

Planning Committee Meeting

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

Thursday, 06 January 2022 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

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Covid 19

Please could attendees note the following:-

- Hand sanitiser, wipes and masks will be available.
- Do not attend if you feel unwell with a temperature or cough, or you have come in to contact with someone who is unwell with a temperature or cough.
- Masks should be worn whilst arriving and moving round the meeting room, unless you have a medical exemption.
- All seating will be socially distanced with 2 metres between each seat. Please do not move the chairs. Masks can be removed when seated.
- Please follow any floor signs and any queue markers.
- Try to arrive at the meeting slightly early to avoid a last minute rush.
- A risk assessment, including Covid 19 risks, has been undertaken for this meeting.

COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 06 January 2022 at 18:00

The Planning Committee Members are:

Pauline Hazell	Chairman
Robert Davidson	Deputy Chairman
Lyn Barton	
Helen Chuah	
Michael Lilley	
Jackie Maclean	
Roger Mannion	
Beverley Oxford	
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:

Kevin Bentley	Tina Bourne	Roger Buston	Nigel Chapman
Peter Chillingworth	Nick Cope	Pam Cox	Simon Crow
Paul Dundas	Andrew Ellis	Adam Fox	Jeremy Hagon
Dave Harris	Mike Hogg	Sue Lissimore	Derek Loveland
A. Luxford Vaughan	Sam McCarthy	Patricia Moore	Beverley Oxford
Gerard Oxford	Chris Pearson	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 2 are normally dealt with briefly.

An Amendment Sheet is published on the Council's website by 4:30pm on the day before the meeting and is available to view at the bottom of the relevant Planning Committee webpage. Please note that any further information for the Committee to consider must be received no later than 5pm two days before the meeting in order for it to be included on the Amendment Sheet. With the exception of a petition, no written or photographic material can be presented to the Committee during the meeting.

1 Welcome and Announcements

The Chairman will welcome members of the public and Councillors to the meeting and remind those participating to mute their microphones when not talking. The Chairman will invite all Councillors and Officers participating in the meeting to introduce themselves.

2 **Substitutions**

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

3 **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.

4 **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.

5 **Have Your Say(Hybrid Planning Meetings)**

At meetings of the Planning Committee, members of the public may make representations to the Committee members. At this meeting representations must be made in person. These Have Your Say! arrangements will allow for one person to make representations in opposition and one person to make representations in support of each planning application. Each representation may be no longer than three minutes(500 words). Members of the public wishing to address the Committee need to register their wish to address the meeting by e-mailing democratic.services@colchester.gov.uk by 12.00 noon on the working day before the meeting date. For those who wish to address the committee we advise that a written copy of the representation should be provided.

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

6 **Minutes of Previous Meeting**

No minutes of previous meetings are submitted for approval at this meeting.

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.

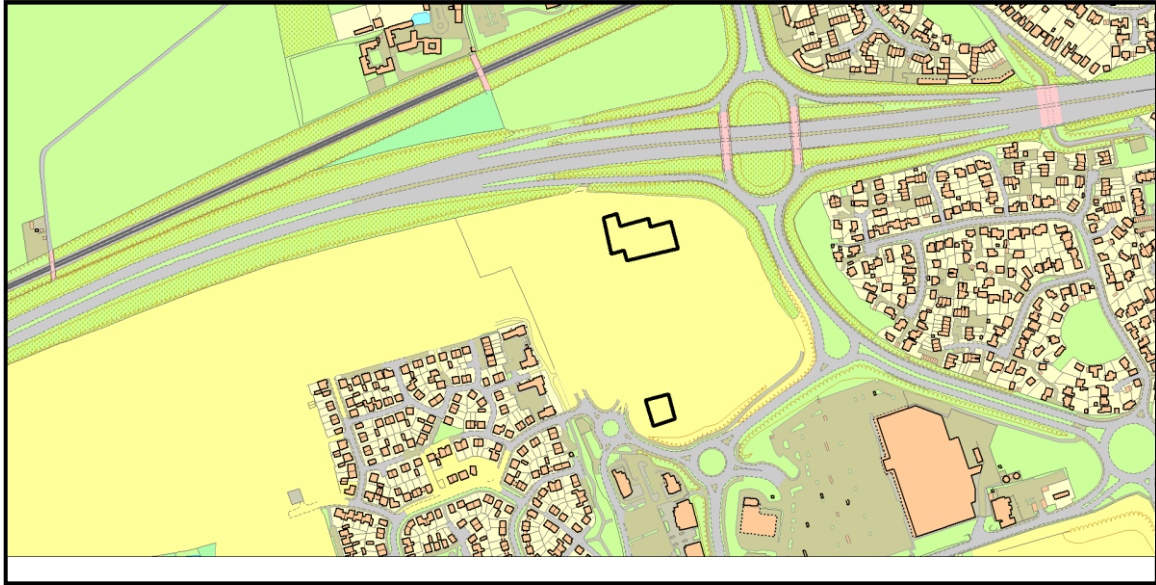
7.1 **212019 Stane Park Site, Yeomanry Way, Colchester, Essex** 7 - 22

Addition of up to 2,323sqm at first floor/mezzanine level to units A4, A5, A6 and C for use as retail floorspace.

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)**



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Item No: 7.1

Application: 212019

Agent: Miss Jessica Ferguson, MRPP

Proposal: Addition of up to 2,323sqm at first floor/mezzanine level to units A4, A5, A6 and C for use as retail floorspace

Location: Stane Park Site, Essex Yeomanry Way, Stanway, Colchester

Ward: Stanway

Officer: Lucy Mondon

Recommendation: Approval subject to conditions

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it constitutes a major planning application where a material planning objection has been received.

2.0 Synopsis

- 2.1 The application seeks planning permission for additional first floor/mezzanine floorspace in part of a retail development at Stane Park, Stanway. The application site is located in a strategic employment area in both the adopted and emerging local plan, although the site has been developed for retail purposes in accordance with planning permission (originally granted in 2019).
- 2.2 The key issues for consideration are the vitality of town centres (given the out of centre location and both national and local planning policy requirements) and highway impact.
- 2.3 Having given due regard to relevant planning policy requirements, as well as other material planning considerations, the application is subsequently recommended for approval subject to conditions.

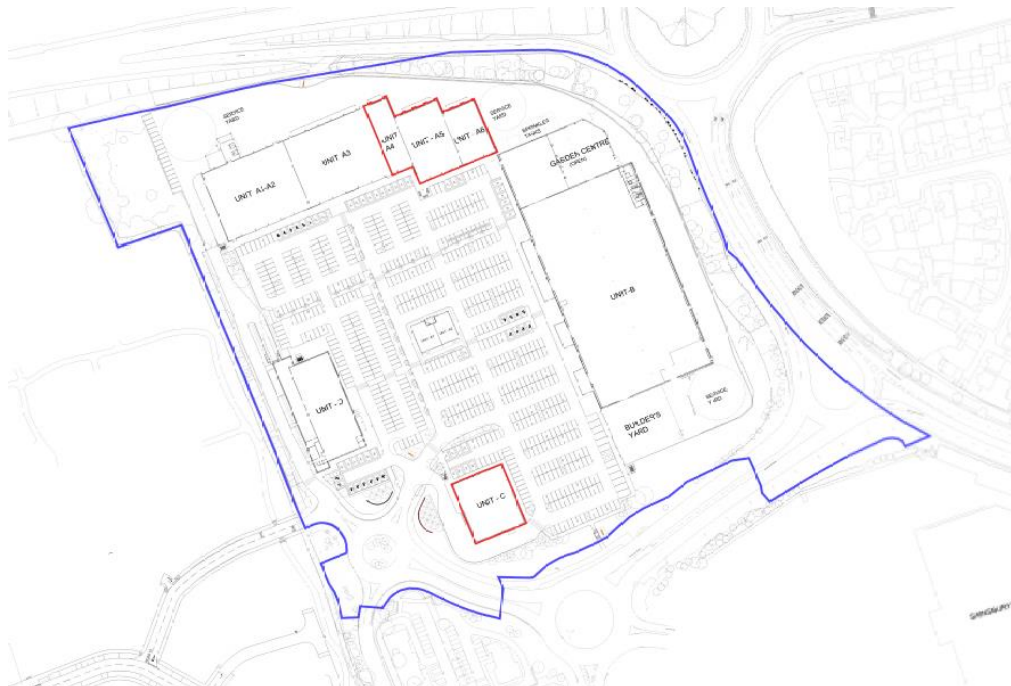
3.0 Site Description and Context

- 3.1 The application site forms part of Stane Retail Park, a recent development of a number of retail units nearing completion, with some units (such as B&Q and Aldi) having opened for business. The site measures approximately 6.89 hectares in total; the planning application relates to a small proportion of this. The site is bounded by the A12 to the north, Essex Yeomanry Way A1124 to the east and south, and residential development to the west. The site forms part of the wider 'Stane Park', the first phase of which was completed in 2018 with a range of restaurants and drive-through food/drink outlets in operation.
- 3.2 The site is on the westernmost boundary of Stanway Ward (adjoining Marks Tey and Layer Ward) and is allocated in the adopted local plan and emerging plan as a Strategic Employment Zone within the Stanway Growth Area. Immediately west of the site is the Wyvern Farm residential development, which is now largely completed; established residential development lies to the east. The Stanway Urban District Centre is located to the south-east of the site, comprising of a Sainsbury's supermarket and existing development at the Tollgate Centre, Tollgate West, and Tollgate East.
- 3.3 The site is recorded as being Grade 2 Agricultural Land (although it has now been developed as a retail park) and it is within a Flood Zone 1. There are no Public Rights of Way (PROW) within or adjacent the site; the closest PROW being number 149_4 approximately 300 metres to the south-west of the site, running south from London Road.

- 3.4 The site is relatively level with the road at the southern boundary, becoming lower in level than the road at the eastern and northern boundaries which are densely planted and screen the site from the road. The western boundary with the Wyvern Farm development is again generally level; separation between the two sites being a hedgerow (with additional planting having taken place as part of the previous planning permissions at this site).
- 3.5 The surrounding area has seen considerable development in recent years, that in immediate vicinity of the application site include the Sainsburys site (permitted 2010), Wyvern Farm (permitted 2015), and Stane Park Phase 1 (permitted 2016).

4.0 Description of the Proposal

- 4.1 The application seeks planning permission for up to 2,323sqm of additional first floor/mezzanine within part of a recently constructed retail park. The additional floorspace would be distributed between the units (units A3, A5, A6, and unit C) outlined in red below:



- 4.2 These units, along with the remainder to the northern retail terrace (units A1/A2 and A3) currently benefit from 6,309sqm net retail floorspace, which includes 4,273sqm of mezzanine floorspace, by virtue of planning permission 202105. The current application would essentially enable full first-floor coverage of the retail terrace (units A1-A6 inclusive) and unit C when taking into account the previous permission.

- 4.3 The application is supported by the necessary planning application form and location plan, as well as the following:
- MRPP Covering Letter, dated 15th July 2021
 - Planning and Retail Statement
 - Transport Note
- 4.4 Further retail impact submissions have been made by the Agent throughout the course of the planning application in response to retail consultant and Case Officer comments.

5.0 Land Use Allocation

- 5.1 The site is part of the Stanway Strategic Employment Zone. Site Allocations Policy SA STA3 relates to the Strategic Employment Zone and states:

‘Within the Strategic Employment Zone allocated on the Proposals Map, the following uses will be considered appropriate;

- a) Research and Development, Studio’s, Laboratories, Hi-tech (B1b), Light industrial (B1c), General industrial (B2), Storage and Warehousing (B8). Any such development will be restricted by way of condition to prevent change of use to B1a.
- b) Display, repair and sale of vehicles and vehicle parts, including cars, boats and caravans
- c) Indoor sport, exhibition and conferencing centres.
- d) Business Incubation space (including land within Stane Park).’

- 5.2 The site remains allocated as the Stanway Strategic Employment Zone in the emerging Local Plan (Policy WC1), although it should be noted that the site has been developed for retail purposes in accordance with appeal decisions and planning permission. At the time of writing, at least two of the units (B&Q and Aldi supermarket) are in operation at the site.

6.0 Relevant Planning History

- 6.1 The application site benefits from planning permission (ref: 202105) for a retail park with retail (A1) and restaurant (A1/A3/A5) units. This permission was a variation of an earlier planning permission 193163, which was itself a resubmission of the original planning permission for the retail development of the site (ref: 172935). The permission was subject to a legal agreement and number of conditions.
- 6.2 Immediately south of the application site is Stane Park Phase 1 (Stane Leisure Park) which was granted planning permission following a planning appeal for the development of a pub/restaurant, three restaurant units, and two drive-through restaurant/café units, with associated car parking and landscaping. The details of the applications are as follows:
- 146486 (Appeal Ref: APP/A1530/W/15/3139492)
Pub/restaurant; two restaurant units, with associated car parking and landscaping.
 - 150945 (Appeal Ref: APP/A1530/W/15/3139491)

One restaurant unit and two drive-through restaurant/café units (later varied under planning reference 162005 to allow for an earlier opening time for one unit).

- 6.3 The Inspector's closing comments in respect of both of the above appeals were as follows:

'Overall, therefore, I conclude that there would be no unacceptable loss of employment land, either in quantitative or qualitative terms and that the proposals pass the sequential test. There would be some harm arising from conflict with the development plan, from the significant level of car-borne customers and to the setting of a listed building. However, the totality of that harm is limited and is significantly outweighed by the benefits of the schemes as identified above. There is conflict with the development plan but in respect of both appeals this is outweighed by the other material considerations. I conclude that both appeals should succeed.'

- 6.4 The benefits of the scheme were identified as being: bringing a vacant site into beneficial use; the design of the buildings enhancing the appearance of the area; and the provision of jobs close to residential areas.

- 6.5 A further relevant planning decision of note is the 2017 approval of planning permission (on appeal) for a mixed-use leisure and retail development at Tollgate Village (Application Ref: 150239; Appeal Ref: APP/A1530/W/16/3147039). In this case, the Secretary of State agreed with the Planning Inspector's recommendation of approval, with their conclusions being as follows:

'For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies CE1, CE2, CE3 and STA3 of the development plan, and is not in accordance with the development plan overall. However, these policies are not consistent with the Framework, are out of date and attract limited weight. The Secretary of State has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

The Secretary of State considers that both the sequential and impact tests set out in the Framework have been passed. The proposal would not be premature and the location is accessible. The retail scheme would have a slight impact on the vitality and viability of the Town Centre but not the severe impact required by the third bullet point in paragraph 32 of the Framework to prevent development. In addition, the proposal would provide a number of social, economic and environmental benefits, as set out above, to which the Secretary of State gives significant weight. These benefits and the fact that the proposal does not conflict with national policy on ensuring the vitality of town centres and promoting sustainable transport, amount to material considerations that would justify a decision other than in accordance with the development plan in this case.'

- 6.6 There has been a subsequent revision to the Tollgate Village Outline Permission (193133) which allowed for additional/revised service vehicle

access points, as well of the retention of an existing unit on site. Reserved Matters proposals, setting out the detailed scheme, have since been approved (193134 and 201503). There is a current application for Tollgate Village (211610) which puts forward an alternative scheme for a lesser amount of retail, but with the addition of leisure, office, and hotel uses; this application is yet to be determined.

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
- SD2 - Delivering Facilities and Infrastructure
- CE1 - Centres and Employment Classification and Hierarchy
- CE2 - Mixed Use Centres
 - CE2a - Town Centre
 - CE2b - District Centres
 - CE2c - Local Centres
- CE3 - Employment Zones
- UR2 - Built Design and Character
- PR2 - People-friendly Streets
- TA1 - Accessibility and Changing Travel Behaviour
- TA2 - Walking and Cycling
- TA3 - Public Transport
- TA4 - Roads and Traffic
- 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
- DP2 Health Assessments
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
- DP6 Colchester Town Centre Uses
- DP7 Local Centres and Individual Shops
- DP17 Accessibility and Access

DP18 Transport Infrastructure Proposals
DP19 Parking Standards
DP20 Flood Risk and Management of Surface Water Drainage
DP21 Nature Conservation and Protected Lanes
DP25 Renewable Energy

- 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 STA1 Appropriate Uses within the Stanway Growth Area
SA STA2 Phasing of Greenfield sites in Stanway Growth Area
SA STA3 Employment and Retail Uses in Stanway Growth Area
SA STA4 Transportation in Stanway Growth Area

- 7.5 Adopted Local Plan and Emerging Local Plan Local Plan 2017-2033 status:
The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP5 Employment
- SP6 Infrastructure & Connectivity
- SP7 Place Shaping Principles

Core Strategy Policy SD1 is fully superseded by policies SP5 and SP6 of the Section 1 Local Plan. Policies SD1, H1 and CE1 are partially superseded by policies SP3, SP4 and SP5 in relation to the overall housing and employment requirement figures. The remaining elements of policies SD1, H1 and CE1 are relevant for decision making purposes.

Section 2 is at an advanced stage having undergone examination hearing sessions in April 2021 and subsequently undergoing consultation on the Inspector’s modifications. Section 2 will be afforded some weight due to its advanced stage. However, as it is yet to undergo full and final examination, the exact level of weight to be afforded will be considered on a site-by-site basis reflecting the considerations set out in paragraph 48 of the NPPF. Proposals will also be considered in relation to the adopted Local Plan and the NPPF as a whole.

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.

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

EPOA Vehicle Parking Standards
Cycling Delivery Strategy
Street Services Delivery Strategy
Air Quality Management Guidance Note, Areas & Order
Stanway Joint Design Statement and Parish Plan
Tollgate Vision 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 Essex County Fire and Rescue: No comments received.
- 8.3 Highway Authority: No objection from a highway and transportation perspective. Confirmation that no further mitigation is required and that the proposal accords with the Highway Authority's Development Management Policies.
- 8.4 National Highways: No objection. There would not be a severe impact on the strategic road network.

9.0 Parish Council Response

- 9.1 No comments have been received from Stanway Parish Council.

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 General Comment has been received which expresses disappointment that cycling is not mentioned in the Planning Statement or Transport Note, with comment that convenient secure cycle parking should be provided for the additional floor area.
- 10.3 One objection has been received which is concerned with the additional retail space resulting in further disruption, pollution, and pressure on infrastructure.

11.0 Parking Provision

- 11.1 No additional car parking is being proposed.

12.0 Accessibility

- 12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposed development is not considered to discriminate future employees or visitors. The application site is readily accessible via a range of transport modes and the proposed first-floor retail space will need to meet Building Regulations in respect of accessibility.

13.0 Air Quality

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

14.0 Planning Obligations

- 14.1 As a “Major” application, there was a requirement for this proposal to be considered by the Council’s Development Team. The Development Team confirmed that no mitigation is required by way of planning obligations.

15.0 Report

Procedural Matters:

- 15.1 Previous planning applications for the retail development of the Stane Park site have been considered as a departure to the Local Plan and have therefore subsequently been referred to the Secretary of State following Planning Committee resolution. In this case, the proposed development would fall below the thresholds set out in The Town and Country Planning (Consultation) (England) Direction 2021 so there is no requirement to refer to the Secretary of State.
- 15.2 The application has undergone an Environmental Impact Assessment (EIA) screening under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and it is concluded that the proposed development is not EIA development.

Impact on Town Centres:

- 15.3 The National Planning Policy Framework (the Framework), at paragraph 87, states that Local Planning Authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. This is relevant to this application as the site is not within a defined centre.

- 15.4 The Framework goes on to state that main town centre uses (such as retail uses) should be located in town centres, then edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and Local Planning Authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
- 15.5 The relevant adopted town centre and employment policies CE1, CE2, CE3, UR1, STA3 and DP5 are considered to be out of date given relatively recent planning appeal decisions, particularly the appeal decision in respect of Stane Park Phase 1 to the south (Stane Leisure Park). The Emerging Local Plan is however considered to carry significant weight in accordance with paragraph 48 of the Framework. It is clear that the proposed development would not accord with requirements for the Strategic Economic Area (primarily emerging policy WC1), but the emerging Local Plan does acknowledge that Stane Park provides retail and leisure uses. Emerging Local Plan Section 2 policy SG6 (Town Centre Uses) reflects the requirements set out in the Framework as summarised above. The policy states that where proposals for main town centre uses are considered to meet the sequential test, they must also comply with a number of requirements, summarised as follows: that the proposals are of a type, proportion and scale that would not threaten the primacy of Colchester Town Centre; the proposals would enhance the diversity of the centre; would not give rise to detrimental effects through smell, litter, noise, or traffic problems; and would not have a significant adverse impact on the town centre (including any committed and/or planned investment). These matters will be considered below.

Sequential Test

- 15.6 The main thrust of the Applicant's argument in respect of the sequential test is that the proposed development would provide additional retail floorspace to serve existing/future units within the scheme and that this has specific market and locational requirements which 'outweighs the rigid application of the sequential test'. They assert that the proposed development is spatially constrained by its host as it would sit within the existing building and that a planning condition could be applied to ensure that the first floor/mezzanine space would only be used in conjunction with the related ground floor occupier.
- 15.7 Following comments on the sequential test, further information has subsequently been put forward to consider sequentially preferable sites, particularly that of Tollgate Village which is approximately 300 metres from Stane Retail Park. Tollgate Village would have sufficient capacity to accommodate the proposed floorspace and, given the extant planning permission for the site, would potentially be available, particularly as there is no immediate urgency for the proposed floorspace given that it is being applied for on the basis of providing additional space should it be required by future tenants. Nonetheless, in applying the flexibility required by the Framework it is appreciated that the Tollgate Village development would be a complex development that would take a longer period of time to be constructed and made

available. In addition, retail consultants have expressed some scepticism as to whether Tollgate Village would be developed as approved given that it would provide extensive retail floorspace which may not be supported in the current retail climate, as well as the fact that an alternative scheme has been applied for in any case (the planning application is ongoing). It is therefore doubtful that Tollgate Village would be available within a reasonable timeframe taking all matters into account. On a sequential basis, the proposed development being within an edge of centre site is considered to meet the requirements of the Framework and the emerging Local Plan.

Retail Impact

- 15.8 Turning to retail impact, further information was submitted by the Applicant in order to consider a number of points raised by the independent consultant; in particular, an assessment of the impact in the context committed development at Tollgate Village (both in terms of the approved scheme and current planning application as a plausible scenario) having regard to the current local circumstances in terms of the health of Colchester Town Centre.
- 15.9 The independent consultant has concluded the following on the basis of the Applicant submissions:
- The 'town centre investment' limb of the impact test is satisfied on the basis there is no evidence that any investment is likely to be put at risk by the application proposals for Stane Retail Park.
 - An appropriate 'worst case' scenario has been considered in terms of the 'town centre vitality and viability impact test' (taking into account the more extensive Tollgate Village approved scheme rather than the current planning application for a reduced scheme).
 - Despite some disagreement on the estimated turnover of the proposed additional floorspace, the 'solus' retail impacts arising from the proposals are likely to be relatively modest in percentage terms. Although the cumulative retail impacts on Colchester Town Centre would be much greater, it is considered that the potential retail impacts associated with the additional mezzanine floorspace are not sufficient (at least in percentage terms of 10-15%) to tip the balance of adverse impacts to 'significant' under the terms of the Framework.
 - There is an assumption that no retailers would relocate to the proposed development from Colchester Town Centre, although there is no evidence to support this and the further expansion of Stane Park would increase its attractiveness to retailers.
 - Ultimately, on the basis of the evidence available, it is concluded that the proposed development is unlikely to have a significant adverse impact on the vitality and viability of Colchester Town Centre.

- 15.10 There are concerns that the proposed development would make Stane Park a more attractive option for town centre retailers, but given the lack of evidence to substantiate these concerns, as well as overall assessment that the proposed development would not have a significant adverse impact on the principle centre Colchester Town Centre, it is not considered to be reasonable to refuse planning permission on these grounds. Conditions can be imposed to stipulate the amount of net retail floorspace and to avoid subdivision of units which will prevent further intensification of the use and related impacts.

Highway Matters

- 15.11 A Transport Note accompanied the planning application which concentrates on the impacts upon the highway network. The note concludes that the proposed development would result in a negligible impact, with trip rates calculated to be an additional 2 vehicles in the AM peak, 20 vehicles in the PM peak, and 26 vehicles during the weekend peak. Parking provision has also been reviewed and it has been demonstrated that there is sufficient car parking provision for a theoretical worse case.
- 15.12 Both National Highways (previously Highways England) and the Highway Authority have confirmed that they have no objections to the proposed development and that no mitigation is required in respect of the road networks.
- 15.13 Development Policy DP19 and the Council's adopted Parking Standards have a maximum limit for car parking at destinations so there is no requirement for additional car parking as a result of this development. There are, however, minimum requirements for accessible car parking, motorcycle parking, and cycle parking. The requirements for both accessible car parking and motorcycle car parking is based upon a proportionate provision in relation to the amount of car parking being provided; this was considered as part of the previous permissions and as there is no additional car parking being required or provided as part of this proposal it is not considered reasonable to require additional accessible or motorcycle parking. It is however, considered appropriate to require additional cycle parking in the interests of encouraging more sustainable modes of transport. The parking standards require 2 cycle spaces per 400sqm of floorspace to provide for both staff and customers; for the proposed development this would equate to 12 cycle spaces in total (6 for staff and 6 for customers). It is considered that the provision of additional cycle parking can be secured via condition.

Other matters

- 15.14 The proposed development would consist of internal alterations only so there would not be any physical or visual impacts (such as ecology, flood risk, landscape impact etc) that require further consideration. Impacts on residential amenity can be mitigated via conditions to control the opening hours and delivery hours associated with the floorspace.

- 15.15 Local representations have expressed concerns that the proposed development would cause further disruption and pressure upon infrastructure. It is acknowledged that this site and the surrounding area has undergone considerable development in recent years. In considering the planning application on its own merits however, the impacts are concluded to be negligible. There are not considered to be any grounds for refusal in this regard.
- 15.16 Comments on cycle parking have been noted and it has been considered reasonable and necessary to secure further cycle parking in association with the increased floorspace in accordance with adopted planning policy and planning guidance.

16.0 Conclusion

- 16.1 The proposed development would result in additional main town centre uses (retail floorspace) outside a designated Centre but within an edge of centre location. Given the nature of the proposed development it is considered that there are relevant functional and locational requirements that would require a pragmatic assessment of the necessary sequential tests and ultimately, given the lack of availability of alternative centre sites, the location of the site edge of centre, and there being no significant adverse impact on the viability and vitality of Colchester Town Centre, the proposed development is considered to be acceptable in terms of town centre impact subject to necessary conditions. The proposed development is not considered to require any further mitigation in respect of impacts on the highway network, although it is considered necessary to condition additional cycle parking in accordance with planning policy in the interests of sustainability. There are not considered to be any adverse impacts in terms of other material planning matters.

17.0 Recommendation to the Committee

- 17.1 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. Development to Accord With Approved Details

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 Site Location Plan, drawing number 7128 Revision 01.

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

3. Use and Permitted Development Rights Removal

The development hereby approved shall relate solely to first-floor/mezzanine floorspace for retail purposes at units A4, A5, A6 and C (as shown on Site Location Plan, drawing number 7128 Revision 01) and the total net sales area of the development hereby approved shall not exceed 1,728sqm.

Reason: In order to provide clarity as to what has been approved and in the interests of ensuring that the development would not lead to a significant adverse impact on designated centres.

4. Tied to Ground Floor Unit

No part of the hereby approved mezzanine floorspace shall be occupied other than in conjunction with the occupation of its related ground floor space as a single unit.

Reason: In the interests of ensuring that the development would not lead to a significant adverse impact on designated centres and because the impacts of the proposal, along with necessary forms and levels of mitigation, have been assessed on this basis.

5. Delivery Times

No deliveries shall be received at, or despatched from Units A4, A5, or A6 outside of the following times:

Weekdays: 06:00 to 22:00

Saturdays, Sundays and Public Holidays: 06:00 to 22:00

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

6. Opening Hours

The use hereby permitted shall not OPERATE/BE OPEN TO CUSTOMERS outside of the following times:

Weekdays: 07:00 to 23:00

Saturdays, Sundays and Public Holidays: 07:00 to 23:00

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

the submitted application, and for the avoidance of doubt as to the scope of this permission

7. Cycle Parking

The development hereby approved shall not be brought into use until additional cycle parking (to provide 6 cycle spaces for staff and 6 cycle spaces for visitors) has been provided in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. The details must show the location and design of the cycle parking facilities and demonstrate that the parking facilities will be secure, convenient and covered. The parking facilities shall then be provided before the development is brought into use and then retained for the purposes of cycle parking at all times thereafter.

Reason: To ensure that appropriate cycle parking is provided in the interests of sustainable development and modes of transport.

Informatives

The following informatives are also recommended:

Electric Vehicle Charging Points

The Developer is encouraged to implement additional electric vehicle charging points for both cars and cycles in the interests of promoting sustainable transport.

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.

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 withhold challenge in appeal or through the courts. Failure to do so would result in a costs award against the Council for acting unreasonably (see other notes pages within this Agenda). Similarly, if the Highway Authority were unable to support their own conclusions they may face costs being awarded against them as the statutory consultee.

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

Parking Standards

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

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

For residential schemes:

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

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



Colchester Borough Council Environmental Control

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

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

Best Practice for Construction Sites

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

Noise Control

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

Emission Control

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

Best Practice for Demolition Sites

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

Noise Control

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

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

Emission Control

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

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

Class A1. Shops

Use for all or any of the following purposes—

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

Class A2. Financial and professional services

Use for the provision of —

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

Class A3. Restaurants and cafes

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

Class A4. Drinking establishments

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

Class A5. Hot food takeaways

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

Class B1. Business

Use for all or any of the following purposes—

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

Class B2. General industrial

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

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

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

Class C2. Residential institutions

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

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

Class C3. Dwellinghouses

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

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

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

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

Class C4. Houses in multiple occupation

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

Class D1. Non-residential institutions

Any use not including a residential use —

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

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

(c) for the provision of education,

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

(e) as a museum,

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

(g) as a public hall or exhibition hall,

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

Class D2. Assembly and leisure

Use as —

(a) a cinema,

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

(d) a dance hall,

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

Sui Generis Uses

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

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

Interpretation of Class C3

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

Interpretation of Class C4

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

Supreme Court Decision 16 October 2017

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

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

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

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

Deferral and Recommendation Overturn Procedure (DROP) Flowchart

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

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

