

# **AMENDMENT SHEET**

## **Planning Committee 18 February 2016**

Item 7. 3 land to north/south of Tollgate West, Stanway

### **Correction:**

#### **P40 paragraphs 3.7 & 3.8**

Reference to 'Code of Conduct' therein should read 'Code of Practice' as in the Council's Planning Procedures Code of Practice which is correctly referred to elsewhere in the report including paragraphs 3.5, 1.4 & 1.1.

Letter dated 16 February 2016 from Ellison's on behalf of Tollgate Partnership Ltd to Andrew Weavers the Council's Monitoring Officer formally requesting that :-

1. The application not be taken to the Planning committee on 18th February 2016 but be presented to the 3 March 2016 Committee instead.
2. Whichever meeting the application is presented the applicant should be given the opportunity to make representation to the Committee

The requests are made on the basis of.....

"..the very real concerns that [they] have, which leading counsel Christopher Katowski QC shares, as to the fundamental – and unlawful – unfairness involved should the Council press ahead on the basis currently envisaged in taking the application to the 18<sup>th</sup> February meeting."

The letter is reproduced in full below:-

16<sup>th</sup> February 2016

Andrew Weavers  
Strategic Governance Manager  
Corporate and Financial Management  
Colchester Borough Council  
Rowan House  
33 Sheepen Road  
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Dear Andrew

**URGENT and BY HAND**

**Planning Application No:** 150239 – Tollgate Village  
**Location:** Land to north/south of Tollgate West, Stanway, Essex

I am writing to you on behalf of the Tollgate Partnership Ltd, to formally request that: (1) this application is not taken to the Planning Committee meeting on 18<sup>th</sup> February 2016, as currently intended, but instead should be considered by the Committee at its 3<sup>rd</sup> March 2016 meeting; and (2) whichever meeting the application is taken to, the applicant (my client) should be given the opportunity to speak at Committee. These requests are made because of the very real concerns that we have, which leading counsel Christopher Katkowski QC shares, as to the fundamental – and unlawful -unfairness involved should the Council press ahead on the basis currently envisaged in taking the application to the 18<sup>th</sup> February meeting.

As you will be aware, at the 17<sup>th</sup> December 2015 Planning Committee meeting members voted not to refuse the planning application and then resolved:

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

Following that deferral I understand that the Council has scheduled returning the application to Committee on 18<sup>th</sup> February 2016 in the full knowledge that, and despite my client's concern that the Chairman and Deputy Chair of the Committee are not able to be present on 18<sup>th</sup> February (but we understand would be able to be present on the 3<sup>rd</sup> March 2016) and despite the fact that both were present on 17<sup>th</sup> December 2015 meeting. My client has requested on a number of occasions that the application be deferred to the 3<sup>rd</sup> March Committee but to date these requests have been declined.

The minutes of the meeting of 17<sup>th</sup> December 2015 show that the Committee passed the following resolution:

**Partners**

Guy Longhurst  
Kevin Wither  
Graeme Wallington  
Nicky Coates  
Seamus Clifford  
Tim Logan  
Charles Penfold  
Robert James\*  
Lee Pearce\*  
Philip Roberts  
Jeanette Hollington  
Alan Holden  
Louise Blend  
Keith List  
Andrew Miranda  
Toby Kramers  
Robert Gair  
Julian Outen

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"A proposal, which had been seconded, to refuse the application was lost (SIX voted FOR, SIX voted AGAINST and the Chairman exercised his casting vote AGAINST."

Accordingly, the Committee has decided not to refuse the application.

The 17<sup>th</sup> December Committee Resolution (as quoted at the beginning of this letter) is clear on what areas members wished to see covered in the officers' report to the subsequent meeting, namely: *"details of the risks to the Council, the financial implications including the need to refer the matter to the Secretary of State for Communities and Local Government, together with recommended conditions and Heads of Terms should the application be granted"*.

However the report which officers have prepared for the subsequent meeting (currently scheduled for 18<sup>th</sup> February 2016) goes substantially beyond the ambit and remit of the resolution passed and includes a wholesale re-arguing and attempt to bolster the officers' original recommendation of refusal, which has already been put to the Committee and lost on the 17<sup>th</sup> December. This is undoubtedly not what members had in mind and is clearly an abuse of the deferral and recommendation overturn procedure. Whereas officers' advice on e.g. whether or not granting planning permission would be vulnerable to legal challenge by way of judicial review, would clearly fall within the four corners of the resolution, re-arguing the planning merits as to whether permission should be granted or refused, plainly does not.

To compound this, and making matters even more unfair, the new report introduces information and arguments that have not previously been put forward or raised, and upon which my client has not had the opportunity to address members.

Paragraph 8 (2) of Part 4 – Section E Colchester Borough Council's constitution (the part relating to planning committee business) states that:

"At every meeting the business of which is to determine planning applications, there shall be the opportunity for public participation immediately prior to the consideration of the planning application in question. (Emphasis added)

As I understand it you notified my client by email on 26 January 2016 that you do not envisage that my client will be given this opportunity at the 18<sup>th</sup> February meeting.

To draw all these points together, it would be fundamentally – and unlawfully – unfair for the Council to proceed as it intends, namely by taking the application back to a differently constituted Committee without the Chairman and Deputy Chair being present (when they were present on 17<sup>th</sup> December), to consider a report from officers which reargues the planning merits of the application and introduces new material and points not made before, and which steps well outside the ambit of the report referred to in the resolution carried on 17<sup>th</sup> December and the deferral and recommendation overturn procedure, and all this without giving my client the opportunity to speak at Committee and address members. To any reasonable person this looks and feels unfair, and in law it would be.

Hence the two requests made at the beginning of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CB'.

Claire Barritt  
Consultant  
Ellisons

Cc Chairman of Planning committee; Chief Executive

In response Andrew Weavers has issued the following letter:-

(please see next pages)



Colchester

Claire Barritt  
Consultant  
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Your ref CB/JJD1/3

Our ref AW

Date 17 February 2016

BY HAND

Dear Claire

**Planning Application No:** 150239 – Tollgate Village

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

Thank you for your letter of 16 February regarding the above application. You have raised two issues in your letter and I will respond to each in turn.

*1. That the application be considered by the Planning Committee at its 3 March 2016 meeting.*

This application is due to be considered by the Planning Committee at its meeting on 18 February 2016. It is true that both the Chairman and the Deputy Chairman have given their apologies for the meeting however the remaining ten members of the Committee who were present at the 17 December 2015 meeting will be present on 18 February 2016. Even if the application were to be considered at the 3 March 2016 meeting there is no guarantee that the same membership will be able to be present. This does not make the process unlawful or unfair as all Councillors who substitute on the Planning Committee are fully trained and will be fully briefed on the application.

*2. That the applicant (your client) should be given the opportunity to speak at the Committee ( whatever date the application is considered).*

You have rightly mentioned that the application was deferred at its meeting on 17 December 2015 for further information and advice in accordance with the Committee's Deferral and Recommendation Overturn Procedure. The supplementary report to the 18 February 2016 meeting contains this further information and explains the risks to the Council as requested by the Committee.

You have made the point that in your opinion the supplemental report introduces new information and arguments which had not been previously put forward or raised and which your client had not had the opportunity to address members of the Committee upon. This is not accepted as the supplementary report does exactly what the Committee requested Officers to provide.

Continued//..



INVESTORS  
IN PEOPLE

It does include additional information but only to the extent that is required to enable the Committee to make an informed decision in accordance with the Deferral and Recommendation Overturn Procedure for example on risk. Furthermore your clients Agent has submitted two letters to the Council commenting on the supplementary report dated 9 and 15 February 2016 together with advice from Christopher Katkowski QC all of which will be circulated to all members of the Committee. Your clients have also written to all Councillors, in a letter dated 16 February 2016, and confirmed that the aforementioned documents cover their concerns.

You have highlighted that the Council's Planning Committee Procedure Rules contain a provision that states that at every meeting the business of which is to determine planning applications, there shall be the opportunity for public participation immediately prior to the consideration of the planning application in question. However the Deferral and Recommendation Overturn Procedure does not provide for additional "Have Your Say" speakers (either for or against an application). The public participation on this planning application was included as part of the 17 December 2015 meeting and in addition this was extended to allow three speakers both for and against the application. As the application was deferred from the 17 December 2015 meeting there is no need for further public participation as the opportunity for representations on the application were made then.

Accordingly the application will be considered by the Planning Committee at its meeting on the 18 February 2016 and there will be no further "Have Your Say" speakers on the application.

Yours sincerely

Andrew Weavers  
**Strategic Governance Manager**

Barton Willmore, agent for the Tollgate Partnership Ltd, has written a detailed representation (dated 15 February 2016) in which the supplemental report and the process that preceded its production is analysed and criticised. The letter also includes a copy of a Counsel Opinion from Mr Christopher Katkowski QC provided to the applicants.

The Barton Willmore letter and Mr Katkowski's Opinion are both reproduced in full below:-

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**SUBMITTED VIA EMAIL**

20638/A3/PN

15<sup>th</sup> February 2016

Dear Mr Pearce

**TOLLGATE VILLAGE**  
**PLANNING APPLICATION REFERENCE: 150239**

As you will be aware, we act on behalf of the Tollgate Partnership Ltd in relation to the above planning application. The application was submitted in February 2015 and considered by members of the Planning Committee on 17<sup>th</sup> December 2015. At that meeting members voted not to refuse planning permission, and following officer advice invoked the Deferral and Recommendation Overturn Procedure (DROP). The Committee minutes states that the DROP was invoked:

*"and a further report be submitted to the Committee giving details of the risks to the Council, the financial implications including the need to refer the matter to the Secretary of State for Communities and Local Government, together with recommended conditions and Heads of Terms should the application be granted."*

Following Committee we requested a meeting with Officers to discuss draft conditions and requested that the application be taken back to the 4<sup>th</sup> February Planning Committee. We subsequently met with Officers on 14<sup>th</sup> January and 28<sup>th</sup> January to discuss draft conditions and S106 Heads of Terms.

During these discussions, Officers confirmed that the application would be taken back to the Planning Committee on 18<sup>th</sup> February despite the Chairman and Deputy Chair of the Planning Committee not being able to attend. We subsequently requested that the application be deferred to the 3<sup>rd</sup> March Committee meeting to allow as many of the original Members including the Chairman and Deputy Chair (of the 17<sup>th</sup> December Committee) to attend. These requests have been repeatedly declined.

We have now had an opportunity to review your report to the 18<sup>th</sup> February 2016 Planning Committee and as you would expect are extremely disappointed with its content. We set out our



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detailed comments below but as a general point it goes far beyond the report requested by Members. It introduces new material (incidentally not provided to the applicant), identifies new concerns not mentioned or set out in the original report to the 17<sup>th</sup> December Committee and includes a number of incorrect and misleading statements. It is clearly aimed at bolstering the Officer's case against the application rather than setting out what was required and requested by Members (see Committee Minute above).

### **Risks to the Council**

The first part of the report, purports to identify the risks to the Council of approving the application.

Rather than repeat the misleading and incorrect statements relating to judicial review, undermining the Local Plan, precedent and prematurity, we attach a written opinion from Christopher Katkowski QC which sets out the correct position. You will see that this concludes that:

*"In overall conclusion, nothing in the Officer's latest report changes the fact that the Committee may safely – and perfectly lawfully – proceed to grant planning permission."*

Notwithstanding this position, and the fact that the Officer's Report seeks to bolster the Officer's justification that the application be refused, it also introduces new information that was not included within the 17<sup>th</sup> December 2015 Committee Report and which is not relevant to the proper consideration of the planning application.

### *Implications for Stane Park Appeals*

The Stane Park applications were refused on 17<sup>th</sup> September 2015 and subsequently appealed on 27<sup>th</sup> November 2015. No mention of the relevance of the appeals was contained within the 17<sup>th</sup> December report despite Officers being fully aware of the position. Also as detailed in the attached legal opinion, precedent, 'simply doesn't apply here'. Clearly each application should be decided on its merits as confirmed in your 18<sup>th</sup> February report (*paragraph 3.34*). The Stane Park proposals have no relevance to the consideration of the Tollgate Village application.

### *The Strategic Plan*

The new report majors on the Council's Strategic Plan 2015-2018. This was not mentioned in the 17<sup>th</sup> December report and clearly does not form part of the Development Plan. It has not been consulted upon or subject to independent examination. It is not relevant to the consideration of the Tollgate Village application.

Despite this, the report continues that the Tollgate Village application will affect the Council's ability to deliver Northern Gateway and protect the Town Centre. We turn to consider both below.

### Northern Gateway

Our position on Northern Gateway has been stated on a number of occasions, most recently in relation to Planning Application ref: 152711. The existing planning permission on that site does not allow or permit a cinema (as has misleadingly been claimed). The site is out of centre (Tollgate Village is part-in, part edge-of-centre), and the site is the highest ranking strategic employment site in the Borough (as defined by CBC's most recent Employment Land Needs Assessment – January 2015).

Any subsequent applications for a cinema on that site (if they are forthcoming) will need to be considered on their merits with regard to the Development Plan and other material considerations. The implications of removing the 'anchor leisure element' (that doesn't actually have planning

permission) is mere speculation. No evidence has been provided to substantiate the 'significant knock on effects' of the cinema scheme not coming forward and they are clearly not relevant to the proper consideration of the Tollgate Village application.

This point was confirmed by you at Committee on 17<sup>th</sup> December when you agreed that reference to Northern Gateway was a 'red herring' and if it and the Strategic Plan were relevant, would have been referred to and highlighted in the 17<sup>th</sup> December Committee Report.

In any event, neither national nor local planning policy offers any protection to out-of-centre schemes or proposals such as Northern Gateway. The impact of Tollgate Village on whether a scheme comes forward or not at Northern Gateway is not therefore relevant to the proper consideration of the Tollgate Village application.

#### Impact on Town Centre

The impact of Tollgate Village on Colchester Town Centre was comprehensively covered in the 17<sup>th</sup> December 2016 Committee Report. There have been no material changes in circumstances that would require further work or analysis on this point. It was debated at length by members.

We would be grateful if you could confirm why NLP have been commissioned to undertake further work to bolster the officer's case against Tollgate Village. Even with this 'new' evidence NLP still do not assert that the proposal will have '*a significant adverse impact on Colchester town centre*', which as both you and NLP know is the relevant NPPF test. If they felt this was the case they would have explicitly stated this.

#### Town Centre Investment

Our position on Town Centre Investment is as set out in the application documentation. To merely list a number of 'investments', the very vast majority of which have already taken place, provides no new evidence on this point. Indeed, they were all known at the time of the original Committee Report and it is therefore surprising that they weren't mentioned at that time.

Our position on Vineyard Gate is as we have always set out. There is no scheme, no agreement in place with the Council, no anchor tenants and no funding. Further, the site is in multiple ownership. It is therefore nonsensical to seek to refuse the Tollgate Village application and the benefits it delivers now in the hope that this scheme comes forward at some point in the future. Even NLP acting for the Council say it will be at least 5 years before anything happens, and in our view that is being optimistic. CBC has provided no contrary evidence on this point.

Interestingly, two further representations are referred to in the report from Historic England and Aquila Developments Ltd. Neither party objected to the application (in the preceding 12 months) and have only arisen now following the 17<sup>th</sup> December resolution. They have clearly been elicited by Officers of CBC as evidenced by the fact that they are not addressed to the relevant case officer. They raise no new substantive issues. Indeed, Aquila's concern is purely commercial (and to our knowledge have no investments in Colchester town centre), and Historic England confirm the Tollgate Village application '*will not directly impact on any designated heritage assets*' (the relevant NPPF test and their specific area of expertise).

## Suggested Conditions and Heads of Terms

As previously stated we have met with Officers twice during January 2016 to discuss the draft conditions and S106 Heads of Terms. Despite reaching what we thought was agreement, the Committee Report contains a number of amendments that have not been previously discussed. We set these out briefly below.

- S106 Litter Picking (1): Despite numerous request for a plan showing the area to be covered by litter picking and a detailed breakdown of costs these have not been provided. We also agreed that the obligation would run for 5 years rather than the 10 years stated. Tollgate Partnership accept the principle of the obligation although the financial figure requires clarification/justification.
- S106 No Poaching of Town Centre Retailers (5): Tollgate Partnership offered this commitment to provide additional security to CBC in relation to mitigating any perceived impact on Colchester Town Centre. The detailed wording will need to be agreed.
- S106 Town Centre Contribution (6): Tollgate Partnership agrees with the principle of a financial contribution and has requested a detailed breakdown of the £50,000 per annum suggested. This has not been provided. The applicant has suggested £25,000 per annum for a period of 5 years.
- S106 CCTV (7): This is not required as an obligation in the S106 Agreement as it is covered by Condition 25.
- Condition 14: We have requested that the Class A3, A4, A5 and D2 uses be allowed to open until 01:00am 7 days a week. This would mirror opening hours on other adjacent nearby facilities.

## Next Steps

We would be grateful if you could acknowledge receipt of this letter and confirm that its content and attachments will be brought to the attention of Members in advance of their consideration of the application on 18<sup>th</sup> February.

Yours faithfully



**BARTON WILLMORE**

Enc:

## Tollgate Village, Colchester

### OPINION

1. We are asked to advise whether the Council can safely proceed to grant planning permission for the Tollgate Village application. In short, the answer to this is undoubtedly - yes. We explain why in a little more detail below, but by way of summary:
  - (i) There is no risk whatsoever of a successful judicial review here. There is ample evidence before Members on which they can properly decide to grant permission. Members are perfectly entitled to go against the Officers' recommendation - Officers recommend, Members decide;
  - (ii) Granting planning permission would not "drive a coach and horses through the Local Plan" – as the Case Officer said at the end of the 17.12.15 Committee meeting. Development Plan policies do nothing more than provide the "norm" – each case has to be decided on its merits and there is no requirement that Members slavishly apply development plan policy where Members conclude that the circumstances of the case warrant the grant of permission;
  - (iii) The question of "precedent" simply doesn't arise here; and
  - (iv) Any argument that the application should be refused on grounds of prematurity would fly in the face of national planning guidance.
2. Judicial review. The short point here is that Members are not obliged to accept the recommendation made in the Committee Report. It is just that – a recommendation. As long as there is (and there is here) evidence on which the Committee can reach a contrary view then any claim for judicial review would undoubtedly fail. The Courts are very clear on this point, see for example the High Court's decision in *Scottish Widows Plc v Cherwell DC* [2013] EWHC 3968 (Admin) at paragraphs 26 - 27 per Burnett J.:

“It was for HPPDM [the Head of Planning] to advise upon, but for the Planning Committee to decide, the question. HPPDM and officials were entitled to their own view of the strength of the competing contentions of the experts, but it was for the Planning Committee to evaluate that evidence and make its own planning judgment bringing its local knowledge to bear. [...]

The factual question for the Planning Committee was one which called for evaluation of conflicting evidence and opinion and the exercise of planning judgment by the Planning Committee.”

3. The evidence submitted with the application provides an ample basis on which Members can decide to disagree with the Officers’ conclusions and recommendation. In order to assist Members the Applicant has prepared a short “route-map” setting out where the evidence dealing with the Officers’ concerns is to be found – a copy of which is attached to this Opinion. As can be seen, there is a clear evidential basis on which Members can properly – and perfectly lawfully – disagree with Officers and decide to grant planning permission. There is no prospect whatsoever of a decision by Members to grant planning permission being overturned on a successful judicial review. In this regard, whilst we note that the Officer’s report for the 18<sup>th</sup> February Committee meeting refers to the possibility that someone might seek judicial review if the Council grants permission, it rightly makes no suggestion whatsoever that it would be unlawful for the Members to grant permission here.
4. Development Plan. It is for the Council – the Members – to decide what is right for their area. Section 38(6) of the 2004 Act provides that applications for planning permission are to be determined in accordance with the development plan unless material considerations indicate otherwise. Development Plan policies are designed to guide, not to prescribe. Where, as in the present case, Members conclude that on balance – and taking into account all material considerations - a scheme warrants the grant of planning permission they may lawfully grant permission even if the scheme constitutes a departure from, and / or conflicts with, the Plan – e.g. if it would involve non-employment uses on allocated employment land. That is not driving a coach and horse through the Development Plan, but rather, and simply, it is deciding the application in accordance with the entirely standard approach to the determination of planning applications, which the legislation provides for, of looking to see whether one should follow the policies in the Plan or whether in the case in hand there is what is seen by Members

to be a good reason on the merits not to do so. Nothing in the Officer's report for the 18<sup>th</sup> February meeting changes this. Officers advise – Members decide.

5. Precedent. Precedent is a meaningless concept here. Every planning application must be determined on its own merits. The grant of planning permission here would not (and as matter of law could not) mean that the Council had to grant planning permission for any other scheme, now or in the future.
6. Prematurity. There is no basis to refuse this application on grounds of prematurity. The PPG makes the position clear in paragraph 21b-014-20140306 (emphasis added):

"In the context of the Framework and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:

the Plan remains at an early stage of development, having not even been submitted for examination. It follows that there is no basis on which this application could be refused on grounds of prematurity. We note that the Officer's latest report argues otherwise but this needs to be seen in context: (a) prematurity was not even mentioned as a reason for refusal when the application was originally reported to Committee; and (b) even now Officers accept that the plan is not at an advanced stage, i.e. Officers accept that one of the two criteria set out above is not met.

8. In overall conclusion, nothing in the Officer's latest report changes the fact that the Committee may safely – and perfectly lawfully - proceed to grant permission.

20638/A5/AI/PN

9<sup>th</sup> February 2016

**TOLLGATE VILLAGE (PLANNING APPLICATION REF: 150239)  
EVIDENCE 'ROUTE MAP'**

1. At the Planning Committee on 17<sup>th</sup> December 2015, Officers recommended that the Tollgate Village application be refused on four grounds. All of these issues have been comprehensively addressed in the application documents and provide a clear evidence base against which to approve the application. To assist Members, the key references are detailed below.

**Loss of Employment Land**

2. There is a substantial oversupply of employment land in the District, including post the development of Tollgate Village. Evidence is provided at:
  - paragraphs 5.49 – 5.56 and paragraphs 6.5 to 6.23 of the Barton Willmore Planning Statement (February 2015).
  - paragraph 43 of the Barton Willmore 'Response to NLP Retail & Employment Critique' (25<sup>th</sup> November 2015).
  - The Employment Land Study prepared by Regeneris (January 2015).
3. The site is not required for employment use and will deliver significant job creation benefits. Evidence is provided at:
  - paragraphs 6.5 to 6.23 of the Planning Statement.
  - paragraph 44 & 45 of the Response to NLP Retail & Employment Critique.
  - paragraphs 19 to 22 of the Barton Willmore 'Response to CBC Spatial Policy Officer Comments' (3<sup>rd</sup> December 2015).
  - The Employment Land Study prepared by Regeneris (January 2015).

**Retail Hierarchy**

4. The scheme will not conflict with the retail hierarchy or retail strategy for Colchester. Evidence is provided in paragraphs 5 to 9 of the Response to CBC Spatial Policy Officer Comments.

**Impact on Town Centre Investment**

5. The proposed development would not result in a significant adverse impact on Town Centre investment, including 'Vineyard Gate'. Evidence can be found at:
  - paragraphs 6.78 – 6.86 of the Barton Willmore Retail & Leisure Assessment (February 2016)
  - paragraphs 32 to 41 of the Response to NLP Retail & Employment Critique.
  - paragraphs 15 & 16 of the Response to CBC Spatial Policy Officer Comments.

**Prematurity**

6. The scheme cannot be considered premature in the context of the emerging Local Plan and national Planning Practice Guidance. Evidence is provided at paragraphs 10 & 11 of the Response to CBC Spatial Policy Officer Comments.

## **Northern Gateway**

7. The Northern Gateway site does not benefit from planning permission for a cinema or unrestricted leisure uses. The only leisure use permitted is a 'health and fitness centre' and it is not therefore relevant to the consideration of the application. The site is also out-of-centre in policy terms and is the highest rated employment site in Colchester. Evidence is provided at paragraphs 23 to 30 of the Response to NLP Retail & Employment Critique.

## **Overall Planning Assessment & Key Benefits**

8. The overall assessment of the scheme and the key benefits it would deliver are set out in Section 6 of the Planning Statement. Section 7 of the Planning Statement provides a summary and conclusions of the proposed development.

Since the supplemental report was published a further 5 letters of representation from local people have been received all expressing support for the proposal as a welcome and needed expansion of facilities on this side of town. Comments generally reflect those previously raised by others and reported earlier.

However, one of the writers commented on her experience leaving the previous meeting:-

"Upon leaving the last planning meeting I realised why families wouldn't go into the town at night, we walked from the town hall to St Johns car park, the streets were in darkness, and the back entrance to St Johns car park is disgusting, smelling of urine and tucked away from public view, why would a family risk their children's safety by taking them into the town centre?"

another comments, amongst other things, thus:-

"I recently visited the town of Shrewsbury where there is a vibrant town centre with some fantastic high quality independent shops, as well as very popular out of town cinemas and retail parks. This is proof that the two can go hand in glove. Colchester Borough council seem to think that they can scare people into stopping out of town developments as a way of covering up their inadequacies in being able to run the borough properly."

Since the report was prepared a representation from Curzon has been received objecting to the Tollgate Village proposal. It is reproduced in full below:-

CURZON

Dear Sir / Madam

#### TOLLGATE VILLAGE PLANNING APPLICATION

Curzon Cinemas have recently concluded a deal with Colchester Council to buy a property at Roman House, Colchester, with an intention to open a 3-screen cinema with attached restaurants.

We have been working very closely with the Council to develop and promote a 'Cultural Quarter' in this area of the town encompassing the First Site Gallery and The Minorities as well as our own cinema.

We have now become aware of the plans for a development on the west side outskirts of Colchester at Tollgate Village which includes plans for a 1,300 seat multiplex cinema.

Curzon Cinemas strongly object to this planning application and would refer to meeting minutes from the Planning Committee Meeting on 17 December 2015 in support of our objection:

Ron Levy, on behalf of Colchester Retail Business Association (CoRBA) addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He explained that he was representing over 200 independent retailers in the town centre, many of whom had struggled through the recession but were fearful of the impact of the proposed Tollgate Village application which they considered would cause stagnation for many years ahead. He referred to the application's divergence from Local Plan policies and the need for priority for the town centre to be maintained.

Councillor Frame did not support the proposal on the basis that the Adopted Local Plan needed to stand the test of time and not be departed from. The proposals would mean the loss of important employment land for which demand was increasing. In addition there would be a serious viability impact for the town centre which would affect its future sustainability. There would be no guarantee that recent investments would continue and he also stated his view that the contents of the Starway Village Plan could only be adhered to if they were not in conflict with the Council's Local Plan policies.

Councillor Liddy explained that he had sympathy with the Committee members. An application bringing with it new job opportunities should be welcomed. However the Council's Local Plan policies were not applied in a vacuum. Whilst the developers had presented an attractive scheme with much to commend it he could see no valid reason for the Committee members to make an exception to the Local Plan policies. He was concerned that a decision to approve the application would set a precedent, would mean that the Local Plan had been discredited, that the Council would be open to accusations of mismanagement and a lack of vision towards the town centre. He also referred to the difficulties which would be encountered by the Council administration following the local elections in May 2016, should approval be given to the application.

Hugo Fenwick addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He referred to the National Planning Policy Framework and quoted Greg Clark - 'Our historic environment - buildings, landscapes, towns and villages - can better be cherished if their spirit of place thrives not withers.' and went on to state that the town centre needed to support vitality and that Colchester town centre was as culturally significant as Colchester itself. He considered the proposals would do irreparable harm to the town centre. The Castle Museum was a prime example of this as well as the large department stores, many small boutiques and vast array of small retailers which all fed off each other. He referred to the significant investment in the town centre recently by Fenwick as well as in Culver Square and Red Lion Walk which was contributing to the future of Colchester as the pre-eminent retail and leisure destination in the region. He referred to the

presumption of Town Centre first in the adopted retail hierarchy where investment was more expensive and took longer to deliver. This was reflected in town centre charges for car parking whereas out of town developments, in the case of Tollgate Village, less than five miles from the town centre and providing for 300 parking spaces were at liberty not to charge. If the application was approved he considered that future investment would disappear and the vitality of the town would dissipate.

Peter Wilks, from Nathaniel Lichfield and Partners who had conducted the employment land needs assessment and retail studies for Colchester, explained that there was concern in terms of the way Tollgate Village would utilise the capacity that would result from future growth. He went on to explain that the findings from their report had shown that if the Tollgate Village development proceeded the town centre would not be able attract future investment and that developers would only consider investments in schemes where there was scope for a return on that investment.

In response to specific questions the Planning Projects Specialist explained that the Council's Local Plan allowed for landowners within the urban district centre at Tollgate to intensify use provided it would not compete with the town centre. The proposal was considered, however, to compete with the town centre at a sub-regional level and, as such would have a significant detrimental impact on the town centre. He went on to explain that it was difficult to predict precisely how many jobs would be created from the development as it was not yet possible to identify likely occupiers. The number of jobs, nevertheless would be significant but may be better located within the town centre as the primary retail centre. He also stressed the importance of retaining the Strategic Employment designation for the site due to the very good access links to the A12. He acknowledged the potential for exceptions to be made to policy in exceptional circumstances but he was of the firm view that the proposals being considered by the Committee did not represent an exceptional circumstance. He further explained that it was for the Local Plan Committee over the forthcoming months to determine the appropriate location for large scale development in Colchester. Peter Wilks explained that the findings from their report had shown that the type of development proposed would divert trade from Colchester town centre, with a small proportion from other nearby town centres. In turn this would lead to stagnation in the town centre with further trade being lost to shopping areas in Bintree, Ipswich and Chelmsford.

Paul Newton for Barton Willmore was of the view that investment in the town centre would not be negatively affected, as evidenced by the introduction of a Primark store and the deal with Curzon for a cinema and, as such the town centre would continue to attract investment.

The advice given in the final paragraph above is incorrect and misguided. Had Curzon known that the Tollgate proposal had a chance of succeeding, when negotiating in good faith with the Council, we may have indeed made a different decision. Curzon Cinemas is still committed to the development at Roman House in the Town Centre, but the Planning Committee decision on Tollgate will directly impact on the funding amount and the timing of Curzon's capital expenditure investment into Colchester Town Centre.

Regards

Robert Kenny  
Director of Cinema Development  
TEL: 0207 438 9519

A representation has also been received from Caddick Developments expressing their view of the likely impact on investment prospects in the Town centre if the event of planning permission for the Tollgate Village proposal being granted. That states:-

Our Ref: 090216vp  
Your Ref: 150239

Mr V Pearce  
Planning Department  
Colchester Borough Council  
Rowan House  
33 Sheepen Road  
Colchester  
CO3 3WG

15<sup>th</sup> February 2016

Dear Mr Pearce

**Tollgate Partnership Ltd - Proposed mixed use development on land at Tollgate West, Stanway, Colchester (LPA ref: 150239)**

#### Introduction

Further to Colchester Council Planning Committees' decision to consider a motion to go against their Officer's recommendation that the Tollgate Village application be refused, we feel compelled to reiterate our commitment to Vineyard Gate and Colchester Town Centre, both of which could be called into question if proposal at Tollgate are permitted.

Much has been made by the promoters of Tollgate concerning the deliverability of Vineyard Gate. Vineyard Gate remains the key development opportunity in the heart of Colchester Town Centre. Like many historic town centre sites, Vineyard Gate is a more complicated development proposition than a typical edge or out of centre site, and will take time to deliver. That it will take time does not however detract from the simple fact that we and the Council remain committed to its development. The granting of planning permission at Tollgate will have a significant impact upon our important planned investment in Colchester Town Centre, as well as the impact upon the vitality and viability of the town centre as a whole.



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The developers supporting Vineyard Gate being Caddick Group and New River Retail are fully committed to the delivery of the development. The 50/50 Joint Venture utilizes both companies strong cash position, Caddick Group specialism in mixed use development and New River Retail being one of the largest owner/managers of shopping centres in the UK.

Caddick Group and New River Retail develop mixed use leisure and retail in a number of UK towns and cities. The knock on economic and social benefit of this type of development is vital for the prosperity of any urban environment. There are numerous case studies showing this which we would welcome presenting to members. Should Tollgate proceed, a huge opportunity to enhance the town centre will be missed for the foreseeable future.

#### **Vineyard Gate**

Plans are currently being developed for a mixed retail and leisure development at the site. The recession has inevitably delayed the project which has undergone numerous redesigns before arriving at the current viable scheme which we believe is more appropriate to respond to retailers' needs post-recession, and having regard to the considerable constraints of the site.

This represents an investment of circa £70m in Colchester and the creation of a substantial number of jobs at varying levels during construction and post completion. Since presenting to Cabinet in 2014 discussions have been ongoing with Colchester Council, both as local planning authority level. We are in discussion with a number of potential anchor tenants however the potential out of town have detracted from our negotiations.

It is also worth noting that any out of town development will adversely affect in town investment values, adversely affecting the viability of in town retail led development.

In summary, Vineyard Gate Developments Ltd are close to implementing the long term held ambition of the Council and redevelop a key development opportunity in the heart of Colchester Town Centre. Process has not been as swift as we would have hoped but this is not unusual when promoting a complex town centre site.

Vineyard Gate is such a town centre site and to proceed with Tollgate would be a major departure from the adopted local and national policy.

The decision at Rushden Lakes in 2014 confirms that the test for demonstrating significant adverse impact on planned investment is high but in so doing acknowledges that the requirement is quite straight forward, only investment that has been made, committed, or is planned warrants consideration.

Vineyard Gate is being actively progressed. That a planning application is still to be submitted, on Vineyard Gate is not sufficient justification to dismiss the proposal. Our investment in the town centre is considerable and would be significantly adversely affected by the proposals at Tollgate and call into question the financial viability of future proposals.

In conclusion, Colchester Town Centre should be the focus for retail and leisure development. Vineyard Gate is a viable proposition and negotiations are at an advanced stage with the Council and other key stakeholders and consultees in order to ensure an anchor tenant can be secured and the submission of a planning application by the end of 2016.

We therefore request that this response is provided to Members in advance of Planning Committee on 18 February so that they can see first-hand that Vineyard Gate Developments Ltd remain committed to delivering Vineyard Gate. We trust these representations have been duly made, but should you wish to discuss any of the issues raised, please do not hesitate to contact me.

Kind regards

Yours sincerely

CC: J Vipond Esq – Colchester Borough Council  
F Nairat Esq – NewRiver Retail (UK) Ltd