

## PLANNING COMMITTEE

### 27 April 2023

<i>Present:-</i>	Councillors Lilley (Chair), Barton, Chapman, Chuah, Mannion, MacLean, McCarthy, Pearson, Tate and Warnes
<i>Substitute Member:-</i>	
<i>Also in Attendance:-</i>	Councillors Buston and Goacher

#### 985. Site Visit

A site visit was conducted on the 27 April 2023 and was attended by Councillors Lilley and Chapman. Members of the Committee visited the following site:

- 230031 Land between 7 & 15 Marlowe Way, Colchester, CO3 4JP
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#### 986. Minutes

The Minutes of the meeting held on the 16 March and 30 March 2023 were confirmed as a true record.

#### 987. 230031 Land between 7 & 15 Marlowe Way, Colchester, CO3 4JP

The Committee considered an application for the variation of condition 2 following grant of planning permission of application 212888 (daylight and sunlight report received). The application was referred to the Planning Committee as it had been called in by Councillor Buston who raised the following concerns:

1. Overdevelopment
2. Ignoring the planning conditions imposed on 212888 approved 21 April 2021
3. Development over a formerly publicly accessible Open Green space
4. The previous application for development on this site (210304) was dismissed on 10 September 21, citing, as reason for dismissal (inter alia): "1. The proposed three dwellings, by reason of their detailed design, form and scale (including being higher than the adjacent properties) would be out of keeping with and harmful to the character of the established street scene and surroundings." Thus that the current buildings have been erected on the site without reference to the plans approved in 212888, in particular the height of these buildings. Policies UR 2 and DP 1, and the (Borough) Council's adopted "Backland & Infill Development SPD, are in particular infringed.

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

Chris Harden, Senior Planning Officer presented the application to the Committee and assisted the Committee in its deliberations. The Committee were shown the location of the site and the surrounding properties including the drawings of what had previously been approved on the site. The Committee heard that the application had been made to overcome the issue that plot 1 was 0.715m taller than the ridgeline of the neighbouring property, and that plot 3 was 0.587m taller than the adjacent neighbouring property. It was further noted that plot 1 had been built closer to the neighbouring property than approved and that the rear kitchens on all properties have been built 0.6-0.7m taller than the approved drawings. It was confirmed that the outlook from existing neighbours and the newly built dwellings would not conflict with the 45 degree angle test for the outlook from windows. The Committee were shown close up views of the differentiation in height, the submitted pictures and the approved elevations. The Senior Planning Officer detailed that there was concern raised over the elevations which were shown to be out of keeping and noted that the drawings for the proposal were approved in good faith. Furthermore, it was noted that comments had been received including: noise emanating from the area, that the system favoured the developer and that the development was overcrowding of the street scene. The Committee heard that the principle for development had been previously agreed and that it was for the Committee to decide whether the proposal before the Committee was acceptable. The Senior Planning Officer outlined that in officer's opinion the proposal was acceptable and that the daylight and sunlight report had concluded that there would not be a significant impact that would warrant refusal of the scheme and detailed that the amenity impact had been considered as acceptable. The Senior Officer concluded by outlining that the recommendation was for authority to approve the application subject to any further consultation responses received and that a new unilateral undertaking was not now required as this had been paid on the previous scheme.

Simon Sorrell addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that the first proposed scheme on this site had been refused in 2021 due to the height of the proposal and its impact on the street scene and loss of open space with members of the local community taking comfort from the material planning concern had been addressed through the conditions that detailed that the proposal needed to be built in accordance with the drawings however it is now obvious that the proposal is taller than agreed. The Committee heard that the Council's enforcement team showed that the applicant had misled the Council and a new planning application amendment had been required. It was noted that although they had admitted that it was wrong this did not alter the material consideration and their actions were reprehensible and their non-compliance with the conditions would make the Council look like fools. It was noted that this could set a precedent for future developments and asked the Committee to refuse the application and force the applicant to put it right.

Robert Pomery (Agent) addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that the intention from the original application had not been to mislead anyone and confirmed that the dwellings as built were taller than the street scene than shown on the indicative drawings and confirmed that there had been no intention to deceive. The Committee heard that the height of the dwellings had been re-assessed to conclude that there was no demonstrable harm and that there should be no reason why approval should not be granted. Members heard that the error was an unintended misrepresentation in the height, that the site was being supplied by local merchants, and that if not agreed there would be an appeal on the application. The speaker concluded by detailing that the homes would be left empty and could be susceptible to anti-social behaviour and that it would be disproportionately harsh not to agree this proposal and asked for the Committees support.

Councillor Roger Buston addressed the Committee as Ward Member for Prettygate addressed the Committee and referred back to the comments made by Simon Sorrell and the impact on local residents. The Ward Member detailed that the site had previously been on green public open space and that when the Committee had refused an application in Highfield Drive on grounds of cramped development this should be considered in conjunction with this case. The Committee heard about the principle of development on the site and precedent within planning and how planning law was inflexible detailing that as the dwellings had been built too tall that they would breach the conditions as agreed and noted that the application would have been refused if the buildings had been taller than proposed and closer to existing dwellings. Members heard that the OS maps were incorrect and queried why this was not pointed out at the outset to avoid this issue and detailed that the dwellings should be lowered in height to accord with the permission as agreed.

The Chair addressed the meeting and detailed their concern that the matter was before the Committee again and the precedent that it sets. They noted that a site visit had been conducted and that if the developer had done their job properly the application would not be before Members. The Chair added that Marlowe way was not an area that suffered from anti-social behaviour.

At the request of the Chair, the Senior Planning Officer responded to the points that had been raised by the speakers. The Committee heard that the dwellings when approved were considered to be acceptable and confirmed that the drawings had misled the Committee regarding the height in comparison to the neighbouring properties. They noted that over their 35 years of experience they were aware of this happening on other applications and that it was for the Committee to decide whether the difference in height was too far beyond what was approved. The Committee heard that there was no bias from officers regarding the application as it had been assessed on the evidence that had been submitted and had confirmed that they had reviewed the case in great depth. It was noted that the proposal was separate from the one on Highfield Drive that had been refused and that there were different material considerations with that application. The Senior Planning Officer concluded by detailing that the judgement for the Committee would be to decide on whether the additional height of the dwellings, the proximity of the dwelling (plot 1) and the height of the kitchens was acceptable and that demolishing the dwellings would be an excessive option.

Members of the Committee debated the application querying when the difference in height from the plans became significant and how this was judged and serious concern was raised that the planning conditions had not been adhered to. The Chair queried whether approving the proposal would set a precedent for the Council.

At the request of the Chair, Senior Planning Officer and Development Manager responded to the queries that had been raised. The Committee heard that the difference in height was not insignificant and that 0.3m was the de minimis measurement and that the difference above that should be considered as non-compliance. The Committee also heard that the Committee's decision would not set a precedent in the same way that other functions of the Council did as every application was considered on its own merits and any harm. The Development Manager detailed that no significant harm had been identified and that although it was different did not automatically warrant a refusal.

Members continued to debate the application and expressed their disappointment that of the situation with some members expressing the view that the proposal ruined the street scene and would have an impact on the existing building behind the proposal and that it was a significant amount of difference from the approved scheme with questions being raised how this could have happened.

At the request of the Chair the Senior Planning Officer responded to the points that had been raised. The Committee heard that the street scenes were not properly plotted and heights were not correctly measured in relation to existing properties. It was noted that the dwellings had been built to the correct height in the other approved plans but that the relationship between the existing dwellings had been misrepresented.

Members debated the proposal and commented whether building regulations officers had visited the site and raised significant concerns that one of the sole reasons that the application had been agreed upon had been flouted. Members noted the comments from the agent and asked questioned what grounds of demonstrable harm there were and what options to Committee had other than imposing the height restriction, and the significance of doing so.

At the request of the Chair the Development Manager responded to the points that had been raised. The Committee heard that the Committee could seek a deferral on whether it was possible for the applicant to return the design to that which had been approved. The Committee heard that the Council did not have the resources to check sites and relied upon neighbours and members of the community to bring the matters to the attention of the enforcement team. It was noted that there was not a requirement for the ridge height to be uniform along Marlowe Way.

Members debated the responses from Officers with some members disagreeing with the assessment of the impact of the roofline and the impact on the street scene with some members suggesting that amendments could be made to the roof to lower the height and that if not then it would make a mockery of the committee's decision-making ability. Members queried why the developer had not stopped building when it had become apparent that they were taller than the surrounding neighbours' properties. Some Members detailed that they believed that the buildings had been built in accordance with the correct measurements, with the plans for their relationship to neighbouring properties being incorrect and accepted that there was an error on the site but that it did not substantially alter the street scene.

At the request of the Chair the Development Manager responded to the points that had been raised. The Committee heard that officers understood Members' dissatisfaction with the proposal but confirmed that it was sadly extremely common for applications not to be developed strictly in accordance with permissions but that in this case the ridge height was given serious consideration by the Committee when the original application was determined. It was noted that Officers deemed the difference to be material hence why the application was required but that its acceptability related to consideration of the harm that the additional height and other changes made to the approved application.

Members discussed the application and noted that there were differing ridge heights in the area and expressed concern that the developer had continued to build the proposal from the wall plate to be higher than approved. Members discussed what the process would be for deferral and the options that would be available to them and what the consequences would be if the application was appealed.

The debate concluded with a resolution that was proposed and seconded as follows:

- That the application be deferred to enable officers to discuss options with the developer for lowering the roof ridge of all the constructed dwellings.

*RESOLVED (UNANIMOUSLY)* That the application be deferred to enable officers to discuss options with the developer for lowering the roof ridge of the constructed dwellings.

**988. 223138 23 Ryegate House, Rent Officer, St Peters Street, Colchester, Essex, CO1 1HL**

The Committee considered an application for a change of use from E (c) (ii) (probation services offices) to create managed HMO rooms. The application was referred to the Planning Committee as it had been called in by Councillor Goacher due to the significant concerns raised by residents about the density and quality of the proposed accommodation and lack of adequate parking provision.

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

Chris Harden, Senior Planning Officer presented the application to the Committee and assisted the Committee in its deliberations. The Committee heard that parking on the right-hand side of the entrance had been negotiated and was not part of the proposal as it would be replaced with bin storage and a bike store with minor amendments to the fenestration. The Committee were shown the floor plans of the proposed design as well as the previously approved application for 14 flats in 2015. The Senior Planning Officer outlined that the proposal was within the City Limits and that it met the HMO standards as required but the applicant would be required to apply for an HMO license. It was noted that the site was within walking distance of the City centre and confirmed that the principal of residential use had been established with the previous 14 flats being approved. The Committee heard that prior to this the building had been used as an office which would have required more parking spaces, it was noted that there would not be any parking permits available for the future occupiers. The Senior Planning Officer detailed that the amenity space on site was small and there was no possibility for expansion but noted that castle park was within a hundred metres of the site which could mean residents had access to amenity space. The Committee heard that in officers' opinion the proposal would not cause detriment to the neighbourhood amenity and noted that anti-social behaviour was not something that the Committee could consider as there was no evidence that this was associated with the proposed use. The Senior Planning Officer concluded by detailing that the existing trees on site would not be affected by the proposal and detailed that subject to a unilateral undertaking and details on contamination including asbestos a condition or informative note could be added to ensure that it is removed satisfactorily.

Maxine Rose addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that 40 objections had been submitted to the Council about the application which included parking for the site which was unsuitable for the Dutch Quarter. The speaker detailed that the proposal would lead to vandalism and criminal activity and would have a negative impact on the area as the future residents would have no investment in the area and that the proposed management of the site was unacceptable via remote means. The speaker concluded by detailing that the proposal would be a harmful intensification of the use and asked that the Committee refuse the proposal.

Kenan Kataray (Applicant) addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that they were a local businessman who had lived in Colchester for thirty years and lived five minutes from the site outlining that they will run the site in a professional manner with their son. They

detailed that they had run shops in the night-time economy and said that they were a hard worker who had got onto the property ladder and owned a property on Queens street where they were always asked for rooms. The Committee heard that there was a demand for HMO's in Colchester and that the building had been unoccupied for 8 years and approving the proposal would clean up the building. The speaker concluded that parking would be bought from Stewart House nearby and would be run professionally whilst helping the local economy.

Councillor Mark Goacher addressed the Committee as Ward Member for Castle addressed the Committee and detailed that there were concerns that anti-social behaviour could be created from the proposal and questioned why other HMO's were not being used as well as how the proposal would be managed. The Visiting Member detailed that the proposal would be cramped with concern being raised over the quality of the accommodation that would lead to people being cramped in like sardines in an area that was struggling with parking issues. The speaker concluded by outlining that the if the proposal was not adequately managed and that if not this could create pressure for the Police and asked the Committee to refuse the application.

The Chair addressed the Committee and asked Members to be mindful that they should not pre-judge who would be living in HMO accommodation if the application was minded for approval.

At the request of the Chair the Senior Planning Officer outlined that a condition could be included regarding travel pack information and that the Council's Environmental Health team had not objected to the proposal but could take action if problems did arise. The Committee heard that an additional condition could be added that the management pack is sent to the Council for approval and noted that there had been no objection from Essex County Council's Highways Department.

At the request of the Chair the Development Manager suggested that a condition be added that the proposal and future occupiers are included in the membership of the Colchester Travel Plan Club and outlined that the proposal had been approved by the Council's Private Sector Housing Team as well as meeting Nationally Described Space Standards.

The Committee debated the proposal noting the additional conditions and welcoming the membership to the travel plan club, as well as discussing accessibility in the building with concern being raised regarding the contamination of asbestos. Members debated the parking on site and asked that one of the parking spaces be designated for disabled parking.

It was proposed and seconded that the application be approved as detailed in the officer recommendation and amendment sheet with the additional conditions/informatives as follows:

- Obligation to join Colchester Travel Plan Club to promote sustainable and active travel in perpetuity.
- A Management Strategy for the premises to be submitted to and agreed in writing by the Local Planning Authority prior to the first occupation of the development.
- The provision of a dedicated disabled parking space on site and thereafter so retained and kept available for use.
- A survey and programme for the safe removal of existing asbestos to be undertaken prior to the commencement of development.

*RESOLVED (UNANIMOUSLY)* That the application be approved as detailed in the officer recommendation and amendment sheet with the additional conditions/informatives as follows:

- Obligation to join Colchester Travel Plan Club to promote sustainable and active travel in perpetuity.
- A Management Strategy for the premises to be submitted to and agreed in writing by the Local Planning Authority prior to the first occupation of the development.
- The provision of a dedicated disabled parking space on site and thereafter so retained and kept available for use.
- A survey and programme for the safe removal of existing asbestos to be undertaken prior to the commencement of development.(informative)