. Those that relate to material planning considerations have been addressed in the above assessment. Other matters, including loss of view, decreasing house values or whether or not development is needed are not matters that can be taken into consideration when assessing a proposal. In terms of construction noise, it has to be noted that construction is an inevitable part of development and is restricted to a relatively short period of time. Conditions including restricting the hours of work and the requirement for a Construction Management Plan, which will deal with the parking of construction vehicles etc., are suggested to ensure that the disturbance during construction is kept to a minimum.

18.0 Conclusion

- 18.1 To summarise, whilst the proposal accords with most of the relevant policies in the Development Plan, it does not fully comply with policies DP1 and UR2 in so far as the design of the proposed development is out of keeping with the main pattern of development within Hardings Close. Having balanced the weight to be given to this conflict, and having had regard to all other material planning considerations, your Officers are of the opinion that the benefits of the proposal, which include a 100% affordable scheme and the tidying up of an area used for unallocated open parking, would outweigh the minor harm the design would cause to the visual cohesion of the area. It is therefore concluded that the proposed development is acceptable in this instance.

19.0 Recommendation to the Committee

19.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

1. ZAA - Time Limit for Full Permissions

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

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

2. ZAM - *Development to Accord With Approved Plans*

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers COR/384548 005 Rev P05, 0016 Rev P05, 0017 Rev P05, 0018, 0019 Rev P05, 0020 Rev P05 and the Arboricultural Impact Assessment (reference EAS-014v2).

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

3. ZBB - Materials As Stated in Application

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings, unless otherwise agreed, in writing, by the Local Planning Authority.

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

4. Non Standard Condition - *Full Landscape Proposals TBA*

No works shall take place above ground floor slab level until a scheme of hard and soft landscape works for the site has been submitted to and agreed, in writing, by the Local Planning Authority. This scheme shall include any proposed changes in ground levels, proposed planting, details of any hard surface finishes and external works, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission. The approved landscape scheme shall be carried out in full prior to the end of the first planting and seeding season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species.

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

5. Non Standard Condition – Construction Management Plan

No development shall take place, including any ground works or works of demolition, until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and under body washing facilities

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

6. ZPA – Construction Method Statement

No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:

the parking of vehicles of site operatives and visitors;
hours of deliveries and hours of work;
loading and unloading of plant and materials;
storage of plant and materials used in constructing the development;
the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
wheel washing facilities;
measures to control the emission of dust and dirt during construction; and
a scheme for recycling/disposing of waste resulting from construction works.

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

7. Non Standard Condition - Reporting of Unexpected Contamination

In the event that historic land contamination is found at any time when carrying out works in relation to the development, it must be reported in writing immediately to the Local Planning Authority and all development shall cease immediately. Development shall not re-commence until such times as an investigation and risk assessment has been submitted to and approved in writing by the Local Planning Authority, and where remediation is necessary, a remediation scheme has been submitted to and approved in writing by the Local Planning Authority. Development shall only re-commence thereafter following completion of measures identified in the approved remediation scheme, and the submission to and approval in writing of a verification report. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason: The site lies on or in the vicinity of residential garages and an historical 5000 gallon above ground heating oil storage tank near to the southern boundary, where there is the possibility of contamination.

8. Non Standard Condition – Vehicular Access

Prior to the first occupation of the proposed dwelling, the proposed vehicular accesses shall be constructed to accommodate the proposed access as shown on Drawing Number COR/384548/0005 Rev P04 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 on-street parking of vehicles in the adjoining streets does not occur in the interest of highway safety.

9. Non Standard Condition - Car Parking Areas

The development shall not be occupied until such time as the car parking areas, have been provided in accord with the details shown in Drawing Number COR/384548/0005 Rev P04. 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.

10. Non Standard Condition – Cycle Storage TBA

Prior to the occupation of the proposed development, storage for bicycles sufficient for all occupants of that development shall have been provided within the site in accordance with details that shall have previously been submitted to and agreed, in writing, by the Local Planning Authority. The agreed cycle storage provisions shall thereafter be maintained and made available for this use at all times.

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

11. ZPD - Limits to Hours of Work

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.

12. ZIF - No Unbound Surface Materials

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

Reason: To avoid the displacement of loose material onto the highway in the interests of highway safety.

13. ZDG - *Removal of PD - Obscure Glazing But Opening*

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the first floor windows in the side elevations shall be glazed in obscure glass to a minimum of level 4 obscurity before the development hereby permitted is first occupied and 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.

20.0 Informatives

20.1 The following informatives are also recommended:

(1) ZT0 – Advisory Note on Construction & Demolition

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

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

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

(3) Non Standard Informative - Asbestos-containing material in existing structures

The applicant is advised to note Delta Simon's recommendations with respect to the potential presence of asbestos-containing materials in the existing structures. The applicant must ensure that an appropriate survey is undertaken prior to the demolition of all existing structures and any identified relevant material safely and appropriately removed from site, in accordance with all relevant regulations, in particular, the Control of Asbestos Regulations 2012.

The Local Planning Authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination. The applicant is responsible for the safe development and safe occupancy of the site.

Reason: The potential presence of asbestos in existing structures has been identified and Environmental Protection wish to ensure that development only proceeds if it is safe to do so. This informative should not be read as indicating that there is any known danger from asbestos-containing material in this locality.

(4) NonStandard Condition - Landscape Informative

'Detailed landscape proposals, if/when submitted in order to discharge landscape conditions should first be cross-checked against the Council's Landscape Guidance Note LIS/B (this available on this CBC landscape webpage under Landscape Consultancy by clicking the 'read our guidance' link).'

(5) ZTM - Informative on Works affecting Highway Land

PLEASE NOTE: No works affecting the highway should be carried out without prior arrangement with, and to the requirements and satisfaction of, the Highways Authority. The applicant is advised to contact Essex County Council on 08456037631, or via email at development.management@essexhighways.org or by post to Essex Highways, Colchester Highways Depot, 653 The Crescent, Colchester, CO4 9YQ with regard to the necessary application and requirements.



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Item No: 7.4

Application: 192893

Applicant: Mrs Beverly Davies

Agent: David MacDougall, Inkpen Downie Architecture & Design Ltd

Proposal: Extending and remodelling storage facilities.

Location: 329 Straight Road, Colchester, CO3 9BT

Ward: Prettygate

Officer: Annabel Cooper

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the applicant is a Councillor at Colchester Borough Council.

2.0 Synopsis

- 2.1 The key issues for consideration are the design, scale and form of the proposed development, as well as its impact on neighbouring amenity in terms of outlook, light and privacy and impact of the parking provision of the community centre.
- 2.2 The planning merits of the case are assessed leading to the conclusion that the proposal is acceptable and that a conditional approval is recommended.

3.0 Site Description and Context

- 3.1 The site is with the settlement boundary in a predominately residential area. 329 Straight Road is a community centre with associated parking. The site has one access point from Straight Road.

4.0 Description of the Proposal

- 4.1 The proposal is for a ground floor extension and remodelling of the storage facilities as well as providing disabled access and steps.

5.0 Land Use Allocation

- 5.1 Predominantly residential.

6.0 Relevant Planning History

- 6.1 There is no site history that is particularly relevant to the decision regarding this proposed development.

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 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
SD3 - Community Facilities
UR2 - Built Design and Character
TA5 - Parking

- 7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

DP1 Design and Amenity
DP4 Community Facilities
DP17 Accessibility and Access
DP19 Parking Standards

- 7.4 There are no relevant policies within the adopted Borough Site Allocations Policies (adopted 2010, amended 2014).

- 7.5 There is no relevant Neighbourhood Plan.

- 7.6 Submission Colchester Borough Local Plan 2017-2033:

The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

1. The stage of preparation of the emerging plan;
2. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
3. The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo a full and final examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF in this case.

- 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
Community Facilities
Sustainable Construction

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 Environmental Protection

No objection subject to condition to limit the hours of demolition/construction, as well as informatives regarding responsibilities in respect of contamination and control of pollution during construction and demolition works.

8.3 Archaeology

No material harm will be caused to the significance of below-ground archaeological remains by the proposed development. There will be no requirement for any archaeological investigation.

9.0 Parish Council Response

- 9.1 The Parish Council have not objected to the proposal.

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 One comment from a third party has been received, summary of the points raised:

- Concerns with regards to construction traffic.
- The potential impact on the parking provision of the centre and consequently parking within the wider local area.
- Enquired as to whether there would be a change of use associated with the alterations.

10.3 *Planning Officer comment:*

- Impact on parking provision has been assessed please see *section 11 of this report*.
- A construction management plan is will be conditioned.
- The application does not include any change of use.

11.0 Parking Provision

11.1 The parking provision of the site will not be impacted. The parking spaces currently located closest to the proposed extension and ramp will likely have to be moved back marginally from their current position however there is a considerable amount of space in the car park for this to be achieved without impacting the parking provision of the site or manoeuvrability into or out off any of the parking spaces.

11.2 With regards to the concerns about the construction traffic and impact on the parking during the construction phase a condition will be imposed to ensure that the construction period is planned to limit and mitigate any harm.

12.0 Accessibility

12.1 The site includes the provision of a new ramp to allow access to the community centre.

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 and it is considered that no Planning Obligations should be sought via Section 106 (s.106) of the Town and Country Planning Act 1990.

16.0 Report

16.1 The main issues in this case are:

- The Principle of Development
- Design, scale and form
- Parking Provision
- Impacts on Neighbouring Properties

Principle of Development

- 16.2 Community facilities are an essential element of sustainable communities providing for education, child care, health, culture, recreation, religion and policing. The Council wishes to protect viable community facilities and services that play an important role in the social infrastructure of the area and support sustainable communities. The Straight Road Community Centre is important within the local community.
- 16.3 Core Policy SD3 and Development Policy DP4 state that the Council supports the retention and enhancement of existing community facilities. The proposed extension is considered to be an enhancement of the existing community facility and is therefore considered to be acceptable.
- 16.4 Development Policy DP18 states that proposals shall incorporate satisfactory and appropriate provision for pedestrians, including disabled persons and those with impaired mobility. The introduction of the disabled access ramp is therefore supported.

Design, scale and form

- 16.5 The extension is an infill development on the ground floor and is modest in scale. The proposed extension is designed to appear as a subservient addition and is complimentary to the existing building and therefore is considered to be acceptable. The proposed materials are to match the existing. Therefore, the proposed complies with Development Policy DP1 and Core Strategy policy UR2 in that the proposed is considered to be of high-quality design that is useable and accessible. The materials for the ramp have not been fully addressed in the submitted material and will be dealt with via a condition.

Parking Provision

- 16.6 The parking provision of the site will not be impacted. The parking spaces currently closest to the proposed extension and ramp will likely have to be moved back marginally from their current position however there is a considerable amount of space on the car park for this to be achieved without impacting the parking provision or manoeuvrability into or out off any of the parking spaces.
- 16.7 With regards to the concerns about the construction traffic and impact on the parking during the construction phase a condition will be imposed to ensure that the construction period is planned to limit and mitigate any harm.

Impact on neighbouring dwellings

- 16.8 Development Plan policy DP1 requires all development to be designed to a high standard that protects existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, and daylight and sunlight.

- 16.9 The proposed development would not appear overbearing on the outlook of neighbours. 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.
- 16.10 Similarly, there are no concerns regarding loss of light. 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.
- 16.11 The proposal does not include any new windows on the first-floor level that would result in an unacceptable impact of neighbour privacy.
- 16.12 The extension of the facility is modest and is not considered to significantly intensify the use of the site therefore it is considered that there would be no adverse impact with regards to security, noise or disturbance.
- 16.13 Environmental protection have recommended a number of conditions that will be imposed to protect the amenity of neighbouring residents during the construction phase of the development.

17.0 Conclusion

- 17.1 To summarise, the proposed development fully accords with the Council's policy requirements.

18.0 Recommendation to the Committee

- 18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

1) Time Limit for Full Permissions

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

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

2) Approved documents

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers: A-1917-PL- 02, A-1917-PL-03A, A-1917-PL-04, A-1917-PL-05, A-1917-S-02 and A- 1917-S-03 indexed 29 November 2019.

Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

3) Materials to match

The external facing and roofing materials of the extension hereby approved shall match in colour, texture and form those used on the existing building.

Reason: This is a publicly visible building where matching materials are a visually essential requirement.

4) Ramp materials to be agreed

No materials shall be used in the construction of the access ramp hereby permitted until precise details of the types and colours of materials to be used has been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.

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

5) Construction Management Statement

No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:

the parking of vehicles of site operatives and visitors;

hours of deliveries;

loading and unloading of plant and materials;

storage of plant and materials used in constructing the development;

the erection and maintenance of security hoarding.

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.

6) Limits to Hours of Work

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.

19.0 Informatives

19.1 The following informatives are also recommended:

(1) Land Contamination – Ground Gas Risks Informative

The applicant is advised that the site to which this planning permission relates is recorded as being within 250 metres of filled land. Prior to commencement of the permitted development the applicant is therefore advised to satisfy themselves that there are no unacceptable risks to the permitted development from any ground gases. Where appropriate, this should be considered as a part of the design of the foundations (and may be required under Building Regulations). As a minimum, any ground gas protection measures should equal those in the main building and not compromise the effectiveness of existing gas protection measures. The Local Planning Authority has determined the application on the basis of the information

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available to it, but this does not mean that the land is free from contamination. The applicant is responsible for the safe development and safe occupancy of the site.

(2) ZT0 – Advisory Note on Construction & Demolition

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

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

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

Material Planning Considerations

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

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

The following approach should be taken in all planning decisions:

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

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

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

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

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

The above list is not exhaustive

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

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

- matters specifically controlled through other legislation

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

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

Planning Obligations

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

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

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

Human Rights, Community Safety and Equality and Diversity Implications

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

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

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

Using Planning Conditions or Refusing Planning Applications

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

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

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

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

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

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

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

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



Colchester Borough Council Development Management

Highway Safety Issues

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

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

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

Parking Standards

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

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

For residential schemes:

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

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



Colchester Borough Council Environmental Control

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

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

Best Practice for Construction Sites

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

Noise Control

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

Emission Control

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

Best Practice for Demolition Sites

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

Noise Control

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

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

Emission Control

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

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

Class A1. Shops

Use for all or any of the following purposes—

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

Class A2. Financial and professional services

Use for the provision of —

- (a) financial services, or
- (b) professional services (other than health or medical services), or
- (c) any other services (including use as a betting office)

which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

Class A3. Restaurants and cafes

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

Class A4. Drinking establishments

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

Class A5. Hot food takeaways

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

Class B1. Business

Use for all or any of the following purposes—

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

Class B2. General industrial

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

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

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

Class C2. Residential institutions

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

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

Class C3. Dwellinghouses

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

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation

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

Class D1. Non-residential institutions

Any use not including a residential use —

(a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,

(b) as a crèche, day nursery or day centre,

(c) for the provision of education,

(d) for the display of works of art (otherwise than for sale or hire),

(e) as a museum,

(f) as a public library or public reading room,

(g) as a public hall or exhibition hall,

(h) for, or in connection with, public worship or religious instruction, (i) as a law court.

Class D2. Assembly and leisure

Use as —

(a) a cinema,

(b) a concert hall, (c) a bingo hall or casino,

(d) a dance hall,

(e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

Sui Generis Uses

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

theatres, amusement arcades or centres, funfairs, launderettes sale of fuel for motor vehicles, sale or display for sale of motor vehicles, taxi businesses or a business for the hire of motor vehicles, a scrapyards 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.

