



Application No: 150213

Location: Land west, 58 Queens Road, Wivenhoe, Colchester, CO7 9JJ

Scale (approx): 1:1250

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7.3 Case Officer: Sue Jackson

MINOR

Site: Land west, 58 Queens Road, Wivenhoe, Colchester, CO7 9JJ

Application No: 150213

Date Received: 2 February 2015

Agent: Mr Steve Norman

Applicant: Mr A Sherwood & Mr T Sherman

Development: Erection of a detached dwelling with associated parking facilities - resubmission of 112284.

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 was deferred at the Planning Committee meeting on 30th July 2015. The minutes of the meeting state:-

RESOLVED (SEVEN voted FOR, FOUR voted AGAINST and ONE ABSTAINED) that:-

- (i) The planning application be deferred for officers to seek a legal opinion regarding any liability arising from a grant of consent, in relation to flooding risk
- (ii) Subject to the legal advice referred to in (i) above confirming no identified risk, and, subject to the signing of a legal agreement under Section 106 of the Town and Country Planning act 1990 within six months from the date of the Committee meeting to secure the submission of a maintenance schedule for the void and trash screens and agreement to the legal responsibility for implementing the maintenance schedule for the life of the property, the Head of Commercial Services be authorised to approve the application subject to the conditions set out in the report.

- 1.2 Since the July meeting legal advice has been received from Homes and Hills solicitors. Officers have also had a meeting with the Environment Agency. Following this meeting it was considered a further report clarifying the sequential test was required.

2.0 Synopsis

- 2.1 The key issues explored in the new report below are the legal advice received, discussion with the Environment Agency and an assessment of the sequential and exception tests. The previous report to members is produced at the end of the new report.

3.0 New Report

3.1 Following the deferral of the application your officers have had a meeting with the Environment Agency and they have clarified their position in respect of this application and indicated that it is for the Council to decide whether the proposal satisfies the sequential and exception tests and they have no involvement in this matter.

3.2 The legal advice from Holmes and Hills states

I understand your Members are concerned that the advice from the Environment Agency (EA) is unequivocal such that ultimate responsibility is passed back to the Council.

Whilst I recognise Members' concerns, nevertheless, I believe the approach taken by the EA is correct. They are merely a statutory consultee and it is the Council who are required, as a matter of law, to determine the application.

It is for the Council, as the Local Planning Authority, in determining the application, to be satisfied that the Sequential and Exception tests are met. The EA merely provide advice or perhaps "ammunition" to assist the Council. On the face of it, the EA are saying that these tests could be met but ultimately it is a matter for the Council, as the body with jurisdiction to determine the application.

It is important that the Council adopt the correct approach for 3 reasons;

- 1. If they fail to adopt the correct approach, then the planning permission might be challenged by way of judicial review by a third party.*
- 2. The Council should generally follow advice within the National Planning Policy Framework (NPPF) and/or the National Planning Policy Guidance or at the very least have justification for not doing so.*
- 3. There is an outside chance that if the Council granted a planning permission without dealing with the matter properly, it could be liable in negligence. Generally speaking, the Courts will not allow any actions for negligence against Local Planning Authorities as a result of a grant of planning permission to someone. However, in Kane v New Forest DC (2002) the Court of Appeal held that the Authority owed a duty of care to a pedestrian injured following the negligent construction of a footpath which emerged onto the highway at a dangerous place.*

I believe that the Council can grant planning permission subject to it going through the analysis that I have set out above.

3.3 This advice is clear in that that provided the correct approach has been adopted the Court will not allow any action for negligence against a Local Planning Authority. The Sequential and Exception tests are important considerations.

3.4 In applying the Sequential Test the overall aim is to steer new development to sites within Flood Zone 1. The site is within Flood Zone 3. There is residential land available in Flood Zone 1 and the site is therefore not a sequentially preferable location. Local Planning Authorities also have to take into account the flood risk vulnerability of land uses. Zone 3 is split into 2 – Zone 3A and Zone 3B. The site falls within Zone 3A, so more vulnerable uses, which includes residential use, should only be permitted if the Exception Test is passed. The site does not fall within Zone 3B where dwellings are not an appropriate use.

3.5 The fact the site is within Flood Zone 3 means the Exception Test has to be applied.

3.6 The Exception Test requires consideration of the following matters:

- A. It must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risks informed by a SFRA where one has been prepared.
- B. A Site Specific Flood Risk Assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and where possible, reduce flood risk overall

3.7 Considering B first this comprises two elements, firstly, B1, the occupants are safe and secondly, B2 that flood risk elsewhere is not increased.

B1 The occupants are safe as the dwelling includes raised floor levels and residents will have safe access and egress.

B2 Site Specific Flood Risk Assessment has been submitted and considered by the Environment Agency their response is set out in the earlier report attached in appendix 1. The site is potentially at risk from flooding from the River Colne, the Town Drain, reduction in flood storage capacity or an increase in impermeable area. The EA has confirmed the site would not be at risk from the River Colne and the development does not increase flood risk elsewhere. The void under the building will compensate for the loss of any flood storage. In addition there will be no increase in impermeable area. A garage in this part of the garden has been demolished and the site as garden to no 58 would benefit from permitted development rights which include rights to erect outbuildings and construct hard surfacing.

3.8 A above, requires consideration of the wider sustainability benefits of the proposal. The sustainability benefits are that the site is within the Wivenhoe development boundary, there is a need to provide new housing and the site is in a sustainable location. The site is close to Wivenhoe centre and within walking distance of the train station and bus services. The site is also close to shops, schools and other local facilities.

3.9 It is concluded that the exception test is met as residents of the dwelling will be safe and flood risk elsewhere will not be increased. The development will provide wider sustainability benefits which it is considered outweigh the flood issues.

3.10 The earlier report to Members is produced in Appendix 1.

4.0 Conclusion & Recommendation

4.1 On the basis that the 'Exception Test' is met and there is no perceived basis for claims under negligence, the original recommendation of approval remains appropriate and the Committee is requested to consider this update report in the light of their previous deliberations and their conditional resolution to grant planning permission. Officers consider that the previous recommendation remains appropriate and Members are requested to affirm their previous resolution to grant; albeit now no longer contingent upon legal advice. The original recommendation to Grant planning permission subject to i) completion of a legal agreement under S.106 of the Act and ii) the conditions listed in the preceding report.

APPENDIX 1

7.3 Case Officer: Sue Jackson

Due Date: 30/03/2015

Site: Land west, 58 Queens Road, Wivenhoe, Colchester, CO7 9JJ

Application No: 150213

Date Received: 2 February 2015

Agent: Mr Steve Norman

Applicant: Mr A Sherwood & Mr T Sherman

Development: Erection of a detached dwelling with associated parking facilities - resubmission of 112284.

Ward: Wivenhoe Quay

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 Scott for the following reasons: flooding risk, suitability of design in or near conservation area, resident's concerns.

2.0 Synopsis

- 2.1 The key issues explored below are the status of the application, impact on the adjacent Conservation Area, the Queens Road vista and Town Drain which are on the Wivenhoe Local List and impact on resident's amenity. Flood and surface water drainage are referred to in the report. Recent planning history, in particular, application 112284 is also explained.

3.0 Site Description and Context

- 3.1 The application site comprises land formerly part of the garden of no 58 Queens Road. No 58 is a corner property and fronts Paget Road. The site is not within the conservation of Wivenhoe but adjacent to it. No.58 Queens Road is a typical modest interwar bungalow.
- 3.2 This section of Queens Road is accessed either via High Street or Park Road. Since the construction of the Cooks shipyard development Queens Road has been closed to through traffic and there is a turning area just to the east of the site. The road slopes down steeply from High Street and the site is at the bottom of the hill.

- 3.3 Queens Road is narrow and as the majority of properties have no provision for on-site parking vehicles park on the road. The south side of Queens Road from High Street to no 56 (the property immediately west of the site) has a distinct character of Victorian terraced and comprises semi-detached houses with small front gardens, this character is reflected on the north side from High Street to Park Road. The character changes at the bottom of the hill where there is a range of modern dwellings and some side gardens face the road. No 58 is a bungalow and other properties in Paget Road are also single storey. The dwellings in Valley Road were erected in the 1960's. Immediately opposite the site is Pump House converted to residential use.
- 3.4 The north side of Queens Road from High Street to Park Road and the south side from High Street to no 56 are within the conservation area. The application site is therefore adjacent to the conservation area.
- 3.5 Queens Road for most of its length, including the application site, is included on the local list of Historic Buildings as a group vista. The Town Drain and the Pump House opposite the site are also on the local list.
- 3.6 The Town Drain (a river) runs along the west boundary of the site. This drain runs under Valley Road down to the former Cooks shipyard site and discharges into the river.

4.0 Description of the Proposal

- 4.1 This full application proposes a 2-bed roomed bungalow. The property would be constructed of red brickwork with a pitched slate roof and timber windows. These are typical facing materials for the area.
- 4.2 Two parking spaces are indicated to the side of the dwelling. A rear garden of approximately 80 square meters in area is indicated which exceeds the Council's standard for a 2-bed dwelling of 50 square meters. The plans incorporate a raised slab level, a void under the building and the installation of trash screens. These features are required by the Environment Agency.

5.0 Land Use Allocation

- 5.1 The site is within an area shown for predominantly residential purposes. The west boundary is adjacent to the conservation area. The site is within the Environment Agency flood zone 2 and 3. The site is within the Wivenhoe Local List as part of a group vista.

6.0 Relevant Planning History

- 6.1 080026 Application for a single dwelling - withdrawn
- 6.2 081086 Application for a single dwelling- withdrawn
- 6.3 112284 Erection of a detached dwelling land adjacent 58 queens road application refused permission and an appeal has been lodged. Details of this application are explained in the report –Paragraph 15.1

6.4 145404 - Entrance canopy and internal alterations approved 58 Queens Road

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

H1 - Housing Delivery

H2 - Housing Density

H3 - Housing Diversity

UR2 - Built Design and Character

PR1 - Open Space

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

DP12 Dwelling Standards

DP13 Dwelling Alterations, Extensions and Replacement Dwellings

DP14 Historic Environment Assets

DP15 Retention of Open Space and Indoor Sports Facilities

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

DP17 Accessibility and Access

DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

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

Backland and Infill

Community Facilities

Vehicle Parking Standards

Sustainable Construction

Open Space, Sport and Recreation

Extending Your House?

The Essex Design Guide

External Materials in New Developments

Wivenhoe Town Plan and Executive Summary

8.0 Consultations

Highway Authority

- 8.1 This application differs from previous ones on this site in so much as the access is against the boundary line with the adjoining property and therefore visibility splays cannot be provided as the adjacent property is not within the control/ownership of the applicant. It is noted that for previous applications on this site visibility splays of 17m were requested. However, it is recognised that neighbouring properties have vehicle access points which do not provide this level of visibility. Whilst this does not fall within the terms of current policy standards it is also recognised that there is no accident record for Queens Road and therefore the limited visibility does not cause a safety issue. In this regard the Highway Authority does not wish to raise an objection to the above application subject to conditions.

Environment Agency

- 8.2 We have reviewed the information submitted and are able to remove our objection, subject to the conditions below being attached to any permission. You should ensure that you are satisfied the development would be safe for its lifetime, and you should assess the acceptability of the issues within your remit. Please see our detailed comments below.

Fluvial Flood Risk

Our previous letter, referenced AE/2015/118827/01-L01 and dated 13 February 2015, stated that we were consulted on a previous application at this site, your reference 112284, and that all information on flood risk which was submitted in support of the previous planning application should also be submitted in support of the current application.

We have now received the following information in support of the above planning application:

- Flood Risk Assessment (FRA), produced by JPC Environmental Services, referenced CE11/003/HJ issue 1.1, and dated October 2011
- Supporting letter from JPC Environmental Services, referenced CE11/003 and dated 13 May 2013
- Supporting letter from JPC Environmental Services, referenced CE11/003/RME/le and dated 13 February 2014
- Supporting letter from JPC Environmental Services, referenced CE11/003/RMC/al and dated 24 July 2014
- Drawings titled Elevations and Typical Section for Land Adj Queens Road Wivenhoe

The FRA referenced CE11/003/HJ has demonstrated that the users of the proposed development are above the flood level and have safe access/egress from the site. Accordingly, based upon the FRA, the development itself can be regarded as safe during a 1 in 100 year flood event with the addition of climate change. A model of the watercourse conducted by Amazi Consulting Ltd and referenced AMA163 R2 Rev 0 has been used to demonstrate this with flood depths established across the site. The development site lies within the floodplain and could, potentially, reduce the storage capacity of the floodplain during times of high flows. The additional information supplied shows the potential of creating a void under the development thus creating no loss in floodplain until fluvial flows are already overtopping the downstream obstruction.

We have no objection to the planning application, providing that you are satisfied that the development would be safe for its lifetime and you assess the acceptability of the issues within your remit and subject to the conditions below being attached to any permission.

The proposed development will only meet the requirements of the National Planning Policy Framework if the following measure(s) as detailed in the Flood Risk Assessment, supporting letters, and approved drawings submitted with this application are implemented and secured by way of a planning condition on any planning permission.

Condition

The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) and the following mitigation measures detailed within the FRA:

- Finished floor levels are set no lower than 5.50 m above Ordnance Datum (AOD). The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority. Reasons To reduce the risk of flooding to the proposed development and future occupants. To ensure the proposed void can be set at the required level to compensate for the loss of flood storage Technical Explanation Sources of Flooding

The submitted FRA, along with your council's Strategic Flood Risk Assessment (SFRA) demonstrates to our satisfaction that the site would not be at risk from the River Colne during the 1 in 200 year tidal event inclusive of climate change allowance if the Colne Barrier were to breach/fail.

However, whilst the site is not at risk from this tidal source, it remains at risk from the fluvial Wivenhoe Town Drain adjacent to the site, which is classed as a 'Main River'. The FRA has also identified the site to be at risk of pluvial (surface water) flooding and has acknowledged that the proposed development will increase the impermeable area. During heavy rainfall events, there are known existing flooding issues within the Wivenhoe Town Drain network of inadequately sized culverts, drains on Queen's Street and further downstream at the railway bridge and the culvert under Brook Street. This arises from a number of sources including overland flow and surface water flowing down the roads; this is often unable to enter the highway drains on Queens Street, inadequate culverts, inadequate capacity within the open section of the drain and tide locking.

Proposed Void

As discussed previously, the proposal includes a void beneath the building to compensate for any loss of flood storage and to allow water to flow freely beneath the new building as well as raising the finished floor level.

The 'flashy' nature of this catchment means that it is prone to carrying and depositing significant amounts of silt from the watercourse and from overland flow off the roads; therefore there is potential for the void to become silted up. If the void beneath the building became silted up causing a blockage it could result in offsite impacts through the displacement of water around the building.

In our comments on the previous application at this site, we raised concerns that if the proposed void beneath the building is not maintained in perpetuity then the building of the property at this location could exacerbate any existing problem by reducing flood storage capacity.

It is noted that the developer is willing to enter into a legal agreement, as part of a Section 106 and planning condition, to maintain the void. It is the developer's intention to surface the underside of the void (ground level) with concrete, incorporating a series

of shallow drainage channels designed to facilitate the flow of surface water run-off and flood water. It is confirmed that the surface will be readily cleared by pressure washer or hose pipe, to remove any fine silt or minor debris that makes its way through the 'debris' screens.

Whilst improvements to the drainage system and overland flow route have been made in the area, it remains unknown as to whether the mitigation proposed in the form of a void beneath the building will be effective in ensuring flooding is not exacerbated locally.

We have previously raised the issue of inadequate drainage and the history of flooding of the site. The consultant considers that the historic flooding was caused by a number of factors that are no longer in effect or have been substantially improved, however, we must point out that these factors remain an unknown/ un-quantified risk that you must be aware of – for example – if the main river is un-maintained/ blocked, if the highways drains become silted/ blocked and if the void beneath the building becomes blocked. We acknowledge that there is an awareness of the potential for flooding at this location and that Highway Teams may be more likely to maintain the drains, and the Environment Agency have permissive powers to maintain the 'main river' watercourse: this does not however, take away the underlying flood risk which has been seen historically. Please note that whilst we have 'permissive' powers to undertake maintenance to Main Rivers, this is priority based, and may not be a regular maintenance regime. The landowner will have riparian responsibility for the maintenance of the section of river bank abutting their land. We are satisfied that the applicant has further considered providing adequate underground storage which will be sealed to prevent groundwater entering the tank.

Should you have any questions then please do contact either Lucy Hayward (Flood & Coastal Risk Management Officer) on 01473 706 076 or myself on the details below.

Other Mitigation

The property itself will have raised finished floor levels above the 1 in 100 year level, inclusive of climate change allowance, but the depth of flooding due to surface water/pluvial flooding is unknown. The occupants would have refuge within the building and have safe access/egress from the site during a 1 in 100 year fluvial flood level, including allowance for climate change, but the depth and velocity of surface water/pluvial flooding is unknown and the building could become surrounded by water. Summary of Our Position Based upon all the information provided to date we believe that the 'picture' of flood risk has been provided. Although we have no objection to the application we advise your council, through consultation with your emergency planning officer, to carefully consider whether this proposal can be considered an acceptable, sustainable development.

Summary of Flood Risk Responsibilities for your Council

We have not considered the following issues as part of this planning application as they are not within our direct remit; nevertheless these are all very important considerations for managing flood risk for this development, and determining the safety and acceptability of the proposal. Prior to deciding this application you should give due consideration to the issue(s) below. It may be that you need to consult relevant experts outside your planning team.

- ☐ Sequential Test;
- ☐ Exception Test;
- ☐ Safety of people (including the provision and adequacy of an emergency plan, temporary refuge and rescue or evacuation arrangements);
- ☐ Safety of the building;
- ☐ Flood recovery measures (including flood proofing and other building level resistance and resilience measures);

- ☐ Whether insurance can be gained or not;
- ☐ Sustainability of the development.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

To help you with your decision, we have provided further information within a technical appendix on the characteristics of flooding and the mitigation measures proposed to manage this risk, along with more information on the responsibilities for your council.

Informative – Flood Defence Consent

Under the terms of the Water Resources Act 1991, prior written consent of the Environment Agency is required for any proposed works or structures, in, under, over or within 9 metres of the top of the bank/foreshore of the Wivenhoe Town Drain, designated a 'main river'.

The flood defence consent will control works in, over, under or adjacent to main rivers (including any culverting).

Your consent application must demonstrate that:

- ☐ there is no increase in flood risk either upstream or downstream
- ☐ access to the main river network and sea/tidal defences for maintenance and improvement is not prejudiced.
- ☐ works are carried out in such a way as to avoid unnecessary environmental damage.

Mitigation is likely to be required to control:

- ☐ Off site flood risk

We will not be able to issue our consent until this has been demonstrated.

We are pleased to note the proposed dwelling is further from the Wivenhoe Town Drain than the dwelling proposed in application 112284. Our Asset Performance team have advised that they have no objection to the dwelling being within 9m of the main river at this location, however they request that access for operatives to the channel is maintained. This should be taken into account when considering construction of fences or hedges within the 9m boundary of the main river.

Colchester Borough Council Resilience officer

8.3 If all the below measures are put in place then I would agree that the risk of surface water flooding to the site was minimized, but not removed. I would also be satisfied that the erection of the additional dwelling would not adversely affect the flood risk on existing dwellings.

- Use of permeable surfaces
- Floor level set to a minimum of 5.5m aOD
- Rain water harvesting
- Introduction of attenuation discharge
- Site Entrance positioned at North East Corner offers the safest for access and egress purposes.

I would advise that a maintenance schedule of the sub floor void be clearly identified and detailed along with legal agreement of responsibility of this maintenance, now and for the life of the property. As if this maintenance was neglected this could have adverse effects on the sustainability of the property, increase the flood risk to the property and surrounding properties. This should be agreed and in place before allowing the development to go forward.

Looking specifically at 'summary of risk responsibilities for your council' in the EA's response it suggests that there should be an Emergency plan produced by the developer to review.

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 has stated that
Some of the Town Council's previous comments for 11/2284 are reiterated, viz: The development is inappropriate in that it is sited in an area prone to flooding. The property is adjacent to the local conservation area and will be out of keeping with the neighbourhood. The Town Council feel that this is over development of the site. Given the location of the driveway any vehicles would have to reverse onto the highway causing a hazard in what is already a narrow street.
- 9.2 Further comments are: The Town Council note that they were not informed in line with other consultees of this application and that notices were originally not put up on the site. The Town Council believe the solution to flooding is untested and question whether it will be adequate given the overwhelming local evidence of flooding in the vicinity. Also as it relies on continued maintenance would ask the Borough what legal powers are available to enforce this maintenance in later years? The Highway concerns remain in terms of access to the site and the site plan is inadequate in demonstrating that the application conforms to parking standards. There is concern that pile driving will have a massive effect on the surrounding properties and their structural integrity. It is doubtful whether 3.2 of Policy DP1 development must positively contribute to the public realm, identifying, preserving or enhancing the existing sense of place can be attributed to this application.
Policy DP1 of the LDF Development Policies Document (adopted October 2010) states that all development should be designed to a high standard that respects and enhances the character of the site, its context and surroundings. The proposal as it stands is contrary to the aforementioned policies, inappropriate and out of keeping with the local scene. Additionally even though the proposal is currently a single storey one, there is sufficient height to convert the loft at a later stage and would ask, if permission is granted, that a condition that it remain a single storey dwelling be placed on that approval. The loss of permeable land is also of concern.

10.0 Representations

- 10.1 6 representations from residents raising objection plus objections on behalf of the Wivenhoe Society and Queens Road Residents Association have been received.

Wivenhoe Society

- 10.2 It is unfortunate that a garden which was an attractive feature of Queens Road has been allowed to become a waste site. Viewed as an infill development the Wivenhoe Society wishes to make four comments
1. The proposed 1960 style bungalow will detract from the appearance of the neighbouring conservation area. The fenestration is out of keeping with the adjacent terraced houses and is an inappropriate neighbour both to the terraced houses and the Pump House opposite the property. The claim that it will have a positive impact on the townscape is questionable. It is positive relative to the current dereliction but negative relative to the situation when it was a garden. It is bad policy that developers should be allowed to create an eyesore and then use some improvement to the situation as a reason for granting planning permission.
 2. The very lengthy correspondence with the Environment Agency on the flooding issue suggests that the proposed system of floodwater void with trash screens is of an experimental nature. The developers are offering to enter into a legal agreement to maintain both the trash screens and the void. Such an agreement would require monitoring. A contribution towards the cost of such monitoring should be required as a part of any planning permission.
 3. Much of the site will either be built on or will provide car parking space. The appropriate surfaces of the car parking should either be designed so that they are water permeable or so that there is adequate drainage into the nearby watercourse.
 4. The existing bungalow and the proposed new bungalow are shown with four parking spaces between them but the layout will result in the loss of one on-street residents' parking space because of the need to keep access clear to the private parking spaces. The Victorian terraced houses have no private parking because of the date at which they were built so require provision for on road parking. A loss of a space will be to their detriment.

Queens Road Residents Association (QRRRA)

- 10.3 Our objection is based upon local knowledge and context of the site and our objective is to prevent the construction of a building which among other things would increase the damage to existing properties during flash flood events and disrupt the fragile natural and man-made surface and foul drainage systems at the bottom of Queens Road.

As explained in my letter 1 March 2015, it has not been clear whether this is a new application or merely a resubmission of planning applications 112284, formerly 080026 and 081086 relating to the same site which has been consistently submitted and withdrawn since January 2008.

If the committee were merely to consider the application as a re-submission and focus only on the suitability based upon building size; a substantial body of relevant opposition, documented in other submissions to this application, based upon knowledge of flooding, insight into the unresolved demarcation differences between the highways agency, environment agency and local government will be ignored.

It is important that the incremental planning process, which can over an extended period, develop cumulative errors in both fact and execution, does not override logic and knowledgeable local insight; with this in mind a complete timeline of all relevant

applications, decisions, re-submissions misunderstandings and subsequent modifications about this site since January 2008 is being prepared in parallel with this objection.

I have been asked to state that the proposed building would be detrimental to the neighbourhood in the following respects.

Flood Risk and Drainage

In November 2013 the Environment Agency made it clear that the quantifiable and unquantifiable flood risk associated with building on the site have been made quite clear to Colchester Borough Council who was in a better position than the Agency to make decisions based upon local advice, I trust that that local advice has been sought and used in your decision making process.

I have been asked to report that the flooding, noted by many others commenting on the application, has still not been resolved. The frequency of flash flood events described in other submissions on this application is predicted to increase in the future due to climate change.

Highways Agency, the Environment Agency and local government disagree on their responsibilities for maintenance and corrective action relating to the brook, culvert and sanitation. Would Colchester Borough Council be content to take on the stewardship overseeing and co-ordinating of any required maintenance and corrective action necessary as a result of events due to the construction or presence of the proposed building?

A report in Wivenhoe News Spring 2013 noted there had been engineering works in Valley Road following serious flooding and that the culvert under Valley Road and Queens Road had been cleared of debris.

No residents have witnessed any inspections nor culvert clearing taking place. The last recorded visit being 14th February 2012 Onsite Drainage Engineers of Worcester – working on behalf of the Environment Agency attempted to carry out a survey of the Queens Road culvert but had to abandon the attempt as it was too silted up to insert their cameras.

Conservation area and Visual amenity

The proposed building is immediately adjacent to the conservation area and does nothing to enhance the environment; rather its influence detracts from the well maintained Victorian terrace it adjoins.

The prized Queens Road vista and Wivenhoe Brook which is now recognised as significant through its adoption on the local list would be spoiled.

The proposed development removes the natural break, provided by the site, between the Victorian terrace to the West of the river and the low rise building and second Victorian Terrace to the East of the river.

Parking

Parking in Queens Road is extremely limited. The road is only wide enough to allow parking on one side, meaning that the number of front doors far exceeds the number of available parking spaces. The additional parking requirement of this proposed property for residents and their visitors will add to an existing problem.

Nuisance

Bringing building materials and machinery required for construction through the narrow street with cars parked along one side will inevitably result in more damage to vehicles and to the brick walls of the properties on the other side of the road which abut the road as there is no pavement.

Construction at the site will have detrimental impact on the foundations of the adjoining Victorian properties and the water table.

The culvert and other under road drains (both clean and foul) are fragile and liable to suffer damage through construction traffic passing over them and disruption due to additional flow from the proposed new property.

10.4 Six letters of objection have been received from residents 3 residents of Queens Road and three residents of Paget Road. Many of the objections reflect those made by the Town council, Wivenhoe Society and Queens Road Residents Association.

10.5 Residents raise the following objections.

- The notification letter is ambiguous because it is unclear whether this is a new planning application or a resubmission of planning application 112284 rejected by CBC Planning Committee in September 2014.
- The fence along the side boundary of 21 Paget Road and the rear boundary of the site belongs to no 21 the fence is 165cm in height anything over this height is foliage. The garden of 21 will be overlooked from the rear windows in the proposed property
- The use of piles will undermine the structural integrity of the adjacent dwellings
- Legal position of future owners regarding maintenance of the void
- The drawings do not indicate the true dimensions of the proposed development
- Why is the applicant allowed to let the site become untidy?
- The letter from the Environment Agency states that maintenance access to the stream must be available; the proposed building does not appear to fit into the space left after allowing for this access

10.5.1 Process

- This application and the processes linked to it (also in terms of the previous application) must be properly scrutinized and in an open and transparent manner
- Why is the applicant allowed to resubmit a new planning proposal potentially without a Planning Committee convening?
- Wivenhoe Town Council did not receive a consultee notification nor was a planning notice displayed on the site which is adjacent to the conservation area until Councillor Rosalind Scott brought this to the Planning Departments attention at the end of February 2015. Whatever happened to transparency in local government? This contentious planning application has dragged on in various guises since 2008 and the planning department would appear to have failed to be impartial, always favouring the developer and not fully taking account of residents genuine concerns. Unfortunately there have been many discrepancies in reports. This and the earlier application 112284 should be investigated further on the grounds of due process and non-compliance with the code of conduct for officer's. This application continues to demonstrate the same issues as the previous application did (112284) with regards to flooding risks. The planning officer's involvement in driving this through raises further concerns over impartiality. We hope this activity will be

investigated for compliance with the Code of Conduct for officers. We believe due process has not been followed as the application page states this is a full application. The planning officer's comments appear biased. The applications for Land West of 58 Queens Road have been riddled with issues, in part displayed by how long the earlier application took to resolve. We would like this and the earlier application referred to the Ombudsman on the grounds of due process and non-compliance with the code of conduct of the planning officer.

10.5.2 Risk of Flooding

Flash flooding incidents at the bottom of Queens Road are well documented by residents going back over 40 years. They are not historical as suggested. This is clearly demonstrated by the Queens Road Flooding and Damage Diary of Events AL1, AL2 and AL3 which Pat Marsden emailed to you on 18th March 2015. It should be noted that 14th February 2012 Onsite Drainage Engineers of Worcester working on behalf of the Environment Agency (EA) attempted to carry out a camera survey of the culvert running under Queens Road. This was aborted because the culvert was heavily silted up. Onsite Drainage Engineers advised me they would report back to EA with a view to de-silting the culvert after which they could carry out the survey. To date (March 2015) there is no evidence of this being done. In December 2012 the culvert underneath Valley Road flooded the highway and the pathway at the back of the Pump House (Queens Road) necessitating the involvement of Anglian Water, EA, Wivenhoe Town Council and the Police.

Whilst the Environment Agency withdrew their objection to the development in November 2013 they emphatically stated in their letter to you dated 24th March 2014:- "Whilst improvements to the drainage system and overland flow have been made in the area, it remains unknown as to whether the mitigation proposed in the form of a void beneath the building will be effective in ensuring flooding is not exacerbated locally".

As far as I can ascertain the technology of an under floor void with associated trash screens to collect flood water is untested in domestic dwellings in full time permanent occupancy. The developer has failed to provide an assessment of the effects of groundwater. Are you suggesting the property owners in the lower part of Queens Road act as guinea pigs for this untested technology?

The planning application offers the same untested technology of an under-floor void to mitigate flooding. The only example given to date is from use on a temporary structure. No assessment of the effects on the groundwater has been provided, especially as building works may well affect the lithology of the sub-strata.

10.5.3 Potential Flooding Problems

Residents have written to the Environment Agency expressing concern that the construction of a house in the natural flood basin which has for years allowed flash flood water to disperse with little consequence, poses a risk to the adjacent properties and describing first-hand experience of flash flood incident mitigation provided by the site along with knowledge of the flood history of the location. This application appears to minimize the importance of the adjacent water course referring to it as the "Town Drain", rather than acknowledging its true Environmental Agency classification as a river. The flood mitigation measures described in application 150213 focus on the protection offered to the proposed new building and do little to mitigate against flash

flood incidents where “The water level was high on the terraced properties opposite and reached tops of the wooden doors of the small garage which at the time was situated on part of the site of the proposed house”. It is important to note that despite appearing that the Environment Agency do not raise any objection to development on this site; in November 2013 they made it absolutely clear that this was because they had put CBC clearly in the picture with regard to the unknown and unquantifiable risks of flooding spelled out in their previous objections and stated that they were unable to advise on this local situation and passed the responsibility for approving any development to CBC, along with any resulting liability.

Over burdening of existing sewer system the application contemplates adding additional input to an extremely fragile drainage system. There have been problems with both the surface water and foul sewerage systems at the bottom of Queens Road. There are on-going capacity problems with the system coping with excess surface water which regularly exits from the drains at the bottom of Park Road and flows on the surface of Queens Road to join the river by way of the car parking area of the proposed building. Remedial repair work which had to be carried out appears to have overcome the difficulties with the foul system. Prior to the work, sewage systems of homes at the bottom of Queens Road regularly backed up. A neighbour regularly called the local council who were obliged to unblock the system by way of the manhole cover in the road. To add to an already fragile situation, ongoing demarcation disputes between the Transport Authority and Environment Agency about the responsibility for clearing the culvert under Queens Road adjacent to the site have resulted in numerous occasions where clearance work has been attempted but abandoned when inadequate equipment had been brought to the location.

Should the property be constructed and the addition of an additional input and construction upset the delicate balance of the ancient sewage system and drainage it would result in considerable nuisance to neighbours and potentially become extremely costly for the entity or entities contributing to that nuisance given the amount of current and archival documentation highlighting the risk.

As has been frequently observed the surface water drainage and other systems in the vicinity are antiquated and fragile and due to poor maintenance prone to collapse¹. There was yet another collapse in the rear gardens of terraced houses on Queens Road, a little way up from the Brook only recently and the garden of No 54 was flooded with sewage. However the developer and the planning officer refer to these problems as though they are historical problems unrelated to the development because it is the responsibility of the various agencies involved to establish an adequate maintenance system. This information is incorrect. There is no regular maintenance scheme to maintain either the Brook or surface water drainage system in spite of numerous appeals by affected residents.

Towards the end of 2012 there was flooding to the rear of the Pump House (opposite the proposed development) and extensive remedial work had to be carried out to the rear of houses on Valley Road west in Spring 2013 to clear out blocked culverts to prevent local flooding.

Is anyone going to want to purchase a house which may end up sitting on top of a water filled void? Will they want to take on the maintenance of the proposed rainwater soak-away sites and trash screens from any debris which might collect there in the future? Is the developer going to inform any prospective buyer of their riparian responsibilities because I don't think fencing the Brook off will absolve any future purchaser from maintaining their riparian bank? The failure of riparian owners (of whom the developer is one) to date has exacerbated the problems with the flow of water along the Brook which has frequently become blocked by overhanging foliage.

10.5.4 Damage and Vehicle Access

Problems construction traffic operating in the very narrow and steep road will be dangerous and cause damage to my boundary walls as has happened in the past. The weak culvert running under the road at the bottom of the hill could also suffer by the passing of construction vehicles. Modern house building machinery may try to minimise the traditional problems of noise and vibration associated with building, but such would not prevent disturbance of the water table and sensitive drainage systems which have traditionally plagued the bottom of this steep valley.

The car access to the plot will make it difficult to access the property opposite as the turn is too tight; there being no room to manoeuvre if there are cars adjoining the entry opposite.

10.5.5 Over Development and Impact on Conservation Area

Residents disagree "that: the new dwelling would enhance the character of the area. The proposed development would place an incongruous dwelling immediately alongside the historic row of Victorian houses. Their notable historic and aesthetic vista has been acknowledged in the Wivenhoe Conversation Area document and the recent Wivenhoe Townscape Forum planned for adoption March 2012. I believe that it is customary to leave appropriate spacing between old and new developments in order to preserve such historical aspects; this development removes an existing natural break.

The proposed type of development is completely unsuitable for an area which is immediately adjacent to a historic road of Victorian houses which are included in the Wivenhoe Conservation Area.² However although it is currently listed as adjacent, the bungalow and plot are included in the Wivenhoe Conservation Area Appraisal carried out by Qube at CBCs request in 2007 and published on CBCs web site. It is only waiting adoption, something which has been pursued many times and put forward for approval again in the ongoing Wivenhoe Neighbourhood Plan. Queens Road is also recognised on the Wivenhoe Local List as Vista when the List was formally adopted by CBC in March 2012:³ The Brook itself is also on the list and this must be taken into account as a material consideration in the planning process. If the revisions to the Conservation Area currently waiting to be adopted are approved the site itself will become part of the Conservation Area

The original dwelling house of 58 Queens Road (same proprietor), has constructed a driveway which crosses a parking bay, which is not in compliance with the planning consent. This is evidence that the applicant has already displayed disregard for the planning rules, and it evidences the planning officer's bias conduct towards the planning process.

10.6. Officer Comment

Clarification of procedural issues

This application is a resubmission of application 112284 which was refused planning permission for a single reason due to the development having an overbearing impact and resulting in a loss of amenity to residents. The current application is a resubmission as it seeks to overcome the reason for refusal by redesigning the dwelling and reducing its height from 1 1/2 storeys to single storey.

The Council's Professional Support Unit (PSU) sent an acknowledgement in respect of the application to the planning agent on the 9th February 2015 and on the same day PSU also notified the town council, residents and consultees. PSU also published the application in the newspaper on the 20th February (due to the lead in time required for publication). Notices were also displayed at the site.

The case officer has visited the site with the Councils Listed Buildings and Areas Officer (LB&AO) and the Major Development and Projects Manager. The LB&AO considers the proposed dwelling will not adversely affect the character of the Conservation Area and will be an improvement; this view is also shared by the Major Development and Projects Manager.

Planning permission is not required to form a dropped kerb onto a non-classified road these works only require the consent of the Highway Authority.

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

11.0 Parking Provision

11.1 Two parking spaces are shown for the new dwelling.

12.0 Open Space Provisions

12.1 A single dwelling is not required to make any provision for open space.

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 not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990

15.0 Report

Planning History

- 15.1 Application 112284 was considered by the Planning Committee on 19th June 2014. At the meeting Members considered the officer report recommending approval, but were minded to refuse planning permission on grounds of flood risk and other issues, subject to there being no significant implications in doing so. The Delayed Decision Protocol was invoked. A report to the Planning committee meeting on the 11th September 2014 considered the implications of refusing planning permission. The report advised Members that the Environment Agency would not support the Council in defending a refusal on flood issues at appeal and in these circumstances the applicant is likely to be successful in having an award of costs against the Council. The site is not a backland site as it has a frontage to Queens Road. The proposal meets the Councils adopted standards for amenity space and parking and the size of the plot is similar to others close by. In terms of negative impacts on residents it was explained that the new property would be slightly elevated on the plot so the rear ground floor windows will appear higher than normal. The report also stated that a site visit had been carried out, by officers including the Historic Buildings and Areas Officer, Planning Project Manager, and previously by the then Conservation Officer. These officers all agreed that the site does not form an important visual gap and that a dwelling on this site would actually improve the vista not detract from it. The report explained the design has been negotiated by one of the Councils Conservation officers and the building design takes references from a converted Pump House on the opposite side of the road.
- 15.2 The report stated that if Members were minded to refuse permission the refusal reason should relate to the overbearing nature of the development and loss of privacy to residents. Members agreed the recommendation and the application was refused for the following reason:

“Due to the limited depth of the site, the height of the dwelling and its raised floor level it is considered the proposed dwelling would have an overbearing impact on and result in a loss of amenity to neighbouring residents in Paget Road contrary to policy DP1 in the adopted Colchester Borough Development Policies (October 2010).”

Design and Layout

- 15.3 The application involves the erection of a slate hipped roof bungalow of red brick. It includes traditional details including a chimney, exposed rafter feet and a brick plinth. The siting of the building respects the building line along Queens Road with the dwelling set close to the road and tandem parking spaces to the side.
- 15.4 The design represents an acceptable transition between the Victorian dwellings on the west side and the more recent bungalows on the east side.

Scale, Height and Massing

- 15.5 A single storey property is proposed. The street scene drawing shows its height in relation to the adjacent dwellings; it is lower than the houses and a similar height to the adjacent bungalow.

Impact on the Surrounding Area

- 15.6 The site is adjacent to the conservation area and the Queens Road vista including the section of road in front of the application site, is in the Wivenhoe local list. The Town Drain is also on the Local List .
- 15.7 As explained in the report to Members on the previous application the criteria applied by officers to the principle of developing this site are those that would be applied in a conservation area namely whether the site is an important gap and whether or not the development will enhance the area. Residents refer to the site previously forming part of an attractive garden to no 58 Queens Road. Your officers consider the site does not form an important visual gap it provides views to rear gardens in Paget Road and is in a road where the main characteristic is buildings enclosing the street. It is consider a dwelling on this site would actually improve the vista not detract from it.

Impacts on Neighbouring Properties

- 15.8 The dwelling is single storey and will not have an adverse impact on the amenity of residents to the side of the site or those on the opposite side of Queens Road. The site is to the north of the dwellings in Paget Road and will not reduce sunlight. The properties on the opposite side of Queens Road are on higher land. No 56 Queens Road is at a slighter higher level and there is approximately 9 metres separation between the buildings. The rear elevation includes a kitchen window and doors to the main living area. Due to the raised floor level these windows will be slightly higher than normal single storey level. Subject to appropriate fencing and screen planting along the rear boundary it is considered overlooking will be reduced.

Highway Issues

- 15.9 The Highway Authority has raised no objection. The parking provision is acceptable and the development provides on-site parking in an area where the majority of residential vehicles park on the street. A turning facility is not required.

Other Matters

Flood Risk/ Surface Water Drainage

- 15.10 The site is at the bottom of a hill next to the Town Drain in an area known to flood. The flooding is a result of several factors. The existing drainage system is described as antiquated. The Wivenhoe Town Drain (a river) is the responsibility of the Environment Agency but it is alleged maintenance has not taken place. In addition land owners along the banks of the Town Drain have riparian responsibilities. The Highway soakaways are the responsibility of the Highway Authority and again it is alleged there has been a lack of maintenance. However; the responsibilities of these bodies and those of individuals will be unaffected by the erection of a dwelling. The maintenance they carry out will also be unaffected. Planning permission should not be refused because of flooding issues resulting from a lack of maintenance by others.

- 15.11 The Environment Agency has confirmed their main concern is the loss of flood storage and displaced flow in an area which has known flooding issues. The Agency has confirmed the occupants of the dwelling would have refuge within the building and have safe access/egress from the site during a 1 in 100 year fluvial flood level, including allowance for climate change. They then go on to comment “but the depth and velocity of surface water/pluvial flooding is unknown and the building could become surrounded by water” however they do not raise an objection. The void under the dwelling will accommodate surface and flood water and the Environment Agency is satisfied that this area will compensate for the footprint of the dwelling. The dwelling will not therefore reduce the storage capacity in times of flood provided the void and trash screens are properly maintained. A legal agreement is required to secure a maintenance regime and to the responsibility for carrying it out.
- 15.12. The applicants drainage consultant has provide the following information “In terms of frequency / programme of maintenance, and our view of the potential costs involved, we do not foresee this being anything other than a post flood treatment as the principal reason for any build-up of debris beneath the building will be silt / soil carried by flood water passing down the Wivenhoe Town Drain. Other than a visual inspection on an annual basis we would not envisage that this maintenance or ‘post-flood’ treatment would be required for than once in every 10 to 20 years. This assessment is based on the design flood level of 5.2m, the depth and capacity of the ditch, and ground levels across the site”.
- 15.13 In summary any lack of maintenance of the Wivenhoe Town Drain and highway soakaways will not be affected by this proposal as these are works that are carried out by third parties. The proposal will not result in a loss of flood storage or displaced flow as the void under the building will accommodate flood and surface water.
- 15.14 The National Planning Policy Framework states that where individual developments are on sites allocated in development plans through the Sequential Test, applicants need not apply the Sequential Test. The Exception Test comprises two elements sustainability benefits to the community that outweigh flood risk, and that it will be safe for its lifetime, without increasing flood risk elsewhere and where possible reduce flood risk overall. The site is in a sustainable location close to Wivenhoe centre and within walking distance of the train station and bus stops. The site when used as garden to no 58 would have benefitted from permitted development rights which include rights to erect outbuildings and construct hard surfacing.
- 15.15 Resilience is included in the design which includes raised floor levels. Occupants of the dwelling have safe access and egress from the site. The Council’s Resilience officer has been consulted and the response set out above. Conditions are proposed to secure the matters referred to including an Emergency Plan.
- 15.16 Other issues raised by residents are not planning matters for example the impact on the building works on adjacent properties. This is a private matter between the various parties in the same way as any one carrying out work whether or not it required planning permission.

16.0 Conclusion

- 16.1 In determining the previous application for a dwelling Members considered the issues relating to flood risk and surface water flooding and accepted these could not be included as reasons for refusal. Permission was refused solely on the grounds of the overbearing impact and loss of amenity to residents. This application is a resubmission proposing a revised scheme to try to overcome the earlier reasons for refusal. The dwelling has been amended from one and a half storeys to single storey and as a result its height is reduced. The dwelling will have a neutral-positive impact on the conservation area and the Queen Street vista. The proposal also meets the Councils adopted amenity and parking standards.

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 the agreement to provide the following:

To secure the submission of; and approval to, details of a maintenance schedule for the void and trash screens and agreement of the legal responsibility for implementing the approved maintenance schedule for the life of the property

- 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 - Time Limit for Full Permissions

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

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

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the approved plans site layout 1:200, floor layout and elevations, street elevation, typical section.

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

3 - Site Levels Plan

No works shall take place until detailed scale drawings by cross section and elevation that show the development 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 and agreed, in writing, by the Local Planning Authority. The development shall thereafter be completed in accordance with the agreed scheme before the development 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.

4 - Non-Standard Condition/Reason

The development hereby permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) and the following mitigation measures detailed within the FRA:

- Finished floor levels shall be set no lower than 5.50 m above Ordnance Datum (AOD)

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To reduce the risk of flooding to the proposed development and future occupants. To ensure the proposed void can be set at the required level to compensate for the loss of flood storage.

5 - Non-Standard Condition/Reason

The development shall be implemented in accordance with the recommendations, mitigation measures and details in the following documents Flood Risk Assessment (FRA), produced by JPC Environmental Services, referenced CE11/003/HJ issue 1.1, and dated October 2011, Supporting letter from JPC Environmental Services, referenced CE11/003 and dated 13 May 2013, Supporting letter from JPC Environmental Services, referenced CE11/003/RME/le and dated 13 February 2014, Supporting letter from JPC Environmental Services, referenced CE11/003/RMC/al and dated 24 July 2014, Drawings titled Elevations and Typical Section for Land Adj Queens Road Wivenhoe. These measures shall thereafter be retained.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

6 - Non-Standard Condition/Reason

Any vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space, retained in perpetuity.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8 of the Development Management Policies

as adopted as County Council Supplementary Guidance in February 2011.

7 - Non-Standard Condition/Reason

No works shall commence until a detailed sustainable transport mitigation package has been submitted to and agreed, in writing by, the Local Planning Authority. This package will provide information on how the applicant proposes to mitigate any increase in private vehicular use associated with the development and will include appropriate information on all sustainable transport modes including bus and rail travel, cycling, walking (including the local Public Rights of Way network), taxi travel, car sharing and community transport in the vicinity of the site. The package shall thereafter be implemented as agreed for each individual dwelling and/or premises within 14 days of the first beneficial use or occupation of that unit.

Reason: In the interests of mitigating the impact of the approved development by seeking to reduce the need to travel by private car through the promotion of sustainable transport choices.

8 - Non-Standard Condition/Reason

No works shall take place until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction 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.

9 - Non-Standard Condition/Reason

No works shall take place until a scheme of hard and soft landscaping works for the site has been submitted to and agreed, in writing, by the Local Planning Authority. This scheme shall include any proposed changes in ground levels and also accurately identify positions, spread and species of all existing and proposed trees, shrubs and hedgerows on the site, as well as details of any hard surface finishes and external works, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission. The hard and soft landscape works shall include the front and rear boundaries.

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

10 - Non-Standard Condition/Reason

All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out in full prior to the end of the first planting and seeding season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details.

Reason: In order to ensure that there is a sufficient landscaping scheme for the development where there is insufficient detail within the submitted application.

11 - Non-Standard Condition/Reason

No works shall take place until detailed scale drawings by cross section and elevation that

show the development 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 the development 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.

12 - Non-Standard Condition/Reason

Notwithstanding the provisions of Classes A, B, C, D and E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no extensions, ancillary buildings or structures shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interest of visual amenity and to ensure the development avoids an overdeveloped or cluttered appearance.

13 - Non-Standard Condition/Reason

Notwithstanding the provisions of Classes F of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no hard surfaces shall be constructed within the curtilage of the dwelling unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interests of sustainability and to reduce the risk of flooding.

14 - Non-Standard Condition/Reason

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no windows/doors/rooflights/dormer windows or any other form of openings shall be inserted in the any elevation or roof slope of the dwelling except in accordance with details which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

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

15 - Non-Standard Condition/Reason

Notwithstanding the provisions of Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no fences, walls, gates or other means of

enclosure, other than any shown on the approved drawings, unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interests of visual amenity with regard to the context of the surrounding area.

16 - Non-Standard Condition/Reason

Prior to the commencement of any works, additional drawings that show details of any proposed new windows, window reveals, doors, eaves, verges, cills, arches plinth chimney and rafter feet to be used, by section and elevation, at scales between 1:20 and 1:1, as appropriate, shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved additional drawings.

Reason: There is insufficient detail with regard to this to protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

17 - Non-Standard Condition/Reason

No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for: the parking of vehicles of site operatives and visitors; hours of deliveries and hours of work; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; wheel washing facilities; measures to control the emission of dust and dirt during construction; and a scheme for recycling/disposing of waste resulting from demolition and construction works.

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

18 - Non-Standard Condition/Reason

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex

Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

19 - Non-Standard Condition/Reason

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

20 - Non-Standard Condition/Reason

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

21 - Non-Standard Condition/Reason

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 120 "Site Characterisation", and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 21 "Submission of Remediation Scheme", which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 22 "Implementation of Approved Remediation Scheme".

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

22 - Non-Standard Condition/Reason

Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

23 - Non-Standard Condition/Reason

No works shall take place until a Flood Warning and Evacuation/Emergency Plan (including temporary refuge and rescue or evacuation arrangements) has been submitted to and approved by the Local Planning Authority in writing. The approved Plan shall be implemented and remain in place thereafter.

Reason: To ensure residents are adequately protected in times of flooding.

24 - Surfacing Material to be Agreed

Prior to commencement of the development hereby approved full details of the permeable surfacing materials to be used for all private, non-adoptable accessways, driveways, footpaths, courtyards, parking areas and forecourts shall be submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason: There is insufficient information within the submitted application to ensure that these details are satisfactory in relation to their context and where such detail are considered important to the character of the area and sustainable development .

25 - Non-Standard Condition/Reason

Prior to commencement of development details of the flood recovery measures and other building level resistance and resilience measures shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason : To ensure the occupants of the building are safe in times of flood

26 – Non-Standard Condition/Reason

Prior to commencement of development details to demonstrate the building is structurally resilient to withstand the pressures and forces associated with flood water shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason: To ensure the safety of the building as the development has been designed to provide refuge above the predicted flood levels.

19.0 Informatives

(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction &

Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

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

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

(3) PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.

(4) PLEASE NOTE: This application is the subject of a Unilateral Undertaking legal agreement and this decision should only be read in conjunction with this agreement.

(5) Essex County Council as Highway Authority can assist in the production of appropriate material as packs of information are available for purchase by the developer. Contact the Sustainable Travel Planning team on 01245 436135 or email travelplanteam@essex.gov.uk for more information.

(6) INF01 Highway Works - All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to: Essex Highways, Colchester Highways Depot, 910 The Crescent, Colchester, CO4 9QQ.

(7) INF02 Cost of Works - The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.