

# Planning Committee Meeting

**Moot Hall, Town Hall, High Street,  
Colchester, CO1 1PJ**

**Thursday, 18 February 2016 at 18:00**

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

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

## Information for Members of the Public

### Access to information and meetings

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

### Have Your Say!

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### Access

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## Material Planning Considerations

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

Where our Development Plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable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

The following approach should be taken in all planning decisions:

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

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

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

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

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

The above list is not exhaustive

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

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

- matters specifically controlled through other legislation

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

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

## **Planning Obligations**

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

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

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

## **Human Rights, Community Safety and Equality and Diversity Implications**

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

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

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

## Using Planning Conditions or Refusing Planning Applications

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

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

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

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

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

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

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

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



## **Colchester Borough Council Development Management**

### **Highway Safety Issues**

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

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

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

### **Parking Standards**

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

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

For residential schemes:

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

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



## **Colchester Borough Council Environmental Control**

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

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

#### **Best Practice for Construction Sites**

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

##### **Noise Control**

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

##### **Emission Control**

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

## **Best Practice for Demolition Sites**

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

### **Noise Control**

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

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

### **Emission Control**

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



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

## **Class A1. Shops**

Use for all or any of the following purposes—

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

## **Class A2. Financial and professional services**

Use for the provision of —

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

## **Class A3. Restaurants and cafes**

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

## **Class A4. Drinking establishments**

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

## **Class A5. Hot food takeaways**

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

## **Class B1. Business**

Use for all or any of the following purposes—

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

## **Class B2. General industrial**

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

## **Class B8. Storage or distribution**

Use for storage or as a distribution centre.

**Class C1. Hotels**

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

**Class C2. Residential institutions**

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

**Class C2A. Secure residential institutions**

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

**Class C3. Dwellinghouses**

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

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

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

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

**Class C4. Houses in multiple occupation**

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

**Class D1. Non-residential institutions**

Any use not including a residential use —

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

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

(c) for the provision of education,

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

(e) as a museum,

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

(g) as a public hall or exhibition hall,

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

**Class D2. Assembly and leisure**

Use as —

(a) a cinema,

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

(d) a dance hall,

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

### **Sui Generis Uses**

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

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

### ***Interpretation of Class C3***

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

### ***Interpretation of Class C4***

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

## Deferral and Recommendation Overturn Procedure (DROP) Flowchart

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

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



**COLCHESTER BOROUGH COUNCIL**  
**Planning Committee**  
**Thursday, 18 February 2016 at 18:00**

**Member:**

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

Chairman  
Deputy Chairman

**Substitutes:**

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

Councillors Christopher Arnold, Lyn Barton, Tina Bourne, Roger Buston, Nigel Chapman, Barrie Cook, Nick Cope, Robert Davidson, Beverly Davies, John Elliott, Annie Feltham, Bill Frame, Ray Gamble, Martin Goss, Dominic Graham, Annesley Hardy, Marcus Harrington, Dave Harris, Julia Havis, Peter Higgins, Theresa Higgins, Darius Laws, Cyril Liddy, Sue Lissimore, Ben Locker, Fiona Maclean, Kim Naish, Nigel Offen, Gerard Oxford, Chris Pearson, Peter Sheane, Paul Smith, Dennis Willetts, Julie Young and Tim Young.

**AGENDA - Part A**

(open to the public including the press)

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

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

**1 Welcome and Announcements**

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

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

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

## **2 Have Your Say! (Planning)**

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

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

## **3 Substitutions**

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

## **4 Urgent Items**

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

## **5 Declarations of Interest**

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

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

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

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

## **6 Minutes**

There are no minutes for confirmation at this meeting.

## **7 Planning Applications**

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

### **7.1 152550 Bawley House, Walter Radcliffe Road, Wivenhoe 17 - 26**

Variation of Condition 02 of planning permission 145776 – Variation is to subdivide the ground floor into three B1 units.

### **7.2 152882 Hallfields Farm, Manningtree Road, Dedham 27 - 34**

Application for variation of Condition 2 (which lists the approved drawings) of planning permission 146334 to allow amendments to the materials and windows to Plots 4 and 5

### **7.3 150239 Land to north/south of Tollgate West, Stanway 35 - 168**

Outline application for mixed used development of leisure uses (use class D2) including cinema and retail (use classes A1, A2, A3, A4 and A5) with associated parking including multi-storey car park, public realm improvements, access, highways, landscaping and associated works.

## **8 Exclusion of the Public (not Scrutiny or Executive)**

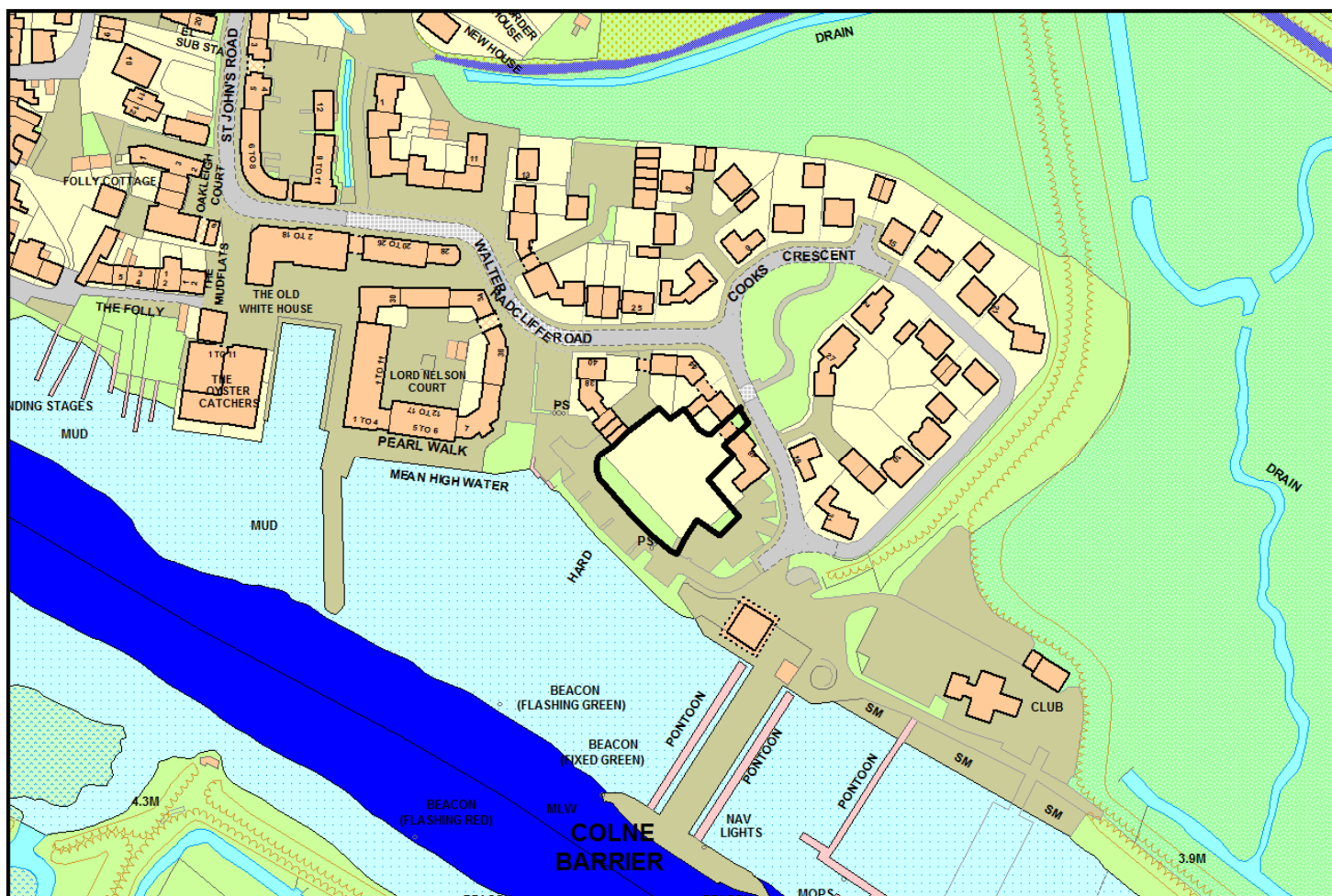
In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example

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)





**Application No:** 152550

**Location:** Bawley House, Walter Radcliffe Road, Wivenhoe, CO7 9FG

**Scale (approx):** 1:1250

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## Committee Report

Agenda item

7

To the meeting of **Planning Committee**  
on: **18<sup>th</sup> February 2016**  
Report of: **Head of Professional/Commercial Services**  
Title: **Planning Applications**

**7.1 Case Officer: Sue Jackson Due Date: 26/02/2016**

**MAJOR**

**Site:** Bawley House, Walter Radcliffe Road, Wivenhoe, CO7 9FG

**Application No:** 152550

**Date Received:** 27 November 2015

**Agent:** Mr C Marshall, Mark Perkins Partnership

**Applicant:** Mr J Frank

**Development:** Variation of condition 2 of planning permission 145776 - Variation is to subdivide the ground floor into three B1 units.

**Ward:** Wivenhoe Quay

**Summary of Recommendation:** Conditional Approval subject to signing of Section 106 Agreement

### 1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it has been “called in “by Councillor Liddy for the following reasons ““The original concept for this development has become eroded over the years with this proposal affecting the last commercial space left. The whole Cooks’ development was marketed with the promise of bringing employment, commercial and social benefit to the area and enhancing the community without negative impact and also reflecting a little bit of Wivenhoe’s past. A good restaurant that specialised in fresh local seafood would have supported our local fishermen, and could have brought income into the town from visitors. The residents of the Cooks’ development consists mainly of commuters and working families who had been looking forward to having a restaurant within their midst. The original s106 Agreement secured a visitors’ car park and was leased to the Town Council with the

intention of providing much needed income from the commercial units and the restaurant. With the danger of the estate becoming primarily residential the visitors' car park will be rendered a white elephant. The Town Council does not accept Mr. Frank's reasons for varying the condition as this has just confirmed their fears from the onset that the concept of commercial units and the restaurant was just a 'backdoor' to more residential units".

## **2.0 Synopsis**

- 2.1 The key issues explored below are the site history and the permitted uses on the ground floor of the building.

## **3.0 Site Description and Context**

- 3.1 Bawley House is the name of a yet to be constructed building located on the former Cooks Shipyard site in Wivenhoe. The Cooks site is on the east side of the town accessed via Anglesea Road or through the historic centre, as the name suggests it was formerly used as a shipyard and has a substantial river frontage.
- 3.2 Bawley House forms the final element of Phase 3, all the residential elements of this phase are now built and occupied. Planning permission has been granted for this building facing the river.

## **4.0 Description of the Proposal**

- 4.1 This application seeks to vary condition 2, which lists the approved plans, of application 145776. The variation is to approve plans which show the subdivision of the ground floor into three B1 office units instead of a single office unit and minor changes to the ground floor elevations. The upper floors of the building are unaffected.
- 4.2 Application 145776 permits the ground floor to be used as a single unit for retail, B1 office or restaurant purposes and the upper floors for B1 business use or use for seven polyfunctional units (use classes C3 residential /B1 business).
- 4.3 The applicant has submitted the following response to the comments made by Councillor Liddy in calling-in the application;

"The ground floor of Bawley House already has planning consent for A3 Restaurant use/ B1

Commercial use and A1 Retail use.

We are applying to continue the commercial B1 use and simply sub-dividing the ground floor into three separate units, as this is where the demand from occupiers is coming from. These units are still approximately 1000 sq feet each and are therefore generously proportioned and will allow a multitude of uses.

The supposition that these will become residential units is unfounded and the detailed planning and building regulation applications that have now been submitted shows the intent to provide these three units for commercial occupation.

It should also be noted that ground floor of Bawley House previously had planning consent to be three commercial units under planning consent number 091559.

I am afraid that some of Councillor Liddy's comments are somewhat misleading and I would like to clarify the following:

1. Fish Restaurant- When we originally made our planning application for the redevelopment of Cooks Shipyard our application included a restaurant on the ground floor of the building now known as The Oystercatchers which is next to the Wet Dock. There was a huge amount of opposition from residents (and the Wivenhoe Town Council) to this element of the scheme and at the planning meeting the committee were persuaded by the objectors to request that we omitted the restaurant from our proposals which we regrettably did. It was our suggestion alone, that this could have been a fish restaurant, with the idea being that the local fishing boats that would be allowed to use the wet dock could have supplied the restaurant. It was the residents of Wivenhoe that got that proposal withdrawn!

2. Visitors Car Park-The commercial success of the Town Councils car park has nothing to do with the commercial elements of this development. The Town Council during our initial pre-application discussions insisted that there was a need for this parking facility and hence a car park was included within the scheme. When the car park was negotiated and agreed there was no restaurant included and therefore the assertion that WTC is not receiving the income it expected, because there is no restaurant is completely incorrect.

Cllr Liddy states that the original concept has been eroded and in some way the Cooks Shipyard Development has not lived up to what was promised! I would argue that this development has very much lived up to what was promised and has far exceeded any other development that I can think of in terms of community provision. This development has:

1. Cleaned up a highly contaminated former industrial site and former gas works
2. Provided circa 100 high quality homes where people really want to live.
3. Provided a publicly accessible pier/jetty at no cost to the public.
4. Opened up a large section of waterfront that had no public access
5. Provided a fully restored wet dock with mooring facilities for local fishermen that had no previous rights to moor.
6. Provided Affordable Housing within Wivenhoe (not Colchester as could have been the case).
7. Provided a storage facility for local fishermen and a toilet facility adjacent to the wet dock.
8. Provided public car parking facilities
9. Provided commercial accommodation at ground floor level in both stand alone and live work forms.
10. Provided the original crane from Hardings Yard at the head of the wet dock (sadly chopped down to a stump at the request of WTC!!!).
11. Provided Dinghy Parking facilities
12. Provided a public slipway
13. Gifted the water meadows/marsh land for conservation purposes.

These things were agreed with Councillor Peter Hill leader of the Wivenhoe Town Council's working party, prior to an application being made. We were not forced to do these things as we wanted this to be an exemplar development of the very highest quality.

Maybe its time to stand back and look at what has actually been achieved on this site, speak to the residents of Cooks Shipyard who love living there, speak to the hundreds of people that enjoy walking through the site, speak to the artists that have built such a strong base from which to work and sell, admire the fact that you can still identify this

site as a former shipyard and be pleased that it doesn't look like every other modern day housing estate”

## **5.0 Land Use Allocation**

- 5.1 Predominantly Residential Conservation Area

## **6.0 Relevant Planning History**

- 6.1 O/COL/01/1799 - Outline planning permission approved on 5 November 2004 for erection of houses, flats, offices, fisherman's store and W.C. Refurbishment of wet dock, jetty, slipway and waterfront. Reconstruction of St John's Road and Walter Radcliffe Way.
- 6.2 072701 - Reserved matters approval for Phase 3 comprising 32 residential units, affordable housing, commercial units – Planning permission granted
- 6.3 091559 - Full application approved to erect 32 dwellings and class B1 and A1 retail floor space
- 6.4 122122 - Variation of Conditions 2 and 8 of application no. 091559 in order to include A3 restaurant use and to include reference to Drawing Nos. 1369-105 & 1369 - Approved
- 6.5 131568 - Change of use of approved eight office units on the first and second floors of the commercial block to eight poly-functional units with associated parking. Approved
- 6.6 145776 Proposed A1 retail use, A3 restaurant use or B1 office use to ground floor and 7no. poly-functional units (B1 & C3 use) to first, second and third floors with associated car parking. Amendment to planning approval 131568. Approved

## **7.0 Principal Policies**

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations  
SD2 - Delivering Facilities and Infrastructure  
UR1 - Regeneration Areas  
UR2 - Built Design and Character  
PR1 - Open Space  
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

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

DP1 Design and Amenity  
DP3 Planning Obligations and the Community Infrastructure Levy  
DP14 Historic Environment Assets  
DP17 Accessibility and Access  
DP19 Parking Standards  
DP20 Flood Risk and Management of Surface Water Drainage  
DP23 Coastal Areas

- 7.4 Further to the above, the adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process: site is within a predominantly residential area

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

Vehicle Parking Standards  
Wivenhoe Town Plan Adopted 2008

## **8.0 Consultations**

- 8.1 Senior Enterprise Officer "I have no problem with the proposed subdivision into three B1 Units as there is a shortage on paper at least of office space for small businesses in Wivenhoe as indirectly evidenced by VOA data and resident propensity for self-employment. Given that there appears to be no restaurant operator interest – and I now appreciate why Jonathan Frank is not going in that direction"
- 8.2 Planning Policy no comments
- 8.3 Environmental Protection No comment
- 8.4 Highway Authority does not wish to submit a formal recommendation.
- 8.5 Environment Agency We have no objection to the application if the conditions requested for application 091559; finished floor levels and flood proofing have be discharged and this application does not seek to vary them.

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

## **9.0 Parish Council Response**

- 9.1 The Town Council have stated that “The original concept for this development has become eroded over the years with this proposal affecting the last commercial space left. The whole Cooks’ development was marketed with the promise of bringing employment, commercial and social benefit to the area and enhancing the community without negative impact and also reflecting a little bit of Wivenhoe’s past. A good restaurant that specialised in fresh local seafood would have supported our local fishermen, and could have brought income into the town from visitors. The residents of the Cooks’ development consists mainly of commuters and working families who had been looking forward to having a restaurant within their midst. The original s106 Agreement secured a visitors’ car park and was leased to the Town Council with the intention of providing much needed income from the commercial units and the restaurant. With the danger of the estate becoming primarily residential the visitors’ car park will be rendered a white elephant. The Town Council does not accept Mr. Frank’s reasons for varying the condition as this has just confirmed their fears from the onset that the concept of commercial units and the restaurant was just a “backdoor” to more residential units.  
The Town Council will be requesting that the application is called in”.

## **10.0 Representations**

- 10.1 None

## **11.0 Parking Provision**

- 11.1 The parking provision remains the same. Twenty one spaces to the rear of the building including two within the building, four spaces near the river front, a public car park next to the building plus a further nine public spaces . Provision is also made within the building for bicycle storage.

## **12.0 Open Space Provisions**

- 12.1 N/A

## **13.0 Air Quality**

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

## **14.0 Development Team and Planning Obligations**

- 14.1 This application is classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. Application 145776 has a legal agreement which secures a financial contribution of £40,000 for affordable housing and the construction of the building within a specified period. A linking agreement is required so these matters continue to be secured.

## 15.0 Report

### Planning History

- 15.1 Outline planning permission for Cooks shipyard, application O/COL/01/1799 was approved on 5 November 2004 for erection of houses, flats, offices, fisherman's store and W.C. Refurbishment of wet dock, jetty, slipway and waterfront. The application was subject to a legal agreement which required a public car park together with other facilities to be managed by the town Council.
- 15.2 A restaurant proposed on another part of the Cooks site was removed from the outline application following local objection and the outline planning permission permitted only B1 for the commercial building. When the Town Council was a signatory to the legal agreement in 2004, in respect of the public car park and other facilities, the planning permission did not include a restaurant.
- 15.3 Application 091559 included planning permission for 3 three units on the ground floor of the commercial building.
- 15.4 Application 122122 was approved and extended the range of permitted uses on the ground floor to include a restaurant.
- 15.5 The latest approved application application145776 authorises the ground floor to be used for B1 office, A1 retail and as an A3 restaurant but reduced the number of polyfunctional units from 8 to 7.
- 15.6 The ground floor therefore has planning permission which authorised its use as a single office and this application proposes a change from a single large office space to 3 smaller offices.

### Design and Layout

- 15.,7 The amendments to the ground floor elevations are minor; the south west elevation, which fronts the river, and the south east, side, elevation are unaltered. The south west, side elevation, has brick detail instead of stone to the opening for 2 parking spaces which will now include timber doors. Changes to the north east elevation, which faces the car park and rear of residential properties, include the repositioning of a door and 2 "false doors" in recessed brickwork and the removal of the extract flue.

### Scale, Height and Massing

- 15.8 Unaffected

### Impact on the Surrounding Area

- 15.9 Officers have supported a range of commercial uses in the building to add the vibrancy of the waterfront. It is agreed that a seafood restaurant could have supported local fishermen and bought visitors to the town and would have been a positive impact on activity along the river frontage.



### Impacts on Neighbouring Properties

- 15.10 No representations have been received. There was objection from residents to the application for the restaurant use.

### Amenity Provisions

- 15.11 There are no amenity issues.

### Highway Issues

- 15.12 The Highway Authority has made no comment

## **16.0 Conclusion**

- 16.1 Planning permission allows the ground floor of Bawley House to be used for either B1 office, A1 retail or C3 restaurant use. The ground floor could therefore be occupied as a single office the proposal is to allow its use as 3 smaller offices. The application which includes minor changes to two of the ground floor elevations is acceptable and planning permission is recommended.

## **17.0 Recommendation**

- 17.1. APPROVE subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Commercial Services to refuse the application, or otherwise to be authorised to complete a linking agreement to provide a financial contribution of £40,000 for affordable housing and the construction of the building within a specified period.
- 17.2 On completion of the legal agreement, the Head of Service be authorised to grant planning permission subject to the following conditions:

## **18.0 Conditions**

### **1 - Non-Standard Condition/Reason**

With the exception of condition 2 of Planning Permission 145776 which is hereby varied, the requirements of all other conditions imposed upon planning permission 145776 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.

### **2 - \*Development to Accord With Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 1025-01A (first, second and third floor plans), 06, 100C and 110A.

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

## **19.0 Positivity Statement**

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



**Application No:** 152882

**Location:** Hallfields Farm, Manningtree Road, Dedham, Essex, CO7 6AE

**Scale (approx):** 1:1250

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**7.2 Case Officer: Sue Jackson**

**Due Date: 05/04/2016**

**MAJOR**

**Site:** Hallfields Farm, Manningtree Road, Dedham, Essex, CO7 6AE

**Application No:** 152882

**Date Received:** 5 January 2016

**Agent:** Mr Gregory Byrne, ADP Ltd

**Applicant:** Mr J. Hills, Hills Building Group

**Development:** Application for variation of condition 2 (which lists the approved drawings) of planning permission 146334 to allow amendments to the materials and windows to plots 4 and 5..

**Ward:** Dedham & Langham

**Summary of Recommendation:** Conditional approval subject to signing of Section 106 Agreement

## **1.0 Reason for Referral to the Planning Committee**

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

## **2.0 Synopsis**

- 2.1 The key issues explored below are the proposed minor changes to the elevations including a comparison with the approved drawings.

## **3.0 Site Description and Context**

- 3.1 The application site lies on the edge of the settlement and has a frontage of approximately 40 metres onto Manningtree Road. The site increases in width to some 125 metres further into the site where it extends behind frontage dwellings and then narrows again where it backs onto a PROW. It is located some 120 metres from the junction with Brook Street and approximately 600 metres from Dedham village centre.
- 3.2 The north, front boundary, faces towards Roman Place it also extends behind Hallfields Cottages and Appletree Cottage; these properties front Manningtree Road. The staggered rear boundary abuts the rear garden of Crown House, Crown Street and the PROW which separates the site from the rear gardens of houses in Forge Street. The latter erected by the Local Authority in the Twentieth century. The staggered west side boundary abuts rear gardens of properties in Crown Street and Hallfields bungalows. These bungalows are set behind the road frontage. The east side boundary abuts farm land. A PROW, comprising a continuation of the path to the rear of Forge Street crosses the farmland some 150 metres to the east of the site and joins Manningtree Road.

- 3.3 Planning permission was granted last year to erect for 17 dwellings; comprising 9 affordable units and 8 private units. This application relates to 2 of the private units, plots 4 and 5, which back onto Hallfields Cottages and Appletree Cottage.

#### **4.0 Description of the Proposal**

- 4.1 The application proposes minor changes to the approved dwellings on plots 4 and 5.
- 4.2 Plot 4 a predominantly brick property will be constructed of Flemish garden wall bond. Changes to the internal layout of the first floor of plot 5 show 2 bedrooms in the rear resulting in 2 bedroom windows where 1 was approved (the total number of bedrooms is not changed) and garage doors are proposed to the rear elevation of plots 4 and 5 and will replace a window and a door.

#### **5.0 Land Use Allocation**

- 5.1 The site abuts but is outside the village settlement boundary envelope. It also abuts the conservation area.
- 5.2 The site is in the Dedham Vale AONB.

#### **6.0 Relevant Planning History**

- 6.1 146334 Application for demolition of farm outbuildings and erection of 9 affordable homes, 8 market homes, associated works and access/parking approved

#### **7.0 Principal Policies**

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

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

SD1 - Sustainable Development Locations  
UR2 - Built Design and Character  
ENV1 - Environment  
ENV2 - Rural Communities

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

DP1 Design and Amenity  
DP22 Dedham Vale Area of Outstanding Natural Beauty

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

The Essex Design Guide  
External Materials in New Developments  
Dedham Parish Plan December 2011  
Dedham Village Design Statement November 2007  
Dedham Vale AONB Management Plan 2004 revised 2010

## **8.0 Consultations**

- 8.1 Highway Authority has assessed the highway and transportation impact of this proposal and raises no objection
- 8.2 Environmental Protection No Comments
- 8.3 Contaminated Land Officer No Comments
- 8.4 Natural England currently has no comment to make on the variation of condition 2.

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

## **9.0 Parish Council Response**

- 9.1 The Parish Council have stated that Dedham Parish Council supports the objection from the Dedham Vale Society and asks that the carefully agreed designs should not be subject to variation

## **10.0 Representations**

- 10.1 Dedham Vale Society: States " I was present at the meeting at the town hall when permission was originally granted despite the proposed development being outside the village envelope and inside the AONB the Planning Committee councillors were impressed with the very high standard of design much of it taking account of the local vernacular. The alterations now proposed down grade the principle established when permission was originally granted"

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

## **11.0 Parking Provision**

- 11.1 Unaffected by the amendments proposed

## **12.0 Open Space Provisions**

- 12.1 Unaffected by the amendments proposed

### **13.0 Air Quality**

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

### **14.0 Development Team and Planning Obligations**

- 14.1 This application is classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. It was considered that a linking agreement was required to secure the same Planning Obligations agreed under application 146334
- 14.2 The legal agreement secures
- the affordable units as affordable in perpetuity
  - the private housing to fund the construction and fitting out of the affordable units
  - a timetable for the delivery of the affordable units to be submitted to and agreed with the Local Planning Authority (constructed, fitted out and passed to a registered provider in accordance with the agreed terms), agreement to a phasing plan and delivery cascade
  - the affordable units to be rented
  - agreement with the Council on the criteria for a Local Lettings policy

### **15.0 Report**

#### Design and Layout

- 15.1 There is no change to the approved layout. The minor changes to the rear elevation on the two plots are acceptable and would have been supported by officers had they formed part of the original application. It is not considered that the proposed alterations dilute or diminish the design quality of the scheme as a whole.

#### Scale, Height and Massing

- 15.2 Unaffected by the proposed amendments

#### Impact on the Surrounding Area

- 15.3 The minor changes are on the rear elevation and have no impact on the surrounding area. Whilst Dedham Parish Council and Dedham Vale Society have raised objection they have not detailed why they consider the amendments will down grade the approved scheme. Flemish garden wall bond which uses headers as well as stretchers in the brick courses is a traditional bond in Dedham and is preferable to the more generally used stretcher bond (a modern mode of brick laying).

### Impacts on Neighbouring Properties

- 15.4 As Members are aware certain non-material amendments can be dealt with by officers. In this instance it was considered the residents of Appletree Cottage and Hallfields Cottages should be consulted on the amendments and the applicant was advised to submit a planning application. No comment has been received from residents.

### Amenity Provisions

- 15.5 Unaffected by the proposed amendments

### Highway Issues

- 15.6 The amendments raise no highway issues

## **16.0 Conclusion**

- 16.1 These minor amendments are acceptable and permission is recommended

## **17.0 Recommendation**

- 17.1. APPROVE subject to the signing of a linking agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Commercial Services to refuse the application, or otherwise to be authorised to complete the agreement to secure the same matters as the existing agreement for application 146334
- 17.2 On completion of the linking agreement, the Head of Service be authorised to grant planning permission subject to the following conditions:

## **18.0 Conditions**

### **1 - Non-Standard Condition/Reason**

With the exception of condition 2 of Planning Permission 146334 which is hereby varied, the requirements of all other conditions imposed upon planning permission 146334 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.



## 2 - \*Development to Accord With Approved Plans

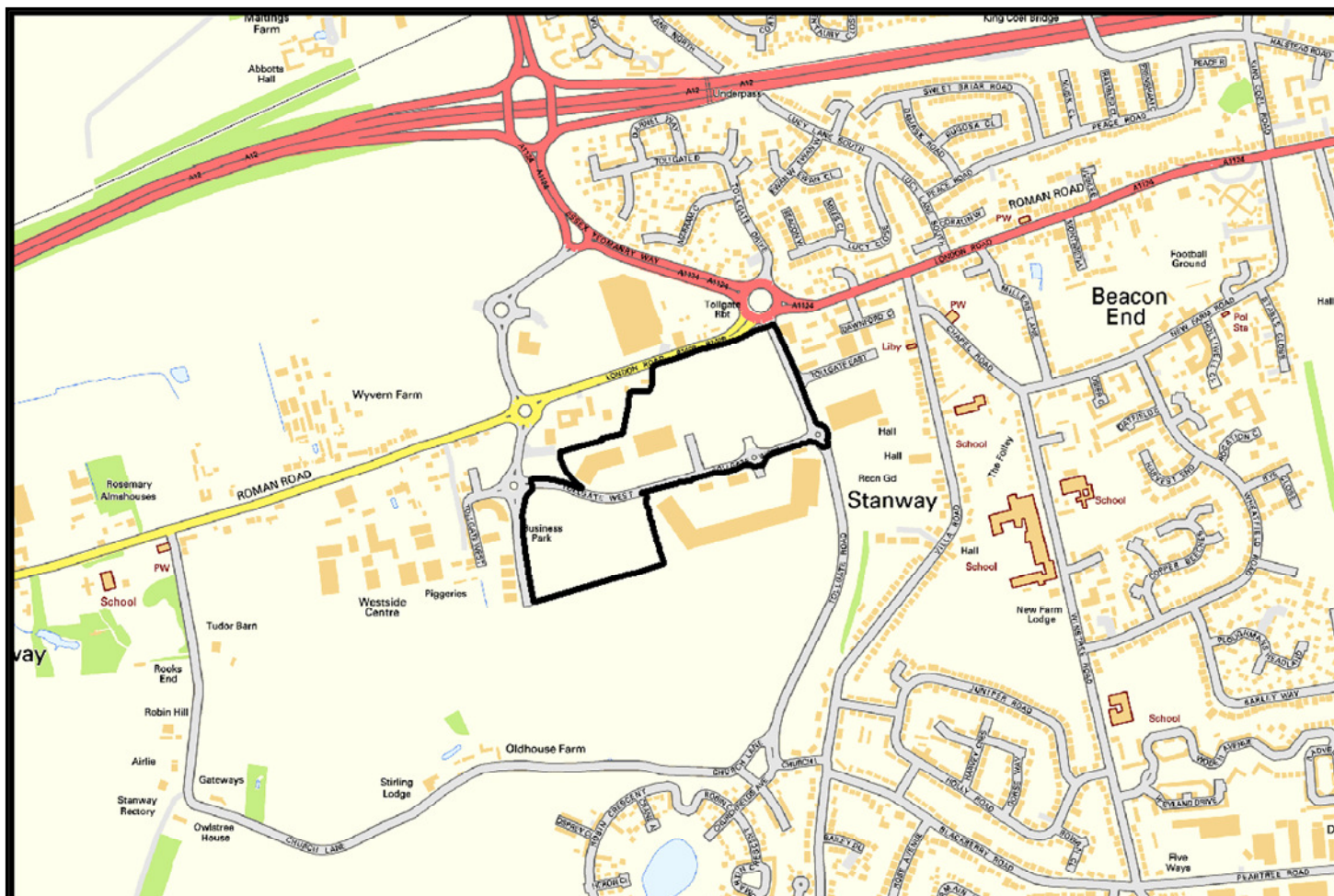
The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers Landscape Strategy 14.1758.01, Highways General arrangement 1034/SK02, Highways Drainage Concept 1034/SK03, 1085.L., 204C, 205D, 013A, 014B, 000, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 017, 018, 019, 020, 021, 022, 023, 024, 025, 026, 027 and 028, 1085.S.201

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

## 19.0 Positivity Statement

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





**Application No:** 150239

**Location:** Land to north/south of, Tollgate West, Stanway, Essex

**Scale (approx):** 1:1250

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**7.3 Case Officer: Vincent Pearce****MAJOR**

**Site:** Land to north/south of, Tollgate West, Stanway, Essex

**Application No:** 150239

**Date Received:** 5 February 2015

**Agent:** Mr Paul Newton

**Applicant:** Tollgate Partnership Limited

**Development:** Outline application for mixed used development of leisure uses (use class D2) including cinema and retail (use classes A1,A2,A3,A4 and A5) with associated parking including multi-storey car park,public realm improvements,access,highways,landscaping and associated works.

**Ward:** Stanway

**Summary of Recommendation:** Refusal

**1.0 Reason for Referral to the Planning Committee**

- 1.1 This application was reported to and considered by the Planning Committee on 17<sup>th</sup> December 2016 at which the 'Deferral & Recommendation Overturn Procedure' [DROP] was triggered. [PART 5 Section B, Schedule 4: Planning Procedures Code of Practice 2015].
- 1.2 The report that was presented on 17 December is reproduced later as part of this supplementary report.
- 1.3 The Minute of the 17 December 2015 meeting records :-that

“RESOLVED that the Deferral and Recommendation Overturn Procedure be invoked and a further report be submitted to the Committee giving details of the risks to the Council, the financial implications including the need to refer the matter to the Secretary of State for Communities and Local Government, together with recommended conditions and Heads of Terms should the application be granted. “

[Minute 252 as presented to and agreed by the Planning Committee at the meeting of 4 February 2016.]

#### 1.4 *Comment on DROP procedure for readers of this report:*

*The procedure for “overturning” recommendations is described and explained in detail within PART 5 Section B, Schedule 4: of the Council’s Planning Procedures Code of Practice 2015]*

*(1) When the Planning Committee disagrees with their professional Planning Officer’s advice the Councillors can raise a motion to overturn the recommendation. This motion should include clearly stated planning reasons so that other Councillors of the Committee can decide whether they agree or disagree. The reasons should be “reasonable” as defined within planning law, and should explain how the Development Plan and other material considerations have been taken into account to justify the motion. Once the mover of the motion has stated their reasons for suggesting the Committee act contrary to the Officer’s recommendation this motion must still be seconded. The seconder should also set out their own analysis of the Development Plan and other material planning considerations so that they can again demonstrate their own “reasonableness” in the decision making process. “*

1.5 This Supplementary Report provides that requested information. The recommendation from officers remains unaltered from that of 17 December 2015.

#### 1.6 Report Contents

Members are advised that the remainder of this report is set out as follows:-

##### 2.0 Synopsis

##### 3.0 Risks to the Council of approving the application

##### 3.16 Implications for existing Adopted Local Plan

##### 3.18 Implications for the Local Plan process

##### 3.33 Implications for Stane Park appeals

##### 4.0 The Strategic Plan 2015-2018

##### 4.1 Northern Gateway

##### 4.8 Impact on the Town Centre

##### 4.12 Town Centre investment

##### 5.0 Financial and procedural Implications of approving the application

##### 5.1 Implications for Judicial Review - financial and other costs

##### 5.12 Departures from the Development Plan and “call-in” for Determination by the Secretary of State.

##### 5.18 Appeals under s38 of the Town & Country Planning Act

##### 6.0 Consultation responses received since 17 December 2015

##### 7.0 Suggested conditions and Heads of Terms

##### 7.4 Current Obligations list

##### 8.0 Draft conditions

9.0 Conclusions of 18 February 2016 report

10.0 Recommendation for 18 February 2016 report

11.0 Report from 17 December 2015 meeting

Appendix 1 NLP comments

Appendix 2 Letters from English heritage and Aquila developments

Appendix 3 – Report as presented to Committee on 17<sup>th</sup> December 2015

## **2.0 Synopsis**

2.1 This report focuses on the additional information requested by the Chairman and is split into the three sections outlined at 1.3 above.

2.2 The report, having considered all material planning considerations, including the supplementary information reported below, continues to recommend that the proposed development be refused. It does so, on the basis of:

- the significant increase in town centre use floorspace proposed which would fundamentally challenge the existing spatial hierarchy which puts the Town Centre at the top of the hierarchy;
- the resultant significant loss of high quality strategically important employment land at Stanway contrary to Council policy safeguarding high quality employment land in Strategic Employment Zones
- the consequential undermining of the Council's adopted local plan and employment strategy which are designed to widen the economic base of the Town and protect the viability and vitality of the town centre thereby undermining sustainable development principles;
- it is considered that this speculative proposal is premature and seeks to pre-determine the established hierarchy via the development process instead of the appropriate and established local plan process resulting in harm through the elevation of Tollgate in the hierarchy without the consideration of that consequence through the development plan on other centres and in particular, the town centre;
- Finally, the benefits arising from the proposal in the form of an expansion in jobs and the widening of local consumer choice along with, the boost to the local economy in Stanway and limited public realm improvements do not outweigh the harm that will arise as a result of the undermining of Colchester's retail hierarchy and the consequent retail growth stagnation and harm to investment confidence in the Town Centre.

## **SUPPLEMENTARY REPORT FOR 18 FEBRUARY 2016 MEETING**

The previous report presented to Committee on 17 December 2015 is reproduced at the end of this report as it continues to form one of the material planning considerations.

## **3.0 The Risks to the Council of Approving the Application**

There are a number of risks to the Council should the Planning Committee be minded to approve the application. These include the following;

- Risks associated with undermining the existing adopted Local Plan

- Retail Hierarchy
- Stane Park appeals
- Risks to the production of the new local plan
- Concern about the ability to deliver the objectives of the Council's Strategic Plan
- The Council's Strategic Plan 2015 -2018 sets out the Council's "direction and potential for the Borough" It describes the ambitious range of goals that the Council will look to successfully deliver for the people of Colchester. It is not a planning document but some of the objectives therein are related to the planning process. It is divided into four main themes:-
  1. Vibrant
  2. Prosperous
  3. Thriving
  4. Welcoming

3.1 Of particular interest are the following elements of the Strategic Plan;

- [Vibrant] Enhance the diverse retail and leisure mix supporting independent businesses valued by residents and visitors
- [Prosperous] Promote Colchester to attract inward investment and additional businesses, providing greater and more diverse employment and tourism opportunities
- [Thriving] Promote Colchester's heritage and wide ranging tourism attractions to enhance our reputation as a destination
- [Welcoming] Make Colchester confident about its own abilities to compete with the best of the towns in the region to generate a sense of pride.

3.2 The Council's Adopted Local Plan documents set out the Council's planning policies but Members will note that the way in which the Council's Strategic Plan objectives get delivered may in part be through the planning process.

3.3 In considering these the Planning Committee can only have regard to the planning issues raised by the Tollgate Village proposal and cannot have any regard to the Council's position as land owner on any (or part of any) other site that may be affected by the Tollgate village proposal.

3.4 It is important to state this clearly as it would pose a significant risk to the Council if the Planning Committee were in any way to have regard to the Council's commercial/financial position as a land owner. These risks include:-

- Legal challenge on the basis that the decision was flawed as a result of the Committee having had regard to matters that should not have been taken into account (i.e. the wider financial interest of the Council)
- Loss of public confidence in the operation of the planning system in Colchester

- Tarnishing of the reputation and integrity of the Council
- Claims of impropriety and unfair bias

3.5 The Council's Planning Procedures Code of Practice sets out the framework within which planning decisions at Colchester will be taken and suggests how risks can be minimised:-

Introduction: paragraph (iv) states

"Councillors have a special duty to their constituents, but their first duty is to the whole community of the Borough of Colchester. They must vote in the interests of the whole Borough where planning matters are concerned. Councillors, like Officers, should have regard to the law, statutory duties, national policy, the Development Plan and all other relevant material planning considerations (The Development Plan incorporates the adopted Colchester Borough Core Strategy, Development Policies, and Site Allocations)."

3.6 Section1: paragraph (2) states:-

"The planning system exists to consider development proposals in the light of the wider public interest. Councillors must take into account the interests of the whole of the Borough of Colchester and act in a way which is fair and is clearly seen to be so. There is also a presumption in favour of sustainable development, and encouragement for Local Planning Authorities to take a positive approach towards planning decision making.

3.7 The Code of Conduct makes it clear that whilst parochial considerations are important these should be secondary to an overall duty to consider the interest of the Borough as a whole. This is the basic tenet of the English Planning system and the role of planning committees.

3.8 The reference in the Code of Conduct to the need to have regard to the Development Plan is fully in line with the National Planning Policy Framework which members will recall from planning training usefully describes the significance of an up to date Local Plan and its role in guiding decisions:-

3.9 It states in paragraph 007 of "How must decisions on applications for planning permission be made?" that:-

"To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise".

3.1 The NPPF stresses importance of a plan-led system. Where proposals accord they should be approved without delay.

"Where a development plan is absent, silent or the relevant policies are out of date the NPPF requires the application to be determined in accordance with the presumption in favour of sustainable development"



- 3.11 Members' attention is drawn to the Government's reference to planning being 'plan-led' because the English planning system is based on local planning authorities setting out their planning policies which then direct development. This provides the development industry, prospective developers/investors, landowners and the public certainty as to how development proposals will be assessed by the local planning authority and is also meant to avoid rogue decisions being taken.
- 3.12 That said the advice does allow decisions to be taken that do not accord with the development Plan where material considerations that indicate otherwise. This supplementary report will consider what these might be in the context of the Tollgate Village development.
- 3.13 At the meeting of 17 December 2016 comment was made during discussion to the effect that 'the Town Centre must stand on its own two feet'. The NPPG is helpful in assessing the extent to which the Government accepts that proposition. In paragraph 001 it states:-
- "Local planning authorities should plan positively, to support town centres to generate local employment, promote beneficial competition within and between town centres, and create attractive, diverse places where people want to live, visit and work"
- "Local authorities should plan... adopting a town centre first approach and taking account of specific town centre policy. In doing so, local planning authorities need to be mindful of different rates of development in town centres compared with out of centre."
- "...The impact test determines whether there would be likely significant adverse impacts of locating main town centre development outside of existing town centres (and therefore whether the proposal should be refused in line with policy)..."
- 3.14 In this context the Government is strongly advising local authorities to take care to ensure that planning decisions do not undermine the important role that Town Centres play in the life of towns. This would tend to suggest that it is inappropriate to suggest that Town Centres must 'stand on their own two feet' if that means abandoning adopted retail hierarchy policies to allow major departures from that policy outside of designated centres.
- 3.15 In restating this, officers are anxious to ensure that the context for doing so is clearly understood. It is not a question of officers trying to apply undue pressure on councillors. That would be wholly unacceptable and improper and is alien to the relationship that has been cultivated over decades in Colchester. That is not the intention. The wider implications are therefore explored below in line with the minute of 17 December 2015.

3.16 Implications for the existing adopted Local Plan

The Council considers that it has an up-to-date Local Plan which should serve as the basis for decision-making in line with national planning policy. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 11 of the National Planning Policy Framework both state that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Appeal decisions within Colchester have established that its Local Plan, as modified by the Focused Review in 2014, is up-to-date and a valid basis for the determination of planning applications. These include for example the decision on the Horkesley Park leisure/retail proposal where the Inspector found that: “The development plan should therefore not be considered absent, silent or relevant policies to be out-of-date and the appeal should be determined against the development plan unless other material considerations indicate otherwise” (APP/A1530/A13/2195924, February 2014). Implicit in the March 2014 appeal decision rejecting the use of two units within the Tollgate West Business Park for retail purposes was the principle that the Council’s planning policies were up-to-date (APP/A1530/A/14/2212689).

- 3.17 A decision to approve the scheme would accordingly need to be based on the view that material considerations were strong enough to outweigh the policy presumptions against a scheme which did not accord with plan policies in terms of the spatial hierarchy, sustainable development and employment land.

3.18 Implications for the Local Plan process

Approval of the scheme in advance of publication of the Council’s Preferred Options for a new Local Plan would prematurely close off options that should be made through the Local Plan process and not by an isolated development management decision. Granting planning permission now for a large scale development outside the scope of adopted policy is considered to harm the robustness of strategic long-term planning for the area, with particular regard to the following issues:

- 3.19 Spatial Hierarchy: The scale and extent of the Tollgate proposals are considered to be significant enough to alter the balance and functionality of centres within Colchester. Plan policies help guide investment decisions, and if a particular centre is promoted, this will inevitably have consequences for competing centres. The development proposals, in combination with existing uses, would provide a concentration of over 50,000 sq.m gross of Class A uses and a new leisure destination. A centre of this size would be more than two and a half times bigger than the next largest UDC (Turner Rise) and, particularly given the focus of the other four Urban District Centres (UDCs) on convenience rather than comparison shopping, would provide a clear challenge to the predominance of the Town Centre as the pre-eminent destination in the Borough for comparison shopping.
- 3.20 Such a significant alteration to the Borough’s spatial hierarchy involving the introduction of a new level below the Town Centre but above the size of existing UDCs should be considered through the plan-making process. This would involve consideration of the need for such a centre; the effects of such a centre on existing and potential Borough links, travel patterns, and functions; and the analysis of alternative sites. Whilst the spatial strategy for the Borough is currently under review, initial work and national guidance supporting prioritisation of the Town Centre do not support introduction of a new tier into the spatial hierarchy. In fact, the lack of clarity arising from the NPPF definition of centres over what sort of town centre activities

should be encouraged in an UDC support a simpler hierarchy removing the UDC designation from the Council's hierarchy. An approval of the Tollgate development at this stage of the plan-making process would accordingly limit the Council's ability to safeguard and promote the Town Centre.

- 3.21 New Retail Allocations: Development of Tollgate would also reduce the potential requirement for new retail space anywhere in the borough to be identified and allocated as part of the Local Plan process. There is a limited amount of new expenditure created by a growing population and careful consideration should be given to where new retail space is provided. Given that new investment is required to maintain the Town Centre's position, the lack of expenditure capacity justifying growth opportunities would limit the Council's ability to argue for regeneration of town centre sites such as Priory Walk, St. Botolph's and smaller brownfield sites, in addition to the existing commitment at Vineyard Gate. An update on retail capacity will be provided at the meeting following the decision on the application for a Sainsburys store at the Hythe.
- 3.22 Employment land supply: To grant planning permission would, in effect, release a significant amount of employment land for development outside the Local Plan review process, against the current intentions of the local planning authority. This would also conflict with the advice in the Framework, which makes clear that the preferred route by which such releases are decided is through the Local Plan process [para. 14].
- 3.23 Ruling out the Tollgate employment land in advance of the new Local Plan is accordingly considered to ignore the latest developments in the area and to pre-empt the process of considering the wider spatial and phasing issues in a Borough-wide context. The recent upturn in the take-up of employment premises in Tollgate highlights the rapid nature of change in the commercial property market and the need to retain flexibility and additional capacity. The Borough needs to ensure that the longer term employment options for the area are not limited by the premature removal of a site well placed to meet the need for B employment uses. Applying the test in NPPF Para 22, it is considered that there is a reasonable prospect of the land being used for employment purposes, and it is therefore justifiable to continue to safeguard the land within the Strategic Employment Zone for B uses.
- 3.24 The Review of the Local Plan is the most appropriate process to look at retail and employment needs across the borough to ensure there is sufficient land, in the right places to support residential communities. Stanway will be included in this review. It is therefore considered that the scale of the development justifies a refusal on grounds of prematurity.
- 3.25 Annex 1 of the National Planning Policy Framework explains how weight may be given to policies in emerging plans. However in the context of the Framework and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:
- a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making

process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and

- b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

- 3.26 Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.
- 3.27 Officers believe that the proposal falls well within the category of development identified as substantial with a significant cumulative effect which pre-determines decisions about the location and phasing of new development. The risk to the Council is if the application were to be refused and an appeal submitted, whether an Inspector would consider the Local Plan to be at an advanced stage.
- 3.28 The Council intends to consult on Preferred Options for its new Local Plan in June and July of this year with approval of the submission version in December. This timetable also accords with those of Chelmsford, Braintree and Tendring Councils. Joint work is underway with the other Councils under the Duty to Co-operate and the Department of Communities and Local Government (DCLG) have awarded a grant of £640k to investigate the potential for new Garden Settlements in a number of locations, two of which are cross border sites. The nearest site being investigated for a Garden Settlement is at Marks Tey, less than 3 miles from the application site. Any decision taken on Tollgate could therefore impact on the future strategic planning not just in Colchester but also Braintree. One of the key principles in the Government document “Locally led Garden Cities” is that garden settlements are expected to have “strong local cultural, recreational and shopping facilities in walkable neighbourhoods.” If retail facilities are available in a sub-regional scale centre less than 3 miles away it is difficult to envisage shopping facilities within any future garden settlement at Marks Tey.
- 3.29 An additional risk therefore for the Council to consider is if another Council argued that CBC had failed under the Duty to Co-operate by taking strategic growth decisions through a planning application that ought to be considered through examination of a plan. Chelmsford City Council have objected to the Tollgate Village application.
- 3.30 The wording in the NPPF set out above is key. Part (B) states ‘seldom’ will prematurity ‘be justified where a draft Local Plan has yet to be submitted for examination’. Helpfully the NPPG describes how a local planning authority will need to indicate how the grant of planning permission for the development will prejudice the outcome of the plan-making process. By implication this means that there are circumstances in which failure to meet circumstance (b) would not prejudice the use of prematurity as a reason for refusal.

3.31 Officers believe there are further exceptional circumstances in this instance that justify grounds of prematurity. The application has come in just as Local Plan policies and allocations for town centre uses are being reviewed for the Preferred Options consultation document to be published this summer to assess how they should address fundamental shifts in the retail and leisure worlds. Floorspace and location requirements are rapidly changing in the wake of the growth of internet shopping and click & collect; the challenge posed to existing chains by competitors such as smaller continental retailers; and the increasing importance of food/drink and leisure uses in retail centres. The impact of these changes has been demonstrated by the big four convenience retailers curtailing expansion plans and cutting large numbers of planned large stores from their build programmes. The Council has accepted the need to accept changes within existing retail developments within the Borough, but the weight of current trends does not support a significant increase in new large format out-of-centre developments. To the contrary, it reinforces the need to support the historic Town Centre as the appropriate focus for the demonstrable trend for high quality environments that combine retail and leisure attractions. If there is justification for further out-of-centre development (capacity for which would be extremely limited if Tollgate were approved), it should be pursued through the evidence based Local Plan process, which could come to the conclusion that future retail expansion should be on the other side of town. If approved the Tollgate Village development in tandem with the growth of regional competitors would soak up nearly all of the retail capacity in Colchester until 2026 (see paragraph 4.11 of NLP report appendix 1 ) In addition the capacity absorbed by the Sainsbury's proposal approved subject to S106 (yet to be signed) at the Planning Committee meeting of 4 February 2016 will effectively remove any capacity until 2026. This would mean that any ability for the Council to strategically direct retail floorspace over the forthcoming Local plan period would be lost

3.32 Members will therefore have to consider the risks associated with approving this development in terms of undermining the efficacy of the Local Plan process and the associated risk of a challenge under the duty to co-operate and the risk of a reason for refusal based on prematurity which is not subsequently supported at appeal.

### 3.33 Implications for Stane Park Appeals

Members will recall the in depth discussion that took place in September concerning two applications near to Tollgate at Stane Park for 6 restaurant/café/pub uses. These were refused on 17 September as being contrary to the local plan insofar as the development would firstly result in the loss of strategically important employment land and secondly would result in the creation of an out of town 'destination' that would harm the vitality and viability of the Town Centre

3.34 Whilst each application should be determined on its planning merits having regard to the development plan and other material planning considerations; relevant planning history is one such material consideration. The Stane Park proposals (now subject to appeals via public inquiry) may be distinguished from the Tollgate scheme as the uses do not include retail/leisure, being exclusively food/drink related. The site is also located entirely within an area allocated as a Strategic Employment Zone. The impacts are therefore different including the scale of impact. Nevertheless, there are similarities in terms of the associated strategic implications/nature of the impacts and these include the loss of Strategic Employment land with excellent transport links and

the predicted adverse impact on the Town Centre. Tollgate is dramatically greater in terms of the scale of development and its resultant impacts when compared to Stane Park. It could be argued that it would be inconsistent following the refusal of the applications at Stane Park to grant consent for a markedly greater scale of development that would also result in the loss of Strategic Employment Land that together could result in a greater scale of adverse impact upon the Town Centre. However, the difference in the scale of development proposed is reflected in the resultant growth that could be delivered by the current Tollgate scheme; albeit that this would be substantially at the expense of the Town Centre through trade diversion and redirection of planned growth. Members may be minded that these growth-related impacts are a material consideration that could justify departure from the local plan. Whilst your officers do not share this view, it could be held that this aspect distinguishes the proposals from the Stane Park appeals and that a different conclusion could be justified therefore

#### **4.0 The Strategic Plan 2015 – 2018**

As explained earlier the Council adopted its Strategic Plan in 2015 to set out the direction and future potential for the borough. The Council has an ambitious range of goals to achieve that build on the successes of the previous three years, working with a large number of partners to get the best for residents. Some of the actions in the Strategic Plan Action Plan are of relevance to the consideration of this application in referring to the Town Centre and Northern Gateway;

- Work with development partners to bring exciting new retail and leisure to the eastern part of Colchester town centre
- Ensure sufficient land is allocated in the right places to attract and retain businesses, supply homes and identify the infrastructure that is needed by developing a Local Plan for the borough
- Co-ordinate partners and funding streams in the Northern Gateway and the Hythe to generate a wide range of jobs and facilities
- Review the Better Colchester Town Centre website to promote Colchester
- Improve the walking and cycling links between Colchester North Station and the town centre through initiatives such as 'Fixing the Link'

Approval of the Tollgate Village application will impact on the Councils ability to deliver these actions. Further details are set out below.

#### **4.1 Northern Gateway**

Since 2006, the Council has held outline permission for sports and leisure uses on the Northern Gateway sites to the west of NAR3. The Stadium was the first element delivered in 2008. In addition, various infrastructure projects, including Junction 28, relocation of the BP garage, Axial Way and United Way, and more recently NAR3, have been developed to support the extant sport and leisure and employment outline permissions. The existing permission expires on 21 March 2016 if no compliant Reserved Matters application has been received by that date.

- 4.2 In accordance with that outline permission, the Council's preferred developer is currently in the process of arranging for a Reserve Matters Application to be made to deliver the anchor elements of the sports and leisure allocation within the Local Plan.

- 4.3 Council Officers believe that the borough cannot sustain 2 x large new cinemas together with the existing Odeon and forthcoming Curzon. If the departure at Tollgate is approved, this will risk the withdrawal of the anchor leisure element of the Northern Gateway scheme. If this occurs all the restaurant and extreme sports uses will also withdraw. Officers are not currently aware of other leisure anchors of similar stature that could be a viable replacement.
- 4.4 The Economic Growth team advises that such an outcome will risk the following benefits to the Borough that the Northern Gateway scheme will otherwise deliver:
- Loss of an annual rental income stream.
  - Loss of approximately £1.5m pa business rates income for the fully developed scheme.
  - Loss of 600 new full and part time jobs directly related to the Turnstone development and a consequent delay in the delivery of the 3500 jobs anticipated from the full development of the Northern Gateway.
  - Loss of an estimated 260 direct jobs that will be generated during the construction phase.
- 4.5 Although it is accepted that the job numbers described above, may be provided by the Tollgate scheme if the departure is supported, the proposed Tollgate development cannot provide for the Sports Village north of the A12, which will also be at risk of delivery if the commercial leisure scheme does not go ahead. Other than the obvious consequence of loss of considerable sport participation opportunities including a new home for the growing Colchester Rugby Club, the inability to move forward a scheme of this type at this time will put potential Sport England funding at risk and other emerging funding pots from a range of national governing bodies. This opportunity to develop new facilities, thereby increasing participation and sports performance levels within the Borough population, with proven benefits to the health of the Borough, will be lost. Whilst economic growth is a material consideration, members are reminded that the financial interests of the Council as landowner must be set aside in their consideration of the Tollgate proposals.
- 4.6 Furthermore the Economic Development Team indicates, it is currently anticipated that the proposed Northern Gateway sports and leisure scheme will provide a firm foundation, which, when mixed with the planned delivery of gigabit fibre connectivity, greatly increases the opportunity to attract real high value, high quality employment uses to the remainder of the site. If Tollgate proceeds and the Northern Gateway leisure anchor is lost, this foundation will be removed, with no certainty of being replaced in the near future.
- 4.7 The proposed developments at the Northern Gateway, both north and south of the A12, are expected to attract millions of visitors to the site on an annual basis. Officers believe these developments are complementary to the Town Centre and shall be taking proactive measures to encourage these visitors from both within and outside the Borough to visit and enjoy the quality facilities in the Town Centre, by means of the Park and Ride.

#### 4.8 Impact on the Town Centre

The thrust of the NPPF and government retail guidance for many years has been about directing retail development to the town centre first. In determining retail decisions at all times it must be considered what will be the effect on the Town Centre as policy dictates. This proposal will affect the Town Centre by changing fundamentally the retail hierarchy in Colchester with the provision of a very extensive retail centre which will seek to trade in competition with the town centre by the nature of the retailers and the format from which they trade. That will inevitably have a powerful effect on shoppers' choices between the town centre and Tollgate.

- 4.9 Further work on the impact issue carried out by the Council's consultants NLP (attached as Appendix 1) calculated that:

Colchester town centre's comparison good turnover is projected to increase by +£87 million (14%) between 2015 and 2019, if the Tollgate Village development is not implemented. However if the Tollgate Village development and commitments are implemented, Colchester town centre's turnover (worst case) is projected to increase by only 1% between 2015 and 2019. Tollgate Retail Park's turnover is expected to double if the proposed development is implemented (para 4.5).

- 4.10 NLP conclude that 'If implemented Tollgate Village would as a maximum divert £803 million from Colchester town centre, which exceeds the projected available expenditure to support new comparison development in Colchester (£392 million). Therefore £411 million of the trade diverted to Tollgate Village from the town centre, is likely to be diverted from existing businesses and commitments in the town centre. Given the town centre's first policy, this £411 million diversion is a clear disbenefit of the development (Para 4.10, Appendix 1).
- 4.11 Tollgate Village is expected to attract £198m of trade from centres outside Colchester Borough over 10 years, which should benefit the local economy. Conversely the reduction in Colchester TC relative attraction with Chelmsford and Ipswich could result in the loss of £120 million, between 2019 and 2026.
- 4.12 At the Planning Committee on 4 February it was resolved to grant planning permission subject to a legal agreement for a new Sainsbury's superstore within the premises currently occupied by B & Q in Lightship Way, Hythe (ref: 143715). NLP have reviewed the cumulative impacts associated with this proposal, if implemented together with the Tollgate proposals. As the proposed Sainsbury's store at Lightship Way has been conditionally granted planning permission it therefore needs to be taken into account as a planned commitment. NLP's analysis of this proposal suggests the store will have a turnover of around £66.5 million (split (£49m convenience goods and £17.5m comparison goods). Allowing for trade draw from outside Colchester the proposed store is expected to reduce expenditure capacity in Colchester by £40m for convenience goods and £15.5m for comparison goods (assuming B&Q relocates to a reduced size store elsewhere in Colchester).
- 4.13 NLP's assessment of the Tollgate scheme indicates the convenience goods element of the scheme would still surplus expenditure capacity of £34m at 2019 and £78m at 2021. The addition of the Sainsbury's store will create a small deficit of -£6m at 2019,



but a surplus of £38m at 2021. For comparison goods the mix Tollgate scheme would create a deficit of -£60m at 2019 reducing to -£38m in 2021. The Sainsbury's store will create a larger deficit of -£75.5m at 2019 and -£53.5m at 2021. These updated projections indicate that the risk the town centre will stagnate for the next decade has increased.

#### 4.14 Town Centre Investment

Approximately £500m has been and continues to be invested in the town centre since 2010. It is an ongoing figure not broken down into years as it includes pipeline projects such as Vineyard Gate. The 10 year investment plan includes the following projects some of which may not proceed if Tollgate Village goes ahead and there is not the investor confidence in the Town Centre;

- £15m on new / refurbed hotels: Greyfriars, Blue Ivy, Premier Inn and others in the pipeline
- £580k on refurbing Mercury Theatre Studio
- £44m on improving retail: W&G refurb/extension, Lion Walk & Yard refurbs, Culver Square and other shop refits
- £70m projected for Vineyard Gate
- £32m on improving places to visit such as The Castle Museum refurbishment and Firstsite plus
- £9m funding bid by the Mercury Theatre for improvements
- £30m New Magistrates' Court & more for public realm surrounding
- £7m new Park & Ride and Colchester Bus Station
- £7m further town centre road networks improvements 2016
- £3.5m for Creative Business Centre
- Relocation of the market (April 2015) with the intention and capability to have themed markets which could run into the evening.
- The investments by the current owners of Lion Walk shopping centre
- Investment in bringing new retailers to Culver Square
- Traffic changes both implemented in March 2013 and planned for the future such as the St Botolph's roundabout
- The new Magistrates Court
- The St Botolph's Quarter development
- The Walls project
- Events such as the Big Screen: (est £250k) a new attraction for Colchester
- The Waiting Room: a community space with a comprehensive event programme, opened in 2013.
- The George Hotel has been taken over and will be completely refurbed starting 2016
- Surya/Flying Trade proposals for new café and museum in Museum Street
- Increasing number of residential properties in the town centre above shops, which add to the diversity and mix in the town centre.

#### 4.13 An unknown sum has also been invested in the Town centre on refurbishments to provide new and improved restaurants:

- Hudsons: New restaurant/club opened December 2014.
- Bills: new family restaurant opened in the High Street July 2015
- The Church Street Tavern – opened in Spring 2014 to rave reviews (The Independent 4.4.15)

- The Three Wise Monkeys – this former member only night club is now a Tap House, restaurant and live music venue set over three floors. Opened in Dec 2013 with full opening in Feb 2014.
- El Guaca – Mexican restaurant opened in 2014 in the former 'Layer Cake' premises transforming a problem bar into a family restaurant
- Love Thy Burger – opened in 2015
- Pizza Express – undergone a complete refurb in 2014
- Aburi – a new Japanese restaurant opened in September 2015 in Short Wyre Street
- Piattos – a new Salsa Café opened in September 2015 in Queen Street
- Tysa Desserts & Coffee – late night café opened in September 2015 in the High Street
- Carluccios Restaurant – opened within Williams & Griffin (Fenwicks) dept store October 2015.
- Hunt & Darton Café at Firstsite Gallery – (June 2015). Opened as the only café art installation in the country (temporary basis as H&D also perform at other events like the Edinburgh Festival)
- The Cells at the old Magistrates' Court – opened in August 2015 as part of the
- Memoirs Restaurant, which opened in 2014

4.16 Since the previous committee two further representations have been received which are relevant to matters concerning the Town Centre. The first letter has been received from Historic England who support "a plan-led approach to the management of development in any given area, and proposals that are contrary to an adopted plan should only be approved in exceptional circumstances, and where they would result in a clear, discernible public benefit that demonstrably outweighs any consequential harm. In this instance we are not aware of any such public benefits that would justify town centre uses (including a cinema) in this location.

4.17 The second letter was received from Aquila Developments Ltd. The letter urges members "to consider very seriously the effects on Colchester Town Centre of this very damaging scheme at Tollgate which goes so far beyond what should reasonably be permitted at a District Centre as to represent a real challenge to the existing retail order... In the real world it represents a real threat to existing, committed and planned Town Centre investment. ... in the event it were to be permitted we (Aquila) would not actively seek development opportunities in Colchester Town centre in the foreseeable future."

4.18 Copies of both letters are attached as appendices to this report.

## **5.0 Financial and Procedural Implications of Approving the Application**

### **5.1 Implications of Judicial Review – financial and other costs**

There are a variety of legal obligations which public bodies have to follow when making decisions and a failure to do so renders any subsequent decision potentially unlawful and vulnerable to challenge. This is also the case in planning decisions – section 38(6) of the Planning & Compulsory Purchase Act 2004 prescribes that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. If a decision that departs from the

development plan is contemplated then clear and convincing material planning considerations are required. There are also key procedures set out in statutory instruments ('orders') that must be followed to prevent any decision taken being legally flawed and vulnerable to challenge.

- 5.2 Judicial review is a process by which the courts review the lawfulness of a decision made (or sometimes lack of a decision made or action taken or sometimes failure to act) by a public body. It is mechanism by which a judge considers whether a public body has acted in accordance with its legal obligations and if not, can declare a decision taken by it invalid. From 1 July 2013 judicial review of planning cases must be started within a strict deadline of 6 weeks from the date of the decision under section 288 of TCPA 1990.
- 5.3 Either party can appeal against the court's decision to the court of appeal. However, the Judge hearing the case has to be asked for permission to appeal. If it is refused an application has to be made to the court of appeal within 14 days of the administrative court's decision. Judges usually refuse permission to appeal, and one has to apply to the Court of Appeal directly for permission.
- 5.4 The associated financial cost of bringing judicial review claims can be very high as all parties need to be represented by costly specialist barristers, especially where a case proceeds to a full court hearing and the claimant is unsuccessful. This is because if unsuccessful, the claimant is likely to be ordered to pay the defendant's costs as well as their own. If the claimant is successful then the defendant will be ordered to pay their costs. However, that leaves the defendant costs should the claim be unsuccessful. Legal costs can be high given that this is a very specialist area of law usually requiring representation by senior counsel or QC's.
- 5.5 In judicial review proceedings of planning decisions the court will usually intervene as a matter of discretion to quash a decision. The court cannot rule on the policy merits of a decision, only in order to right a recognisable public wrong. If an application for judicial review is successful the court can grant to the claimant a Quashing order where the original decision is declared invalid and is struck down and the public body has to take the decision again.
- 5.6 Arguably the greatest impact of this court process is delay, uncertainty and cost to developers. There have been a number of judicial reviews which have resulted in considerable delay to development projects, including infrastructure, housing, retail and residential developments.
- 5.7 In conclusion, the principal risks associated with judicial review relate to the uncertainty and delay that a decision may be quashed with the award of costs against the unsuccessful party. These costs can be significant.
- 5.8 If a decision is quashed then the lpa may consider a new application afresh and address the flaws identified by the Court in the previous decision making process. In itself, the threat of judicial review should not be seen as a material planning consideration in the determination of the application either way. However, departure from the adopted and up-to-date local plan requires robust material planning considerations to justify setting aside the policy framework and in the absence of such a justification, any decision could be considered vulnerable to successful court challenge.

- 5.9 In this particular case if the Council approved planning permission an aggrieved third party might seek to challenge the decision if in their opinion a legal mistake had been made by the Council when reaching the decision to approve and they could evidence this. - this might include, for example, that the Local Authority failed to take into account opinions put forward (this does not mean that the Council has to agree with them), had undue regard to matters that were not material planning considerations, had not had due regard to material planning considerations, that the procedure in dealing with the application was flawed, that a Councillor failed to declare an interest
- 5.10 In the event of a refusal of permission you might normally expect the applicant to appeal the decision but a third party could seek to challenge the refusal via a JR if they believed a legal mistake had been made

5.11 *[Officer comment:]*

*The question here for the Council is that decision on a sound legal basis having had proper regard to all material factors and/or followed all appropriate procedure and/or all interests had been properly declared. That is what it is essential that the officers report is thorough and that the Committee in reaching its decision clearly provides justifiable reasons for reaching that decision. This is particularly important where the Committee looks to overturn a recommendation where a major departure from policy would result –such as in this particular case.*

*In a situation where a major plank of Council retail and employment planning policy is being overturned it opens the door to third parties to challenge that decision if it can be demonstrated that decision was reached without due regard to those policies. A number of Town Centre retailers have made representations objecting to the proposed development on the grounds it is contrary to local and national planning policy. It is therefore important that any decision to approve that development can be properly justified if a JR is to be successfully resisted.*

5.12 Departures from the Development Plan and 'call-in' for determination by the Secretary of State

A departure application is a planning application that is not in line with, or 'departs from', the development plan in force in the area where the application is being made. It used to be the case that the Secretary of State had to be notified if a local planning authority intended to approve a departure application.

- 5.13 In April 2009 a new circular and direction, The Town and Country Planning (Consultation) (England) Direction 2009, came into force which defined which applications local authorities must notify the Secretary of State of. This direction removed the need for local authorities to inform the Secretary of State if they intend to approve a departure application.
- 5.14 The 2009 Direction does still require local planning authorities to notify the Secretary of State before approving certain types of very significant development.

5.15 Even though local planning authorities no longer have to inform the Secretary of State about all departure applications they intend to approve, these applications have to be publicised locally more than other types of application. When a local authority receives a departure application, it must:

- display a notice at the development site for at least 21 days
- place an advertisement in the local newspaper

(Article 13 of the Town & Country Planning (Development Management Procedure) Order 2010).

5.16 Section 77 of the Town and Country Planning Act 1990 is also relevant. It provides that the Secretary of State may direct that any particular planning application should be called in for determination, irrespective of whether it falls within the terms of the new direction, having regard to the policy on call-in. This Direction shall apply in relation to any application for planning permission which is inter-alia for development outside town centres defined as “development outside town centres” means development which consists of or includes retail, leisure or office use, and which – (a) is to be carried out on land which is edge-of-centre, out-of-centre or out-of-town; and (b) is not in accordance with one or more provisions of the development plan in force in relation to the area in which the development is to be carried out; and (c) consists of or includes the provision of a building or buildings where the floor space to be created by the development is 5,000 square metres or more. The Direction requires ‘Where a local planning authority does not propose to refuse an application for planning permission to which this Direction applies, the authority shall consult the Secretary of State (SoS). In the event that members resolve to grant planning permission then the SoS will need to be notified in accordance with the provisions of the 2009 Direction’. The SoS may then decide to call-in the application and a local inquiry would then be held under the direction of a planning Inspector who would report directly to the SoS; who retains the discretionary power to determine the application.

5.17 This process could result in considerable delay and uncertainty for investors and could have considerable implications for the local plan. There are considerable direct costs associated with hosting and staffing a complex inquiry (in excess of £100K) with expert witnesses and advice from specialist senior counsel. These are similar to those associated with an appeal against refusal under section 38 of the 1990 Act. The financial costs should not be seen as a material consideration and should not be afforded weight in the determination of an application. The Tollgate proposals were advertised as a departure in accordance with the relevant regulations and due procedure has been followed.

5.18 Appeals under s.38 of the Town & Country Planning Act

If members are minded to refuse the application in accordance with the Officer recommendation then the applicants would have resort to appeal. Given the level of public interest, this is likely to be via a public inquiry hosted by the Borough. An Inspector appointed by the Secretary of State would then determine the application in due course (unless ‘recovered’ by the SoS for determination). The costs associated with a large public inquiry are considerable (in excess of £100k) given the essential input required from expert witnesses and legal representation. This is not a material consideration in the determination of the application.

- 5.19 As members will appreciate the cost of mounting a defence at appeal is a legitimate cost of democracy. Members should not approve an application merely to avoid the high cost of an appeal if they feel such a refusal is justified - the Council has ways of funding such appeals as a contingency.
- 5.20 The important question for the Committee when refusing an application is "Is it acting reasonably in doing so. If an appellant can demonstrate that the Council acted unreasonably he/she can seek to recover appropriate costs from the Council. The appeal inspector would consider claims for costs on their merits. Local planning authorities can also seek to recover costs from appellants where they have acted unreasonably.
- 5.21 NPPG paragraph 031 advises that costs may be awarded where:-
- a party has behaved unreasonably; and
  - the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
- 5.22 This poses the question – "What does 'unreasonable' mean?"
- 5.23 Again the NPPG provides helpful advice in paragraph 032 when it states

"The word "unreasonable" is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774.

Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

The Inspector has discretion when deciding an award, enabling extenuating circumstances to be taken into account."

- 5.24 Further clarification is provided by paragraph 033:-

"An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses.

Costs applications may relate to events before the appeal or other proceeding was brought, but costs that are unrelated to the appeal or other proceeding are ineligible.

Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.”

#### 5.25 Officer comment:

*Officers do not consider that the recommendation to refuse permission contained in this report exposes the Council to a serious claim for a costs award at appeal as it is based solidly on strong policy grounds. In terms of the question of prematurity the Council is able to support its claim that the application is significant and will harm the economic prospects of the Town Centre and is strongly contrary to local and national planning policy/guidance. The Council is also able to evidence why approving the proposed development ahead of adopting a new Local plan would be prejudicial to the planning process in a plan-led system.*

### 6.0 Consultation responses received since 17 December 2015

- 6.1 The Council has received a letter from Historic England in respect of the Tollgate Village application and its possible impact on the heritage assets in the Town Centre and Aquila a developer who objects. These are reported in the section of the Supplementary Report which deals with the Town Centre.

*[officer comment]:*

*It is interesting to note that the Historic England letter places an interesting focus on the significance of investment and vitality and how it also sustains, almost as a by-product, the physical fabric of an historic town centre. It is rare for Historic England to make such a representation and it highlights the extent of their concern that they have done so and the extent to which they wish the Council to consider the wider impacts of under-investment in terms of the unforeseen consequences that could follow for the nationally important heritage assets within Britain's Oldest Recorded Town. It is noted that the letter refers to concern about possible longer-term vacancies. The Council's retail consultant has indicated that in his view the number of vacancies that will arise in the town centre will be low as a consequence of the Tollgate Village proposal.*

- 6.2 As of 4 February 2016 a further 6 letters had been received since the Committee considered the application on 17 December 2015. Each expressed support for and welcomed the Tollgate Village proposal. No new material issues were raised that have not been previously reported.

### 7.0 Suggested Conditions and Heads of Terms

If members are minded to approve the application, a list of conditions is suggested as being appropriate in the circumstances to provide:-

1. A framework within which the merits of subsequent reserved matters applications following the grant of outline planning permission can be assessed; and ,
2. Provide the Council with control over the subsequent details (via Reserved Matters submissions) - the Committee having agreed the principle of the development as being justifiable as an exceptional departure. These will include a range of 'prior to commencement' ; 'prior to beneficial use occurring' and a number of 'restrictive' conditions

Included below is also a list of suggested heads of Agreement that members may feel are appropriate to mitigate the impacts of the development. . All have been agreed with the Applicants except those shown in italics. These are explored first.

7.1 Draft S106 requirements

As requested by the Committee on 17 December 2015 Place Services and the applicants have been exploring potential s106 contributions designed to mitigate impact of the proposal were it to be approved. Government guidance on the use of planning obligations is clear that they cannot be used to make an unacceptable proposal acceptable and that they cannot be used to buy a planning permission.

7.2 The Council must when requiring planning obligations be able to demonstrate that they pass the Governments three tests of reasonableness. Known as the C.I.L. tests after the Community Infrastructure Levy Regulations 2010 which set them out in paragraphs 122 & 123.

7.3 Obligations can be used to:-

- restrict the development or use of the land in any specified way
- require specified operations or activities to be carried out in, on, under or over the land
- require the land to be used in any specified way; or
- require a sum or sums to be paid to the authority (or, to the Greater London Authority) on a specified date or dates or periodically.

And can only be required where they are:-

- necessary to make the development acceptable in planning terms
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development

7.4 Currently the obligations identified are as follows:-

(1)

*Contribution of (a) £24,000 + (b) £1000 pa to the Council to provide for (a) litter picking and bin emptying in vicinity around Tollgate Village + (b) fuel, bags, equipment, ppe and waste disposal. (for an initial period of 10 years); or,*

*a binding commitment from the developer to provide this service through the wider Tollgate Village maintenance contract.*

CIL test comment:

This is considered to pass the CIL tests in that with a significant number of A3-A5 uses and large areas of public realm litter could become a nuisance beyond the site even with comprehensive management within the development. It is required to make the development acceptable in planning terms as it provides a mechanism to tackle environmental and amenity nuisance generated by it.. ie wind-blown litter and dropped litter beyond the Tollgate Village boundary. As a result the requirement is related to the development and the 'either or' option for delivery ensures that scale is reasonably related so long as parties can agree the



extent of the area to which the 'beyond the boundary' litter picking applies . Clearly the further the distance the less reasonable it is likely to be. It would also be unreasonable if the Council could not justify the size of the costs as being directly related to the tasks being undertaken and the frequency with which they are being delivered or the area over which that service is being provided. The figures have been provided by Operational Services.

(2)

(As required by Highways England [HE] )

Highway's England has indicated that they will require the developer to implement all the agreed highway mitigation works (A12) prior to any part of the development coming into use. The applicants have asked for an alternative option which allows them to make an agreed financial contribution to Highway's England who will then implement the works themselves or use the funding to implement a wider improvement scheme. The applicants have asked that in the event of this option being triggered they be allowed to open the development prior to the highway works being implemented by Highways England.

Highways England have indicated they have no objection in principle to the applicant delivering the required improvements prior to the opening of the Tollgate Village development but have some concern that if a financial contribution alternative is made and the development opened before Highway's England has secured agreement to add the works to their programme then highway safety issues could arise.

Highways England is looking to agree a form of wording that requires physical delivery but if a financial contribution is to be acceptable then they need a form of wording that allows it only to be triggered if Highways England is able to deliver the improvements within an identified programme that is near enough (in terms of delivery date) to the projected opening of Tollgate Village as to minimize any disruption to and congestion on junction 26. Work on wording is in progress.

(3)

(As required by Essex County Council [ECC] as local highway authority

Funding for travel plan and public transport improvements). Grampian conditions will be used to secure highway improvements. All works will need to be in place prior to opening.

(4)

Commitment to local recruitment and training. ('Recruitment Scheme')

Sample

Tollgate Partnership covenants and undertakes to the Council as follows as follows:

"Recruitment Scheme" means a scheme establishing the details of a partnership between TP the Council and Job Centre in relation to all aspects of selection of candidates for interview for all employment vacancies and opportunities at the Development including the provision by TP or their potential occupiers of agreed pre- interview training of prospective interview candidates and for the avoidance of doubt the decision as to who to employ at the Development rests solely with TP or their occupiers

2. TP covenants with and undertakes to the Council:

2.1. no less than 6 months before the opening of any part of the Tollgate Village Development to:-

2.1.1 prepare the Recruitment Scheme and

2.1.2 submit the Recruitment Scheme to the Council for approval

2.2 Not to Occupy any part of the Development prior to

2.2.1 the inclusion in the Recruitment Scheme of such amendments as the Council shall reasonably require and

2.2.2 receiving the approval in writing by the Council of the Recruitment Scheme

2.3 To operate the Recruitment Scheme in relation to all employment vacancies and opportunities at the Development for the Life of the Development

CIL test comment

This type of initiative was successfully employed on the replacement Sainsbury Store at Tollgate with the Tollgate Partnership & Sainsbury's and also with Waitrose on St Andrews Avenue. In a situation where employment land is being lost it is right to work with the developer to offer skills training to those locally who are currently unemployed or school leavers in the hope that it enhances the chances of them benefitting from the development which is itself a departure from the Local Plan and the new jobs it offers. It is acceptable in planning terms in that it potentially offers local people enhanced opportunities for employment and therefore helps to promote some degree of sustainability. It is directly related to the development and is reasonable in scale and is unlikely to cost the developer financially.

(5)

*Commitment that any retailer with a Town Centre presence at the time of issuing the planning permission who then wishes to open a store at Tollgate Village that the Town Centre unit will be retained, open and trading for at least 4 years after the completion of the relevant unit.*

CIL test comment

This is a requirement often used across the Country to try and ensure that a development that will adversely and significantly impact Town Centre retailing is constrained in that impact in its early years by preventing 'poaching' and evacuation of traders from the Town Centre by retailers attracted 'out of town'. In some ways it is a blunt instrument in that whilst an operator can make a commitment to retain a town centre presence (as well as open a new store elsewhere) it is very difficult for the Council to enforce this. This is because it could be held as unreasonable for a Council to require a trader to keep open a loss making store and the Council cannot reasonably force a building owner to extend a lease to a retailer for a limited period in order to comply with a commitment to retain a town centre presence. The requirement will be difficult to apply to a subsequent tenant of the Tollgate Village Development in any event as that trader will not be a signatory to the Agreement. It would rely on the owner of the Tollgate Village development not leasing a unit/s to a retailer who

could not demonstrate that they have a lease with 4 years left to run on their town centre premises.

The value of this requirement is questioned in practice. It is perhaps window dressing designed to soften the apparent possible impact of the development on the Town Centre. It is however a statement of intent by Tollgate Partnership who would have to be trusted to deliver on the commitment even where this may be against their immediate financial & commercial interest (for those four years after the completion of each individual unit))

(6)

*Financial contribution of £50,000 to Colchester Borough Council for each of 5 consecutive years from a date 6 months prior to the opening of the first phase of the Tollgate Village development towards the promotion of the Town Centre as a sub-regional retail centre and for visitor initiatives.*

C.I.L test comment:

It is required to make the proposal acceptable in that the Committee in determining the application with a view to granting planning permission has identified that it will have an impact on the Town Centre but that impact is less than that identified by officers and the Council own retail consultant. Members have judged that if that impact is to be minimized in the interest of retaining a viable and vital town centre then the Tollgate Village development must look to support the town centre and the adopted retail hierarchy. This support can be expressed by contributing financially to the promotion of the Town Centre during the early years of the Tollgate Village development trading.

In this sense it is directly related to the development and its impacts and represents a sensitive response to mitigation. The scale of the sum required is considered reasonable and appropriate in scale and is a relatively modest annual contribution compared to the overall size of the investment at Tollgate and its projected turnover.

Whilst modest in nature it will allow for a broad range of promotional activity that will help to keep the Town Centre and what it offers to the fore of the public's mind

(7)

*Extension of CBC CCTV coverage to Tollgate with a financial contribution*

C.I.L test comment:

It is expected that the Tollgate Village development will have its own CCTV management system within the site for obvious security and safety reasons. The development is likely to attract significant new footfall to Tollgate and this would extend late into the evening. If the development is to attract significant visits by non-car mode it is reasonable to expect the developer to contribute to extending the Town's CCTV coverage to include the vicinity around the development. This will enhance community safety and potentially encourage people to walk & cycle to the site. The extent to which the system needs expanding and the identification of a reasonable sum that relates to the scale of development has yet to be agreed. It may also be possible to link the Tollgate Village system to the Council's system thereby extending the comprehensiveness of coverage

(8)

*A financial contribution towards expansion of the existing community hopper bus service. Currently the quoted figure put to the applicant is:-*

*£25,028pa for each of 10 consecutive years (Total over the 10 years = £250,028) to fund the running running two return journeys on two days*

C.I.L. test comment:

The contribution is required to make the development acceptable in that the applicant's have strongly argued that facilities will be well used by local people and that the development is sustainable. Whilst the site is served by a number of bus routes that radiate to and from main urban centres. Within the local community there are those whose access to local facilities is restricted by circumstance including lack of a car or disability, The current bus routes are not always close enough or frequent enough to offer support for some in the local community. Mini-cab fares may be prohibitively high for others. Fortunately Stanway is served by a rudimentary community bus service provided by Colchester Community Volunteer service (CCVS). A development of the scale proposed at Tollgate is the type of proposal that can reasonably be expected to enhance accessibility and enhance non-car access particularly for individual /groups who are already disadvantaged or isolated. Some initial research has been undertaken and preliminary discussion with the applicants has proved positive. Currently the contribution suggested is

(9)

*Villa Road footpath improvements*

C.I.L. test comment:

The Council is currently exploring who owns the embankment on the east side of Tollgate Road because it would be reasonable to require the Tollgate Village development to pay for the improvement of the pedestrian link between Villa Road and shops at Tollgate. The overall Vision for Stanway promotes enhanced accessibility and linkage for pedestrians/cyclist and there is no doubt that a retail leisure development such as that proposed in the shape of Tollgate Village will attract customers from the existing residential neighbourhood to the east. The improvement of the current sub-standard, steep stepped link up/down the embankment is fully justifiable from an access and safety perspective and relates directly to the added attraction of the site that will be generated by the range of facilities on offer. It may also encourage local people to leave their car at home and walk to the site.

Additional work is required to resolve how best an enhanced link can be provided and the extent to which the applicants can be expected to finance the work but what appears clear is that the land is not within the ownership of the applicants. Therefore if the landowners co-operation cannot be secured it will not be possible to require the applicant to make the required improvements. If the owner of the land turns out to be O&H who are developing parts of Lakelands they may wish to freely co-operate as improvement of the link will benefit residents buying into Lakelands who wish to access schools and other facilities to the east

## 8.0 Draft Conditions

1.

No development shall be commenced until plans and particulars of "the reserved matters" referred to in the below conditions relating to the APPEARANCE, LANDSCAPING, LAYOUT, (Including the DISTRIBUTION OF USES hereby permitted) , AND SCALE, have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: The application as submitted does not provide sufficient particulars for consideration of these details.

2.

Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3.

The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

4.

Details of Reserved Matters shall generally accord with the Parameter Plans and Design Principles (amended March 2015)

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

(Note: need to qualify the detail shown for development zone 3)

5.

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

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

6.

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

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

7.

Prior to the first occupation of the development hereby permitted in any Development Zone, refuse and recycling storage facilities for that Zone (including those located within other zones but serving the Zone in question) shall be provided in accordance with a scheme which shall have been previously submitted to and agreed, in writing, by the Local Planning Authority. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times.

Reason: The application contains insufficient information to ensure that adequate facilities are provided for refuse and recycling storage and collection.

8.

Prior to the first occupation of the development hereby permitted in any Development Zone, equipment, facilities and other appropriate arrangements for the disposal and collection of litter for that zone (including those located within other zones but serving the Zone in question) shall be provided in accordance with details that shall have previously been submitted to, and agreed in writing by, the Local Planning Authority. Any such equipment, facilities and arrangements as shall have been agreed shall thereafter be retained and maintained in good order.

Reason: In order to ensure that there is satisfactory provision in place for the storage and collection of litter within the public environment

9.

No works whatsoever shall commence within any Zone until a scheme to deter the removal of trolleys from the site has been submitted to and approved, in writing, by the Local Planning Authority. The scheme shall then be implemented as approved prior to the commencement of the first use of the development hereby permitted within that Zone (including those located within other zones but serving the Zone in question) and retained as such thereafter.

Reason: To retain trolleys on site and deter the unnecessary displacement of any trolley from the site that may lead to abandonment elsewhere, in order to avoid any detrimental impacts on the neighbouring areas.

10.

The Class A1, A2, A3 A4 A5 floorspace hereby permitted shall not exceed 24,122 sq.m. gross. Notwithstanding this the maximum floorspace within individual use classes shall not exceed:-

- Class A1 comparison goods: 21,314 sq.m. gross / 14,290sq.m net for for the avoidance of doubt includes flexible A1 floorspace set out below
- Class A1 convenience goods 1,858sq.m. gross / 1394sq.m. net
- Class A3, A4 and A5 floorspace shall not exceed 2,100 sq.m gross
- The Class D2 floorspace hereby permitted shall not exceed 6,690sq.m.

11.

Control over unit size maxima and/or minima to be formulated that allows small local shops within the cluster on the north side of Tollgate West immediately adjacent to the new pedestrian corridor.

Note - to be developed and presented at the meeting.

12.

Notwithstanding the definition of development the creation of any mezzanine level or intermediate floorspace within any building or part of a building within this development is not permitted without the further grant of planning permission for an expansion of floorspace from the local planning authority.

Reason: In assessing the merits of this development the Council has had careful regard to retail impact and highway impact. The Council therefore wishes to ensure that any addition to the overall total floorspace within the development, notwithstanding the restrictions contained in condition 10 above, is subject to control in order that the wider retail and highway impacts of that floorspace can be properly assessed and where appropriate and/or possible mitigated before that floorspace is constructed. All of this is in the wider interest of safeguarding the viability and vitality of the Town Centre and in the interest of safeguarding highway safety and the efficiency of the local and trunk highway networks.

13.

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

Weekdays: 08.00 to 18.00hrs

Saturdays: 09.00 to 13.00hrs

Sundays and Bank Holidays: none

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.

14.

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

Weekdays: 07.00-23.00

Saturdays: 07.00-23.00

Sundays and Public Holidays: 09.00-22.00

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 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.

15.

No deliveries shall be received at, or despatched from, the site outside of the following times:

Weekdays: 07.00 to 20.00

Saturdays: 07.00 to 20.00

Sundays and Public Holidays: 09.00 to 20.00

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.

16.

Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours and noise attenuation to external plant that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. Where appropriate this scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed shall thereafter be retained and maintained to the agreed specification and working order.

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

17.

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;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- wheel washing facilities;
- measures to control the emission of dust and dirt during construction; and
- a scheme for recycling/disposing of waste resulting from demolition and construction works.
- routing for vehicles delivering construction materials
- location of compounds
- health & safety measures to protect public during construction
- methodology for breaking up concrete slab and crushing
- noise suppression measures
- arrangements for exceptional events
- arrangements for the display of contact details on site in prominent locations for the public to report issues to the site manager

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable and in order to ensure that publicity can be given to the public (especially school children) as to which local routes to avoid in order miss additional hgv traffic.

18.

No works shall take place within any Development Zone until full details of all landscape works have been submitted to and agreed, in writing, by the Local Planning Authority and the works shall be carried out prior to the occupation of any part of the development unless an alternative implementation programme is subsequently agreed, in writing, by the Local Planning Authority. The submitted landscape details shall include:

- PROPOSED FINISHED LEVELS OR CONTOURS;
- MEANS OF ENCLOSURE;
- CAR PARKING LAYOUTS;



- OTHER VEHICLE AND PEDESTRIAN ACCESS AND CIRCULATION AREAS;
- HARD SURFACING MATERIALS;
- MINOR ARTEFACTS AND STRUCTURES (E.G. FURNITURE, PLAY EQUIPMENT, REFUSE OR OTHER STORAGE UNITS, SIGNS, LIGHTING ETC.);
- RETAINED HISTORIC LANDSCAPE FEATURES;
- PROPOSALS FOR RESTORATION;
- PLANTING PLANS;
- WRITTEN SPECIFICATIONS (INCLUDING CULTIVATION AND OTHER OPERATIONS ASSOCIATED WITH PLANT AND GRASS ESTABLISHMENT);
- SCHEDULES OF PLANTS, NOTING SPECIES, PLANT SIZES AND PROPOSED NUMBERS/DENSITIES WHERE APPROPRIATE; AND
- IMPLEMENTATION TIMETABLES.

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

19.

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

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

20

Contamination Condition

21

Prior to the first occupation of the development within any Development Zone, the vehicle parking area indicated on the approved plans for that Zone , (including those located within other zones but serving the Zone in question) including any parking spaces for the mobility impaired, shall have been hard surfaced, sealed, marked out in parking bays and made available for use to the satisfaction of the Local Planning Authority. The vehicle 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 that are related to the use of the development.

Reason: To ensure that there is adequate parking provision to avoid on-street parking of vehicles in the adjoining streets in the interests of highway safety.

22.

Prior to the commencement of the development within any Development Zone, details of the number, location and design of cycle parking facilities shall be submitted to and approved, in writing, by the Local Planning Authority. The approved facility shall be secure, convenient and covered and shall be provided prior to occupation within that Zone (including those located within other zones but serving the Zone in question) and retained for that purpose at all times thereafter.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety.

23.

Prior to the commencement of development within any Development Zone the areas within that Zone for the purpose of loading, unloading and manoeuvring of all vehicles including construction traffic, as well as a timetable for their implementation, (including those located within other zones but serving the Zone in question) shall have been submitted to and approved, in writing, by the Local Planning Authority. The areas for loading, unloading and manoeuvring shall then be provided in accordance with the agreed details for that Zone and shall be retained at all times for that sole purpose thereafter.

Reason: To ensure that appropriate loading, unloading and manoeuvring facilities are available in the interest of highway safety.

24.

No works shall take place until a scheme for the phasing of construction work has been submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved phasing scheme.

Reason: To limit the local impact of construction work in the interests of the amenities of the surrounding area.

25

No part of the development hereby permitted shall be brought into beneficial use until a Site Management and Security Plan has been agreed in writing with the local planning authority. This plan shall include a description of:-

- CCTV coverage and monitoring arrangements
- On-site security presence
- Methods for securing the site (particularly the car parking areas) outside of business hours
- Litter control and site cleaning
- Public realm maintenance

Reason: In order that the Council be satisfied that the site will not pose a risk to community safety or result in unacceptable anti-social behaviour during the hours that the site is not in use. The Council is particularly concerned that the large areas of car parking are not open when the site is not in use as there has been some experience of such areas being misused at night

## **9.0 CONCLUSIONS RECOMMENDATION (following Supplementary Report considerations) 18 February 2016**

- 9.1 Having provided and fully considered the additional information requested by Members as set out in this Supplementary Report officers remain of the opinion that the proposal is unequivocally unacceptable and should be refused on the grounds previously recommended.

## **10.0 RECOMMENDATION (following Supplementary Report considerations) 18 February 2016**

### **10.1 REFUSE planning permission for the reasons set out below.**

#### **1. Conflict with site allocation as a Strategic Employment Zone**

A significant part of the application site is allocated in the Adopted Local Plan as a Strategic Employment Zone (policies CE1, CE3, SA STA3 and DP5). The proposed uses are not in conformity with the provisions of the local plan and the loss of this important high quality Adopted Strategic Employment Zone (SEZ) land is considered prejudicial to the Council's overall employment strategy to the detriment of the medium to long- term economic benefit of the town. It is important to maintain a range of different quality sites available to the market. Notwithstanding that the proposed development will generate new jobs in the service and hospitality sectors the proposal would erode the integrity and future attractiveness of The Tollgate SEZ for business park development that requires excellent access to the Nation's strategic trunk road system. This concern is further compounded by the fact that Stanway is expanding rapidly through planned housing delivery and the Strategic Employment Site offers potentially sustainable employment opportunities for residents who are otherwise forced to travel in search of job opportunities.

This site and its wider hinterland is allocated in the Council's Adopted Core Strategy - Policy SD1 as the Stanway Growth Area (SGA) where development is expected to be focused and where proposals that accord with other policies in the Local Plan will be approved without delay. In defining the Stanway Strategic Employment Zone, within which the application site lies, the Council identified the type of development that would be appropriate to achieve its medium to long- term economic objectives within Table CE1b (as supports employment classification and hierarchy policy CE1 and the strategic designation provided by table CE1a). These appropriate uses are defined as B1b research and development, studios, laboratories, hi-tech; B1c light industry; B2 general industry; and B8 storage and distribution. Secondary land uses are described as B1a offices; C1 hotels, D2 assembly and leisure and sui generis. The proposed land uses comprising A3 or A4 uses do not comply with that policy. The proposed development on this strategically important Employment Zone would seriously undermine the Council's ability to plan for the medium to long term expansion of the Town's economy to create sustainable high value jobs in locations that complement areas experiencing rapid and significant housing growth and with excellent access to the strategic highway network. The Council's carefully planned employment strategy is reinforced within its Adopted Site Allocations (2010) in so far as Policy SA STA1 and SA STA 3 that make provision for employment use (which exclude those proposed here) and reject the need for town centre uses as proposed.

## 2. Conflict with retail hierarchy policy and Urban District Centre (UDC) policy

A large part of the application falls outside of the designated Urban District Centre and proposes a significant expansion of retail and town centre use floorspace outside of the defined UDC contrary to Policy CE2b of the Adopted Core Strategy (revised July 2014). It is the Council's opinion that the scale and type of retailing and town centre uses proposed is of an order of scale that would effectively make Tollgate a sub-regional retail/leisure attractor that will inevitably harm Colchester's Town Centre at the apex of the Adopted retail hierarchy as the pre-eminent sustainable destination for such activity within the Borough and sub-region.

Adopted Core Strategy Policy CE1 directs that the Town Centre shall be protected as the sub-regional shopping centre within the Town's retail hierarchy and the Council believes that as a consequence planned investment in the Town Centre will be seriously prejudiced and future investor confidence in the Town Centre harmed to the extent that growth in the Town Centre will stagnate for at least 10 years whilst Tollgate diverts footfall and trade away from the Town Centre. As a result, key regeneration sites within the Town Centre may not come forward as planned and that in the intervening period Colchester's Town Centre will fall behind its regional competitors as they continue to invest in their town centres. Having considered the proposal in the context of the National Planning Policy Framework (especially paragraphs 23-27) and associated National Planning Practice Guidance the Council considers that the harm to retailing in the Town Centre arising from the proposal is not outweighed by the benefits that are likely to arise from the proposal in the form of additional new jobs, widened consumer choice at Tollgate and associated public realm improvements.

## 3. Prematurity

In the opinion of the Council, the Tollgate Village proposal is premature within the context of the Council's ongoing Local Plan process and the programmed publication of Preferred Options and Site Allocations in summer 2016 with the anticipated submission of the final Draft Local Plan in 2017. Key elements of the emerging Local Plan are a review of the future strategic employment land and retail requirements of the Borough. This will involve both a quantitative assessment and a qualitative assessment together with a spatial analysis of the optimal distribution and location of significant growth in Town Centre and employment uses. This analysis will take account of wider sustainability issues and the Council opines that determination of the Tollgate Village proposal ahead of the next stage of the Local Plan (which will include comprehensive public consultation) will prejudice the ability of the Council to make strategic decisions based on a thorough evidence and analysis of all possible options rather than one that has an advantage of timing through the submission of a speculative planning application. A grant of consent for a proposal of this magnitude would effectively dictate issues of hierarchy prior to any consideration of such issues in the development plan.

## 4. Sustainable Development

The expansion of town centre uses of the magnitude proposed in this location with heavy reliance on trip generation by the private car with the resultant adverse impact identified upon the Town Centre together with the potential loss of planned employment growth within this strategic employment site and the resultant harm to the planned economic growth significantly outweighs the benefits identified to be delivered by the proposals. Consequently, in the opinion of the Council the development is inherently unsustainable contrary to paragraphs 6-14 of the Framework and the Government's explicit intention that the purpose of the planning system is to contribute to the achievement of sustainable development. The proposal is thus contrary to the strategic aims of the adopted local plan. The car-dominated

nature of the proposal is further evidenced by the associated highway improvements required by the Highway Authority that would result in the creation of a poor pedestrian environment contrary to adopted policy CE2b and Design Principles set out in the Stanway Vision Statement (2013) that require new development to deliver improvements to the public realm and create a pedestrian-friendly environment. The proposals are therefore also contrary to paragraph 64 of the NPPF and the Government's intention to contribute positively to making places better for people.





**Nathaniel Lichfield  
& Partners**  
Planning. Design. Economics.

## Draft Briefing Note

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Our ref 13184/PW/PW  
Date 8 January 2016  
To Vince Pearce/Laura Chase - Colchester BC  
From Peter Wilks

### **Subject Tollgate Village**

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#### 1.0 **Introduction**

1.1 This note assesses the implications of permitting the proposed Tollgate Village on growth and investment in Colchester over the next 10 years. This note assumes the worst case (fashion led) development scenario is implemented at Tollgate Village, on the basis there are no planning restriction on the range of goods sold.

#### 2.0 **Existing Situation – Status Quo**

2.1 The annual retail turnover of existing retail businesses (comparison goods) in Colchester Borough is £862 million (£8.62bn over 10 years), of which £648 million (£6.49bn over 10 years) is attracted to the town centre.

2.2 These 10 year projections would be achieved if there is no change in Colchester's market share, catchment population or expenditure per capita in the future i.e. no growth baseline.

#### 3.0 **10 Year Expenditure and Population Growth**

3.1 Population and expenditure growth should increase the turnover of facilities in Colchester. If Colchester can maintain its market share of expenditure in relation to its competitors then an additional £1.95bn of expenditure would be attracted to the Borough over a 10 year period (an increase from £8.62bn to £10.57bn). The additional trade attracted to the town centre would be £1.461bn. However in order to attract this growth in expenditure, Colchester will need to expand its retail offer, because other competing centres (Braintree, Chelmsford and Ipswich) are likely to improve their retail offer.

3.2 Some of the growth in expenditure should be absorbed by the existing retail stock through increased turnover efficiency. Based on Experian efficiency forecasts, existing facilities might reasonably be expected to absorb £1.28bn over the 10 year period.

3.3 This would leave £662 million expenditure growth that is unlikely to be attracted to the Borough if new development was not implemented within Colchester. Planned commitments (primarily the William & Griffin development) should absorb £270 million of this growth over the next 10 years. If no other new retail development is provided in Colchester, then £392 million of expenditure growth could be diverted to competing centres over the next 10 years.

3.4 In terms of Colchester town centre, existing retail businesses might reasonably be expected to absorb £963 million over the 10 year period, through the growth in turnover efficiency. The William & Griffin development should absorb £225 million.

3.5 In summary, the projected growth in comparison expenditure potentially available over the next 10 years in Colchester could be broken down as follows (based on existing market shares):

- Colchester town centre (efficiency growth) = £963 million
- Colchester town centre (commitments) = £225 million
- Other Colchester Borough (efficiency growth) = £323 million
- Other Colchester Borough (commitments) = £45 million
- New development in Colchester (not committed) = £392 million
- **Total** = **£1,948 million**

#### 4.0 **Tollgate Village Development**

4.1 If implemented the Tollgate Village development is expected to attract up to £1.043bn of comparison goods trade over the next 10 years. This equates to about 53% of the projected total growth in comparison goods of expenditure growth that could be attracted to Colchester Borough if market shares are maintained.

4.2 Based on NLP's impact assessment (fashion led scheme) the source of Tollgate Village's trade is as follows:

- Colchester town centre = 77% (£803m over 10 years)
- Other Colchester Borough = 4% (£42m over 10 years)
- Elsewhere = 19% (£198m over 10 years)

#### 4.3 **Implications for the Local Plan Review and Hierarchy**

4.4 At present the comparison good turnover of facilities in the Tollgate area is around 20% of the turnover of Colchester TC. NLP's impact figures suggest this will increase to around 40% in 2019, if the Tollgate Village development is implemented (fashion led scheme). This is a major shift in the relative



strengths of the two shopping destinations, but the town centre should remain much stronger in terms of overall comparison turnover than Tollgate.

- 4.5 As indicated, Colchester town centre's comparison good turnover is projected to increase by +£87 million (14%) between 2015 and 2019, if the Tollgate Village development is not implemented. A comparable level of growth (14%) might reasonably be expected over the same period for competing towns in the sub-region. However if the Tollgate Village development and commitments are implemented, Colchester town centre's turnover (worst case) is projected to increase by only 1% between 2015 and 2019. Tollgate Retail Park's turnover is expected to double if the proposed development is implemented.
- 4.6 Javelin's Venuescore scores town centres across the UK in terms of their comparison retail offer (i.e. presence of multiple operators). From a customer perspective Venuescore provides a good guide to the overall attraction of main centres for comparison goods shopping.
- 4.7 Assuming a centre's Venuescore changes in line with the level of expenditure attracted to that centre (discounting for growth in turnover efficiency for existing outlets), then a 3% increase in the Venuescore for competitors is envisaged by 2019 and an 83% increase is projected for Tollgate Retail Park. As a worst case, Colchester town centre's Venuescore would reduce by 8% between 2015 and 2019. Longer term projections up to 2026 have also been provided based on a 10.7% growth between 2019 and 2026 for all centres.

Centre	Current Venuescore	Projected 2019 Venuescore	Projected 2026 Venuescore	Change in CTC's relative attraction
Colchester TC	206	190	210	n/a
Tollgate RP	29	53	59	x7.10 → x3.56
Braintree TC	86	89	99	x2.40 → x2.12
Braintree Freeport FOC	77	79	87	x2.71 → x2.41
Chelmsford TC	199	205	227	x1.03 → x0.93
Chelmer Village RP	33	34	38	x6.24 → x5.53
Ipswich	214	220	244	x0.96 → x0.86

- 4.8 At present Colchester TC's Venuescore is over 7 times higher than Tollgate RP's score. If the Tollgate Village development is implemented this could reduce to 3.56 times, which is a major shift in the balance between the two destinations.

- 4.9 Braintree TC would remain a much less attractive centre than Colchester, but would close the gap slightly, but no significant change in shopping patterns is likely. Chelmsford will overtake Colchester TC by 2019. Ipswich would draw further ahead of Colchester TC. It is possible these changes in relative attraction could lead to additional expenditure leakage to these two centres. The swing towards these two centres is about 10%.
- 4.10 These two destinations attract a relatively small proportion of their total turnover from the Colchester catchment area i.e. Ipswich attracts £76 million from the catchment in 2019 and Chelmsford attracts £53 million, out of a total of £1.6 billion. Extrapolated these figures would increase to £100 million and £70 million by 2026 respectively. If an additional 10% (in line with the 10% swing outlined above) is diverted from Colchester TC then £13 million could be diverted at 2019 increasing to £17 million in 2026. This could total around £120 million between 2019 to 2026.
- 4.11 The Local Plan will need to cover a 20 year period (probably up to 2036). The retail capacity analysis in NLP's retail critique suggests (as a minimum) the residual expenditure capacity (£34 million), taking into account Tollgate Village and commitments, could support around 5,000 sq.m gross of comparison goods floorspace in the Borough by 2026. This is unlikely to be sufficient to support the Vineyard Gate development at 2026, but it could provide opportunities for smaller scale development in the short to medium term. However a £17 million increase in diversion to Ipswich and Chelmsford would reduce this floorspace capacity projection to 2,500 sq.m gross. An increase of 2,500 sq.m gross would represent less than a 3% increase in comparison goods floorspace in Colchester town centre, a one medium size retail warehouse unit, similar in size to Matalan or Dunelm in Colchester.
- 4.12 There are current development proposals in the St. Botolph's area of the town centre including the proposed Curzon cinema that could provide up to 3,850 sq.m gross of Class a1 retail floorspace, which could exceed the reduced capacity projection (2,500 sq.m gross).
- 4.13 Between 2026 to 2032 continued population and expenditure growth should be sufficient to support around 15,000 sq.m gross of additional comparison goods floorspace. In total there should be scope for 17,500 to 20,000 sq.m gross over and above Tollgate Village and commitments over the plan period to 2036. Based on these broad brush post Tollgate Village figures, the Local Plan Review would need to identify opportunities to accommodate 2,500 to 5,000 sq.m gross of comparison floorspace in the medium term (up to 2026) and a further 15,000 sq.m gross during 2026 and 2032.
- 5.0 **Cost/Benefit Analysis**
- 5.1 If implemented the Tollgate Village development is expected to generate £65 million in terms of construction value, which should benefit the Colchester

economy. Additional direct economic output (or Gross Value Added) would be £16.9 million per annum and a further £1.7 million indirect GVA per annum. This would equate to £186 million GVA (direct and indirect) over a 10 year period.

- 5.2 Tollgate Village is expected to attract £198m of trade from centres outside Colchester Borough over 10 years, which should benefit the local economy. Conversely the reduction in Colchester TC relative attraction with Chelmsford and Ipswich could result in the loss of £120 million, as indicate above.
- 5.3 A further £45 million will be diverted from facilities in Colchester, but outside of the town centre. This could be considered to be neutral in terms of the impact on the local economy.
- 5.4 If implemented Tollgate Village would as a maximum divert £803 million from Colchester town centre, which exceeds the projected available expenditure to support new comparison development in Colchester (£392 million). Therefore £411 million of the trade diverted to Tollgate Village from the town centre, is likely to be diverted from existing businesses and commitments in the town centre. Given the town centre's first policy, this £411 million diversion is a clear disbenefit of the development.
- 5.5 This significant reduction in town centre trade endorses NLP's previous conclusion that there would be limited residual expenditure capacity to support other comparison retail floorspace within designated centres in Colchester until after 2021. The implementation of Tollgate Village is likely to jeopardise or significantly delay the Vineyard Gate planned investment within the town centre, and prevent other major investment coming forward. This loss of planned investment would represent a significant adverse impact on the town centre, and the Council will need to decide if the benefits of the Tollgate Village development demonstrably out-weigh this negative impact.





Historic England

Simon Cairns  
Major Projects Manager  
Colchester Borough Council

Our ref:  
Your ref:  
Date: 29 Jan 2016  
Direct Dial: 01223 582717

By e-mail to [simon.cairns@colchester.gov.uk](mailto:simon.cairns@colchester.gov.uk)

Dear Simon

**Application Ref: 150239 Outline Application for Mixed Use Development Leisure and Retail) and Associated Car Parking, on Land North and South of Tollgate West, Stanway**

This proposed out-of-centre retail and cinema development has been brought to the attention of Historic England. Whilst the development will not directly impact on any designated heritage asset, Historic England is concerned over the implications that this development might have on the long-term vitality and wellbeing of the historic town centre, and the consequential increased risk of vacancy and lack of maintenance amongst the many historic buildings that can be found in that part of the town. In order to ensure historic buildings survive for the benefit of future generations it is important that they remain in appropriate beneficial use, and for many of these buildings that will be as part of a vibrant and commercially successful town centre.

Historic England is also aware that the town centre includes some negative elements that currently detract from the character and appearance of the conservation area. Removing these negative elements is only likely to take place as part of commercial redevelopment and refurbishment projects, but again these are less likely to be forthcoming if the longer term vitality of the town centre is made less certain through the location of town-centre functions to out-of-centre locations.

Historic England therefore supports a plan-led approach to the management of development in any given area, and proposals that are contrary to an adopted plan should only be approved in exceptional circumstances, and where they would result in a clear, discernible public benefit that demonstrably outweighs any consequential harm. In this instance we are not aware of any such public benefits that would justify town centre uses (including a cinema) in this location.



Historic England, Brooklands, 24 Brooklands Avenue, Cambridge CB2 8BU  
Telephone 01223 58 2749 [HistoricEngland.org.uk](http://HistoricEngland.org.uk)

Please note that Historic England operates an access to information policy.  
Correspondence or information which you send us may therefore become publicly available.



Yours sincerely



**David Grech**

Historic Places Adviser

e-mail: [david.grech@HistoricEngland.org.uk](mailto:david.grech@HistoricEngland.org.uk)



Historic England, Brooklands, 24 Brooklands Avenue, Cambridge CB2 8BU  
Telephone 01223 58 2749 [HistoricEngland.org.uk](http://HistoricEngland.org.uk)

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Correspondence or information which you send us may therefore become publicly available.



Mr I Vipond  
Strategic Director – Commercial & Place  
Rowan House  
33 Sheepen Road  
Colchester  
CO3 3WG

29 January 2016

Dear Mr Vipond

**Land To North/South of Tollgate West. Application no.150239**

I write in relation to the above application , which I understand is due to be considered again by your planning committee in the near future and which evidently remains open for debate notwithstanding a previous firm officer recommendation for planning refusal .

As you will doubtless be aware, my Company have extensive development and property investment interests in South Essex and in recognition of this we have been monitoring this proposal as a scheme which will have effects over a wide area. Whilst we have not raised an objection to date we are dismayed that the scheme which is so clearly at odds with the 'town centre first ' approach to retailing has not been rejected in short order and accordingly now wish to express our significant concern .

Our current development in Chelmsford City Centre provides an excellent example of the benefits of strong policy support for town centre investment and I can say with some confidence that this simply would not have been deliverable in the absence of strong reassurance from the Council that it would resist any inappropriate out of centre development.

I would urge your members to consider very seriously the effects on Colchester Town centre of this very damaging scheme at Tollgate, which goes so far beyond what should reasonably be permitted at a 'District Centre as to represent a real challenge to the existing retail order. Whilst I have no doubt that its impact may have been 'modelled ' by consultants, whatever the results of this I have no doubt that in the real world it represents a real threat to existing , committed and planned town centre investment . Certainly from my Company's standpoint , in the event that it were to be permitted I can confirm that we would not actively seek development opportunities in Colchester town centre for the foreseeable future.

The development industry is on occasion happy to challenge planning policy where it is seen to be unduly rigid but it also requires a degree of certainty and consistency in decision making to underpin investment decisions. The proper application of national and local retail policies is a prime example of this and in this situation we would urge the Council to reject a proposal which so manifestly offends these.

Yours Sincerely



**A D Chambers**  
Chairman





## APPENDIX 3 – REPORT PRESENTED TO COMMITTEE ON 17<sup>TH</sup> DECEMBER 2015

<b>7.1 Case Officer: Vincent Pearce</b>	<b>MAJOR</b>
<b>Site:</b>	<b>Land to north/south of, Tollgate West, Stanway, Essex</b>
<b>Application No:</b>	<b>150239</b>
<b>Date Received:</b>	<b>5 February 2015</b>
<b>Agent:</b>	<b>Mr Paul Newton</b>
<b>Applicant:</b>	<b>Tollgate Partnership Limited</b>
<b>Development:</b>	<b>Outline application for mixed used development of leisure uses (use class D2) including cinema and retail (use classes A1, A2, A3, A4 and A5) with associated parking including multi-storey car park, public realm improvements, access, highways, landscaping and associated works.</b>
<b>Ward:</b>	<b>Stanway</b>
<b>Summary of Recommendation: Refusal</b>	

### 1.0 Reason for Referral to the Planning Committee

#### 1.1 This application is referred to the Planning Committee because:-

- The proposal is a significant Departure from the Adopted Development Plan.
- It is considered appropriate in terms of transparency of decision-taking for this application to be determined in public if for no other reason than the fact that the Council owns a number of sites where certain components to those being proposed here are potentially being (or will be) pursued through the planning process. In this context it is important for the Council as local planning authority to act independently of the Council as a land owner and for the applicants and the public at large to see and hear the evidence of that to ensure that the consideration of the merits of the proposal are restricted only to those which constitute material planning considerations. The Council as local planning authority will not, must not and has not had any regard to the financial interests of the Council as land owner.

- It has attracted a significant level of public interest.
- It had been called in by former Councillor Lesley Scott-Boutell when she served on the Council. Call-in was on the basis that “ local residents have voiced concerns regarding the potential for significant impact on highway capacity”.
- It raises the issue of ‘prematurity’ in the context of the current Local Plan process being undertaken by the Council
- The proposal falls within a category of development that could in certain circumstances require referral to the Secretary of State under the Town & Country Planning (Consultation) (England) Direction 2009.

## 2.0 Synopsis

2.1 **This report, having considered all material planning considerations recommends that the proposed development be refused.** It does so on the basis of:

- the significant increase in town centre use floorspace proposed which would fundamentally challenge the existing spatial hierarchy which puts the Town Centre at the top of the hierarchy;
- the resultant significant loss of high quality strategically important employment land at Stanway contrary to Council policy safeguarding high quality employment land in Strategic Employment Zones
- the consequential undermining of the Council’s adopted local plan and employment strategy which are designed to widen the economic base of the Town and protect the viability and vitality of the town centre thereby undermining sustainable development principles;
- it is considered that this speculative proposal is premature and seeks to re-determine the established hierarchy via the development process instead of the appropriate and established local plan process resulting in harm through the elevation of Tollgate in the hierarchy without the consideration of that consequence through the development plan on other centres and in particular, the town centre;
- Finally, the benefits arising from the proposal in the form of an expansion in jobs and the widening of local consumer choice along with, the boost to the local economy in Stanway and limited public realm improvements do not outweigh the harm that will arise as a result of the undermining of Colchester’s retail hierarchy and the consequent retail growth stagnation and harm to investment confidence in the Town Centre.

## 2.2 Abbreviations used in this report

ELNA: Employment Land Needs Assessment  
 NPPF: National Planning Policy Framework  
 NLP: Nathaniel Lichfield & Partners (CBC’s retail consultants)  
 NPPG: National Planning Policy Guidance  
 SEZ: Strategic Employment Zone  
 SGA: Stanway Growth Area  
 UDC: Urban District Centre

## Glossary of terminology

## 2.3 What is the sequential test?

2.3.1 The sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of town centre locations, with preference for accessible sites which are well connected to the town centre. It supports the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking. (National Planning Policy Guidance [NPPG]; Ensuring the vitality of town centres paragraph 008 – rev date 06.03.2014)

## **2.4 What is the impact test?**

2.4.1 The purpose of the test is to ensure that the impact over time (up to five years (ten for major schemes)) of certain out of centre and edge of centre proposals on existing town centres is not significantly adverse. The test relates to retail, office and leisure development (not all main town centre uses) which are not in accordance with an up to date Local Plan and outside of existing town centres. It is important that the impact is assessed in relation to all town centres that may be affected, which are not necessarily just those closest to the proposal and may be in neighbouring authority areas. (National Planning Policy Guidance [NPPG]; Ensuring the vitality of town centres paragraph 013 – rev date 06.03.2014)

2.4.2 Main town centre uses: Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres, and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities). (National Planning Policy Guidance [NPPG]; Annex 2:Glossary).

## **3.0 Site Description and Context**

3.1 This site sits within the area known as Tollgate within the Parish of Stanway.

3.2 It extends to some 11.75ha of land and sits in two parcels – one north of Tollgate West and the other south of Tollgate West. The northern portion is bounded on two sides in their entirety by highway. The eastern edge is defined by Tollgate Road with the southern edge defined by Tollgate West and in part bounded on its northern edge by London Road. The remaining side runs diagonally south-west to north-east approximately from the Stanway Western by-Pass / Tollgate West roundabout along the backs of properties in London Road where it joins the northern edge that runs along London Road.

3.3 The site topography reflects its former quarrying history as it lies considerably below the level of London Road and Tollgate Road which inclines northwards.

3.4 This parcel contains the cleared former Sainsbury's site (eastern end of site) and the current retail units (western end).

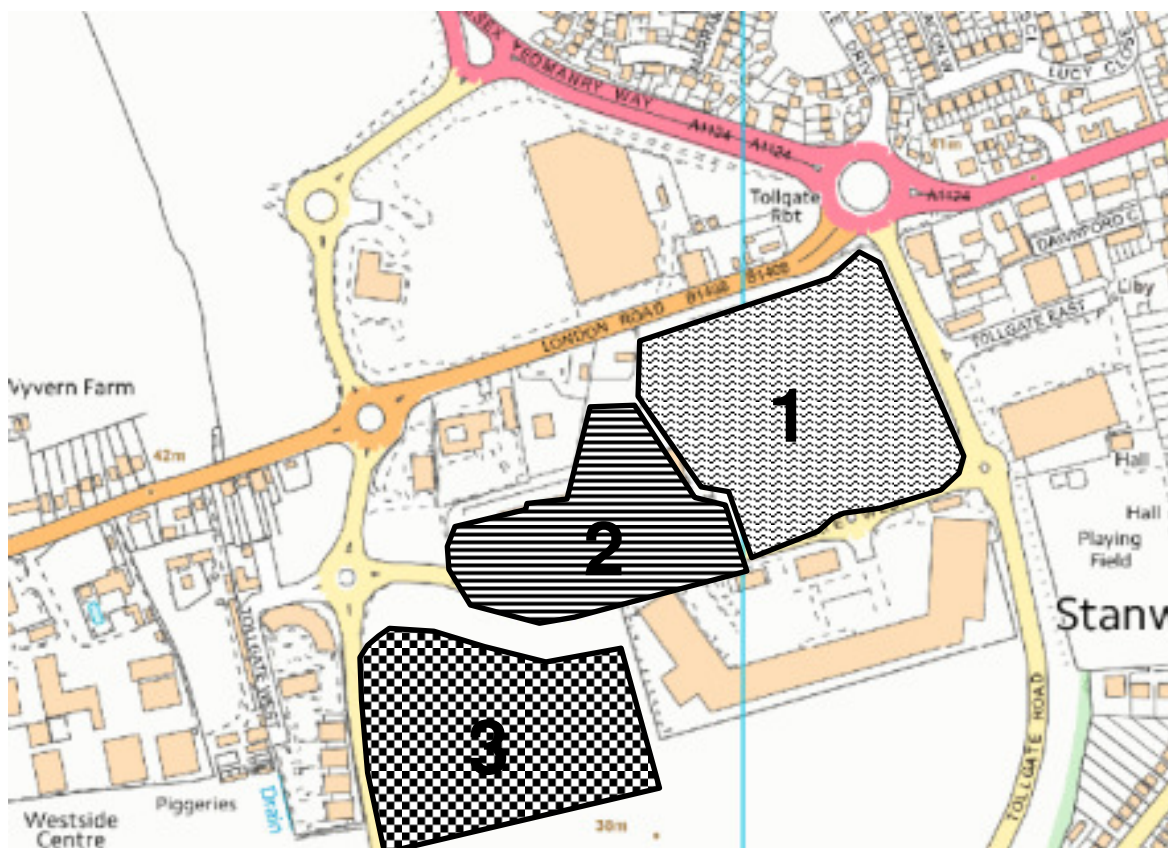
3.5 The site of the original Sainsbury's superstore site is vacant as the building was demolished and the site cleared following the relocation of the store to a new site and a new building just to the north (also in the ownership of the applicants but outside of the current proposal site).

- 3.6 The southern portion is bounded by the residential development site Lakelands to the south, the Tollgate Centre (not part of this proposal and owned by British Land) to the east, Tollgate West to the north and the Stanway Western By-Pass to the west.
- 3.7 The site is cleared and has not been used since the site was quarried for sand and gravel. There is a difference in levels across the site as part of the southern half is modestly terraced below that to the north.
- 3.8 Following quarrying, in the latter quarter of the twentieth century the area was redeveloped in part for retail superstore purposes (Sainsbury's) and retail warehouse purposes. Tollgate East (which is not part of this proposal) was also part of the earlier development and included a DIY store and various warehouses.
- 3.9 The applicant has divided the site into three parts for the purpose of description.

These are

- Zone 1: Former Sainsbury's site (allocated for employment uses)
- Zone 2: Existing Urban District Centre allocation
- Zone 3: Employment allocation but undeveloped

These are identified thus:-



**Figure 1 The 3 development zones identified by the applicant**

## 4.0 Description of the Proposal

### 4.1 The applicant describes the proposal as :-

“A major mixed–use development providing additional retail and leisure floorspace for this part of Colchester and substantial public realm improvements to link the disparate parts of the existing Tollgate Urban District Centre.

The proposal includes leisure uses (D2) including a cinema (D2), retail uses including shops (A1), Financial and professional services (A2), restaurants (A3), drinking establishments (A4) and takeaways (A5) with associated parking including a multi-storey car park, public realm improvements, access highways, landscaping and associated works”

### 4.2 The application describes the proposal as comprising the following mix of uses (by gross internal floor area). totalling 30,812 sq.m of commercial floorspace:

- Class A1 comparison goods up to 16,304sq.m. gross
- Class A1 convenience goods of 1858sq.m. gross
- Flexible Class A1-A5 of 5010sq.m. gross
- Flexible A3-A5 of 950sq.m. gross
- D2 of 6690sq.m. gross

### 4.3 Existing retail floorspace (gross internal) is cited as 4669sq.m.

### 4.4 The jobs uplift derived from the proposal is cited as being from 135 to 1000.

### 4.5 The application as submitted proposed 1523 car parking spaces and the applicants described the current number as 293.

### 4.6 The proposal involves the following mixture of new build and remodelling of existing buildings, comprising:

Zone 1: new build

Zone 2: remodelling , extension, new build

Zone 3: new build

### 4.7 Heights of proposed retail and leisure buildings vary from commercial single storey 6m) and two storey through to 3 floors. Proposed heights are as follows:-

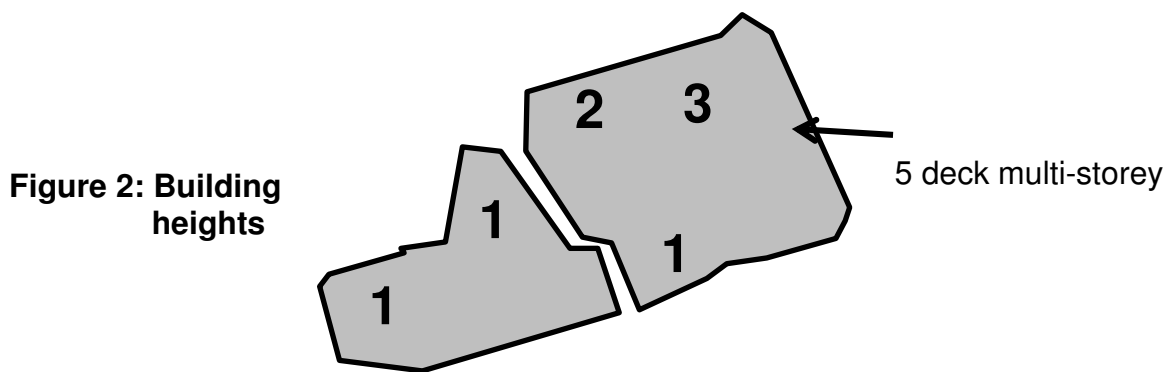
Zone 1: 6-24m

Zone 2: 6-12m

Zone 3: 6-16m

### 4.8 Layouts for zones 1 and 2 are more advanced than for zone 3 where the applicant requires greater flexibility at this stage to respond to the market when marketing (if the application is successful).

4.9 However with zones 1 and 2 the scale is broadly as shown below in indicative form



4.10 The applicants have submitted the extensive package of supporting documents described below:-

- Retail and leisure assessment
- Employment land study
- Transport assessment
- Ecological appraisal
- Health impact assessment
- Landscape and visual appraisal
- Planning statement
- Travel plan framework
- Tank validation report (re historic removal of petrol tanks from former Sainsbury's filling station - Tollgate West)
- Desk top contamination study
- Reptile survey report
- Design principles statement
- Parameter plans
- Design and access statement
- Flood risk assessment
- Associated plans

4.11 The proposal was the subject of a Screening Opinion and the Council determined that an Environmental Impact Assessment (EIA) was not required. However the supporting documents listed above were considered necessary.

4.12 The application includes the following summary justification:-

"The scheme represents an important opportunity to deliver new retail and leisure floorspace to service the wider Stanway area and Colchester as a whole, to improve the existing offer of the defined Urban District Centre and provide a greater choice for residents and competition to existing facilities. Whilst a full explanation of the application proposal and its justification is set out in the remainder of this document, it should be noted from the outset and read in the context that the proposals are considered acceptable for the following reasons:-

## Economic factors

- The site forms part of the Stanway Growth Area, a key focus for new development in the Borough
- It will create over 1,000 new job opportunities (during construction and operation)
- It will create a direct GVA [*Gross Value Added*] of up to £16.6m in Colchester
- It will claw back expenditure currently being spent outside of the Borough, to the benefit of Colchester.
- The loss of some B class employment land is acceptable based on current evidence and will still leave a substantial oversupply in the Borough
- The proposal will not have a significant adverse impact on defined centres including Colchester town Centre.
- It will result in a range of spin-off benefits for existing operators at Tollgate.
- The provision of a range of unit sizes for national, regional and local scaled facilities

## Environmental factors

- It involves the re-use of a mainly vacant site
- It is the most sequentially preferable location for new facilities
- It will deliver substantial public realm, landscape and access enhancements, ensuring improved physical and visual links and connectivity between the disparate parts of Tollgate District Centre.
- It is in a highly accessible location, well served by public transport and easily accessible on foot to nearby residential areas.
- It will deliver improvements to the existing highway network and improve pedestrian and cycle accessibility to the Site

## Social factors

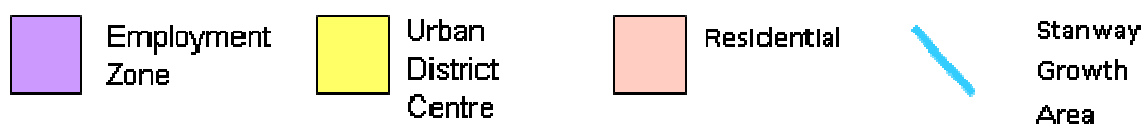
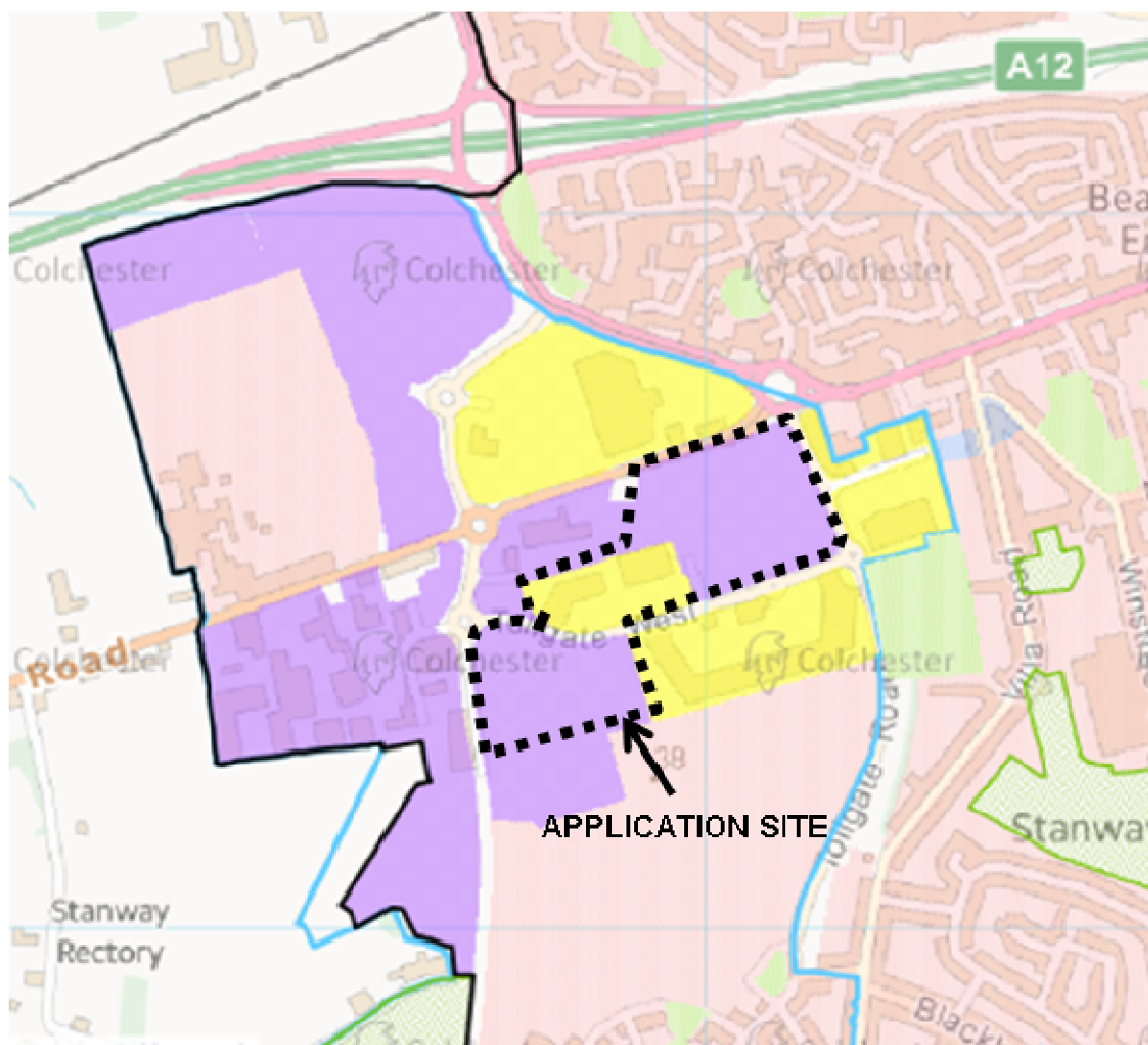
- The provision of new high quality retail and leisure facilities within and adjoining the defined District Centre, attracting new operators and services.
- It will provide additional choice and competition to existing retail and leisure provision within the Borough.
- Smaller local scale units will be provided in order to attract a range of operators, including independents, and ensure enhanced access to a range of facilities and services for local residents.
- It will create a sense of place and heart for the Stanway Growth Area.
- There is a significant local and stakeholder support for the proposal.”

## 5.0 Land Use Allocation

- part Urban District Centre (UDC)
- part Strategic Employment Zone (SEZ)
- Stanway Growth Area (SGA)

### 5.1 Constraints:

- Conservation area - no
- TPO (Tree Preservation Order) - none
- Listed Buildings - none within the site
- PROW (Public Rights of Way) – none within site FP5 to south



**Figure 3: Proposals Map Extract: reflecting policy SA STA3 Site Allocations**



## 6.0 Relevant Planning History

6.1 The submission of this application was preceded by pre-application discussion with the Major Development Service within the framework of a fee paying Planning Performance Agreement (PPA). The stated aims of the signed PPA were as follows:-

- (I) To provide managed support for the creation of a masterplan for the comprehensive redevelopment of land at Tollgate
- (II) To provide guidance and advice on land use allocation issues including collaboration on navigating the Local Plan (Core Strategy and Allocations DPD) review process
- (III) To provide project managed pre-application support to provide for the timely preparation, consideration and determination of a subsequent associated planning application or planning application that result from this process within the lifetime of this agreement.

6.2 That Agreement was entered into on 27 August 2013.

Section 7 of that Agreement carried the following proviso:-

### *"7.0 PLANNING POLICY*

*7.1 CBC's vision for the site is established by reference to the adopted Development Plan and any changes that arise during the Local Plan review process. The NPPF is a material consideration as is any wider master planning work that may be prepared and adopted during this PPA period.*

*7.2 Where the landowner's aspirations depart from the adopted development plan policy these will need to be robustly justified. CBC reserves the right to refuse subsequent planning applications if they believe the justification is not sufficiently robust."*

Signatures to the Agreement are preceded by the following text:-

"This document represents a strong expression of intent to work collaboratively but does not constitute a legally binding document and does not convey any guarantee or promise that any submission made as part of the Core Strategy review or as an application for planning permission or both will be approved".

6.3 The application has been advertised as a 'Departure' from the Adopted Local Plan by the Council.

6.4 The Tollgate area is the subject of an extensive and complex planning history and a summary history will be provided prior to the Committee meeting.

## 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. (Further to section 38(6) of the Planning & Compulsory Purchase Act 2004 and 70(2) of the Town & Country Planning Act 1990.) The National Planning Policy Framework (NPPF) must also be taken into account in planning decisions as a material consideration. The NPPF sets out how the Government's planning policies are to be applied. It makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental. The NPPF succinctly identifies these as follows:-

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

7.2 Much of the NPPF is relevant to the proper consideration of the merits of this proposal. Particular (but not exclusive) attention is drawn to the relevance of the following sections:-

### 7.3 Presumption in favour of sustainable development (paragraphs 11-16).

7.4 Particular attention is drawn to paragraph 14 therein:-

Paragraph 14:

*“14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.*

*For **plan-making** this means that:*

- *local planning authorities should positively seek opportunities to meet the development needs of their area;*
- *Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:*

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.

For **decision-taking** this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: – any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or – specific policies in this Framework indicate development should be restricted.

- 7.5 In the context of this the Council is currently advancing its new Local Plan and will be in a position to consult publicly on its preferred options in 2016. As part of that emerging direction the Council is now developing its planning strategy for growth in employment, the supply of strategic employment land and the optimum location for such sites as well as setting out its future retail hierarchy and the extent to which new retail floorspace is required .
- 7.6 In terms of the Council's planning policies, the Adopted Development Plan is not silent on retail policy and employment policy. The Council believes that its Review Local Plan Core Strategy revised July 2014 and the Development Policies revised July 2014 are up to date and disagrees with the view of the applicant's planning consultants, Barton Willmore that it is not as stated in its submission of 3 December 2015. The validity of the status of the Council's Local Plan has been established through a number of appeal decisions subsequent to NPPF publication, including for example the decision on the Horkesley Park proposal where the Inspector found that: "The development plan should therefore not be considered absent, silent or relevant policies to be out-of-date and the appeal should be determined against the development plan unless other material considerations indicate otherwise." (APP/A1530/A13/2195924, February 2014).
- 7.7 Implicit in the March 2014 appeal decision rejecting the use of two units within the Tollgate West Business Park for retail purposes was the principle that the Council's planning policies were up-to-date. (APP/A1530/A/14/2212689). The Council is revising its employment hierarchy and policies as part of developing a new Local Plan and will have regard to changes in both national policy and local circumstances. Current adopted policies are however, considered to remain appropriate and up-to-date in their overall direction on town centre spatial hierarchy and employment land issues. Specifically, Paragraph 23 of the NPPF provides that local authorities should, inter alia, 'define a network and hierarchy of centres that is resilient to anticipated future economic changes'. This is reflected in the Council's Centres and Employment classification and hierarchy set out in Table CE1a which puts the Town Centre at the top of the hierarchy, with Urban District Centres below them. The NPPF's definition of town centre uses which provides that all forms of centres are suitable for town centre uses allows town centre uses to be introduced into Urban District Centres, but the Council considers that its policies limiting the scale of their development outside the Town Centre remain a valid check which is compliant with the intent of the NPPF to ensure the vitality of town centres. This view reflects the outcome of the Focussed Review consultation. The Council originally sought to vary its Centres and Employment policies to ensure their conformity with the NPPF, including the definition of 'centres', but did not pursue this approach due to the fact that limited alterations would have had the unintended

consequence of affecting other policies not included in the Focused Review. The Inspector accepted this approach and the retention of the Centres and Employment policies in their first form, given that the NPPF (para 153) gives the Council the discretion to decide the extent of review. The Inspector directed that the Council should: 'Delete from the Focused Review all the changes relating to retail and employment policies to avoid introducing piecemeal changes to such policies which have implications for the overall strategy of the development plan and existing allocation policies. All these policies would thus remain as currently set out in the development plan.' This would leave the Council the task of updating all the employment and retail policies in one comprehensive and coordinated manner as part of the full review of the local plan and avoid the conflicts and potential unintended consequences of making piecemeal changes now.

- 7.8 It is accepted that the Council will need to carry out further work to ensure its Centres and Employment policies are compliant with national policy, but this can be achieved through the full review of the Local Plan and does not compromise the overall soundness of the Council's hierarchy which is considered compliant with the NPPF. Paragraph 21 of the NPPF provides that local authorities should set out a clear economic vision and strategy for their area which is accompanied by criteria or strategic sites to match the criteria. Paragraph 22 provides that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used. The Council's employment policies are compliant with this in that they provide a hierarchy of Strategic Employment Zones and Local Employment Zones providing a range of sites in policies CE1, CE3 and DP5, with Table CE1b and DP5 providing more detailed guidance on the range of employment to be expected in these zones. Policy DP5 addresses the concerns about overly rigid protection of employment zones by providing criteria to permit release of employment land for other purposes.

## **7.9 Delivering sustainable development**

### **Building a strong, competitive economy (paragraphs 18-22)**

- 7.10 Specific attention is drawn to paragraph 18 that states:

"18. The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future."

- 7.11 In considering the current proposal this report will look objectively at what the proposal offers in terms of direct and indirect job creation opportunities
- 7.12 Members may be aware that Colchester as a town performs below many other Essex towns in terms of average wage levels and has been seeking to attract or encourage higher paid jobs to the town to widen the town's economic base and allow residents to work locally rather than commute out (usually towards south Essex /London) which is not particularly sustainable. Higher paid jobs within Colchester secured by Colchester residents allow more wealth to be captured and retained within the town thereby enhancing local prosperity and boosting the local economy.

- 7.13 Paragraph 20 NPPF states:

“20. To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century.”

7.14 Within this context members will be asked to take into account the needs and prospects of existing Colchester retail businesses; especially those located in the Town Centre, the commercial needs of the applicants who are an established local development company and the potential needs of retailers looking to locate or develop an additional presence in the town.

7.15 Paragraph 22: states:

“22. Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.”

7.16 This is an important consideration as parts of the application site fall within a designated strategically important employment zone. Members will be helped in examining this issue by reference to the Council's Employment Land Needs Assessment published January 2015 (as undertaken on behalf of the Council by Nathaniel Lichfield & Partners (NLP)).

7.17 Any consideration of the economic performance of allocated employment sites must also have regard to the wider impact of the 2008 world banking crisis and the economic turbulence that has followed and continues to leave its footprints on the national economy.

7.18 **Building Sustainable Development 2: Ensuring the vitality of town centres**  
(NPPF paragraphs 23-27)

7.19 All of the paragraphs in this section are relevant as they provide a comprehensive framework for supporting the continued vitality and viability of town centres. This involves in the first instance developing a spatial policy framework that clarifies local links and functions and seeks to ensure new development is directed to locations that will support and strengthen the pivotal role of main town centres. The sequential test is provided as the technical means for assessing the relative appropriateness of alternative sites for development. Proposals also need to satisfy an impact test to demonstrate they would not have a significant adverse effect on town centres. Finally the Government's position expressed within paragraph 27 is pivotal:-

“Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused”.

7.20 Members need to carefully consider the content of these paragraphs as they are critical to the consideration of the proposals. For this reason, they are set out in full below:

“2. Ensuring the vitality of town centres

23. Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should:

- recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;
- define a network and hierarchy of centres that is resilient to anticipated future economic changes;
- define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations;
- promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres;
- retain and enhance existing markets and, where appropriate, re-introduce or create new ones, ensuring that markets remain attractive and competitive;
- allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres. It is important that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability. Local planning authorities should therefore undertake an assessment of the need to expand town centres to ensure a sufficient supply of suitable sites;
- allocate appropriate edge of centre sites for main town centre uses that are well connected to the town centre where suitable and viable town centre sites are not available. If sufficient edge of centre sites cannot be identified, set policies for meeting the identified needs in other accessible locations that are well connected to the town centre;
- set policies for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres;
- recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites; and
- where town centres are in decline, local planning authorities should plan positively for their future to encourage economic activity.

24. Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

25. This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development.

26. When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a

proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). This should include assessment of:

- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.

27. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.”

7.21 The applicants have produced a reasoned supporting retail impact analysis as part of their submission which in their view strongly indicates that the proposed development will not have a significant adverse impact in the context of issues identified in paragraphs 23-27 (inclusive) above and will not be contrary to the sequential test. This report will explore the extent to which these conclusions are accepted by the Council.

7.22 Local authorities are required to have regard, when assessing impact assessments, to:- (paragraph 26 of the NPPF)

- The impact of the proposal on **existing, committed** and **planned** public and private investment in a centre or centres in the catchment of the proposal
- The impact of the proposal on town centre **vitality and viability**, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years the impact should also be assessed up to ten years from the time the application is made

7.23 **4. Promoting sustainable transport** (paragraphs 29-41)

7.24 Particular regard needs to be given to the following paragraphs:-

Paragraph 32

32. All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
- safe and suitable access to the site can be achieved for all people; and
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

7.25 The application is supported by extensive highway/traffic impact analysis work and the application has been the subject of in depth negotiation with both Highways England

(strategic network impacts – A12 and local junctions) and Essex County Council (local network impacts)

- 7.26 Members who are familiar with Stanway/ Tollgate will be aware that the local highway network suffers regular congestion and this has been a long-standing concern with residents. This report will carefully consider highway impacts and the likely impact of proposed mitigation measures.
- 7.27 Paragraph 34. Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas.
- 7.28 Paragraph 38. For larger scale residential developments in particular, planning policies should promote a mix of uses in order to provide opportunities to undertake day-to-day activities including work on site. Where practical, particularly within large-scale developments, key facilities such as primary schools and local shops should be located within walking distance of most properties.
- 7.29 Stanway has seen a rapid and expansive growth in the number of new homes from the 1980's and that pattern is set to continue. Until relatively recently a village, Stanway has now become the outer edge of urban Colchester. In the context of paragraph 38 it is certainly appropriate to consider how this burgeoning new community is currently supported by local facilities and whether the Tollgate Village proposal will provide local people with opportunities to undertake day-to-day activities without harming other 'interests of material importance'.
- 7.30 Paragraph 40. Local authorities should seek to improve the quality of parking in town centres so that it is convenient, safe and secure, including appropriate provision for motorcycles. They should set appropriate parking charges that do not undermine the vitality of town centres. Parking enforcement should be proportionate.
- 7.31 The Tollgate Village proposal includes the provision of 1523 parking spaces which are expected to be free to use. The availability of free parking must be assessed against the promotion of modal shift towards sustainable modes of travel. The impact of this free parking in terms of the ability of the town centre to compete and maintain vitality will be explored in the report. Consideration of the impact of Tollgate Village on the Council's town centre parking income is not a material planning consideration and is not a matter to be taken into consideration.
- 7.32 This report will, where appropriate, also refer to other specific sections and paragraphs of the NPPF as needs be.
- 7.33 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations  
SD2 - Delivering Facilities and Infrastructure  
CE1 - Centres and Employment Classification and Hierarchy  
CE2a - Town Centre  
CE2c - Local Centres



CE3 - Employment Zones  
 UR1 - Regeneration Areas  
 UR2 - Built Design and Character  
 PR1 - Open Space  
 PR2 - People-friendly Streets  
 TA1 - Accessibility and Changing Travel Behaviour  
 TA2 - Walking and Cycling  
 TA3 - Public Transport  
 TA4 - Roads and Traffic  
 TA5 - Parking  
 ER1 - Energy, Resources, Waste, Water and Recycling

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

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  
 DP10 Tourism, Leisure and Culture  
 DP14 Historic Environment Assets  
 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

7.35 Further to the above, the adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

Paragraph 3.13 Strategic Employment Zones (Stanway 34.43ha)  
 SA TC1 Appropriate Uses within the Town Centre and North Station Regeneration Area  
 SA STA1 Appropriate Uses within the Stanway Growth Area  
 SA STA3 Employment and Retail Uses in Stanway Growth Area  
 SA STA4 Transportation in Stanway Growth Area

7.36 The following non-statutory guidance document is also relevant: The future of Tollgate: A Framework Vision (July 2013) and the Stanway Parish Plan & Design Statement (March 2011)

In the context of the Parish Plan, particular attention is drawn to:-

- P30: Recreation & Leisure

“With shopping coming top of the list for adults’ leisure activities it wasn’t a surprise that wider shopping choice was the clear leader in the choice of new facilities with 40% in favour. British land’s proposed changes to the Tollgate Centre, if accepted, may go some way to meeting this need. A swimming pool (27.5%), sports complex (25.5%),

bigger library (16.5%) and more allotments (14%) also attracted significant minority support with cinema, ten pin bowling and ice rink, all at just under 10%.....”

- P43: Community facilities (Recommendations from the Stanway Parish Plan: recommendations for planning...)

#### Paragraph 31

“Improve and expand shopping choice at the Tollgate Centre that does not conflict with Town Centre uses and introduce environmental improvements to enhance the overall shopping experience.”

- P44: Commercial (Recommendations from the Stanway Parish Plan: recommendations for planning...)

#### Paragraph 32

“ensure that future development proposals provide a range of commercial premises (size and type), including incubation units, that sustain existing businesses and create opportunities for business to expand in Stanway.”

#### 7.37 Other material statutory documents:

Vehicle Parking Standards (2009)  
Sustainable Construction (2012)  
Cycling Delivery Strategy (2012)

- 7.38. It is noted that Stanway Parish Council now has an agreed Neighbourhood Plan Area but little else at this stage and so there is no neighbourhood plan weight that can be given to the consideration of the Tollgate Village application at this time.

### 8.0 Consultations

#### 8.1 The Planning Policy Service recommends refusal of the proposal on the following grounds :-

- Harm to the development plan retail strategy;**
- Harm to the emerging development plan and in particular, the proposal is premature;**
- Harm to planned investment in the town centre;**
- Harm to the provision of employment land;**
- The proposal does not accord with paragraph 14 of the NPPF because the proposal is not considered to have benefits that outweigh the adverse impacts due to the four impacts identified above.”**

This recommendation is based on the conclusion that:-

“While the proposal would deliver benefits in employment creation and provision of new facilities and services, the proposal would also conflict with numerous policies as set out above. The Council does not consider that the normal presumption in favour of sustainable development described in the National Planning Policy Framework (paragraph 14) can be properly applied to the proposal given that the adverse

impacts of doing so are considered to significantly and demonstrably outweigh the benefits.”

## 8.2 The consultation response is reproduced in full below:-

### “Current policy designation

1. The application site is located within areas designated for the following uses within the adopted Local Plan and identified on the associated Proposals Map:

a. One third of the site, described by the applicants as (Development Zone 2 lies within the Tollgate Urban District Centre (UDC), Urban District Centres are covered by policies CE1 (Centres and Employment Classification and Hierarchy) and CE2b (District Centres) Site Allocations policy STA3 (Employment and Retail Uses in Stanway Growth Area) provides specific policy guidance on the Tollgate UDC. Policy CE1 positions District Centres in a spatial hierarchy below Town Centre and Edge of Centre locations, and Policies CE2b and STA3 provides further guidance on the role and function of the Tollgate District Centre, as explained further below in Para 20.

b. Two thirds of the site (Development Zones 1 and 3) lie within the Tollgate Strategic Employment Zone (SEZ). The position of Strategic Employment Zones in the spatial hierarchy is outlined in Policy CE1, and appropriate uses within them is covered by Policy CE3 (Employment Zones) and Development Policy DP5 (Appropriate Employment Uses and Protection of Employment Land and Existing Businesses), as explained further below at Para 21.

### Proposed uses

2. The proposal involves a total of 30,812 sq.m of commercial floorspace, split as follows:

- a. Class A1 comparison goods – up to 16,304 sq.m gross
- b. Class A2 convenience goods – 1,858 sq.m gross
- c. Flexible Class A1 to A5 – 5,010 sq.m gross
- d. Flexible Class A3 to A5 – 950 sq.m gross

The above figures include 4,699 sq.m of existing Class A1 retail floorspace in Development Zone 2.

3. Development of town centre floorspace in Development Zones 1 and 3 would involve the loss of land designated for B employment uses. The total loss of employment land in the two parcels is 9.07ha which would reduce the employment land supply at Stanway from 26.8ha to 17.7ha, a reduction of 34%. In Borough wide terms the loss of these two sites would result in a 12% loss in total supply, or a 15% reduction in Strategic Employment Zone land.

4. The Supplementary Information document submitted by Barton Willmore in June 2015 suggested that the applicant would be willing to accept conditions restricting floorspace levels and the ability to move from one use class to another to address concerns about the proposal's impact on the town centre.

### Policy context

5. The following section outlines the national and local policies guiding consideration of the planning application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states: "If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise." Para 12 of the NPPF also reinforces this point and makes clear that where development is in accordance with the development plan, it should be approved without delay (paragraph 14).

6. Colchester's Local Plan is considered to be up to date for the purposes of decision making on planning applications. This is substantiated by the conclusions of the Inspector for an appeal at Tollgate, Stanway (May 2014, ref. APP/A1530/A/14/2212689), who assessed the proposed development against the Local Plan centres and employment policies, and did not highlight any inconsistencies with the NPPF.

#### Achieving sustainable development

7. The presumption in favour of sustainable development lies at the heart of the National Planning Policy Framework (NPPF) and is the overarching principle governing consideration of this application paragraph 6 of the NPPF states that "the purpose of the planning system is to contribute to the achievement of sustainable development" which includes interlinked economic, social and environmental objectives. Determination of this application accordingly needs to have regard to the balance between these contributing elements of sustainable development. This includes weighing the job creation and consumer choice benefits of the scheme against its longer term effect on the Borough's commercial hierarchy and quality of place.

8. The principle of sustainable development contained in the NPPF is reflected in Colchester's Core Strategy Policy SD1 of the Local Plan (as amended 2014) which states that "Throughout the borough, growth will be located at the most accessible and sustainable locations in accordance with the Settlement Hierarchy... Development proposals will be expected to make efficient use of land and take a sequential approach that gives priority to accessible locations and previously developed land (PDL)." The Local Plan approach to sustainable growth in Colchester accordingly considers all proposals for growth in relation to the Borough's spatial hierarchy.

#### Pursuing a plan-led approach to significant development

9. The NPPF provides that planning should be 'genuinely plan-led'. (Para 17) Para 23 goes on to outline how plans should set out policies 'for the management and growth of centres over the plan period'. This includes defining 'a network and hierarchy of centres that is resilient to anticipated future economic changes.' This means that decisions on large-scale significant planning applications should be compatible with a plan-led approach to development and be consistent with the adopted spatial hierarchy.

10. The Town Centre is at the top of the Borough's spatial hierarchy and is given pre-eminent status throughout the plan, beginning with the Vision which states: 'The historic Town Centre will be the cultural and economic heart of the borough,

surrounded by thriving suburbs, villages and countryside. New cultural, retail, office and mixed use developments will be delivered through regeneration of the Town Centre and its fringe.’ This broad principle is supported by policies SD1 (Sustainable Development), CE1 (Centres and Employment Classification and Hierarchy) and CE2a (Town Centre). Adopted Local Plan Policy CE1 provides that the Town Centre sits at the top of the centres hierarchy, followed by edge of centre locations and then District Centres.

11. Colchester has a good track record in adopting and maintaining an up-to-date planning policy framework, and this has contributed to a positive atmosphere for development in the Borough and associated high levels of housing delivery. Colchester Borough Council adopted a Focused Review of its Local Plan in July 2014 which brought selected policies into compliance with the National Planning Policy Framework.

12. The intent to pursue a co-ordinated approach to development in the Tollgate area was reinforced in July 2013 with the adoption as guidance of ‘The Future of Tollgate: A Framework Vision. The document was prepared by local landowners in consultation with the Council and the local community. The purpose of the Vision was to ‘encourage high quality proposals that will enhance the quality of the public realm and townscape, seek to create an interconnected environment and contribute towards a vibrant and successful ‘humanised’ environment’.

13. The Council is currently in the process of drafting Preferred Options for a new Local Plan. An Issues and Options consultation was carried out in January-February 2015, including an identification of the need for the new plan to ensure the delivery of well-located sites to support employment with particular regard to growing sectors of the economy; and to review the retail hierarchy to ensure it would safeguard the pre-eminence of the Town Centre while supporting appropriate levels of growth in other areas. Officers are now pulling together evidence base work, site assessment appraisals, consultation feedback and policy analysis to inform Preferred Options document. This document is programmed for consultation in 2016, with adoption expected in 2017. The adjacent authorities of Braintree and Tendring have similar time frames for their Local Plan process. Overall planning for the area is accordingly proceeding in a co-ordinated manner, in line with Government ‘duty to cooperate’ requirements.

14. The applicants’ agent Barton Willmore responded to the Issues and Options consultation, stating that there is no justification in the evidence base to retain the existing B Class employment allocation at the Tollgate Village site. They considered that Tollgate Village should be allocated for mixed use retail and leisure floorspace, which would assist in meeting the requirement for substantial additional retail floorspace in Colchester in a sequentially preferable location in or adjacent to a designated centre. The applicants have also submitted the Tollgate Village site for consideration for allocation through the Call for Sites process.

15. Planning Practice Guidance explains that a substantial proposal such as Tollgate must meet the following criteria if its determination were to be considered to undermine the plan-making process:

a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by

predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and  
b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.

#### Ensuring the vitality of town centres

16. The NPPF recognises that town centres lie at the heart of their communities (Para 23), and that local authorities should 'define a network and hierarchy of centres that is resilient to anticipated future economic changes'.

17. The NPPF provides for two key tests to assess the potential effect of new town centre proposals – the sequential test and the impact assessment;

- a. Sequential test - Para 24 sets out a sequential approach to site selection to ensure that town centre sites are given priority.
- b. Impact test - Para 26 addresses the potential impact of new town centre proposals on the vitality of existing town centres and states that planning applications for town centre uses should be assessed against:
  - the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal;
  - the impact of the proposal on the town centre vitality and viability, including local consumer choice and trade in the town centre and wider area.

The NPPF provides that where there is no locally set floorspace threshold, then impact assessments will be required for retail and leisure developments of 2,500 sq.m gross or more. The proposal for over 3,000 sqm gross floorspace clearly exceeds this threshold, so the determination of the proposal's impact on the town centre is a key consideration. The NPPF states that planning applications for town centre uses should be assessed against the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal, as well as the impact of the proposal on the town centre vitality and viability, including local consumer choice and trade in the town centre and wider area. Para 27 of the NPPF states that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on, it should be refused.

18. The section on 'Ensuring Town Centre Vitality' in Planning Practice Guidance provides further detail on the sequential test and impact assessments. In particular, it explains how the impact assessment should address the issue of impact on investment:

Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:

- the policy status of the investment (i.e. whether it is outlined in the Development Plan)
- the progress made towards securing the investment (for example if contracts are established)
- the extent to which an application is likely to undermine planned developments or investments based on the effects on current/ forecast turnovers, operator demand and investor confidence.

19. Policy CE2b on District Centres states that ‘new retail proposals (including change of use to retail) will not be supported, unless they meet identified local needs and do not compete with the Town Centre. Expansion of the Urban District Centres will not be supported, but intensification within the Centre will be supported where the quality of the public realm and the built character is improved.’ This view is specifically applied to the Tollgate area in Site Allocations Policy SA STA3 (Employment and Retail Uses in Stanway Growth Area, which does not support additional Town Centre uses within the Stanway Growth Area. STA3 allows for small scale retail facilities if they meet local needs and do not compete with the Town Centre. The policy also notes the relocation of Sainsbury’s to a new site and the swap of land uses resulting in the new Sainsbury’s being included in the Urban District Centre, while the old site is allocated to employment use.

#### Safeguarding Employment Land

20. Paragraph 22 of the NPPF states: “planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits...”

21. Policies CE1 and CE3 of the Local Plan set out the Borough’s Employment Hierarchy which covers the one third of the site lying within a Strategic a Strategic Employment Zone at the top of the Employment Hierarchy. . The spatial hierarchy reflects the important role given to the three Strategic Employment Zones in the Borough in the East, North and West of the Colchester urban area. This acknowledges their strategic locational advantages and existing and potential stock of high quality employment floorspace. Policy SA STA3 of the Local Plan allocates the proposed development site within the Strategic Employment Zone for employment use and sets out the uses considered to be appropriate on that land, including B1 a-c, B2, B8 and selected sui generis uses.. Policy DP5 also sets out appropriate uses in line with those in STA3 and aims to safeguard employment land for these purposes.

## Additional policy considerations

22. The following additional adopted local planning policies are relevant to the application and will need to be the subject of detailed development management consideration.

### Core Strategy Policies

Policy SD3 – Community Facilities

Policy UR2 – Built Design and Character

Policy PR1 – Open Space

Policy TA1 – Accessibility and Changing travel Behaviour

Policy TA2 – Walking and Cycling

Policy TA5 – Parking

Policy ENV1 – Environment

Policy ER1 – Energy, Resources, Waste Water and Recycling

### Development Policies

DP1 – Design and Amenity

DP2 – Health Assessments

DP17 – Accessibility and Access

DP19 – Parking Standards

DP20 – Flood Risk and Management of Surface Water Drainage

DP21 – Nature Conservation and Protected Lanes

### Site Allocations

SA STA1 – Appropriate Uses within the Stanway Growth Area

SA STA4 – Transportation in Stanway Growth Area

SA STA5 – Open Space in Stanway Growth Area

Evidence Base for consideration of the application

The following documents provide key evidence which has been relied upon to guide consideration of the application. In particular, the NLP critique (para 29) relates specifically to this proposal and accordingly should be referred to for further detail on the potential impacts of its retail and employment aspects.

Retail Study on Colchester's Town Centre (October 2011), King Sturge

23. The study carried out a health check on Colchester's retail and leisure offer and included an assessment of the possible impact of changes in futures supply both internal to Colchester and in competing centres, along with a strategy for long-term retail health and vitality. It found that there were no tangible threats to Colchester on the immediate time horizon, but they did highlight a number of intervention-based priorities to ensure the Town Centre remained competitive. Future investment in Vineyard Gate was supported in harness with other initiatives to help kick-start wider improvement in the wider retail offer and avoid failure to capitalise on the town's full trading potential.



## Retail Study Update (March 2013) Nathaniel Lichfield & Partners

24. The study updated the findings of 2006 and 2009 work and assessed the future need and capacity for retail floorspace up to 2026. The quantitative assessment of the potential capacity for new retail floorspace suggested that there was scope for new retail development over and above commitments. For comparison goods retail development (the primary element of the Tollgate proposal) the study recommended the following phasing:

- Up to 2016: implementation of commitments/town centre proposals and the reoccupation of vacant units
- 2016 to 2021: implementation of up to 13,000 sq m gross
- 2021 to 2026: implementation of up to a further 19,000 sq m gross.

25. The report states that retail development should not be permitted outside the Town Centre Core unless it can clearly be demonstrated that the proposed development cannot be accommodated in the Town Centre Core, and the proposals will not harm the vitality and viability of designated centres and planned investment. It considered that the defined urban and rural district centres should continue to complement the town centre by providing for bulk convenience food shopping and a more limited range of comparison shopping facilities and other services.

## Employment Land Needs Assessment (January 2015) Nathaniel Lichfield & Partners

26. The Council appointed Nathaniel Lichfield & Partners to carry out an employment land needs assessment in conformity with national requirements as set forth in the NPPF and Planning Practice Guidance. It provided the Council with an understanding of its Functional Economic Market Area and its current and potential requirements for employment land. This was based on considering a range of scenarios for how the Colchester economy could change in the future.

27. The study concluded that based on available employment space, Colchester has sufficient employment floorspace in quantitative terms to meet future needs up to 2032 (Para 7.36). The study however, refines this point by noting that 'to ensure a flexible and responsive policy framework, it will be necessary not just to focus on meeting forecast quantitative requirements (which will fluctuate over time), but to think about the opportunities and risks that flow from particular policy approaches' (Para 8.16.)

28. The report provides scored assessments of employment sites within Colchester, including the employment allocations within the proposal site. The study recommends that the Council adopts 'a selective approach to safeguarding these undeveloped allocations for future development, by retaining those sites with the best intrinsic qualities and the greatest prospects of coming forward for employment development' (Para 8.48.) The site's score placed it slightly below the highest ranking Stanway site, Stane Park, which is earmarked as warranting protection, (Para 8.49) but decisions on the level of sites to be retained or de-allocated are left to the next stage of plan-making, particularly given that only a small margin separates the scores of Stanway sites (3 points out of a 30 point scale). The report recommends that the Council should evidence how its portfolio of allocations and other development opportunities will support delivery of new space over the short, medium and long-term. (Para 8.57)



## Additional Retail and Employment work

29. In light of the large size and potential impact of the Tollgate West proposed development, the Council commissioned Nathaniel Lichfield & Partners to evaluate its potential retail and employment implications to aid determination of the application. Their independent evaluation of the scheme accords with national and local planning policy, in particular Planning Policy Guidance on the evaluation of major town centre and employment schemes and accordingly underpins Council views on the application. The Council, NLP, applicants and their planning consultants worked together to agree methodological approaches to assessment of the scheme, and the resulting statements submitted by the applicant on retail and employment matters reflected discussions between all parties on the best approach in the light of the particular circumstances of the proposal. While modifications and further information was submitted on some points, the following areas remain as unresolved points of difference between the parties:

- i). Status and timing of Vineyard Gate application and the extent to which it should be factored in to impact calculations
- ii). Implications of the speculative nature of the proposal and the lack of certainty on the following areas given that they could vary significantly based on different types of occupier:
- iii). Use class and categorisation of different types of tenant – i.e. bulky goods, fashion retail, A1 uses vs. other A and D uses
- iv). Floorspace requirements -Net to gross ratio
- v). Sales densities and turnover
- vi). No analysis of trade diversion/impact was provided by the applicant for the non-Class A1 uses and proposed cinema

## Assessment of planning policy implications

### Key Issues

The above summary of relevant policy guidance highlights the key policy considerations for this application:

- a. overall sustainability;
- b. pursuing a plan-led approach to development;
- c. town centre impact;
- d. safeguarding employment land.
- e. sustainability
- f. The following sections explore these key issues, with sustainability considered at the end due to its overarching impact on the evaluation of the proposal.

## Spatial hierarchy and plan-led approach to development- Policy assessment

31. The existing spatial hierarchy in Colchester reflects the ongoing pre-eminence of the historic Town Centre as well as the development in the 70s-90s of out-of-centre shopping centres anchored by supermarkets and/or bulky goods retailers. As noted in the NLP critique, the 2013 Retail Study found that none of the five Urban District Centres (UDCs) in Colchester, including Tollgate, provide all of the characteristic typically found within District Centres, as set out in Government guidance, which usually comprise a group of shops containing at least one supermarket, a range of non-retail services, and local public facilities. All of the five UDCs are currently anchored by large food superstores but the range of non-retail

uses is limited in all centres. (para 8.7) The NLP work goes on to detail the types of retail development in each of the centre, noting that they provide a reasonable distribution of large food stores and bulky goods retail warehousing within Colchester's urban area, with gaps in coverage in the north east and south.

32. Adopted policy seeks to limit the expansion of town centre uses outside the town centre by restricting further new retail development unless it meets identified local needs and does not compete with the Town Centre. (Core Strategy Policy CE2b). NLP conclude that the Tollgate Village proposals are at odds with this policy, because the development effectively expands town centre uses beyond the UDC boundary. (para 8.18)

33. The scale and extent of the Tollgate proposals are considered to be significant enough to alter the balance and functionality of centres within Colchester. The development proposals, in combination with existing uses, would provide a concentration of over 50,000 sq.m gross of Class A uses and a new leisure destination. A centre of this size would be more than two and a half times bigger than the next largest UDC (Turner Rise) and, particularly given the focus of the other four UDCs on convenience rather than comparison shopping, would provide a clear challenge to the predominance of the Town Centre as the pre-eminent destination in the Borough for comparison shopping.

34. NLP concludes that: If permitted and developed before 2019 (the design year) this development will pre-determine future decisions relating to the future scale and distribution of retail and leisure development within Colchester. The appropriate strategy for the shopping hierarchy should ideally be considered within the new Local Plan. The approval of the expansion proposed at Tollgate Village will have significant implications for the review of the hierarchy and the emerging development strategy for these centres in Colchester Borough and will predetermine the new Local Plan in this respect. (Para 8.27 and 8.28)

35. The changes in the Tollgate Urban District Centre have, to date, been incremental and difficult for the Council to resist given their lack of individual impact on the town centre. Demand has reduced for the original type of bulky goods floorspace found in the UDCs, reflecting the increase in on-line purchase of these items. These uses have been replaced by a wider range of retail uses, including some that also have a town centre presence (i.e. Argos, Boots, Next, Iceland). The Council has appreciated the societal trends driving the pressure on the Urban District Centres and has adopted a flexible, pragmatic approach to accepting a wider range of uses. It has, however, approached variation of condition applications by widening the range of permitted uses rather than by jettisoning scrutiny of uses within centres. The Council still wishes to scrutinise proposals to widen uses to ensure they avoid cumulative impact on the town centre and achieve compatibility with policy aims to diversify Urban District Centres and improve their public realm. Acceptance of a limited degree of change to more town centre uses should not, accordingly, be considered to constitute acceptance of a large proposal which would challenge the role of the town centre.

36. The Council's approach to centres and their hierarchy reflected national policy in PPS6 which was current at the time of developing the Core Strategy in 2008. The policy approach regarding the definition of the hierarchy of centres and the application of the sequential approach is considered to remain largely unchanged with the NPPF, notwithstanding the glossary definition which states that references to town centre apply to all forms of centres. Appeal decisions within Colchester have established that its Local Plan, as modified by the Focused Review in 2014, is up-to-date and a valid basis for the determination of planning applications. On that basis, the proposal is considered not to comply with adopted Council policies on appropriate developments for its centre hierarchy due to the scale of development proposed.

37. Furthermore, approval of the scheme in advance of publication of the Council's Preferred Options for a new Local Plan would prematurely close off decisions that should be made through the Local Plan process rather than by an isolated development management decision. Granting planning permission now for a large scale development outside the scope of adopted policy is considered to harm the robustness of strategic long-term planning for the area.

38. The applicants have put forward their site through the Local Plan Call for Sites process, and this is considered the most appropriate mechanism to address a large scale proposal with the potential for significant impact on the Borough's spatial hierarchy.

#### Sequential test –Policy assessment

39. The proposal includes land both within and adjacent to an Urban District Centre (UDC), so policy for both types of area needs to be considered. In terms of the land within the UDC, the proposal needs to be considered under Policy CE2b, which states that new retail in UDCs is not supported unless it meets identified local needs and does not compete with the Town Centre. This issue is covered below in the section on impact. In terms of the two thirds lying outside the UDC, the proposal needs to be evaluated in terms of the sequential test as required in the NPPF for proposals which 'are not in an existing centre and are not in accordance with an up-to-date Local Plan.

40. To address the requirements of a sequential test, the applicants submitted information to address potential sites in the Town Centre and in the Tollgate Urban District Centre, which has been reviewed by the Council's consultants NLP. The applicant's view is accepted that because the site is partly within and partly adjoining Tollgate Urban District Centre, only potential Town Centre sites required assessment given that other UDC-adjacent sites would be equal in rank rather than sequentially preferable to the Tollgate UDC. As NLP note, the application of the sequential approach needs to be considered within the context of the Rushden and Dundee decisions. The application of the approach outlined in these decisions suggests emerging developments within the town centre cannot accommodate the Tollgate Village development in its entirety and probably not within the same timeframe. The applicants' consultants, Barton Willmore, identified in pre-application discussion with officers two potential sequentially preferable sites – the Cowdray Centre and Vineyard Gate.

Cowdray Centre: NLP consider that emerging development proposals suggest not all of the Cowdray Centre will be available and they also have reservations about the suitability of the Cowdray Centre for the size of development proposed at Tollgate Village.

Vineyard Gate: NLP consider that it is unlikely that Vineyard Gate can be brought forward to deliver development before 2019, and therefore is not available to deliver development within the same timetable as Tollgate Village.

41. Objectors to the scheme (GL Hearn on behalf of M&GRE) have argued that the development is separated into three physical zones and three phases and therefore can easily be disaggregated. This argument, however, is considered to have limited weight given that it is accepted that there is a synergy between the retail and leisure elements of the Tollgate proposal and furthermore, it has not been established that there are suitable and available sites for all the disaggregated elements of the proposal. NLP accordingly conclude that the proposal is not considered to be contrary to the NPPF, Policy SD1, Policy CE1 (Table CE1a) and Policy CE2a in relation to the sequential approach.

42. It is, however, important to note that out-of-centre development that prevents the proposed uses being developed within the town centre (i.e. impact on planned investment) could be considered contrary to the objectives of the sequential approach. In this respect, the sequential approach is interrelated with impact on planned town centre investment.

43. This is an important point to make, given that the Borough is concerned that the Tollgate scheme would have a deadening effect on all future town centre expansion and investment plans, and could affect a range of businesses from small independents to existing large retailers and new retailers seeking a presence somewhere in the Colchester area. This has been confirmed by a recent inquiry from a national agent on behalf of an operator wanting to locate in the town centre. They will not pursue this further until the Tollgate Village application has been determined.

44. The recent Secretary of State decision on an application for a new out-of-centre Sainsbury's store in Braintree reinforces the limited role of the sequential test. It was found that the application met the sequential approach test as defined, but if the impacts of the appeal proposal and the commitments were added to the retail landscape, the impact on the centre was considered to be significantly adverse. It was agreed that the Braintree proposal would secure the redevelopment of a largely vacant industrial site, however, paragraphs 26-27 of the NPPF were clear that where an application is likely to have a significant adverse impact on a town centre, it should be refused. (Ref. APP/Z1510/A/14/2219101, para 548 of Inspector's decision and paras 18-21 of SoS letter of 25 June 2015). Thus, while the Council does not contest the acceptability of the scheme on sequential test grounds the impact test is similarly key in this case to the assessment of the overall merits of the Tollgate proposal.

## Impact – Policy assessment

45. NLP have assessed the applicant's work on the potential impact of the proposed development at Tollgate on both comparison and convenience shopping in the Colchester catchment area as well as the impact of the proposal on town centre vitality and viability.

### Convenience Shopping

46. For convenience shopping, NLP consider that the proportional impact on food stores in Colchester ranges from -2.6 to -11.2%, with an impact of -7.4% in the town centre. Convenience shopping forms a relatively small part of the proposal which is expected to be provided within a single standalone store or as part of an anchor retail tenant. NLP note that Barton Willmore's convenience goods impact analysis includes two proposed Tesco stores that are not now expected to be implemented, which results in an over-estimate of cumulative impact, but NLP conclude that it is in any case appropriate to assume a higher level of impact. (para 2.70 point 2)

47. The applicants proposed a suggested condition, if felt necessary, to limit the net convenience goods retail sales of the development to 1,394 square metres (BW Supplementary Retail and Leisure Assessment, June 2015, para 2.7). NLP note that 'without a named food store operator there is a risk a food store occupier will not be found and there may be pressure for this space to be occupied by other types of retail uses. A condition would be necessary to ensure the food store is not converted back to comparison good sales' (NLP critique, para 2.36.) Such a condition, however, would not be in keeping with the current relaxation by the Government of restrictions on uses to stimulate growth and provide flexible floorspace, and an application to vary such a condition could prove difficult to resist if foodstore operators weren't interested in the space.

48. NLP conclude that no significant adverse impact is envisaged on the convenience goods sector that would warrant refusal of the convenience good element proposed within the scheme. (para 3.55) This in part reflects that the convenience part of the scheme and the convenience market overall is smaller than the comparison part of the scheme and the overall market. The projected convenience turnover is £16.44 million, with the Colchester convenience market in 2019 estimated at £395 million, while the projected comparison turnover of the scheme is estimated at between £74.6 million (applicant) to £104.44 million (NLP fashion-led scheme) with the Colchester comparison market estimated at between £923.8 million (applicant) to £959.26 million (NLP) in 2019).

### Comparison Shopping

49. The key issue accordingly is the impact of the comparison aspects of the Tollgate proposal on the Town Centre. The exact nature of the comparison impact is complicated by the lack of known end users and by the potential for other uses such as convenience (noted in the above paragraph) and leisure use to swap to comparison use in future. A further element of variability arising from the uncertainty over end users is the difficulty of accurately predicting the net to gross ratio. The applicants have adopted a net to gross ratio of 70%, but NLP suggest that a figure of 80% is more realistic for modern, regular shaped, larger units (para 2.40.)

50. The applicants adopted an average comparison good turnover density of £5000 per sq.m net. NLP, however, did not unconditionally accept that this figure was appropriate for the proposed development, particularly given that the 2013 Retail Study adopted an average sales density of £7000 psm at 2012 for all new comparison goods floorspace in Colchester, which was projected to increase thereafter taking into account growth in turnover efficiency (para 2.46 and 2.47)

51. In response to the Council and NLP's request for further information on the tenant mix, the applicant submitted supplementary information on a potential tenant target list. The information, however, did not provide a clear view on the likely end users of the scheme, given the wide range of potential bulky goods, non-bulky comparison goods, and discount retailer occupiers. The applicants have not suggested any conditions that are considered to be able to effectively control the nature of town centre users within the site. This means the scheme needs to be evaluated on its maximum impact, including assumptions of higher sales density.

52. NLP believes much higher figures should be tested because of the following factors:

- e. The lack of certainty regarding the likely trade/tenant mix and the flexible planning conditions proposed;
- f. The existing high comparison turnover density of Tollgate Retail Park; and
- g. The scale of development and likely sub-regional attraction of existing and proposed facilities at Stanway. (para 2.56)

53. NLP accordingly adopted two potential scenarios assessing combined convenience and comparison impact to address these concerns. The first was a mixed scheme with a balance of bulky goods, fashion and other comparison goods retailers as suggested by a target list of potential occupiers submitted by the applicants. This scenario was considered to generate an average sales density of around £5,500 psm net in 2019, with a turnover of £82.06 million, compared with the applicant's estimate of £74.6 million. (para 2.57)

54. The second scenario tested included primarily fashion retailers and retailers who usually trade from town centres. This generated a higher turnover of £7,000 psm at 2019, which would provide a comparison turnover of £104.44 million (para 2.50.) If a fashion-led scheme at Tollgate was implemented along with commitments, then the comparison goods turnover of existing floorspace within Colchester town centre is estimated to decrease from £709.87 million to £612.36 million in 2019, which is a cumulative impact of -13.7% (Para 3.38.) Cumulative trade diversion will not be offset by projected population and expenditure growth between 2015 and 2019. As with the mixed scenario, the predicted level of trade diversion for the fashion-led scenario is not expected to lead to a significant number of shop closures, but the shop vacancy rate would be expected to remain around 10% and the centre would stagnate, with increased concerns over the impact on longer term planned investment in the town centre.



55. NLP conclude that under either scenario, the Tollgate development is expected to include good quality comparison goods retailers who will compete directly with Colchester town centre for higher order comparison shopping trips. The development will create a sub-regional comparison shopping and leisure destination that will inevitably compete directly with Colchester Town Centre (4.29). This means that the proposal would have an unacceptable impact on the Town Centre and fail to accord with the Council's adopted Centres and Employment policies protecting the Town Centre.

#### Other Town Centre uses

56. NLP flag up that the impact assessment submitted by the applicant does not include the impact of food and beverage floorspace (para 2.64.) The proposed scheme provides for a high degree of flexibility for A3-A5 uses, ranging from a minimum of 950 sqm to 5,960 sqm if less A1 floorspace is occupied. NLP states that they 'cannot conclude a development with anything approaching 5,960 of Class A3 to A5 will have an acceptable impact on Colchester town centre'. (Para 2.68) This reflects the concern that a higher ratio of food/drink establishments would further Tollgate's move toward a centre replicating and competing with the Town Centre mix.

57. Additionally, the applicant's impact assessment does not include analysis of a potential cinema at Tollgate. This lack of analysis on A3-5 uses and leisure uses is an important concern in view of the ever-growing importance of food and drink and leisure activities in sustaining and supporting town centres. The Council is seeking to strengthen the leisure offer in the Town Centre through a variety of new activities and venues, including a new Curzon cinema within the St. Botolph's quarter. The Council is also seeking to develop the sport and leisure offer in the Northern Gateway, including a cinema, in line with an extant planning permission which included the Community Stadium. Determination of the Tollgate application at this stage would pre-empt decisions on overall growth of leisure uses that will be developed through the Local Plan process.

#### Trade Diversion

58. NLP concluded that while the expenditure deficit which could be created by the Tollgate Village development as projected in 2019 and 2021 would not be expected to lead to a significant number of shop closures within the town centre, it would nevertheless have the following effects:

h. Existing comparison goods facilities will not achieve a 2.5% per annum growth in turnover efficiency between 2015 and 2019 or 2015 and 2021. A growth rate of less than 0.8% could be achieved to 2019 and 1.8% in 2021.

i. The £23.1 million of surplus expenditure over and above commitments expected for Colchester in 2019 (£47.94 in 2021) would be absorbed by Tollgate Village, leaving limited expenditure growth to support the re-occupation of vacant shop units in the town centre or further development investment by 2019/21. (Para 4.16 and 4.19)

59. NLP figures indicate that the Tollgate Village development would absorb projected surplus comparison goods expenditure up to 2023/2024, with an even greater impact if a fashion-led scheme is pursued. NLP accordingly concludes that 'these comparison goods expenditure projections indicate there is a significant risk that the Town Centre will stagnate for the next decade.' (Para 4.28)

#### Effects on Planned Investment

60. The applicant originally factored in Vineyard Gate as planned investment, but later work submitted in June 2015 states that Vineyard Gate cannot be classed as a viable scheme which could accordingly be affected by competition elsewhere (Supplementary Information para 3.26). While NLP do not consider that Vineyard Gate is an immediate competitor with the Tollgate proposal as it is unlikely to be completed before 2019/20, they do consider that it is critical to consider the potential impact of Tollgate on planned investment at Vineyard Gate.

61. This view reflects guidance in the NPPF, which refers to impact on 'existing, committed and planned public and private sector investment' in para 26. Planning Practice Guidance provides more detail on this, stating that

Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:

- the policy status of the investment (ie whether it is outlined in the Development Plan);
- the progress made towards securing the investment (for example if contracts are established);
- the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence.

62. The Vineyard Gate development has been an important longstanding Council commitment, and is allocated for development in the adopted Local Plan (Core Strategy policy UR1 – Regeneration Areas, and Site Allocation policy TC1 – Appropriate Uses within the Town Centre and North Station Regeneration Area). Its delivery has been delayed by a number of factors reflecting the fragility of the retail sector and the evolving role of town centres nationally over the past decade.

63. In March 2014, the Council approved revised Heads of Terms for the development with its preferred development partner Caddicks. The revised Heads of Terms, whilst largely similar to those agreed at Cabinet in January 2012, included revised financial terms including the need for direct investment of £6 million by the Council which reflected the economic pressures on the scheme. The draft Heads of Terms will form the basis of the Development Agreement which will be the legal contract between the Council and Vineyard Gate Developments Ltd. to build the scheme.

64. The proposed development at Tollgate, however, is considered to be of a sufficiently large scale to pose a threat to investor confidence in Vineyard Gate, particularly given the speculative nature of the Tollgate scheme and potential competition for the same tenants. Caddicks have submitted a representation making this point, noting that 'the similarities between this out of centre proposal and our own are striking and if allowed will damage retailer interest in Colchester and send a confused message as to the future of the planned town centre investment'.

65. The Vineyard Gate development, accordingly, is seen to be at a point of maximum vulnerability to a similar nearby scheme. It is clearly highlighted as a Council commitment in the adopted Local Plan and has the benefit of a selected development partner and financial backing from the Council. Its delivery, however, could be fundamentally compromised by a rival scheme which did not need to fund the additional investment required on a historically significant brownfield site.

66. In the Braintree case referenced above the Inspector and SoS agreed that there was a significant impact even though there was no specific planned or committed town centre investment directly at risk. This emphasises the importance of considering the impact on potential future investment and suggests that the issue is not when Vineyard Gate will be delivered but whether its delivery would be stopped in its tracks by competition from Tollgate.

67. Given the speculative nature of the scheme, it is difficult to accurately quantify the impact of the Tollgate scheme on the town centre, but if the fashion-led scheme is taken to be a worst-case scenario, then a 13.6% trade diversion could be expected to have a significant effect on town centre confidence. Importantly, the impact on planned investment in the Town Centre is not confined to the Vineyard Gate scheme. The consideration of impact also needs to include existing and planned investment. CBRE, under instruction from Fenwicks (owners of Williams & Griffin Department Store) and Sovereign Land (owners of Lion Walk), along with GL Hearn, under instruction from M&G Real Estate (owners of Culver Square) submitted representations on the application noting concerns about the effect of Tollgate on their existing and planned investment. All three major retailer interests have completed or are underway with improvements to their facilities. CBRE note that 'Fenwick's, Sovereign and M&G are particularly concerned at the assertion that the proposals will provide space for new retailers and those seeking additional premises. In truth, this could herald a departure from the town centre which will affect footfall, consumer confidence and will impact on future investment decision making, both in the assets held by key stakeholders and those wishing to invest in schemes such as Vineyard Gate.'

68. The applicants have proposed various conditions to restrict floorspace and limit trades between use classes, but conditions would be unlikely to be sustainable over time if market forces dictated a switch to alternative uses. Conditioning of the proposal is accordingly not considered to be an effective way of limiting the potential impact on the town centre. NLP suggests there could be potential to limit town centre impact by imposition of a condition restricting the maximum amount of built Class A1 to A5 to not more than 24,122 sqm gross, of which the overall comparison goods sales floorspace should not exceed 14,920 sqm net, but note that these types of conditions can be difficult to monitor and enforce, particularly across a large development within a number of separate units (para 2.38-2.41).

69. In addition to assessing the potential impact on the Town Centre, NLP have also carried out work on the potential impact of the proposal on the other Urban District Centres in Colchester – Highwoods, Peartree, Turner Rise and Greenstead. They did not find that the Tollgate Village development would undermine the vitality and viability of these centres, so the objection to the impact on centres is confined to the Town Centre.

#### Safeguarding Employment Land – policy assessment

70. The Council's Employment Land Needs Assessment (ELNA) indicates that Colchester has a sufficient supply of employment land in quantitative terms to meet demand based on current trends to 2032. The study does however, go on to advise the Council to consider its employment land supply by reviewing its portfolio through the Local Plan process to develop a portfolio of sites that would support a pro-active strategy for attracting inward investment to the Borough by retaining a portfolio of good quality development opportunities that are most likely to prove attractive to prospective firms.

71. This view is restated in NLP's critique of the Tollgate employment and retail work, which notes that the acceptability of the reduction of 34% of Stanway employment land, or 12% overall in the Borough is a decision for the Local Planning Authority to make at the time of the local plan review, when the likely land demands for all uses could be assessed within the context of an overall spatial strategy (para 7.20.)

72. The NLP work clearly highlights that any portfolio should include the Stane Park site, (also in Stanway) but it might be just as appropriate for a portfolio to include the Tollgate employment land in view of its locational advantages and status as a higher ranking site within the overall rating of Colchester sites. Sites within the Strategic Employment Zones of North Colchester, Stanway/Tollgate and the Knowledge Gateway in East Colchester received rankings between 19 and 26, while employment sites elsewhere in the Borough were scored at between 9 and 21. Tollgate's score of 20 accordingly places it joint 10th out of 43 of sites within the Borough.

73. The ELNA recommends that within the Stanway Strategic Employment Zone, the Council should adopt 'a selective approach to safeguarding these undeveloped allocations for future development, by retaining those sites with the best intrinsic qualities and greatest prospect of coming forward for employment development in future' (para 8.48). Stane Park is considered to be the most likely candidate for attracting inward investment, but Tollgate also benefits from locational advantages of good access to the A12 at Junction 26. Stane Park is given 5 out of 5 for its access to the strategic road network, while Tollgate is only given a score of 3, along with other Stanway/Tollgate sites, as well as sites much farther away from the strategic road network such as the Whitehall Industrial Estate and smaller sites within East Colchester and the Town Centre. This highlights the point that a review of the Council's employment land portfolio will need to place the relatively blunt instrument of the ELNA scores within the context of additional specific information as well as policy objectives.

74. As part of this process of expanding the understanding of additional current factors underpinning employment floorspace supply and demand in Tollgate, the Council's Senior Enterprise Officer has prepared the attached analysis of the current market for B use premises in Colchester and surrounding areas, which is attached as Appendix 1. To summarise the main points, the analysis observes that following the recession which slowed new development, there is now a shortage of good quality commercial stock across all use classes. 'As a result there is an upward pressure on values with an increase in sale prices and rents as occupiers, investors and developers seek out scarce opportunities.' Data on total volumes of office and industrial property since 2005 demonstrates an early recovery for industrial space from the recession, followed by the office market at a 12-18 months lag and at a lower level.

75. More specifically, the office market in Colchester is underperforming, particularly compared against Chelmsford. The Borough is not well-endowed with office space, as a significant proportion of floorspace is old and underspecified compared with other Essex locations in Chelmsford and Southend. There is a shortage of Grade A office space in Chelmsford relative to demand for that location which may encourage spill-over demand from London and Chelmsford to take advantage of lower rental values in Colchester.

76. The potential for Tollgate to address this demand for high quality office floorspace has recently been demonstrated by new developments by the Tollgate Partnership in the Tollgate area. These include a twelve unit B use speculative development at Tollgate West, which is now almost fully occupied following a slow start. Additionally, a new incubator unit has also been opened at Tollgate, adding to the critical mass of B class business occupiers, and thereby addressing the ELNA's concern that the area did not have a strong profile as a key Colchester business location. Despite only just opening the incubator unit is already half full.

77. The Council's analysis concludes that 'there are opportunities for developers to deliver B use space within the Borough as the market is at or close to pre-recession levels, there is an acknowledge shortage of Grade A office space across the Greater Southeast and within Chelmsford, Colchester's nearer-London rival, and rapid population growth which is maintaining an increasing economically-active population seeking, predominantly, local employment'.

78. The new business use developments in Tollgate address the concerns raised in the ELNA that the area did not have a strong profile as a key Colchester business location and establish that scope remains for further business use development.

79. Ruling out the Tollgate employment land at this stage is accordingly considered to ignore the latest developments in the area and to pre-empt the process of considering the wider spatial and phasing issues in a Borough-wide context. The recent upturn in the take-up of employment premises in Tollgate highlights the rapid nature of change in the commercial property market and the need to retain flexibility and additional capacity. The Borough needs to ensure that the longer term employment options for the area are not limited by the premature removal of a site well placed to meet the need for B employment uses. Applying the test in NPPF Para 22, it is considered that there is a reasonable prospect of the land being used for

employment purposes, and it is therefore justifiable to continue to safeguard the land within the Strategic Employment Zone for B uses.

80. It is appreciated that the uses proposed for Tollgate Village would also create employment, just not in the B use classes. NLP have noted, however, that it is difficult to quantify the exact amount of employment the scheme would create given the range of potential end users. The Planning Assessment states that around 1,000 jobs would be created, but as NLP observe, the applicant's Employment Assessment states that only 550 Full Time Equivalent posts in direct employment will be created. NLP breakdown the 550 figure further by type of use and conclude that 550 is a reasonable figure based on the scale of floorspace proposed (para 7.24). This figure, however, does not include an adjustment for displacement. NLP note that 'if the development results in an adverse impact on planned investment within the town centre then this would also displace jobs' (para 7.25).

81. If the Class B employment uses were implemented on the site area contained within the Strategic Employment Zone, this could generate in excess of 1,800 FTEs, based on a development density of 60% and 30 sqm per FTE (NLP critique para 7.28).

82. Given the levels of uncertainty surrounding the precise number of either town centre or B use jobs created by development of the site, the question is whether the potential longer term benefits of retaining the site for B use employment outweigh the short term benefits of creating employment more immediately, albeit at a lower level. The evidence contained in the ELNA and the supplementary information contained in Appendix 1 provide support for the view that the need for high quality, well-located B use floorspace will increase in Stanway, so land should not be unallocated prior to and outside of the Local Plan process. Decisions on the allocation of different types of commercial floorspace cannot be taken in isolation of the wider and related issues of whether provision of town centre jobs will displace jobs in the town centre, reducing its viability and vitality, longer term requirements for high quality employment floorspace of all types, and whether the land within the Strategic Employment Zone can be readily replaced elsewhere.

#### Sustainability- policy assessment

83. National and local policy guides new development to the most accessible and sustainable locations. This reflects the greater sustainability of town centre locations which can be accessed by a range of transport modes. Colchester's Town Centre provides a high concentration of town centre uses within a compact area that is walkable and easily accessible by public transport. With its 14,000 jobs and high density surrounding residential areas, the Town Centre has a critical mass of residents and workers who can take advantage of its facilities. While Tollgate is accessible by bus from the Town Centre, the availability of free parking, the lower surrounding residential densities and the lack of accessibility to all parts of Colchester mean that journeys to and from Tollgate are dominated by the private car. The proposals for Tollgate Village would reinforce this dominance by increasing the amount of large scale retail and leisure development, particularly if the development functions as a sub-regional attractor.

84. NLP conclude that the proposal is of a sub-regional scale that would inevitably compete with the Town Centre. The proposal would enlarge the existing District Centre to a disproportionate extent and would not be consistent with the spatial hierarchy set out within the adopted development plan in policies CE1 and CE2. This hierarchy directs town centre uses to the Town Centre and seeks to maintain the Town Centre's pre-eminence by strictly controlling further growth of Urban District Centres. Development of such a scale and significance as the Tollgate proposal would pre-empt decisions best made through the Local Plan on the scale, function and distribution of commercial activity in the Borough. Approval of a large development of town centre uses outside the approved spatial hierarchy would be contrary to Core Strategy Policy SD1 (Sustainable Development) which provides that growth will be located at the most accessible and sustainable locations in accordance with the Settlement Hierarchy.

85. In considering the three dimensions of sustainability, economic, social and environmental, the key concerns in this case are weighing up the advantages of employment creation and provision of more consumer choice over the disbenefits of harm to the vitality of the Town Centre; conflict with the existing spatial hierarchy; the pre-empting of decisions on changes to the spatial hierarchy; the reinforcement of existing car-dominated travel patterns; and the loss of land safeguarded through the Local Plan for alternative B use employment uses.

86. Additionally, the overall appraisal of the scheme involves determination of the contribution the proposal would make to the overall quality of place in Colchester by virtue of its design, layout and functions. The design merits of the scheme would need to be considerable, given that a new large-format development cannot replicate the fine grain detail and mixture of historical periods and styles found in the town centre that give it its unique character and attractiveness.

## Conclusion

87. While the proposal would deliver benefits in employment creation and provision of new facilities and services, the proposal would also conflict with numerous policies as set out above. It is accordingly concluded that the proposal should be refused on the following five policy grounds:

### a. Harm to the development plan retail strategy

The NLP work clearly establishes that the proposal would involve the creation of a sub-regional scale development that would not accord with adopted sustainable development and centres and employment policies (Core Strategy Policies SD1, CE1 and CE2).

### b. Harm to the emerging development plan and in particular, the proposal is premature

The proposal is considered to pre-empt significant decisions on the Borough's spatial hierarchy which should instead be reached through the Local Plan process.

c. Harm to planned investment in the town centre

This reflects the potential for the proposal to have a significant negative effect on the town centre due to the impact on planned investment.

d. Harm to the provision of employment land

The applicants are not considered to have demonstrated that there is no reasonable prospect of B-class employment uses coming forward for the Strategic Employment Zone portion of the site contrary to Core Strategy Policy CE3, Site Allocations Policy SA STA3 and Development Policy DP5.

e. The proposal does not accord with paragraph 14 of the NPPF because the proposal is not considered to have benefits that outweigh the adverse impacts due to the four impacts identified above.

While the proposal would deliver benefits in employment creation and provision of new facilities and services, the proposal would also conflict with numerous policies as set out above. The Council does not consider that the normal presumption in favour of sustainable development described in the National Planning Policy Framework (paragraph 14) can be properly applied to the proposal given that the adverse impacts of doing so are considered to significantly and demonstrably outweigh the benefits.

8.3 The Council's **Landscape Planning** Officer, having analysed the submitted landscape impact documentation, confirms that there is no landscape impact objection to the proposal. Landscape conditions are suggested to allow full landscape details to be properly considered in the event that permission is granted.

8.4 The Council's **Contaminated Land Officer**, having considered the submitted supporting documentation (including a desk top study requested after submission) confirms that :-

'Based on the information supplied, it would appear that the site could be made suitable for use, with the remaining matters *[discussed in detail in her response]* dealt with by way of condition. Consequently should permission be granted for this application, Environmental protection would recommend the inclusion of the following conditions'.*[these are then set out]*

8.5 The Council's **Environmental Protection Service** raises no objection but suggests conditions in the event that planning permission is granted.

8.6 **Highways England** does not object to the proposed development and recommends that the following conditions should be attached to any planning permission that may be granted.

1. Before any development on planning application 150239 commences the developer shall have submitted to and had approved in writing by the Local Planning Authority, in consultation with Highways England and Essex County Council, the following design details relating to the required improvements to the A12 Eight Ash Green (Junction 26). The scheme shall generally conform to the arrangement shown in outline (including the signals to be provided by others) on



Drawing IT698/SK/09 Improvements at A12 Eight Ash Green interchange dated June 2015.

Scheme details shall include drawings and documents showing :

- (i) How the improvement interfaces with the existing highway alignment and carriageway markings including lane destinations,
  - (ii) Full construction details relating to the highway improvement. This should include any modification to existing structures or proposed structures, with supporting analysis,
  - (iii) Full signing and lighting details where applicable,
  - (iv) Confirmation of full compliance with Departmental Standards (DMRB) and Policies (or approved relaxation/departures from standards).
2. The above scheme approved by the Local Planning Authority shall be implemented and completed to the satisfaction of the Local Planning Authority, in consultation with the Highway Authority for the Strategic Road Network. No beneficial occupation, unless otherwise agreed in writing, shall take place unless and until the junction improvements in full (i.e. including the signalisation of both the Ipswich bound and London-bound off slips of the A12) have been delivered and are fully operational.
3. No part of the development hereby approved shall be brought into use until an (Interim) Travel Plan has been approved in writing by the Local Planning Authority who shall consult with the Highways England, on behalf of the Secretary of State for Transport :

The Travel Plan shall be in line with prevailing policy and best practice and shall include as a minimum :

- The identification of targets for trip reduction and modal shift ;
- The methods to be employed to meet these targets;
- The mechanisms for monitoring and review ;
- The mechanisms for reporting ;
- The penalties to be applied in the event that targets are not met ;
- The mechanisms for mitigation ;
- Implementation of the travel plan to an agreed timescale or timetable and its operation thereafter ;
- Mechanisms to secure variations to the Travel Plan following monitoring and reviews.

Reason : To ensure that the A12/A1124 Eight Ash Green junction (A12 Junction 26) will continue to fulfil its purpose as part of the Strategic Road Network in accordance with the Highways Act 1980, Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development' the National Planning Policy Framework and Planning Practice Guidance .

The Highways England 'Informative' re S278 agreements dated July 2015 in respect of planning application relating to development known as 'Tollgate West' is attached and should be appended to any subsequent planning permission.

- 8.7 **Essex County Council as local highway authority** raises no objection subject to a programme of highway improvements and related matters.
- 8.8 **Essex County Council as education authority** requested £427,379.20 towards the provision of early years education and childcare but this was rejected by Colchester's development team as being unreasonable and failing the CIL tests.
- 8.9 **Essex County Council as SuDS and flood authority** supports the application from a flood risk perspective subject to conditions and has issued standing advice in respect of SuDS matters and watercourse matters.
- 8.10 **Anglian Water** has not objected but has indicated that 2 conditions (requiring a foul water strategy and a surface water strategy to be prepared) need to be added to ensure that drainage impacts from the proposed development and suitable mitigation is agreed prior to commencement
- 8.11 **Natural England** has confirmed that it has no comment to make
- 8.12 The Council's **Development Team**, having rejected Essex County Council's request for £427,379.20 on the grounds that it failed the CIL tests, then considered other potential mitigation and concluded that none could be reasonably sought beyond that as may be required by the highway authorities once all the traffic information had been analysed. In the event that the proposal was acceptable the Council would seek to encourage the applicant to develop a training initiative whereby locally unemployed people could be given a chance to develop skills in the retail sector that may then make them eligible for interview for jobs within the new development.

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

## **9.0 Parish Council Response**

### **9.1 Stanway Parish Council**

"Stanway Parish Council raises NO OBJECTIONS in principle and broadly supports the proposed vision subject to infrastructure improvements before completion and safeguards regarding 24 hour operation"

### **9.2 Eight Ash Green Parish Council** raises a number of concerns stating:-

The Parish Council would like to make the Borough Council aware of their concerns relating to the number of eateries now proposed at Tollgate and how these will have an impact on local facilities within the neighbouring rural villages. As you will be aware, traditional village public houses are very much at the heart of these communities and there is a real risk that this over-proliferation of new national chain facilities in such an accessible and visible location will significantly impact on the type of passing trade that is relied upon to ensure ongoing viability of these establishments.

The Parish Council feels very strongly that local facilities in rural villages like Eight Ash Green should be protected and that the level of development of this type currently proposed should be resisted and scaled back proposals encouraged with a better mix of land uses.

- 9.3 This commentary was provided by EAGPC in respect of both the Tollgate Village proposal and the Stane Park proposal. (the latter having been refused by Planning Committee on 17 September 2015).

## **10.0 Representations**

- 10.1 As of 26 November 2015 the responses from the public who hadn't declared they were retailers in the town, were acting for existing retailers or employed by existing retailers/businesses was numbered **196**.
- 10.2 The breakdown of these between support and object:-

### **RESIDENTS' COMMENTS**

Support 149  
Object 38

Neutral 9

This a ratio of approximately 4 to 1 in favour (supporting the proposal) amongst those contacting the Council without expressing the fact they operated a business, worked within a business or represented a business.

In terms of the views expressed within this group of responses the breakdown is as follows. (the figure in brackets represents the frequency with which that type of view was mentioned). Whilst there is some overlap between the types of comment this analysis is designed to give Members a broad indication of what has driven support or objection. Clearly most respondents mentioned more than one factor when expressing support or objection hence the number of views exceeds the number of responses received

### **10.2.1 RESIDENTS' COMMENTS**

#### **10.2.2 SUPPORT**

- great proposal/welcome to Stanway (27)
- significant increase in jobs welcome (25)
- better to keep retail in Colchester rather than lose to other competing towns (Braintree, Ipswich and Braintree variously mentioned) (25)
- cinema welcome at Stanway
- good to see vacant sites/eyesore (old Sainsbury's) developed (16)
- provide better balance / choice on west side of Colchester (17)
- welcome enhanced shopping experience (15)
- development supports rapid and significant housing growth (15)
- Town Centre is run down / not attractive /safe / inconvenient (15)
- Colchester is growing and needs a convenient out of Town Centre that will not harm Town centre (some examples quoted - like Exeter, Chester, Chesterfield)
- Town Centre has other attractions /retail which means it will not be harmed (11)
- If Town centre traders don't like it they should improve their offer and/or Council should reduce Town Centre parking charges (11)
- Leisure needed and welcome (10)
- There is room for both locations [Town Centre and Tollgate] to flourish (8)

- Complements what already exists at Tollgate (4)
- New restaurants welcome / improve local choice and cater for families (6)
- Local people should decide it's what they want (3)
- Means local people will not have to leave Stanway for facilities (3)
- Town Centre too congested (2)
- Town Centre is anti-motorist (2)
- Town Centre lacks quality retailers found in other nearby towns (2)
- Town Centre not good for disabled parking /access Tollgate is (2)
- Town Centre full of charity shops (1)
- Proposal will boost local economy (1)
- Large Town centre retailer is bullying people to object (1)
- Tollgate is a sustainable location (1)
- Tollgate Village cannot disturb nearby residents as there aren't any (1)
- Just get on with it (1)

#### 10.2.3 OBJECT

- Add unacceptably to traffic problems in the area (24)
- Unacceptable harm to Town Centre (21)
- Unsustainable travel patterns (3)
- Cinema not needed (3)
- Contrary to National Planning Policy (3)
- Ugly multi-storey car park (2)
- Local people will be unable to get out of their own properties (traffic/parking) (2)
- In sufficient detail in plans (1)
- Smell nuisance from eateries (1)
- Loss of community to commerciality (1)
- Increase in parking across Tollgate add to congestion (1)
- Additional shops not needed (1)
- Leisure centre and swimming pool would be more useful (1)
- Potential contamination problems across site (1)
- Loss of employment land (1)
- Development at Tollgate will result in decline of Town Centre and deterioration of heritage fabric through neglect and under-investment (1)
- Character of Town centre will be harmed by decline (1)
- Will kill prospects of Vineyard Gate delivering new facilities to enhance Town Centre (1)
- Out of Town should remain bulky goods only (1)

#### 10.2.4 Where conditionality has been expressed in support the following issues have been mentioned:-

- Subject to traffic issues being satisfactorily resolved (12)
- Subject to a range of non-chain restaurants being delivered (2)
- Subject to parking within multi-storey being free (2)
- Subject to adequate parking being provided (1)

10.2.5 In amongst both expressions of support and objection a number of neutral statements and/or questions were raised:-

- Will additional traffic cause problems ? (3)
- Will parking spread onto residential estates where it is not welcome? (2)
- Will enhanced bus services be provided across local area? (2)
- Will all this development be accompanied by new schools? (2)
- Can Town Centre parking charges be reduced? (2)
- Can a local gym / pool be provided? (2)
- Unable to navigate way through all the Council's relevant planning web pages (2)
- Could a free bus link be provided between Tollgate and Town centre? (1)
- Can a 30mph speed limit be introduced on Warren Lane? (1)
- Can Park & Ride be provided at Stanway? (1)
- Can a large big name department store be located at Tollgate? (1)
- Will there be adequate parking? (1)
- Will noise and pollution be an issue? (1)
- Might a large car park undermine town's Park & Ride facility? (1)
- Will design be good? (1)
- Will litter be controlled? (1)
- Will adequate cycle parking be provided? (1)
- Will multi-storey car park access interfere with traffic flow? (1)
- Can facilities to make crossing Tollgate West safer for disabled shoppers be provided? (1)
- No point objecting because Council doesn't listen money talks (1)

### 10.3 BUSINESS COMMUNITYS' COMMENTS

10.3.1 The above analysis does not include representations received from those who had given clear indication that they were traders themselves in the town, who stated they were employed by traders in the town or who stated they acted for traders in the town. These have been analysed separately on the basis that they represented the local business community and business views rather than being submitted as residents.

10.3.2 As of 26 November 2015 the responses from those identifying themselves as operating a business in the town numbered **34**

10.3.4 The breakdown of these between support and object:-

#### BUSINESS COMMUNITYS' COMMENTS

Support 3  
Object 31

Neutral 0

10.3.5 In terms of the views expressed within this group of responses the breakdown is as follows. (the figure in brackets represents the frequency with which that type of view was mentioned). Whilst there is some overlap between the types of comment this analysis is designed to give Members a broad indication of what has driven support or objection. Clearly most respondents mentioned more than one factor when expressing support or objection hence the number of views exceeds the number of responses received.

#### 10.3.6 **BUSINESS COMMUNITYS' COMMENTS**

##### 10.3.7 **SUPPORT**

- Moved business deliberately to Tollgate because it is expanding, vibrant & accessible (2)
- Run business in Town Centre but feels the market is large enough to support Tollgate Village and the Town Centre (1)

##### 10.3.8 **Named businesses:-**

iSiteTV unit 8 Tollgate Business park  
Henley's Estate Agents, unit 6 Tollgate Business Park

##### 10.3.9 **OBJECT**

- Undermine viability & vitality of the Town Centre/loss of footfall (16)
- Undermine current and future investment in the town centre (11)
- Character of Town centre will decline as businesses close (9)
- Cheaper rents and free parking at Tollgate undermines viability in town centre (6)
- Will destroy independent sector/closures (8)
- Proposal will worsen traffic problems at Tollgate (5)
- Contrary to NPPF Town centre policy (5)
- When will the Council support small business in the Town Centre? (3)
- Undermine attempts to get Vineyard Gate developed (3)
- Contrary to Local Plan (2)
- Lack of detail in application (2)
- Town centre is only just recovering from years of recession and market is fragile (2)
- Undermine investment in park & Ride to support Town centre (1)
- Town centre already has a cinema (1)
- Undermines Better Town Centre initiative

#### 10.3.10 Named businesses:-

AG Cards  
Animal (now closed)  
Boot's  
The Craft Spot  
The Dance Shop  
Franklin's  
Frippery  
Gunton's  
Horbury's (now closed)  
Humphrey's  
Inprint  
i Store  
Jacqueline's Tea Room  
Just Essentials  
Markham's  
Merrills Electrical  
The Original Art Shop  
Simpkins Jewellers  
Turners  
Tymperley's  
White Shine Jewellery

#### 10.4 **ADDITIONAL PUBLIC COMMENT**

- 10.4.1 A further three responses were received from people stating that they worked for businesses in Colchester. Of these:
- 10.4.2 One person supported the Tollgate Village proposal as they currently work for a Tollgate business and welcome enhancements to the quality of the area and support further expansion of opportunity.
- 10.4.3 Two people objected both employed by businesses in the Town centre on the basis of adverse impact on the viability of town centre business from Tollgate Village (2), added traffic problems at Stanway (1), lack of detail (1) and undermine Town centre investment (1).

#### 10.5. **REPRESENTATIONS ON BEHALF OF LARGER RETAILERS/CENTRE OWNERS DEVELOPERS**

- 10.5.1 In addition to individual comments the Council has received a number of representations from specialist consultants acting for a number of major retailer/centre owners/developer interests in Colchester

10.5.2 In SUPPORT

10.5.3 **BRITISH LAND** owners of the Tollgate Centre (south side of Tollgate West) support the Tollgate Village proposal.

"I am very supportive of the regeneration of Tollgate Partnership Limited's land adjacent to the Tollgate centre. I consider that enhancing the area's retail and leisure offer with a development of appropriate scale and delivered in conjunction with ancillary benefits to the local area will contribute to the further growth of the Stanway area and cement Tollgate as the District centre at the heart of this area. I am pleased that Tollgate Partnership Limited's proposals consider improvements to the local road network along Tollgate Road and Tollgate west and the additional pedestrian and cycle connectivity between the Tollgate Centre and the proposed development.

As you will be aware, over recent years British Land has invested very considerably in the Tollgate Centre Retail Park and delivered new retailers to the area including Argos, Next, Sports Direct, Costa, Boots and so on. We are about to invest a further £6.00m in a significant upgrade to the public realm to further enhance the shopping experience for visitors.

In the event that planning permission is granted British Land would welcome a detailed discussion with Tollgate partnership Limited regarding the potential to integrate both the existing and proposed schemes with a view to maximising pedestrian connectivity and linked trips for the benefit of all visitors to Tollgate. British land's ongoing refurbishment will deliver improved public realm "dwell areas" at either end of the terrace which offer the potential for safe and convenient links between the existing and proposed schemes."

10.5.4 That letter was dated 12 May 2015.

10.5.5 **OBJECTIONS**

These are as follows:-

10.5.6 G.L Hearn on behalf of M&G Real estate owners and managers of the **CULVER SQUARE SHOPPING CENTRE**

Their representation concludes:-

"We conclude that the proposal does not accord with local or national planning policy and should be refused.

The application does not accord with adopted planning policy and fails to satisfy the requirements of the NPPF in terms of its approach to assessing sequentially preferable sites or the impact of the proposal upon the town and other district centres.



The applicants fail to adequately demonstrate why the Vineyard Gate site could not accommodate the TRP proposal and employs a conservative approach to estimating the likely turnover of the proposal, thereby underestimating the proposals impact upon the health of Colchester Town Centre. With proposals for Vineyard Gate gaining momentum the proposal could call into question the future viability of this allocated town centre opportunity and impact upon planned investment.

Adopted planning policy recognises that Colchester town centre should be the focus for retail development and new proposals in the urban district centres will not be supported unless they meet an identified local need and will not impact upon the town centre. The importance of protecting the retail focus in the town centre and balancing priorities between land uses is well established in the development plan, with retail uses identified as the core use underpinning the Town Centre's viability and vitality. Furthermore Strategic Employment Zones, within which Tollgate sits should be the focus for business development and allocated employment sites safeguarded.

Notwithstanding M&G RE's objection to the proposals, should the LPA be minded to approve the application, we would request that careful consideration is given to use of conditions and that the various type and range of uses to be permitted, are clearly identified and controlled in order to minimise impact on the town centre and other centres."

10.5.7 The representation was dated 14 May 2015

10.5.8 CBRE on behalf of **FENWICK'S** and **SOVEREIGN LAND** (owners and managers of Red Lion Square)

Their representation concludes:-

"Fenwick's, M&G and Sovereign Land represent key stakeholders with significant interests in Colchester Town centre. We consider that the planning application should be refused in this present form as a consequence of the deficiencies within the supporting documents such:-

- The application fails to demonstrate the adequate discharge of the sequential assessment, in accordance with development plan policy and para's 24 and 27 of the NPPF
- The application fails to adequately consider retail, leisure and other town centre uses within the submitted retail and leisure impact assessment
- The application is on strategic employment land which restricts non-employment uses and specifically excluded town centre uses from the allocation at Stanway

10.5.9 A separate objection is being drafted on highway matters."

- 10.5.10 A transport assessment review (of the submitted Tollgate Village transport assessment) has been undertaken by traffic consultants 'Motion' on behalf of **SOVEREIGN LAND**.

That review concludes:-

"Having reviewed the Traffic Assessment (TA) undertaken by Intermodal Transportation Ltd (ITL) we have concerns in relation to the proposed access arrangements and the potential impact on the surrounding road network. We are therefore of the opinion that the level of detail contained within the planning submission is not sufficient to favourably determine the application. The review then itemises 14 areas where the submitted TA is in their view in need of further analysis.

10.5.11 **VINEYARD GATE DEVELOPMENTS Ltd**

VGD Ltd is owned by Caddick Developments in a partnership with New River Retail (UK) Ltd and they are prospective developers of Council owned land at Vineyard Gate.

The representations made concludes that:-

"Tollgate's proposal would be in direct competition with Vineyard Gate and has clearly been designed to attract similar retailers/operators (e.g. the sizes and configurations of the proposed units). Far from clawing back expenditure to the town centre it will divert very significant trade away and exacerbate this leakage. Our investment in the town centre is considerable, and would be significantly and adversely affected by the proposals at Tollgate and call into question the financial viability of future proposals.

In conclusion Colchester town centre should be the focus for comparison goods retail and leisure development. Vineyard Gate is a suitable alternative for the proposal and negotiations are at an advanced stage with the Council and other key stakeholders and consultees in order to ensure submission of a planning application by the end of 2015.

The impacts of the Tollgate proposal have been underestimated and no assessment has been made of the impact of the cinema and leisure uses on the town centre or our own proposals. Of greatest concern is the impact of the Tollgate proposal upon our planned investment for the town centre which after an initial delay is now on track for a Cabinet resolution in June"

- 10.5.12 That representation was dated 13 May 2015. A planning application is not expected by the end of 2015 and it is understood that discussions between VGD Ltd and the Council as land owner are ongoing. No formal contract has been concluded between VGD Ltd and the Council at the time of writing this report.

#### 10.5.13 **COLCHESTER RETAIL BUSINESS ASSOCIATION (CORBA)**

CORBA objects. They highlight how fragile the market is for small businesses in the Town Centre by citing the harmful impact that the trial closures to traffic in the High Street had on footfall and subsequent trade loss. (reduced takings). CORBA argues that trade has started to recover in terms of footfall and business performance but 'there are still businesses living on the brink and their survival is finely balanced and any small change is likely to be the breaking point.'

10.5.14 They predict that trade diversion of just 6% will have a knock on impact on the recovery of small business in the town centre.

10.5.15 That representation was dated July 2015.

#### 10.5.16 **FEDERATION OF SMALL BUSINESSES**

10.5.17 The FSB objects to the proposal on the grounds of the economic damage and impact on employment that the proposal could cause to the Town Centre. They claim that out of town retail venues are damaging to town centres as a result of drawing custom away resulting in reduced footfall and spend in the town centre. Faltering viability in their view will result in closures and consequent job losses in the town centre. They are that the proposal will not deliver the opportunities for upskilling and career path progression envisaged in the local plan. They look for support in the NPPF and from national planning policy.

#### 10.5 18 **M.P. COMMENT**

The Right Honourable Priti Patel MP (Witham) within whose constituency this site sits has contacted the Council on a number of occasions in respect of this application on behalf of constituents who have expressed concern that the Council may refuse the Tollgate Village proposal when in their view it should be approved. Ms Patel has also been following the progress of this application and its handling by the Council and a series of updates has been provided over the months.

Ms Patel who is Minister of State for Employment in the Government has expressed support for the proposal on her web site.

#### 10.5.19 **CHELMSFORD CITY COUNCIL**

CCC asks that the Council does not determine the application on the basis that they consider the City Centre in Chelmsford to fall in the catchment of the Tollgate Village proposal and the submitted retail impact assessment does not consider the impact the proposal will have on planned investment in Chelmsford City Centre. They also take the view that the proposal is deficient in that impact on the viability and vitality of the City Centre and potential trade diversion are not considered.

That representation was dated March 2015.

## 10.5.20 COLCHESTER CYCLING CAMPAIGN

CCC objects on the grounds of traffic generation and increased car dependence that will be encouraged as well as air pollution. They also object on the grounds that the proposal will adversely harm the viability of the town centre. They suggest that the Council should consider the impact of all developments containing more than 10 parking spaces on global warming. In the event that permission is granted CCC suggests that S106 funding for Colchester Cycling Strategy Plan initiatives should be secured.

**10.6 The summaries above are designed to capture the key points of representations and afford Members with an overview of the nature of those representations. Readers of this report who wish to analyse the original responses in detail are asked to view the full text of all the representations received on the Council's website.**

## 11.0 ANALYSIS: Planning merits of the proposal.

11.1 This section of the report uses a different format to that usually employed as standard. This is to allow Members to focus immediately on the 'crux' land use policy issues, with other issues to follow.

11.2 The report will therefore focus on:-

- Retail impacts; and,
- Employment and employment land impacts

and then it will consider highway impacts followed by other relevant considerations.

## 11.3 Retail impacts

### 11.3.1 Colchester Shopping Hierarchy:

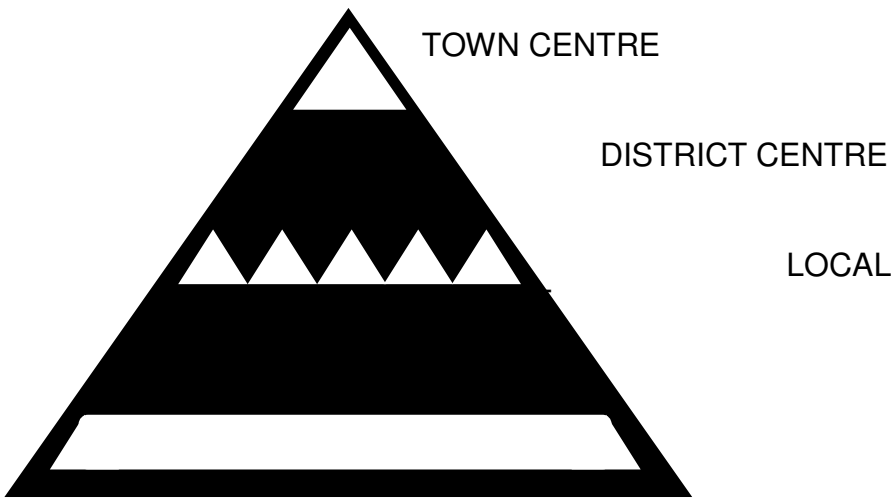
11.3.2 Approximately one third of the site lies within an Urban District Centre and is currently in retail use. The remainder of the application site sits outside of the designated UDC and is within land allocated as Strategic Employment Zone.

11.3.3 Three questions arise from the nature of the proposal in the context of the designated UDC. These are:-

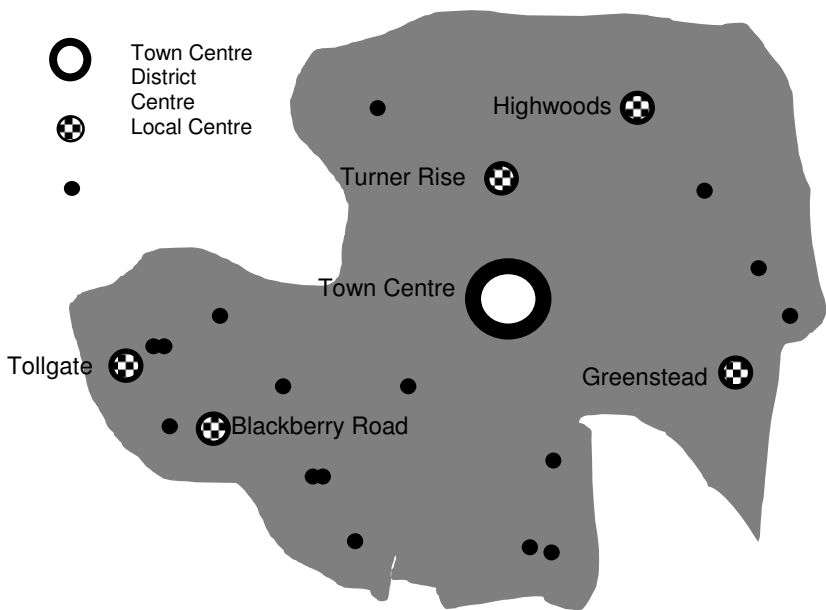
- a) What is the significance of a UDC and what role is it expected to play within the established retail hierarchy of the town?
- b) What is the nature of existing retail uses at Tollgate and how do they conform?
- c) To what extent is the proposed development consistent with the role and function of a UDC?

11.3.4 These are now considered below:-

- a) Function, role and place in Colchester's Adopted retail hierarchy of Tollgate as an Urban District Centre (i.e. Tollgate)



**Figure 3: Diagrammatic representation of Colchester's Adopted retail hierarchy**



**Figure 4: Spatial depiction of Adopted retail hierarchy**

- 11.3.5 When development at Tollgate was originally permitted in the 1980's it comprised a large Sainsbury's supermarket and an out of town retail warehouse park with permissions restricted to bulky goods as was the norm. In previous Local Plans from the end of the last century the area was allocated as Retail Warehouse Park and reflected the then national trend to locate large bulky goods retail warehousing in 'out of town' locations in large purpose built sheds where the entire range of stock could be displayed and ordered and occasionally driven away by customers. In this context Tollgate had a life involving forms of retail before the designation as a UDC. This wasn't the case in respect of all UDC's.
- 11.3.6 Paragraph 31 of the Planning Policy Services consultation response highlights the fact that all five of the borough UDC's are currently anchored by a large food superstore with varying degrees of other retail and non-retail uses.
- Highwoods: Tesco superstore and small shops
  - Turner Rise: Asda superstore and large retail warehouse type units
  - Blackberry Road: Fiveways supermarket and larger shops (much in the form of historic warehouse retailing)
  - Hythe: Tesco superstore
  - Tollgate Sainsbury's superstore (outside the designated UDC as a result of a site swap) and larger shops, (much in the form of historic warehouse retailing), A3 & A5 and non-retail
- 11.3.7 As stated it is clear that the Tollgate UDC designation has developed from what was an out of town retail warehouse development as with those at Turner Rise and Blackberry Road (incl. DIY). In explaining the emergence of UDC's the Core Strategy (revised 2014) states:-
- "There are a number of large format retail centres around the Town Centre and Colchester Town, including Tollgate and Turner Rise. These centres comprise large supermarkets, bulky goods retail, and large surface parking areas that could provide space for intensification. Expanding the retail components significantly could undermine the viability of the Town centre, however it is important to increase the mix of uses and improve the provision of community facilities, office floorspace or housing, as well as enhancing the quality of the public realm and the townscape"
- 11.3.8 Policy CE2b UDC's makes the explicit statement that:-
- "..New retail proposals (including change of use to retail) will not be supported unless they meet identified local needs and do not compete with the Town Centre"
- 11.3.9 To help understand how uses such as Next and Argos within the Tollgate Centre were justified in the context of the above we need to examine the Planning Policy Services comments on those proposals to see what parallels, if any, exist between those cases and what is now being proposed.

- 11.3.10 Whilst CE2b 'District Centres' does not define what is meant by 'identified local needs' This could mean an objectively assessed need (i.e. evidence based arising from capacity and demand); it could be interpreted as that which fits within the appropriate category for a particular tier within the adopted hierarchy to meet local needs. In Colchester's case reference to what is appropriate in a UDC can be gauged by looking at what is appropriate within the tier immediately above and below a UDC:-
- CE2c Local Centres (below UDCs in the hierarchy)  
Small scale local shops
  - CE2 a – Town Centre (above UDCs in the hierarchy)  
Sub-regional scale retailing
- 11.3.11 This tends to suggest that UDCs are not confined to small shops (as this would make them a local centre) and can include larger stores where these are catering for local demand but it also indicates that scale and size becomes important in that the types of retail activity appropriate within a UDC should not be those that you would expect to serve a wider than local catchment as these are only appropriate within the Town Centre, with its wider than local catchment and functionality.
- 11.3.12 It is interesting to note that in their summary justification the applicants describe one of the benefits of the proposal as:-
- “ The provision of a range of unit sizes for national, regional and local scaled facilities”
- 11.3.13 It is important to consider the appropriateness of the scale of development within its context in the retail hierarchy. The benefit is cited as “It will allow representation within the UDC of national, regional and local operators” rather it tellingly refers to scale in that the unit sizes will be such as to allow not local scale facilities but regional and national scale. Within the adopted retail hierarchy in Colchester it is considered that the appropriate location for such a development is at the apex and that is the Town Centre with sub-regional importance. The reference made in support of the application that the intention is to create a high order retail destination within/adjacent to an UDC as opposed to the town centre at the apex of the retail hierarchy.
- 11.3.14 Any assessment based against the desires of local people would fail to reflect the relevant statutory duties and at a basic level planning operates on the basis of a wider common good rather than parochial interests. (Otherwise there would no doubt be local demand for all kinds of facilities in hundreds or possibly even thousands of unsustainable locations). Members of the Committee will want to have regard to local opinions. Members invariably have to grapple with this within the context of a national planning system that remains 'plan-led' and constrained by reference to national planning policy and local policies in Adopted Development Plans.

11.3.15 Members will have noted that of the 196 residents who commented on the application 76% expressed support and 19% objected . The level of response indicates a significant level of interest amongst local people. Stanway has a total population 8,509 (2011) and the Council formally wrote to 4,909 households informing of the receipt of the application (as well as posting site notices and public notices in the local press).

11.3.16 The responses recorded above and summarised in the consultation analysis section of this report provided earlier are consistent with the evidence gathering that informed the production of the Stanway Parish Plan in that shopping was identified as the most popular leisure pursuit amongst adults in Stanway and that an increase in the choice of shops was desirable. Indeed the Stanway Parish Plan refers to this in its recommendations but it is careful to put such demands in the context of not harming the Town Centre when it states:-

“Improve and expand shopping choice at the Tollgate Centre that does not conflict with Town Centre uses and introduce environmental improvements to enhance the overall shopping experience.”

11.3.17 b) Retail representation at Tollgate

Currently the following retailers operate from Tollgate

**North of Tollgate West**

B&M

Costa (north-west)

Curry's/PC World

Hughes Electrical

Staples

**South of Tollgate West (Tollgate Centre)**

AHF Furniture

Argos

Boots

Carpetright

Carpets 4 less

Costa

Dreams

Harveys

Iceland

McDonalds

Next

Next Home

ScS

Smyths Toys

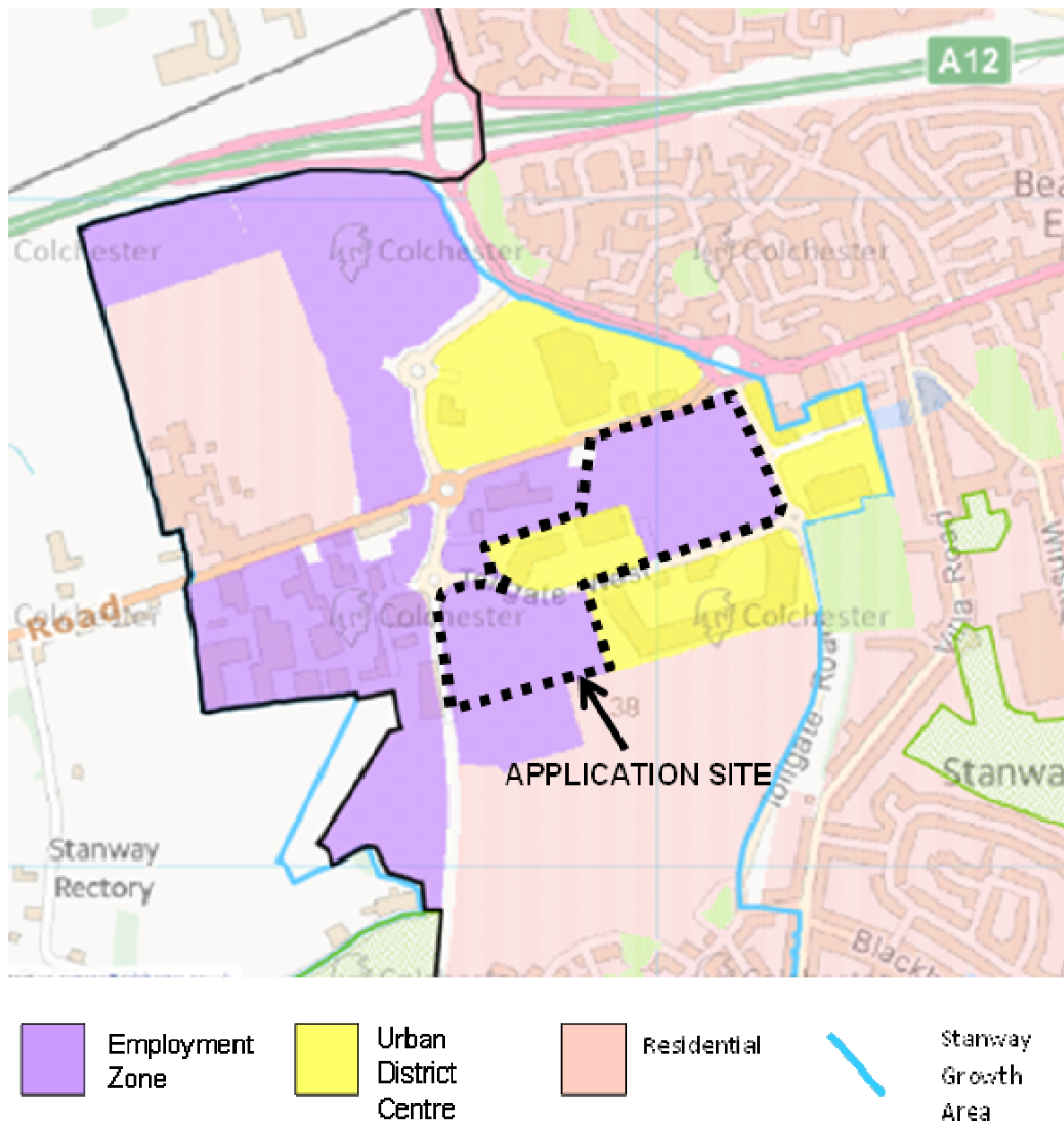
Sports Direct

Wren Kitchens



**Tollgate East**  
Seapets  
Homebase  
Magnet Kitchens

- 11.3.18 These traders represent remnants of occupiers from the former out of town bulky goods/white goods days of the former retail warehouse park with some newer arrivals who do have high street representation in the town but are of a size that appears to be catering for local demand.
- 11.3.19 c) To what extent is the retail component of the Tollgate Village proposal in conformity with the current UDC status?
- 11.3.20 In evaluating the type and scale of retail development proposed we are obliged to consider the extent to which the proposal can be said to be 'expanding' the UDC as policy CE2b states:-
- 11.3.21 “..Expansion of the UDC's will not be supported but intensification within the centre will be supported where the quality of the public realm and built character is improved”
- 11.3.22 It is clear from this that the reference to 'expansion' means the increasing the physical extent because intensification within the UDC is conditionally supported.
- 11.3.23 The defined UDC within the Adopted Proposals Map (see Figure 5 below) shows the extent of the Tollgate UDC in yellow.



**Figure 5: Proposals Map Extract: reflecting policy SA STA3 Site Allocations**

- 11.3.24 The UDC designation does not extend to include the current Sainsbury's superstore north of London Road since the site swap that resulted in the old Sainsbury's site becoming employment zone.
- 11.3.25 As can be seen from Figure 5 above the proposal does involve the de facto expansion of the UDC. On this basis it is contrary to CE2b which states that "Expansion of UDC's will not be supported" Members will be aware that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. (s.38(6) PI & Compulsory Purchase Act 2006).

- 11.3.26 The proposed expansion extends to an additional 3.62ha which represents a 27.5% increase on the footprint of the Adopted Tollgate UDC. This is material and in conflict with the provisions of the local plan.
- 11.3.27 Whilst expansion within the current UDC is 'conditionally' supported by adopted policy CE2b the significant increase in site footprint (scale) is not. Members may query the difference between permitting intensification within the current UDC boundary but not allowing expansion beyond, if - development within the existing boundary was very intensive (high density of floorspace) compared to a scenario whereby expansion within and outside was low density?
- 11.3.28 The important element is 'intensification' If expansion beyond established UDC boundaries was permitted then intensification would then be conditionally supported in the context of UDC policy. This would then potentially create an overall level of floorspace and subsequent attraction that would mean the area no longer functioned as a UDC but was effectively functioning higher up the established hierarchy. (even with the safeguard in CE2b that new retail development will not be supported unless they meet identified local needs and do not compete with the Town Centre – because as Members have seen once a building exists it can over time be difficult to ensure controls over use remain enforceable, either as a result of slow imperceptible changes in behaviour or through changes in secondary planning legislation).
- 11.3.29 It is the Council's contention that the significant expansion of the UDC beyond its established designated boundaries would result in Tollgate detrimentally and harmfully competing with the Town Centre contrary to adopted planning policy.
- 11.3.30 This is the basis of the Planning Policy Service's advice in paragraphs 33 – 36 of their formal consultation response. In paragraph 35 they acknowledge that it has been difficult for the Council to resist incremental changes within the Tollgate UDC due to their lack of individual impact on the Town Centre and demand for bulk goods floorspace receding due to changed shopping behaviour (e.g. on-line purchases).
- 11.3.31 The Planning Policy Service advises:-

"These uses have been replaced by a wider range of retail uses, including some that also have a town centre presence (i.e. Argos, Boots, Next, Iceland). The Council has appreciated the societal trends driving the pressure on the Urban District Centres and has adopted a flexible, pragmatic approach to accepting a wider range of uses. It has, however, approached variation of condition applications by widening the range of permitted uses rather than by jettisoning scrutiny of uses within centres. The Council still wishes to scrutinise proposals to widen uses to ensure they avoid cumulative impact on the town centre and achieve compatibility with policy aims to diversify Urban District Centres and improve their public realm. Acceptance of a limited degree of change to more town centre uses should not, accordingly, be considered to constitute acceptance of a large proposal which would challenge the role of the town centre."

- 11.3.32 It is important to note that if the proposal before Members is permitted then Tollgate would be 250% bigger than the next largest UDC (Turner Rise). Given the clear emphasis on comparison (clothing, furniture, fashion, electricals) retailing within the Tollgate Village proposal rather than convenience (groceries) as found in the majority of other UDC's there would be "...a clear challenge to the predominance of the Town Centre as the pre-eminent destination in the Borough for comparison shopping." (paragraph 35 of the Planning Policy Service's comments)

#### **11.4 Sequential test:**

- 11.4.1 **The Council's Planning Policy Service has stated that it does not contest the acceptability of the scheme on sequential test grounds per se having accepted the advice of its retail consultant NLP. (paragraph 44 of the Planning Policy Service's comments). Objections have been received on this point from town centre retail interests who believe that there is a conflict as alternative sites in sequentially preferable location (e.g Vineyard Gate) are 'available' in their opinion.**
- 11.4.2 The reasons for this acceptance are set out in paragraphs 40 – 44 of the Policy response. It is therefore not proposed to expand on this aspect further here.
- 11.4.3 **It should however be noted that the Place Service in accepting the sequential test is 'passed' does not accept that the development will therefore have no harmful cumulative impacts on the economic well-being of the Town Centre. The sequential test merely establishes that there are insufficient suitable sites available within the Town Centre to accommodate the extent of development being proposed within the Tollgate Village scheme, not that the impact is considered acceptable. Paragraph's 26-27 of the NPPF are clear that where an application is likely to have a significant adverse impact on a town centre it should be refused on this basis. In the opinion of officers, there is clear evidence that material harm would result in this instance.**

#### **Impact on the Town Centre**

- 11.4.4 This report now considers the adverse impacts identified. In doing so the report must also address the question - "What is significant?"
- 11.4.5 Whilst currently there is no definition of 'significant' or 'significantly adverse' in either the NPPF or the NPPG logically it is reached as a cumulative conclusion drawn from a combination of tested criteria. These tests have been considered by the Council's retail consultants, NLP, in the context of the Tollgate Village proposal and in the context of Barton Willmore's own assessments. NLP conclude that "in our view, the proposed development fails the test set out in NPPF paragraph 26 and 27, because the scheme will have a **significant adverse impact** on planned investment in Colchester Town Centre". (para.9.10) leading to stagnation.

## **11.5 Convenience shopping**

- 11.5.1 The Planning Policy Service having regard to advice from Nathaniel Lichfield & Partners accept that the convenience shopping element of Tollgate Village proposal will not have significantly adverse impact on the convenience market in Colchester and as such this component of the project does not justify a refusal.**
- 11.5.2 It is noted that the convenience component within the proposal is considerably smaller than the comparison component and that the overall convenience market in Colchester is considerably smaller than the overall comparison market.
- 11.5.3 The projected convenience turnover of the proposal is £16.44m which represents 4.16% of the overall convenience sector in Colchester (£395m) estimated at 2019.

## **11.6 Comparison shopping**

- 11.6.1 It is this component of the Tollgate Village proposal that needs to be carefully analysed because its impact on Colchester's comparison market is larger than that arising from the convenience component.
- 11.6.2 NLP has advised the Council that the Tollgate Village comparison component is likely to represent between 8.1% and 10.89% of the overall Colchester comparison market in 2019. (between £74.6m [applicant] and £104.44m [NLP with fashion led scheme] of a total market of £923.8m [applicant] or £959.26m [NLP] in 2019).
- 11.6.3 NLP concludes that whichever scenario above is used the Tollgate Village proposal is expected to include good quality comparison goods retailers who will compete directly and effectively with Colchester Town Centre for higher order comparison shopping trips.
- 11.6.4 Furthermore they conclude that the proposal will create a sub-regional comparison shopping and leisure destination that will inevitably compete directly with Colchester's own centre. The Planning Policy Service concludes therefore that the proposal would have an unacceptable impact on the Town Centre and fail to accord with the Council's adopted Centres and Employment Policies protecting the Town Centre.**

## **11.7 Other Town Centre uses**

- 11.7.1 As the applicants have not undertaken an impact test in respect of the leisure component of their proposal it has been difficult for the Council's retail consultants to advise on whether these elements would have a harmful impact on the town centre.

- 11.7.2 However in terms of the flexibility suggested by the applicants (depending on A1 shop demand/take-up) the between 950sq.m. and 5960sq.m. of new A3/A4/A5 (restaurant, drinking establishment or takeaway respectively) floorspace may have a harmful impact particularly when existing floorspace across Tollgate is aggregated. Given the speculative nature of the proposal there is a potentially powerful effect on consumer choice and the increased likelihood that the increased Tollgate offer would be in direct competition to the town centre and lead to a long term decline in the town Centre's relative competitiveness.
- 11.7.3 Members will of course recall that as recently as 18 September 2015 they rejected proposals at Stane Park (a site nearby to the north-west) for 5 restaurants/drive-throughs/takeaways and a pub on the grounds that:-

### **1.Conflict with site allocation as a Strategic Employment Zone**

The application site is allocated in the Adopted Local Plan as a Strategic Employment Zone (policies CE1, CE3, SA STA3 and DP5). The proposed restaurant uses are not in conformity with the provisions of the local plan and the loss of this Adopted strategically important employment zone site is considered prejudicial to the Council's overall employment strategy to the detriment of the medium to long- term economic benefit of the town. Notwithstanding that the proposed development will generate new jobs in the hospitality sector the proposal would erode the integrity and future attractiveness of Stane Park for business park development that requires excellent access to the Nation's strategic trunk road system. This concern is further compounded by the fact that Stanway is expanding rapidly in terms of housing delivery and the Strategic Employment Site offers potentially sustainable employment opportunities for residents who are otherwise forced to travel in search of job opportunities.

This site and its wider hinterland is allocated in the Council's Adopted Core Strategy - Policy SD1 as the Stanway Growth Area (SGA) where development is expected to be focused and where proposals that accord with other policies in the Local Plan will be approved without delay. In defining the Stanway Strategic Employment Zone, within which the application site lies, the Council identified the type of development that would be appropriate to achieve its medium to long- term economic objectives within Table CE1b (as supports employment classification and hierarchy policy CE1 and the strategic designation provided by table CE1a). These appropriate uses are defined as B1b research and development, studios, laboratories, hi-tech; B1c light industry; B2 general industry; and B8 storage and distribution. Secondary land uses are described as B1a offices; C1 hotels, D2 assembly and leisure and sui generis. The proposed land uses comprising A3 or A4 uses do not comply with that policy.

The proposed development on this strategically important Employment Zone would seriously undermine the Council's ability to plan for the medium to long term expansion of the Town's economy to create sustainable high value jobs in locations that complement areas experiencing rapid and significant housing growth and with excellent access to the strategic highway network.

(in this case the A12).

The Council's carefully planned employment strategy is reinforced within its Adopted Site Allocations (2010) in so far as Policy SA STA1 and SA STA 3 that make provision for employment use (which exclude those proposed here) and reject the need for town centre uses such as those proposed here respectively.

## **2.Urban District Centre and Town Centre retail policy**

The Council is of the opinion that the growth and concentration of the proposed A3 uses and A4 use in this out of centre "destination" are harmful to the vitality and viability of the Town Centre on the grounds that the location is in a sustainable location promoting trips and car borne traffic with more sequentially preferable locations for such growth in town centre uses being available. The Council's Adopted Local Plan Policy CE2a defines that the Town centre will be promoted as the sequentially preferable location for growth as a prestigious regional centre where a mix of uses will be encouraged. This Core strategy objective is further expanded by Development Policy DP6.

Adopted Local Plan policies CE1 & CE2 define that such uses as those proposed are appropriate in Mixed Use Centres. Policy DP5 defines the range of uses that are acceptable within designated employment zones and the proposals do not fall within these uses. The designated Stanway Growth Area is not a mixed use area and the application is not within the designated Urban District Centre. The proposal therefore seeks to effectively expand the Stanway Urban District Centre into an area designated for strategic employment purposes. Policy CE2 b clearly states that the expansion of Urban Districts Centres will not be supported and the proposals are in direct conflict with the strategic aims of the adopted local plan which seek to promote sustainable employment growth and promote growth in sequentially preferable and accessible locations whilst protecting the vitality of the town centre.

## **11.8 Trade Diversion**

11.8.1 It is important to note that the Council's own retail consultants have advised that the expenditure deficit which could be created by the Tollgate Village development as projected 2015-2019 or 2015-2021 would not be expected to lead to a significant number of shops closures within the Town Centre in the short term but the town centre offer would not be expected to grow having had most of its potential expenditure growth removed (para.3.61), it would consequently have the following effects:-

- The growth rate in Town Centre comparison goods would be limited to only 0.8% to 2019 and 1.8% in 2021
- The £23.1m of surplus expenditure over and above commitments expected for Colchester in 2019 (£47.94 in 2021) would be absorbed by Tollgate Village leaving limited expenditure growth to support the re-occupation of vacant shop units in the town centre or further development investment by 2021

- 11.8.2 NLP conclude from this analysis that:-
- 11.8.3 “These comparison goods expenditure projections indicate there is a significant risk that the town centre will stagnate for the next decade”
- 11.8.4 It is preferable that headroom growth in expenditure available in the catchment in the next 5-10 years is captured by Colchester town centre in order to maintain the primacy and range/choice available rather than diverting to other centres within or outside the Borough.
- 11.8.5 For this reason the report must consider, as guided by Government in such situations, the implications of the Tollgate Village proposal on planned investment in the Town Centre.

### **Impact on investment in the Town Centre.**

- 11.8.6 In considering this issue it is necessary to consider:
- Existing public and private investment
  - Committed public and private investment
  - Planned public and private investment
- 11.8.7 Members will not need any reminding that in late 2008 a recession impacted on Britain and the development industry, in particular, with the country only officially emerging from this investment crisis in mid-2014. percolated down from the financial sector to all regions and sectors of the UK economy to varying extent, in including retail. The national recovery is still in its early phase, appears delicate, and recent downturns in China and India may result in a new cycle of economic downturn. This is mentioned because the Borough and Town Centre has managed to pull through the years of austerity relatively intact and in the last three years some retailers / retail development owners have shown sufficient confidence in the town to make multi-million pound investments in upgrading and expanding facilities. Examples here are Sovereign and their major re-vamp of Lion Walk /Red Lion Yard and more recently Fenwick’s with their current £30m+ expansion of their High Street department store (Williams and Griffin) where work is underway. St Nicholas House has been and is being refurbished and the ground floor is back in use for retail purposes after sitting empty for some time. Angel Court has been completely refurbished and converted. Ongoing discussions continue in respect of bringing regeneration sites such as Vineyard Gate and St Botolph’s to the market. The public sector and Lottery has funded a multi-million refurbishment of Colchester Castle building and museum which was re-opened in 2014 and Essex County Council recently opened its £5.5m Park and Ride site in North Colchester to serve the Town Centre. Just recently, the Council’s redevelopment of St Botolph’s has re-ignited with the former Police Station’s conversion into a Council-owned Creative and Digital Media Business Centre starting on site and it has also just signed (December 2015) with Curzon Cinemas for their redevelopment of the former Keddies department store in Queen Street into a 3-screen cinema with associated bar and restaurants.



- 11.8.8 From just these few examples it can be seen that the list includes considerable existing, committed and planned investment within the Town Centre designed to ensure that the Town Centre continues to function as a major attractor supporting amongst other things a significant Regional (top five locations) and sub-regional (Haven Gateway) retail and leisure destination.
- 11.8.9 The Council has received representations on behalf of town centre retailers opposing the planned Tollgate Village development. The concern generally being expressed is that the proposal will divert sufficient trade away from the Town Centre to result in a harmful reduction in total footfall and therefore spend and this will in turn adversely impact viability and vitality and will threaten to drive some businesses out of business (particularly the concern amongst small specialist independent traders). The Council's own retail consultants appear not to accept this as the likely outcome.
- 11.8.10 Members will recall that in the Corporate planning training for those councillors wishing to sit or "sub" on the Planning Committee that 'individual competition' is not a material planning objection to a proposed development. The Council cannot protect through the planning system one trader from another wishing to sell similar products on the grounds that this would expose the first trader to competition. Within this general constraint of the planning system, the market will decide if two traders selling similar products can viably survive. That said, the Council as Local Planning Authority can legitimately look to protect its retail hierarchy because this is what provides retail and development investors with certainty, stability and ensures that confidence is maintained. This is in the wider public interest – it is a "public good" - in order to maintain the vitality and attractiveness of the town centre for residents, visitors and investors.
- 11.8.11 The importance of confidence should not be underestimated or dismissed lightly. The Tollgate Partnership is a successful Colchester business, which is seeking to speculatively invest the not inconsiderable sum of £60m whilst the other town centre operators such as Fenwick's are investing some £30m on one store on the basis that the Council has a strict and established retail hierarchy that puts the Town Centre first.
- 11.8.12 Public comment on social media and in the press in recent months has been concerned with this Council's ownership of land also being promoted for commercial development purposes within the Town Centre and at the Northern Gateway. Members are required to concern themselves only with the application before them and it is clear that the Council's alleged financial interests must be excluded from any part of the consideration of this application.
- 11.8.13 It is important to address this issue directly because, as a responsible and accountable public authority, any issue or matter that undermines the integrity of the planning system will bring the Council into disrepute and will erode the public's confidence in the transparency and fairness of the decision-taking process.

## **11.9 Vineyard Gate**

- 11.9.1 In their response to the current application, the Council's Planning Policy Service establishes the chronology around Vineyard Gate which is that it has been a longstanding Council commitment and is allocated for development in the Adopted Local Plan (Core Strategy policy UR1 – Regeneration Areas) and Site Allocation policy TC1 – Appropriate Uses within the Town Centre and North Station Regeneration Area.) Its delivery has been delayed by a number of factors reflecting the fragility of the retail sector and the evolving role of town centres nationally over the past decade
- 11.9.2 The Planning Policy Service notes that the applicant originally factored Vineyard Gate into its impact assessment as planned investment but later took this out of its June 2015 material stating that it cannot be considered a viable scheme which could accordingly be affected by competition elsewhere.
- 11.9.3 NLP's advice to the Council in respect of this particular point needs to be carefully considered and the nuances understood.
- 11.9.4 Whilst it is NLPs view that Vineyard Gate is unlikely to come forward before 2019/2020 they also point out that it remains critical to consider the potential impact on 'planned investment' at Vineyard Gate of the Tollgate Village proposal..
- 11.9.5 Planning Policy's detailed response between paragraphs 60 and 69 explores this point in considerable detail.
- 11.9.6 They conclude that the Vineyard Gate development is at a point of maximum vulnerability from a nearby scheme with similar components. It is important to note that nearby schemes could include those in the north of Colchester were they to include retail development. (the extant outline planning permissions do not permit A1 [shops] uses) Vineyard Gate is an allocated brown field regeneration site where retail/leisure development is actively directed within the Adopted Local Plan being located within the sub-regionally important Town Centre. Furthermore, this Town Centre site has the benefit of a selected development partner and financial backing from the Council.
- 11.9.7 The Council as local planning authority contends that to allow the Tollgate Village proposal as a Departure from the Local Plan at this critical point in time for Vineyard Gate is likely to seriously prejudice the site coming forward because Tollgate does not have the same constraints and costs associated with it in terms of knitting new development into an established and sensitive historic setting.
- 11.9.8 Indeed the submission of the Tollgate Village application in February 2015 may have impacted investment confidence as the prospective developer awaits the outcome of the Tollgate Village application before resuming discussions with the Major Development Service. Representations from them and other major Town Centre players all indicate that the Tollgate Village proposal is a real cause for concern and is a cause for concern for Fenwick's as they are in the middle of their massive £30m investment in an enhanced Department Store.

- 11.9.9 In a scenario where trade was being diverted to Tollgate (were Tollgate Village to be approved) to the extent of 13.7% (cumulative) by 2019 without a compensatory offset by projected population and expenditure growth (between 2015-2019) it is difficult to see how Vineyard Gate could come forward with possible investors looking at locations such as Tollgate (possibly utilising the S73 route over time to incrementally vary floorspace limit constraints to relax use by floorspace conditions were these to have been employed on the basis that they gave comfort to the Council in the event that permission was granted for Tollgate Village ).
- 11.9.10 Members' attention is drawn to a recent appeal decision in Braintree in which the Inspector and the Secretary of State dismissed an appeal in respect of a proposal involving significant retail floorspace out of the town centre having accepted that the proposal would have a significant impact even though there was no specific planned or committed town centre investment at risk. In the words of the Planning Policy Service, "this suggests that the issue for Colchester is not when Vineyard Gate will be delivered but whether its delivery will be stopped in its tracks by competition from Tollgate".
- 11.9.11 Retail consultants are in agreement that Tollgate Village if approved is unlikely to trigger initial substantial shop closures in the Town Centre but with shop vacancy rates expected to remain at around 10% there is a real risk that trade diversion will herald stagnation within the Town Centre if existing and prospective town centre businesses/operators uncertain about the future competitiveness of Colchester Town Centre decide not to invest.
- 11.9.12 On the basis that NLP has concluded that Tollgate Village will compete directly with the Town Centre for higher order comparison shopping trips and that this will have an unacceptable impact on the Town Centre these risks appear real and plausible. Certainly it would appear to add credence to the expressions of concern raised by not just Fenwick's but also Sovereign Land who own the recently refurbished Red Lion Walk/Square Shopping Centre where a planned Phase 3 expansion is currently in abeyance and M&G Estates who own the other major shopping centre in Colchester (that being Culver Square)
- 11.9.13 Consideration of impact on investment must not be restricted to major players in the Town Centre or Tollgate that are making big investment decisions. Small businesses are also making hard and difficult economic decisions. Not involving multi-million pound sums but decisions that will impact their individual financial wellbeing and that of their families. Does the trader renew her or his lease when it comes up for renewal with the concern about loss of footfall and reduced spend being actively discussed and shared around the town, in the local press and in reports such as this. Do they invest in expensive new stock with what many see as the sword of Damocles hanging over them (even if NLP believe the closures may be limited they do not identify whether this reference relates to overall floorspace or units. Representations suggest the small independent sector is intensely worried that it could mean a number of their cohort goes out of business (which means the overall floorspace involved may be small but the predicted 10% vacancy rate could imply a significant sector of the small business community.)

- 11.9.14 CORBA's view is that significant trade diversion will seriously impact the viability of their businesses in the Town Centre because reduced footfall and reduced spend will hit them hard where the margins between being 'in business' and 'no longer being able to trade' are very fine. They argue that to some extent national chains are able to support less profitable locations with their high earning locations just to maintain national coverage and representation. (but even that has been shown not always to be the case after the 2008 recession). There is a genuine fear amongst small Town Centre traders that a 13.7% trade diversion could for them translate into wipe out. This is at a time when the Council is promoting Colchester as a sub-regional shopping destination highlighting its individuality compared to regional competitor destinations arising from its small specialist shop sectors in and around Eld Lane and Short Wyre Street. The Councils 'Shops on the Wall' initiative is an example of this.

## 11.10 Northern Gateway

- 11.10.1 This strategic regeneration site owned by the Council benefits from a series of outline planning permissions for mixed development granted as a Departure in 2006. These remain valid but require the submission of reserved matters for those parts not already the subject of reserved matters approval (or already developed) developed by 20 March 2016. Parts of the wider Gateway area have already been developed in accordance with these permissions. This includes employment zone compliant uses such as Easter Park (Axial Way) and the new Lancaster Toyota and Lindvale VW dealerships. The permissions provided for a range of uses including business, leisure, community stadium, hotel and A3 uses and major infrastructure works including the new junction 28, Via Urbis Romanae and the associated busway.
- 11.10.2 The delivery of this infrastructure was the key to unspringing all the Local Plan land allocations in North Colchester and securing the delivery of the centrepiece of the Gateway sport and leisure hub that is the community stadium was enabled by the development that was approved. The Council continues to work towards delivering the overall vision contained in the Northern Gateway Framework and it is the development permitted by the 2006 permissions that will help to fund the wider public benefits associated with community based leisure and sport .
- 11.10.3 The planning permissions of 2006 were all subject to a referral to the Secretary of State who determined that the Council could proceed with approving development without the need for him to call in the application to decide for himself. The suite of permissions dating from 2006 that relate to the Northern Gateway **make no provision for retail development** within Class A1 (shops). At the time of pre-application negotiation back in 2001 the local planning authority required the removal of a significant proposed retail element within an early iteration of the proposal in order to protect the status of the town centre.
- 11.10.4 It is true to say that the permissions include a significant element of restaurant / pub uses as these were intended to support the operation of the community stadium, budget hotel and business/leisure uses. The overall level of floorspace allowed by condition in the relevant planning permission of 2006 far exceeds that currently proposed in the Tollgate Village proposal.

11.10.5 That said it would be reasonable to draw a parallel between the Council's attitude to allowing a number of A3/A5 uses at Tollgate (McDonalds, Chiquitos, Frankie & Benny's and Costa x 2) to support other activities and what is envisaged at the Northern Gateway and exercising control to prevent the wider Tollgate area becoming an A3/4/5 destination in its own right.

11.10.6 NLP also undertook an assessment on behalf of the Council on the likely impact of the Tollgate Village proposal on other Urban District Centres and they concluded that it would not undermine the viability and vitality of these.

#### **11.11 Conclusions regarding impact on retailing and planned investment**

11.1.1 Based on the discussions above it is concluded that the Tollgate Village proposal will have an adverse impact of the Town Centre in terms of the comparison goods sector such as to pose a direct threat to the Town Centre' role as a sub-regional shopping centre at the apex of the town's Adopted Retail hierarchy and that the proposed Tollgate Village proposal were it to go ahead would adversely impact existing , committed and planned investment damage such as to cause stagnation in the Town Centre for at least 10 years during which time the Town Centre would lose ground to competing sub-regional centres to thereby compounding its ability to compete as these other centres continue to attract investment throughout the same period.

11.11.2 This is a significant planning consideration but there are others that must be explored in reaching a recommendation and ultimately taking a decision.

#### **11.12 EMPLOYMENT ISSUES**

11.12.1 The importance of job creation is a significant consideration as the proposal represents an opportunity to create a large number of jobs, perhaps not of a type that Council policy is seeking to encourage but nonetheless real jobs. In considering this component of the proposal this report does not seek to underestimate what this can mean to individuals seeking employment but must put this issue in the round with all other material planning considerations.

##### **11.12.2 Employment land**

11.12.3 The applicant states that there is more than enough employment land in the borough to cater for its likely needs to 2032 that is quantitatively true. The Council's own Employment Land Needs Assessment (2015) confirms this. However there are issues of the varying attractiveness of such land to investors and a hierarchy has been identified as part of the 2015 NLP study.

11.12.4 Members are however advised that the quantitative position is just one of two critical considerations. The other is the qualitative condition of all the land identified. In assessing quality it is important to consider availability, accessibility, site constraints inter alia.

- 11.12.5 Having undertaken the Assessment NLP has advised the Council to consider its employment land supply by reviewing its portfolio through the Local Plan process. In this way the Council can develop a portfolio of sites that would support a pro-active strategy for attracting inward investment to the Borough by retaining a portfolio of good quality development opportunities that are most likely to prove attractive to prospective firms.
- 11.12.6 The applicants will argue that they have been providing opportunities for B1 employment when few others have as they speculatively built out Tollgate Business Centre when the market was flat. After a slow start that development is proving successful and is attracting occupiers. They state they are ready to invest in the Tollgate Village project now and consequently do not want to wait for the outcome of the Local Plan process, especially as they began discussion with the Council as long ago as 2013.
- 11.12.7 The Council's Planning Policy Service however highlights the point made by NLP that the Tollgate Village proposal represents a 34% reduction in employment land in Stanway which is 12% of the Borough's total. These are significant proportions and could have strategic implications in view of the high quality of this land for employment use.
- 11.12.8 The Planning Policy Service draws attention to the significance of this land when it states:-
- “..it might be just as appropriate [compared to facilitating the Tollgate Village proposal] for a portfolio to include the Tollgate employment land in view of its locational advantages and status as a higher ranking site within the overall rating of Colchester sites. Sites within the Strategic Employment Zones of North Colchester, Stanway/Tollgate and the Knowledge Gateway in East Colchester received rankings between 19 and 26 while employment sites elsewhere in the Borough were scored between 9 and 21. Tollgate's score of 20 accordingly places it joint 10th out of 43 sites in the Borough.”
- 11.12.9 Of the sites within the Stanway SEZ, Stane Park is considered to be the most likely candidate for attracting inward investment but Tollgate also benefits from locational advantages of good access to the strategic road network at junction 26. Stane Park is given 5 out of 5 for access while Tollgate is given 3 out of 5, which is the same as Whitehall in East Colchester. The point being accentuated by the Planning Policy Service is that the scoring system used in the ELNA is relatively crude and blunt and that the Local Plan process affords the appropriate opportunity to undertake a far more sophisticated analysis to ensure that the right land is retained for the best strategic outcome.
- 11.12.10 In terms of the current Local Plan process the Council expects to publish its preferred options/sites consultation as soon as summer 2016 with final submission/adoption in 2017. It is considered premature to re-allocate this strategically important employment site to accommodate speculative major applications. Orthodox process would involve the Council's Local Plan Committee carefully considering the appropriate strategic direction based on evidence through the local plan in a plan-led system only after extensive consultation on and

consideration of all the available possible strategic options. To that extent the consideration of the merits of the Tollgate Village application by the Planning Committee (as it must do, the application having been placed before the Council) must occur within the context of the current adopted local plan otherwise the wider Local Plan process of considering all options will be subverted by one site which may seem premature before other possible strategic options have been considered. The current position is that the local plan is up to date and is not silent in this regard and the proposals are contrary to the adopted policy framework. Statute is clear, the proposal should be determined in accordance with the local plan unless material considerations indicate otherwise.

- 11.12.11 If we set aside this 'prematurity' argument for a moment, the question must be: is the Applicant right to suggest that the market for B use development in Colchester is poor and that a B use- based scheme is unlikely to go ahead at Tollgate because of a lack of market interest? This being the same argument as put forward by the developer at Stane Park. This matter is addressed at para. 22 of the NPPF and is considered further at 11.12.16 below and the reasonable prospect that the land may be brought forward for employment uses.
- 11.12.12 Clearly, land that benefits from an employment allocation has an enhanced development value over land with no development allocation but any land owner is likely to want to secure the even higher values that a retail allocation/planning permission bring. This is a commercial aspiration rather than a material consideration.
- 11.12.13 The Council's Senior Enterprise Officer has analysed the current market in Colchester for B uses (reproduced in the Appendix) and he concludes that:-
- The recession (with its slowed delivery of new premises) has resulted in there being a shortage of good quality commercial stock
  - As a result there is upward pressure on values with an increase in sale prices and rents
  - Figures demonstrate that there has been an early recovery for industrial space with a lag of 12-18 months for the office sector
  - The office sector in Colchester is currently underperforming against Chelmsford but Chelmsford has a shortage of Grade A offices against demand. It is reasonable to expect that Colchester could respond to this and Tollgate is well placed to do so (as is Stane Park)
- 11.12.14 Specifically the Senior Enterprise Officer states:-
- “ these [new developments at Tollgate by the applicants] include a twelve unit B use speculative development at Tollgate West, which is now almost fully occupied following a slow start. Additionally a new incubator unit has also been opened at Tollgate [Pappus House] adding to the critical mass of B class business occupiers, and therefore addressing the ELNA's concern that the area did not have a strong profile as a key Colchester business location. Despite only just opening, the incubator unit is already half full.”

11.12.15 Members will also have noted on their daily travels around the Borough that the relatively recent changes to permitted development rights introduced by the Government in respect of the ability to convert office premises to residential use without the need for a change of use permission has had a transformative effect. A significant amount of old poor quality office floorspace, particularly in the Town Centre, has now been weeded out through conversion to flats. This up-cycling of accommodation must mean that the stock of difficult to let office accommodation in the town has dwindled and this may help to fuel new investment in replacement stock in locations with strategic advantages now that the economy is picking up and demand is rising.

11.12.16 In the light of on-going economic recovery the Planning Policy Service comments:-

“Ruling out the Tollgate employment land at this stage is accordingly considered to ignore the latest developments in the area and to pre-empt the process of considering the wider spatial and phasing issues in a Borough-wide context. The recent upturn in the take-up of employment premises in Tollgate highlights the rapid nature of change in the commercial property market and the need to retain flexibility and additional capacity. The Borough needs to ensure that the longer term employment options for the area are not limited by the premature removal of a site well placed to meet the need for B employment uses. Applying the test in the NPPF at paragraph 22, it is considered that there is a reasonable prospect of the land being used for employment purposes, and it is therefore justifiable to continue to safeguard the land within the Strategic Employment Zone for B uses.”

11.12.17 Members, in considering the loss of employment land issue, should have regard to an Appeal decision from May 2014 (Unit 10 Tollgate West Business Park) in which the Inspector in dismissing the Appeal concluded:-

“I recognise the benefits of the proposal in filling 2 vacant premises, creating new jobs and supporting the local economy through the use of local manufacturers. Nevertheless, these benefits do not outweigh the significant harm that the proposal would cause through the loss of employment land in the circumstances described above.”

11.12.18 Whilst there is clearly a difference in scale between that case and the Tollgate Village proposal as the Inspector had cited the main issue as being “..is the effect of the proposal on the supply of premises for employment use” there is a strong direct relevance.

### **11.13 Employment generation estimated from the Proposal**

11.13.1 The Applicant has obtained an employment forecast for the Proposal which – from their own interpretation - predicts that the Development will generate some ,000 jobs, of which 450 will be in the construction phase and 550 from the final occupiers, the latter being estimated Full-Time equivalents in direct employment. According to the Council’s Senior Enterprise Officer, this “headline” assertion of 1,000 extra jobs for the Borough requires to be better understood if proper consideration of the Proposal’s jobs impact is to be arrived at.



- 11.13.2 The Planning Application states that there will be an additional 1,000 full-time equivalent jobs over the current 135 FTE on the proposal total area. This is incorrect when held against the below analysis and compared with the Tollgate Village Employment Land Study (January 2015) commissioned from Regeneris by the Applicant. The accompanying Planning Statement by Barton Willmore does not provide any detail on the assumptions behind the above job creation figures. To obtain more detail on these, the Regeneris study supplies headline figures for intermediate (construction) and final jobs but only the methodology for estimating construction job –years is given.
- 11.13.3 The Regeneris assessment of the economic opportunity provided by the proposal can be summarised as:
- An estimated total of 550 FTE permanent jobs created from the build out of 30,812 m2 of new retail and leisure floorspace;
  - Generating a multiplier of 55 FTE jobs in the wider Colchester Borough economy plus 220 FTE in the rest of the East of England;
  - So a sub-total of direct and indirect FTE jobs of 825 from the impact of the final development; plus,
  - 950 person years of construction employment over two years of site development – 475 construction jobs per year..(Construction jobs are not usually taken into significant consideration in terms of elaborating spin-off and multiplier effects).
- 11.13.4 For construction jobs the methodology applied is as recommended by Offpat in a previous technical guidance note (2008) which moves from construction spend to average turnover per FTE construction employee to arrive at the total of construction job-years. The Regeneris study estimates FTE construction jobs at 950 person years, using a turnover per FTE construction job figure of around £57,000 per annum for commercial schemes in 2009 prices (inflated to current) against an estimated cost of £65 million and a two year development period. The figure of 950 person years of employment appears correct. However, technical practice in converting construction job-years to Full-Time Equivalent jobs is to divide by 10 to arrive at 1 additional construction job. Applying this ratio, the total of construction jobs from the Proposal will total 95, not 950.

- 11.13.5 Turning to the direct and final jobs estimate from the development of 550 FTE, these have been re-appraised below to test the Applicant's estimate.

### Re-appraisal of employment density estimates

Use Class	End use	Gross m2	Net m2	Emp density	FTE
A1	comparison	16,304	11,413 (as per PS)	1 FTE per 90m2 NIA	127
A1	convenience	1,858	1,394	1 FTE per 17 m2 NIA	82
Flexible class A3-A5		950	792	1 FTE per 17m2 NIA	47
D2	Total area 6,690 Cinema (1,300 seat) +	3,440	n/a	Cinema based on % of proxy Odeon 30 jobs /1,421 seats	30 cinema
	Indoor adventure centre	3,250		1 FTE per 100 m2 GIA (on a range of 40-100 m2	27
Flexible class A1-A5		5,010	4,175	1 FTE per 90m2 NIA	246
Multi-storey car park	1,523 spaces	Not stated		Proxied from NCP car parks	5
<b>Total</b>		<b>30,812</b>			<b>564</b>

Source: Offpat/HCA, Employment Densities Guide, 2010

Notes: GIA to NIA – reduced by 20%.

Cinema estimated by proportion of staff to seats. Using the Colchester Odeon as a comparison, that has 1,421 seats with eight screens and employs 56 staff – 9 f/t and 47 p/t – so 30 FTE) Taking 1 FTE per 110m2 GIA (on a range of 90-120m2), the cinema would generate 31 FTE. Indoor adventure centre FTE density taken at the upper end, 100m2.

Car park. NCP employ 7 f/t staff across two car parks (Osborne Street and Nunns Road) providing a total of 1,243 spaces. Some of these staff are multi-site so 5 FTE are assumed to adjust and include the larger development proposed.

- 11.13.6 The conclusion from the above is that the Applicant has slightly underestimated the **gross** FTE jobs impact of the direct final job total from the Proposal which is estimated here to be lightly higher at 564 jobs, but well within a margin of 5% variability for employment density calculations. Together with the construction FTE jobs total of 95, the development will generate an overall total of 659 FTE jobs – not 1,000 jobs .

- 11.13.7 As noted above, the total of 659 FTE jobs refers to **gross** and not **net** jobs. In other words, the impact of creating these jobs does not factor in their final impact in terms of the overall jobs total of the Borough. Gross jobs are typically reduced by the effects of two processes: **leakage** – a proportion of jobs will be taken by residents from outside the Borough; and, **displacement** – businesses occupying the development will take some market share from other Borough businesses, reducing the employment count of the latter. The Applicant does not provide an estimate of the jobs going elsewhere or lost through competition as a direct consequence of the impact of the Proposal. In highlighting this counter reaction NLP have not indicated a likely figure
- 11.13.8 Retail (as with leisure) job *leakage* is likely to be at the low end as, given the relatively low skill levels required and low salaries associated with the sector, it is less likely that there would be significant interest in available positions from outside the local area. We would apply a “ready reckoner” of 10% leakage, reducing the final jobs from 659 to 593 from this effect. (*See, English Partnerships, Additivity Guide, 3<sup>rd</sup> ed., 2008 for indicators*). *Displacement* will inevitably occur to some degree but, in the absence of identification by the Applicant of the occupier fascias (business names) for the Development, it is difficult to assess the extent to which these occupiers will go “head to head” with Town Centre retail and leisure businesses. It seems appropriate to apply a ready reckoner (as per the Additivity Guide, above) of between 25% (*‘There are expected to be some displacement effects, but only to a limited extent’*) and 50% (*‘About half of the activity would be displaced’*) In the absence of consultant findings and Applicant evidence, we may apply a reasonable average of 37.5% displacement. Overall, therefore, the Proposal will generate Final jobs on a range between 297- 445, with the average of these being a final total of 371 jobs.
- 11.13.9 The Council’s Senior Enterprise Officer calculates that were the area of the proposal within the SEZ to be developed for B uses this could generate in excess of 1800 FTE’s, based on a development density of 60% and an average of 30sq.m area per FTE. By the same token, if much of this area were to be used for warehousing/distribution purposes, then the number of jobs would be significantly less. In recently determining (refusal) the Stane Park proposal Members considered exactly the same issue and the principles underpinning the Council’s designation of SEZ’s and concluded that the offer of jobs today in a sector that is considered inappropriate within an SEZ did not outweigh the need to retain land for the future delivery of jobs in those sectors that its Adopted Strategic Employment Policies is targeting, particularly where this would also have the added disbenefit of undermining the viability and vitality of the Town Centre.
- 11.13.10 In this context it is not perverse to have an employment zone in which certain categories of development are inappropriate and unacceptable even where they are delivering jobs because a SEZ does not look to encourage any type of job. These are better directed to locations where retail jobs are being encouraged by planning policy. This is the essence of spatial planning that seeks to direct specific uses to the optimal location.

#### **11.13.11 Conclusion regarding employment issues**

- 11.13.12 There is sufficient evidence available to support the Council's view that the demand for high quality, well-located B employment use floorspace is already there and will increase in Stanway and that land such as the current sites with clear strategic advantages should not be unallocated prior to and outwith the Local Plan process. The loss of this strategically important employment land is considered unacceptable in that it will be prejudicial to the overall Employment Strategy of the Council in that it will remove a significant quantity of high quality employment land from the overall stock currently available in Stanway. The Tollgate Area lies within an allocated Growth Area as well as partly within a Strategic Employment Zone and an Urban District Centre. Within the SGA and SEZ 'B class' uses are encouraged and the expansion of appropriate retail jobs within the UDC are similarly encouraged. To allow the effective widening of the area dedicated to retail and leisure at the expense of retaining B use employment land is considered unacceptable as it will shrink the range and type of employment opportunities available within the Stanway area contrary to the Council Strategic Employment Policies.
- 11.13.13 Colchester underperforms against most other Essex local authorities, the County and the East of England in terms of average resident wage levels. The Council's Employment Land strategy is designed to encourage businesses offering well-paid, full-time employment opportunities to grow and locate in Colchester rather than facilitating sectors that are associated with higher levels of part-time working and lower pay. As with the Report considered by Members in respect of Stane Park, this is not to say that lower value, lower paid jobs are decried by the Council - they certainly fit in with and around many people's life styles, skills sets and other commitments and contribute to well-being. There does however need to be balance and variety if the Town is to prosper and drive a resilient local economy that can spin out new opportunities from developing businesses. B use class development, especially of Offices, creates higher average wages and a greater multiplier effect for the local economy and higher value jobs are badly needed to absorb the skills of school and college leavers in the Borough who would otherwise mainly become out-commuters or re-locate elsewhere in the Greater Southeast.

#### **11.14 Sustainable development**

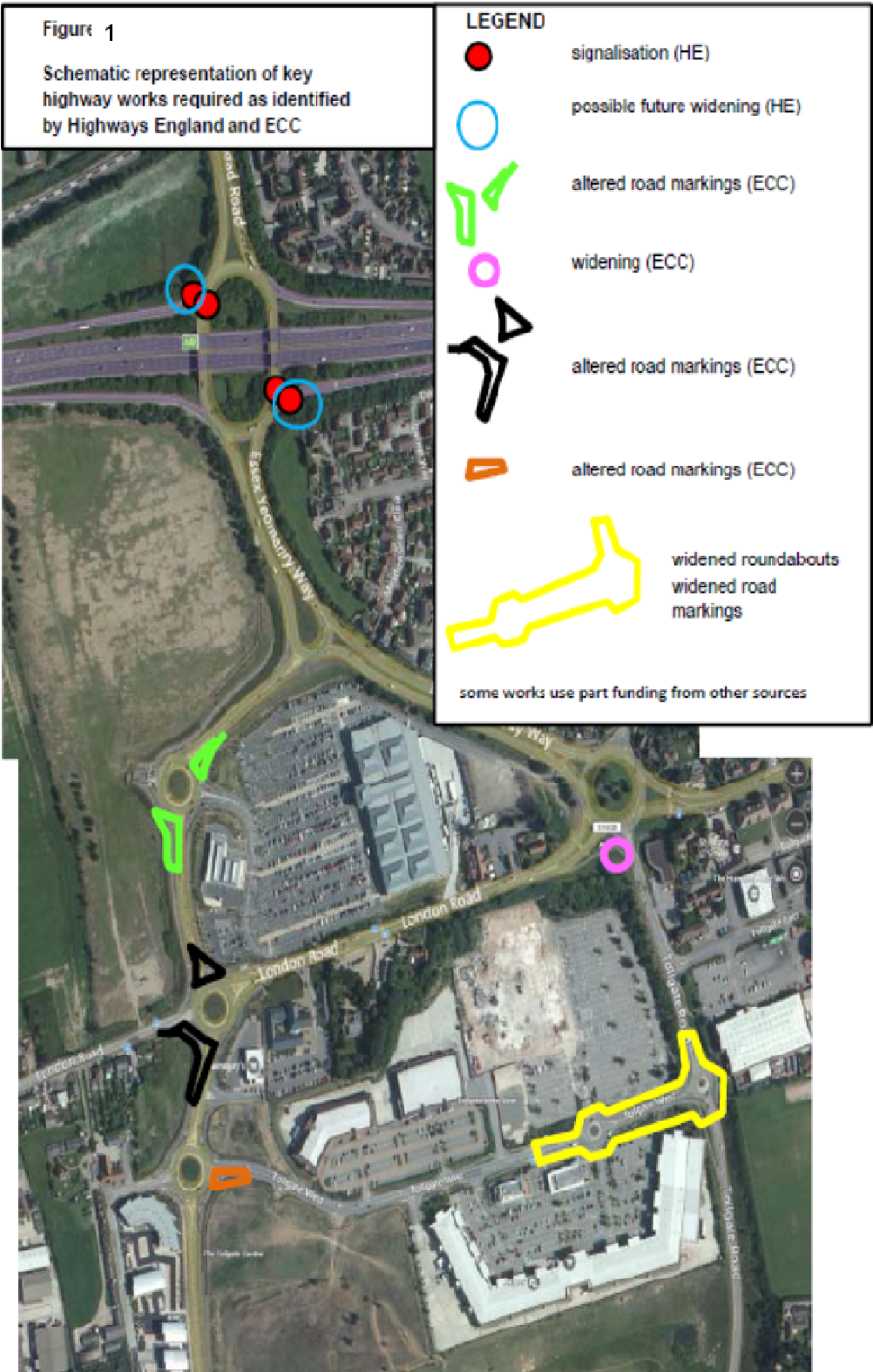
- 11.14.1 Colchester's Town Centre provides a high concentration of town centre uses within a compact area this is walkable and easily accessible by public transport (bus, coach, rail & taxi). With its 14,000 jobs and high density surrounding residential areas, the Town Centre has a critical mass of residents and workers who can take advantage of its facilities. While Tollgate is accessible by bus from the Town Centre the availability of free parking, the lower surrounding residential densities and the lack of accessibility to all parts of Colchester mean that journeys to and from Tollgate are dominated by the private car, Proposals for Tollgate Village would reinforce this dominance by increasing the amount of large scale retail and leisure development, particularly if the development functions as sub-regional attractor.

- 11.14.2 The residential population of Stanway has been expanding and will continue to do so with significant planned growth (e.g. Lakelands under construction 800 homes + Wyvern Farm under construction 358 homes and Five Ways Fruit Farm to follow) the majority of strategic housing growth continues to be focused close to the town centre. (e.g. NGAUE/Chesterwell 1600 homes; Severalls Hospital 1000 homes; Garrison 2600 homes). As the population of central Colchester burgeons it is not desirable to locate a sub-regional attractor away from the town centre where access is easy using sustainable transport modes and well established and where genuine linked trips are possible.
- 11.14.3 NLP concludes that the proposal is of a sub-regional scale that would inevitably compete with the Town Centre. The proposal would enlarge the existing District Centre to a disproportionate extent and would not be consistent with the spatial hierarchy set out within the Adopted development Plan in Policies CE1 and CE2. This hierarchy directs town centre uses to the Town Centre and seeks to maintain the Town Centre's pre-eminence by strictly controlling further growth of Urban District Centres. Development of such a scale and significance as the Tollgate Village proposal would pre-empt decisions best made through the Local Plan on the scale, function and distribution of commercial activity in the Borough. Approval of a large development of town centre uses outside the approved spatial hierarchy would be contrary to Core Strategy Policy SD1 (sustainable development) which provides that growth will be located at the most accessible and sustainable locations in accordance with the settlement hierarchy.
- 11.14.4 As the Planning Policy Service highlights in considering the three dimensions of sustainability, namely economic, social and environmental, the key concerns in this case [as explored so far in this report] are weighing up the advantages of employment creation and provision of more consumer choice over the disbenefits of harm to the vitality of the town centre; conflict with the existing spatial hierarchy; the reinforcement of existing car-dominated travel patterns; and the loss of land safeguarded through the local plan for alternative B use employment uses".

## **11.15 Highway issues**

- 11.15.1 The outstanding issue common both to residents objecting to the proposal and conditionally supporting is a common concern that that the proposed development will significantly exacerbate well known congestion problems in the area. Extensive and protracted discussion/negotiation has been undertaken between the applicants, their highway consultants, Highways England and Essex County Council, as the local highway authority.
- 11.15.2 Members will have seen that Highways England does not oppose the development on the basis that if planning permission is granted suitable mitigation measures/works have been identified to avoid any adverse impact on the efficiency and safety of the A12 trunk road and local junctions directly serving it.
- 11.15.3 Essex County Council as local highway authority has stated that it finds the proposal acceptable subject to the conditions requiring highway works across a number of local junctions and roads. (figure 11 shows these in diagrammatic form)

11.15.4 On this basis and subject to the appropriate mitigation being secured as appropriate there can be no supportable highway objection to the proposal. However members will want to carefully consider the implications for layout and sense of place that now arise from the works being proposed at the eastern end of Tollgate West. (please read Design section of this report)



11.15.5 Essex County Council has also raised no objection to the proposed parking arrangements as the proposals comply with current Adopted parking standards in that the proposed number of spaces planned to be provided do not exceed the relevant maxima. Members will recall that unlike the Adopted residential parking standards which are applied as a minimum parking for non-residential developments are applied as a maximum. The level of parking being proposed is 68% of the maximum and Essex County Council has accepted this figure as appropriate and reasonable in the associated modelling and in subsequently assessing the wider highway impact of the development.

11.15.6 In these circumstances it is concluded that no sustainable objection can be raised on parking grounds

## **11.16 Applicant's rebuttal**

11.16.1 Barton Willmore, agents for the Tollgate Partnership, has submitted (25 November 2015) a seven page rebuttal to the views expressed by NLP and the Planning Policy Service. This is reproduced in full at the appendix.

11.16.2 Their summary and conclusions state:-

“ 52. NLP conclude that the scheme complies with the sequential test and does not identify a significant adverse impact in terms of Town centre vitality and viability. NLP does however raise concerns over potential impact on in-centre investment in terms of Vineyard gate. For the reasons set out above [see appendix] we disagree with NLP and maintain our position that the scheme complies with the NPPF sequential and impact tests (paragraphs 24 & 26) and in turn paragraph 27.

53. Further, no new evidence has been presented on employment land matters which would justify the retention of the application site

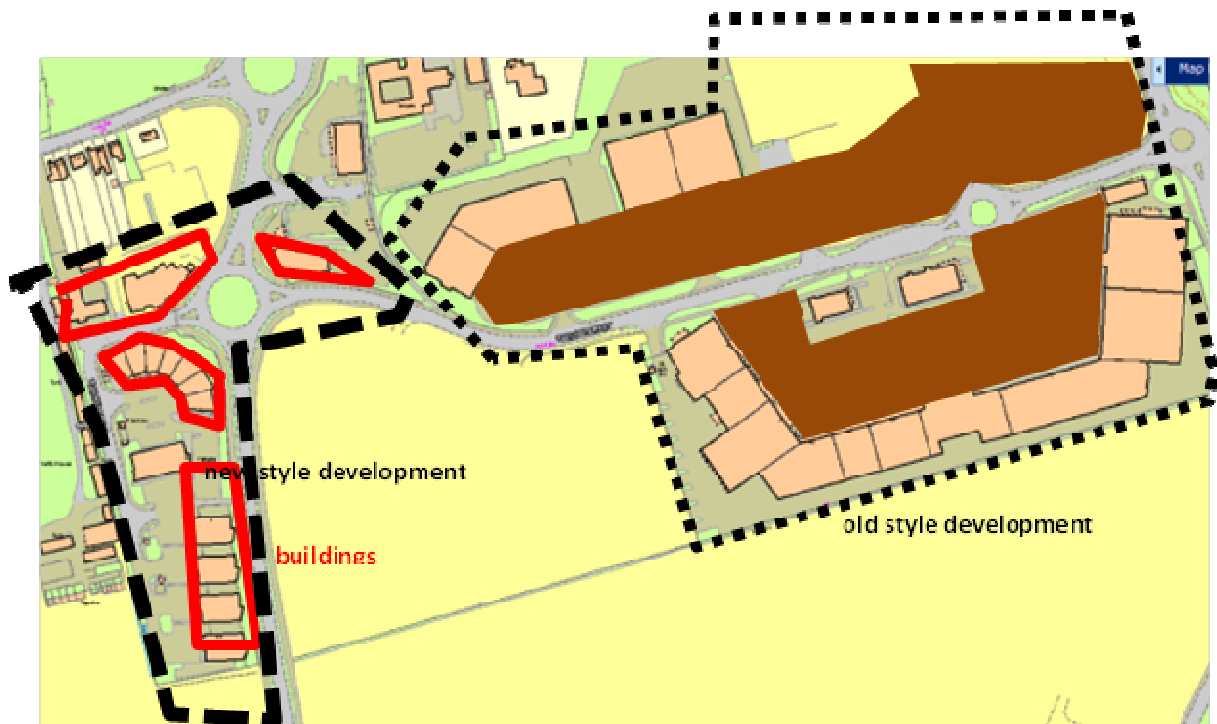
54. Against this background we maintain our position that the application proposals comply with the development Plan and National Guidance. In the absence of harm and considering numerous tangible benefits arising from the proposal, it represents ‘sustainable development’ and should therefore be granted planning permission.’

## **11.17 Design issues**

11.17.1 Owners and operators of out of town centres have realised that shopper habits, behaviours and expectations have changed dramatically since inception in the 1980's but they have inherited old layouts which are not highly adaptable. British Land with their Tollgate Centre and now the Tollgate Partnership are trying to create a new ‘place’ with a completely different ambiance that makes the shopping trip more pleasurable and encourages people to stay.

11.17.2 However, Tollgate and many other out of town venues struggle to reproduce the fine grain, charm, intimacy, human scale and the character that has evolved in town centres over centuries with a rich patina etched into every surface from the passing of time, the impact of human activity and the slow actions of change.

11.17.3 The Tollgate Partnership has responded to the need to create a sense of place in some of their more recent developments. Parking is now more visually subservient 'round the back' and no longer a dominant feature in the street scene. In working up preliminary concept sketch layouts with the Major Development Service, the Tollgate Partnership and their architects looked to develop the various components of the Tollgate Village proposal in a pedestrian friendly way whilst also lining the British Land development in a newly modified sector of Tollgate West. Buildings are of an appropriate scale in this location and the scheme takes advantage of the significant difference in levels between the old Sainsbury's site and the adjacent road levels. The illustrative drawings indicate that customers would be able to enter the main anchor unit directly from London Road at current pavement level or from an entrance 3 storeys lower on the Tollgate West side of the building. Customers would be able to navigate through the building to enter or leave at different levels.



**Figure 12: The recent change in design philosophy where parking has become more subservient to built form**

11.17.4 Undoubtedly the proposal improves some limited parts of the public realm in the form of new plaza's and open spaces and would provide landscape interest on a site that is currently largely devoid of such interest except on its periphery.





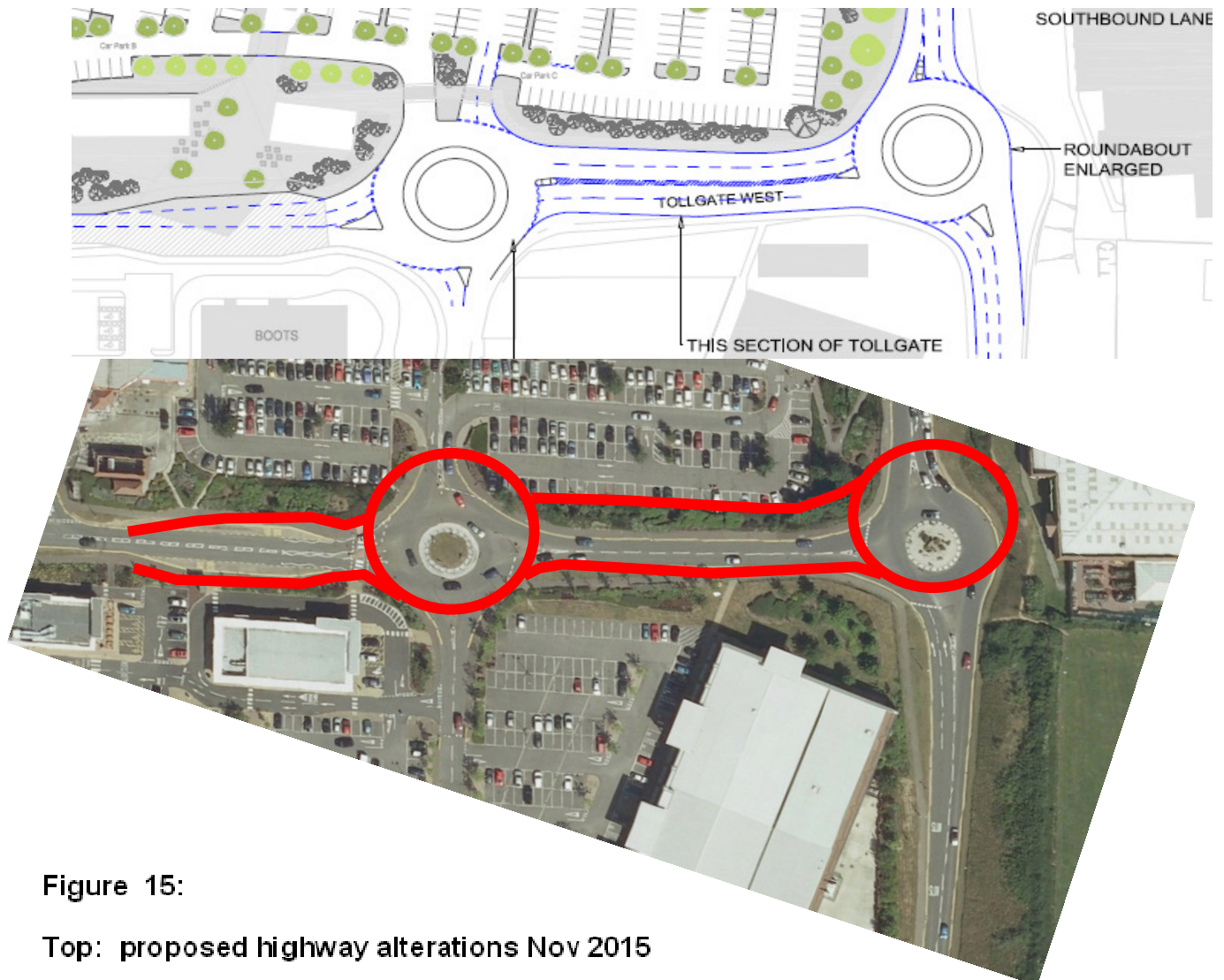
**Figure 13: Example of new public realm; north side of Tollgate West**



**Figure 14: example of new public realm that would be created; south side of Tollgate West**

- 11.17.5 The buildings depicted in the supporting material are all contemporary in appearance. The multi storey car park exploits changes in level.
- 11.17.6 Car parking would continue to make its presence felt visually in the landscape being created but would be less the dominant feature than currently.

- 11.17.7 Unfortunately Essex County Council as local highway authority in attempting to resolve highway issues has required the applicants at a late stage without consultation with the Major Development Service at Colchester to amend the road layout on Tollgate West to an extent that is incompatible with an Urban District Centre and contrary to the Stanway Vision Statement. Far from enhancing the sense of place and building a new pedestrian friendly ambiance it has made the barrier to movement formed by Tollgate West between the Tollgate Centre and the UDC on the north-side of Tollgate West and more of a physical and visual hurdle.
- 11.17.8 The extract below highlights just how dominant the road would be in the event of Planning permission being granted.
- 11.17.9 Whilst the Council may not have objected to the general illustrative layout of the proposed development the latest highway amendments in respect of Tollgate West completely undermine the pedestrian friendly character developed in those illustrative drawings. Whereas the Council had sought to enhance the pedestrian public realm in Tollgate West the latest highway proposals now introduce additional lanes (doubling them at the eastern end of the site) and create an in slip within that part of the site that was to form part of a shared pedestrian realm.
- 11.17.10 Members are reminded of the design principles espoused in the Stanway Vision Statement 2013 when it states:-
- Enhancing the sense of place for the local community in Stanway as well as for Colchester and the surrounding area.
  - Prioritising the linkage of development plots to encourage pedestrian and cycle movement
  - Provision of shared access for pedestrians and cyclists to surrounding residential neighbourhoods » Provision of routes following pedestrian desire lines to encourage easy movement between destinations
  - Ensuring appropriate levels of access and parking for cyclists.
  - Provision of high quality design, way marking and landscaping to promote usage of non-vehicular link
  - Ensure easy access to the existing public transport network
  - Creation of a bus hub for Stanway
  - Easy pedestrian access to public transport from other residential and commercial areas



**Figure 15:**

**Top: proposed highway alterations Nov 2015**

**Bottom: aerial view of existing highway arrangement with proposed highway works as a crude overlay**

## **Other Issues**

### **11.18 Drainage**

From responses received from the relevant drainage bodies it would appear that the proposed development is not expected to have adverse impacts that cannot be appropriately and properly mitigated via reserved matters submissions. No ground/s for refusal in this regard

### **11.19 Archaeology**

The Council's Archaeological Officer is satisfied that the proposed development can proceed without harm to archaeological assets. No grounds for refusal in this regard.

**11.20 Landscape**

The Council's Landscape Officer is satisfied that the proposed development will not harm any landscape of significance and that the scheme can be adequately enhanced through the submission of landscape details in the event that planning permission is granted. No ground/s for refusal in this regard.

**11.21 Contamination**

The proposed development is not expected to pose impacts that cannot be adequately mitigated. No ground/s for refusal in this regard.

**11.22 Ecology**

The proposed development is not likely to adversely harm local ecology. No ground/s for refusal in this regard.

**11.23 Heritage**

Section 66(1) of the PI (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker to pay special regard to the desirability of preserving the setting of listed buildings. In this case, the site is remote from the listed cottage 'Foakes' on London Road which is itself now bounded on its eastern and southern sides by new development and so the proposal is unlikely to have any material or harmful impact on the character and setting of that building. It is therefore considered that this statutory test is satisfied. The historic setting of this building has already been dramatically changed from its former rural context and the proposal would not exacerbate the existing position in your officers opinion.

- 11.23.1 Cherry Tree farmhouse a grade II listed building (now a restaurant and associated accommodation) on the north side of London Road is close to the northern edge of the Tollgate Village site. In developing the area to the south care will need to be taken especially with the proposed street level access to the anchor unit not to dominate the modest farmhouse with oversized new build. Cross sections suggest that with the significant level difference between the front and back of the development site it should be possible to present modest height building form to London Road thereby protecting the setting of Cherry Tree farmhouse.

**11.24 Amenity**

The Council's environmental control service is satisfied that any likely harm to amenity (noise, lighting, odours can be controlled and mitigated through the application of suitable conditions and so there is no ground/s for refusal in this regard.

**11.25 Air quality**

The proposal is not expected to adversely impact designated Air Quality Management Areas (AQMA's) and so there is no ground/s for refusal in this regard.

## 12.0 Overall Conclusion

Whilst the outline proposal offers a number of benefits including:-

- the creation of a significant number of new jobs,
- widening consumer choice at Tollgate,
- enhancing the public realm in part at Tollgate; and,
- injecting significant investment into the Stanway local economy
- contributing to highway improvements in an area noted for regular traffic congestion

and in the context of NPPF paragraph 14 these benefits are considered not to outweigh :-

The harm to:-

- **development plan retail strategy**

The NLP work clearly establishes that the proposal would involve the creation of a sub-regional scale development that would not accord with adopted sustainable development and centres and employment policies (Core Strategy Policies SD1, CE1 and CE2).

- **the emerging development plan and in particular the proposal is *'premature'***

The proposal is considered to pre-empt significant decisions on the Borough's spatial hierarchy which should instead be reached through the Local Plan process.

- ***'planned investment'* in the Town Centre**

This reflects the potential for the proposal to have a significant negative effect on the town centre due to the impact on planned investment.

- **The provision of employment land**

The applicants are not considered to have demonstrated that there is no reasonable prospect of B-class employment uses coming forward for the Strategic Employment Zone portion of the site contrary to Core Strategy Policy CE3, Site Allocations Policy SA STA3 and Development Policy DP5.



## 13.0 Recommendation

### 13.1 REFUSE planning permission for the reasons set out below.

#### 1. Conflict with site allocation as a Strategic Employment Zone

A significant part of the application site is allocated in the Adopted Local Plan as a Strategic Employment Zone (policies CE1, CE3, SA STA3 and DP5). The proposed uses are not in conformity with the provisions of the local plan and the loss of this important high quality Adopted Strategic Employment Zone (SEZ) land is considered prejudicial to the Council's overall employment strategy to the detriment of the medium to long- term economic benefit of the town. It is important to maintain a range of different quality sites available to the market

Notwithstanding that the proposed development will generate new jobs in the service and hospitality sectors the proposal would erode the integrity and future attractiveness of The Tollgate SEZ for business park development that requires excellent access to the Nation's strategic trunk road system. This concern is further compounded by the fact that Stanway is expanding rapidly through planned housing delivery and the Strategic Employment Site offers potentially sustainable employment opportunities for residents who are otherwise forced to travel in search of job opportunities.

This site and its wider hinterland is allocated in the Council's Adopted Core Strategy - Policy SD1 as the Stanway Growth Area (SGA) where development is expected to be focused and where proposals that accord with other policies in the Local Plan will be approved without delay. In defining the Stanway Strategic Employment Zone, within which the application site lies, the Council identified the type of development that would be appropriate to achieve its medium to long- term economic objectives within Table CE1b (as supports employment classification and hierarchy policy CE1 and the strategic designation provided by table CE1a). These appropriate uses are defined as B1b research and development, studios, laboratories, hi-tech; B1c light industry; B2 general industry; and B8 storage and distribution. Secondary land uses are described as B1a offices; C1 hotels, D2 assembly and leisure and sui generis. The proposed land uses comprising A3 or A4 uses do not comply with that policy. The proposed development on this strategically important Employment Zone would seriously undermine the Council's ability to plan for the medium to long term expansion of the Town's economy to create sustainable high value jobs in locations that complement areas experiencing rapid and significant housing growth and with excellent access to the strategic highway network..

The Council's carefully planned employment strategy is reinforced within its Adopted Site Allocations (2010) in so far as Policy SA STA1 and SA STA 3 that make provision for employment use (which exclude those proposed here) and reject the need for town centre uses as proposed.

## **2. Conflict with retail hierarchy policy and Urban District Centre (UDC) policy**

A large part of the application falls outside of the designated Urban District Centre and proposes a significant expansion of retail and town centre use floorspace outside of the defined UDC contrary to Policy CE2b of the Adopted Core Strategy (revised July 2014). It is the Council's opinion that the scale and type of retailing and town centre uses proposed is of an order of scale that would effectively make Tollgate a sub-regional retail/leisure attractor that will inevitably harm Colchester's Town Centre at the apex of the Adopted retail hierarchy as the pre-eminent sustainable destination for such activity within the Borough and sub-region.

Adopted Core Strategy Policy CE1 directs that the Town Centre shall be protected as the sub-regional shopping centre within the Town's retail hierarchy and the Council believes that as a consequence planned investment in the Town centre will be seriously prejudiced and future investor confidence in the Town centre harmed to the extent that growth in the Town centre will stagnate for at least 10 years whilst Tollgate diverts footfall and trade away from the Town Centre. As a result, key regeneration sites within the Town Centre may not come forward as planned and that in the intervening period Colchester's town centre will fall behind its regional competitors as they continue to invest in their town centres.

Having considered the proposal in the context of the National Planning Policy Framework (especially paragraphs 23-27) and associated National Planning Practice Guidance the Council considers that the harm to retailing in the Town Centre arising from the proposal is not outweighed by the benefits that are likely to arise from the proposal in the form of additional new jobs, widened consumer choice at Tollgate and associated public realm improvements.

## **3. Prematurity**

In the opinion of the Council, the Tollgate Village proposal is premature within the context of the Council's ongoing Local Plan process and the programmed publication of Preferred Options and Site Allocations in summer 2016 with the anticipated submission of the final Draft Local Plan in 2017. Key elements of the emerging Local Plan are a review of the future strategic employment land and retail requirements of the Borough. This will involve both a quantitative assessment and a qualitative assessment together with a spatial analysis of the optimal distribution and location of significant growth in town centre and employment uses. This analysis will take account of wider sustainability issues and the Council opines that determination of the Tollgate Village proposal ahead of the next stage of the Local Plan (which will include comprehensive public consultation) will prejudice the ability of the Council to make strategic decisions based on a thorough evidence and analysis of all possible options rather than one that has an advantage of timing through the submission of a speculative planning application. A grant of consent for a proposal of this magnitude would effectively dictate issues of hierarchy prior to any consideration of such issues in the development plan.

#### **4. Sustainable Development**

The expansion of town centre uses of the magnitude proposed in this location with heavy reliance on trip generation by the private car with the resultant adverse impact identified upon the town centre together with the potential loss of planned employment growth within this strategic employment site and the resultant harm to the planned economic growth significantly outweighs the benefits identified to be delivered by the proposals. Consequently, in the opinion of the Council the development is inherently unsustainable contrary to paragraphs 6-14 of the Framework and the Government's explicit intention that the purpose of the planning system is to contribute to the achievement of sustainable development. The proposal is thus contrary to the strategic aims of the adopted local plan. The car-dominated nature of the proposal is further evidenced by the associated highway improvements required by the Highway Authority that would result in the creation of a poor pedestrian environment contrary to adopted policy CE2b and Design Principles set out in the Stanway Vision Statement (2013) that require new development to deliver improvements to the public realm and create a pedestrian-friendly environment. The proposals are therefore also contrary to paragraph 64 of the NPPF and the Government's intention to contribute positively to making places better for people.

#### **14.0 Positivity Statement**

- 14.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.