

# Planning Committee Meeting

**Grand Jury Room, Town Hall, High Street,  
Colchester, CO1 1PJ**

**Thursday, 08 December 2022 at 18:00**

**The Planning Committee** deals with planning applications, planning enforcement, public rights of way and certain highway matters. If you wish to come to the meeting please arrive in good time. Usually, only one person for and one person against each application is permitted.

# Information for Members of the Public

## Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda (the list of items to be discussed at a meeting), which is usually published five working days before the meeting, and minutes once they are published.

Dates of the meetings are available here:

<https://colchester.cmis.uk.com/colchester/MeetingCalendar.aspx>.

Most meetings take place in public. This only changes when certain issues, for instance, commercially sensitive information or details concerning an individual are considered. At this point you will be told whether there are any issues to be discussed in private, if so, you will be asked to leave the meeting.

## Have Your Say!

The Council welcomes contributions and representations from members of the public at most public meetings. At Planning Committee meetings, other than in exceptional circumstances, only one person is permitted to speak in support of an application and one person in opposition to an application. If you would like to speak at a meeting and need to find out more, please refer to the Have Your Say! arrangements here:

<https://colchester.cmis.uk.com/colchester/HaveYourSay/HYSPlanning.aspx>.

## Audio Recording, Streaming, Mobile phones and other devices

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## Access

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## Facilities

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**COLCHESTER CITY COUNCIL**  
**Planning Committee**  
**Thursday, 08 December 2022 at 18:00**

**The Planning Committee Members are:**

Cllr Lilley  
Cllr Barton  
Cllr Chapman  
Cllr Chuah  
Cllr Mannion  
Cllr MacLean  
Cllr McCarthy  
Cllr Nissen  
Cllr Tate  
Cllr Warnes

Chair  
Deputy Chair

**The Planning Committee Substitute Members are:**

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

**Councillors:**

Tracy Arnold	Molly Bloomfield	Michelle Burrows	Roger Buston	Mark Cory
Pam Cox	Adam Fox	Mark Goacher	Jeremy Hagon	Dave Harris
Mike Hogg	Richard Kirkby-Taylor	Sue Lissimore	Andrea Luxford Vaughan	Patricia Moore
Sam McLean	Chris Pearson	Kayleigh Rippingale	Lesley Scott-Boutell	Paul Smith
Dennis Willetts	Barbara Wood	Julie Young	Tim Young	

# **AGENDA**

## **THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING**

### **(Part A - open to the public)**

**Please note that Agenda items 1 to 2 are normally dealt with briefly.**

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

#### **Live Broadcast**

Please follow this link to watch the meeting live on YouTube:

[\(107\) ColchesterCBC - YouTube](#)

#### **1 Welcome and Announcements**

The Chairman will welcome members of the public and Councillors and remind everyone to use microphones at all times when they are speaking. The Chairman will also explain action in the event of an emergency, mobile phones switched to silent, audio-recording of the meeting. Councillors who are members of the committee will introduce themselves.

#### **2 Substitutions**

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

#### **3 Declarations of Interest**

Councillors will be asked to say if there are any items on the agenda about which they have a disclosable pecuniary interest which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other registerable interest or non-registerable interest.

#### **4 Urgent Items**

The Chairman will announce if there is any item not on the published agenda which will be considered because it is urgent and will explain the reason for the urgency.

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

At meetings of the Planning Committee, members of the public may make representations to the Committee members. This can be made either in person at the meeting or by joining the meeting remotely and addressing the Council via Zoom. These Have Your Say! arrangements will allow for one person to make representations in opposition and one person to make representations in support of each planning application. Each representation may be no longer than three minutes(500

words). Members of the public wishing to address the Committee either in person or remotely need to register their wish to address the meeting by e-mailing [democratic.services@colchester.gov.uk](mailto:democratic.services@colchester.gov.uk) by 12.00 noon on the working day before the meeting date. In addition for those who wish to address the committee online we advise that a written copy of the representation be supplied for use in the event of unforeseen technical difficulties preventing participation at the meeting itself.

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

## **6 Minutes of Previous Meeting**

The Councillors will be invited to confirm that the minutes of the meeting held on 17 November 2022 are a correct record.

**2022-11-17 CBC Planning Committee Minutes**

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## **7 Planning Applications**

When the members of the Committee consider the planning applications listed below, they may decide to agree, all at the same time, the recommendations in the reports for any applications which no member of the Committee or member of the public wishes to address the Committee.

### **7.1 221868 Colchester Crematorium, Mersea Road, Colchester, CO2 8RU**

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Application to vary condition 2 of planning permission (183133)

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

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

**Planning Committee Information Pages v2**

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## **Part B (not open to the public including the press)**



## PLANNING COMMITTEE

### 11 November 2022

<i>Present:-</i>	Councillors Barton (Vice Chair), Chapman, Chuah, J. MacLean, S. McLean, Mannion, McCarthy, Kirkby-Taylor, Tate, and Warnes
<i>Substitute Member:-</i>	Councillor S. McLean substituted for Councillor Lilley Councillor Kirkby-Taylor substituted for Councillor Nissen
<i>Also in Attendance:-</i>	

#### 953. Site Visit

A site visit was undertaken for application 221294 – 43 Roman Road, Colchester, Essex, CO1 1UR on the 14 November 2022 and was attended by Councillors Lilley, Barton, S. McLean and Kirkby-Taylor.

#### 954. Minutes

The Minutes of the meeting held on the 22 September 2022 and 10 October 2022 were confirmed as a true record.

#### 955. 221294 43 Roman Road, Colchester, Essex, CO1 1UR

The Committee considered an application for a single storey rear extension. The application was referred to the Planning Committee as the application had been called in by Councillor Mark Goacher for the following reasons (summarised in the committee report):

- Impact on light into Neighbours gardens
- Excessive height
- Limited garden space would remain
- The drawings do not fully represent the proposed extension (half-light basement, back doors, steps not shown on plans)
- The proposed extension, along with an existing pergola in the rear garden, represents an over-development within a conservation area.

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

Simon Cairns, Development Manager, presented the report and assisted the Committee in its deliberations. The Committee heard that the dwelling was a terraced frontage development 19<sup>th</sup> Century Townhouse in the Conservation area that had yet to be extended to the rear. The proposed extension had been amended since the application had been first submitted to create a smaller extension that was before the Committee and

resulted in an improved relationship with the building and its surroundings. He explained that the proposal included a twin gabled rear form with glazed rear elevations with the extension replacing the side boundary wall. It was noted that the property to the north had also been extended, where no objection had been received from them but added that the pergola in the garden as shown in the presentation was not part of the application. The Development Manager concluded by outlining that the officer recommendation was for approval as detailed in the report.

Rosie White addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. The Committee heard that the property was currently up for sale and that the application site and the property immediately south were a unique pair of townhouses which had remained unchanged since they had been built 130 years ago. The speaker elaborated that the proposal would be 1.5 storeys tall with a height of 4 metres and 6 metres wide and would be overbearing to the neighbouring properties. The speaker raised concern that the area and specifically the walls were protected by Article 4 but would be destroyed by the proposal and noted that although there were extensions on other dwellings none of them had half light extensions or black metal doors. The speaker concluded by drawing attention to the fact that the materials for the roof had not been detailed and that part of the wall at the rear of the garden could contain parts of the original roman city wall.

James Pilgrim addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that the property was sold subject to conditions and that the proposal was in compliance with all of the Councils policies.

Councillor Goacher attended and with the consent of the Chair addressed the Committee. The Committee heard that the length of the extension did concern the Ward Member and whether it was in-keeping with the area especially with regards to the doors and their association with the conservation area. The Committee heard how there was a request for clarification on the wall, its origins and status and queried whether the half light basement had been taken into consideration when coming to a decision. The visiting Member concluded by contending that the height of the extension was overbearing.

The Development Manager addressed the Committee responding the points made and questions asked by speakers. The Committee heard that the pergola was a matter that would be subject to a separate application whereby interested parties would be able to comment at that time. He added that the rear wall of the property did follow the line of the old Roman wall but that this had been rebuilt with brick in the 19<sup>th</sup> Century and that this application would not affect any of the instances of original fabric that were still in existence. The Development Manager noted that although the height of the street front was at a different level the rear elevation of the property the rear garden was considered to be ground level for the extension. It was noted that although the extension had not been designed to look Victorian and that using the 45 degree rule in planning lighting would not be effected for the basement. The Development Manager advised the Committee that many of the houses on Roman Road had extensions and that the form of the development would not be intrusive and its design was acceptable and that the proposed French doors dark colouring would be visually recessive. The Committee were asked to note that although part of the Victorian brick wall would be lost it was not a feature of scarcity within the borough but appreciated the desire to preserve it.

The Committee debated the application on the issues including the length of the proposed extension being approximately two thirds of the size of the existing footprint of the building,



the basement and the impact of light this would have on it as a living area.

The Development Manager advised the Committee that although the property was up for sale this was not a material consideration as the permission for the proposal was tied to the land and not to the owner.

*RESOLVED (UNANIMOUSLY)* that the application be approved subject to the conditions and informatives set out in the report.

**956. 222402 44 Marlowe Way, Colchester, Essex, CO3 4JP**

The Committee considered an application for the replacement of an existing flat roof single storey rear extension with a proposed two storey extension. The application was referred to the Planning Committee as the Applicant was an Officer of the Council.

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

*RESOLVED (UNANIMOUSLY)* that the application be approved subject to the conditions and informatives set out in the report.





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## Item No: 7.1

**Application:** 221868

**Applicant:** Colchester Borough Council

**Agent:** Mr Lee Copping

**Proposal:** Application to vary condition 2 of planning permission.  
(183133)

**Location:** Colchester Crematorium, Mersea Road, Colchester, CO2  
8RU

**Ward:** Berechurch

**Officer:** John Miles

**Recommendation:** Approval

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

- 1.1 This application is referred to the Planning Committee because the applicant is Colchester City Council.

## **2.0 Synopsis**

- 2.1 The application seeks to vary the approved drawings of application 183133, under which permission was granted for alterations to the crematorium's southern vehicular access point. Revised railing and gate designs are now proposed. Key issues for consideration are visual impacts, and any impact upon trees and landscaping, amenity and highway safety. In this instance the proposed revisions to the approved scheme are not anticipated to have an adverse impact with regards to any relevant material planning considerations.
- 2.2 The application is subsequently recommended for approval.

## **3.0 Site Description and Context**

- 3.1 The application site relates to Colchester Crematorium which opened in 1957. Colchester Crematorium includes a large expanse of garden and landscaped areas. The site is served by two existing entrances/exits.

## **4.0 Description of the Proposal**

- 4.1 The application seeks to vary the design of replacement gates and railings, to the site's southern entrance, from those original approved under application 183133. The previously approved plans are specified under Condition 2 of application 183133 and this application looks to vary this condition, to take account of the proposed design changes.

## **5.0 Land Use Allocation**

- 5.1 The site serves a well-established crematorium in a predominantly residential area.

## **6.0 Relevant Planning History**

- 6.1 As discussed there is relevant planning history in the form of application 183133. Under this application approval was granted for the widening of the existing (southern) entrance, part removal of existing boundary walls and provision of new gates and railings, repositioned to fit the revised entrance. In addition to this, plans included the introduction of electrical gate opening system - all for the purposes of Health and Safety.
- 6.2 Minor alterations to the approved scheme (access width) were subsequently approved under Non-material Planning Amendment [NMA] application 200027.

## 7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

### 7.2 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP7 Place Shaping Principles

### 7.2 Local Plan 2017-2033 Section 1

Section 2 of the Colchester Local Plan was adopted in July 2022. The following policies are of relevance to the determination of the current application:

SG1 Colchester's Spatial Strategy  
ENV1 Environment  
DM2 Community Facilities  
DM15 Design and Amenity  
DM16 Historic Environment  
DM21 Sustainable Access to development

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

The Essex Design Guide  
External Materials in New Developments  
EPOA Vehicle Parking Standards  
Community Facilities

## 8.0 Consultations

8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

8.2 **Archaeological Advisor:** No archaeological issues.

8.3 **Contaminated Land Officer:** No objections.

8.4 **Environmental Protection:** No comments.

8.5 **Highway Authority:** No objections.

- 8.6 **Historic Buildings and Areas Officer:** Concerns regarding the inclusion of ivy detailing on the gates. It is considered these features appear overly elaborate, in the context.

*Officer comments: These matters are addressed in the main body of the report.*

- 8.7 **Natural England:** No comments.

- 8.8 **Landscape Advisor:** No objections.

## **9.0 Parish Council Response**

- 9.1 The site is non-parished.

## **10.0 Representations from Notified Parties**

- 10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. No representations have been received at the time of writing.

## **11.0 Parking Provision**

- 11.1 The proposal will have no material impact on parking provisions.

## **12.0 Accessibility**

- 12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposed development does not raise any concerns in this regard.

## **13.0 Open Space Provisions**

- 13.1 Not applicable.

## **14.0 Air Quality**

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

## **15.0 Planning Obligations**

- 15.1 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 (s.106) of the Town and Country Planning Act 1990.

## 16.0 Report

### Principle

- 16.1 As discussed, the principle of the works to create a new widened access has also already been established through the previous permission, with this application simply seeking to vary the detailed design of the approved gates. In this case, the main considerations will be impact on visual amenity, given the nature of the changes proposed.

### Design

- 16.2 Section 1 Policy SP7 states that all new development should respond positively to local character while Section 2 Policy DM15 sets similar requirements for high quality design. The National Planning Policy Framework (the Framework) (2021) and the Planning Practice Guidance recognise the importance of good design and sets further design requirements.
- 16.3 The proposed revised fence design is considered acceptable, with the proposed revised design retaining a simple, lightweight form. While concerns have been raised about the current gate design, the issues raised by the Council's Historic Buildings and Areas Officer have been discussed with the applicant and revised drawings omitting the ivy detailing are expected to be received (and made available for inspection) before the next committee. Subject to the above, the proposed changes are considered acceptable in design terms.

### Trees and Landscaping

- 16.4 Policy ENV1 of the Section 2 Local Plan states that the Borough Council will conserve and enhance Colchester's natural environment. Central Government guidance on conserving the natural environment is set out in the NPPF. Section 2 Local Plan Policy DM15 requires development to respect and enhance the landscape and other assets that contribute positively to the site and the surrounding area, in addition to creating a safe and secure environment. Policy SP7 of the adopted Section 1 Local Plan (2021) which requires development to protect and enhance assets of historical or natural value.
- 16.5 It is understood that groundworks have already taken place, in accordance with the details approved under the original application, with the only works outstanding the installation of the proposed gates. It is not considered any of the remaining works pose the potential to adversely impact existing natural features. Landscaping works have also already been undertaken, with the submitted drawings confirming the landscaping works previously agreed under planning application 183133 will be managed in perpetuity sufficient to keep them in a safe & tidy condition, they will be regularly inspected, and any failing works will be replaced like for like as soon as is practical. For these reasons there are no concerns with regards to trees or landscaping.

### Highway Safety

- 16.6 Section 2 Local Plan Policy DM21 requires development to give priority to the movement of people walking and cycling; and create safe, secure, convenient and attractive layouts which minimise conflicts between traffic, cyclists and pedestrians. Section 2 Local Plan Policy DM22 relates to parking standards in association with the Vehicle Parking Standards SPD. Paragraph 111 of the NPPF provides that development may be refused on highways grounds if there would be unacceptable impact on highway safety.
- 16.7 In terms of impact on highway safety, the Highway Authority have considered the proposal and raised no objections. It is also noted that the original scheme was submitted in order to improve safety and the revised proposals do not give rise to any concerns in terms of highways safety or capacity.

### Impact upon Residential Amenity

- 16.8 Section 2 Policy DM15 states that all development must be designed to a high standard and protect and promote public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance. Section 1 Policy SP7 echoes these sentiments.
- 16.9 In regard to residential amenity, it is not considered that the proposal will cause material harm. It was concluded under the original application that the proposed development is unlikely to create any significant increase in traffic movements and it is not considered the proposal will result in increased noise and as a result increased disturbance is likely to be minimal. There are not considered to be any changes in circumstances that alter these conclusions.

### Other Matters

- 16.10 No material harm will be caused to the significance of below-ground archaeological remains by the proposed development. There will be no requirement for any archaeological investigation.
- 16.11 Finally, in terms of other usual planning considerations (e.g. contaminated land, flood risk, ecology etc.) the proposed development does not raise any concerns.
- 16.12 As a procedural matter, while the application solely seeks the variation of Condition 2 of application 183133, for the reasons outlined above it is considered Conditions 5 and 6 of application 183133 (tree protection measures) are now superfluous. Similarly the works controlled by Condition 4 (landscaping) are understood to have already been carried out, while the form of any landscape management - previously the subject to Condition 3 - has been addressed by the details submitted under this application. With the development having commenced, Condition 1 which imposed a time limit for commencement also falls away. Condition 2 of application 183133 (approved drawings) is therefore the only condition still considered necessary in planning terms.



## 17.0 Conclusion

17.1 To summarise, the proposed development is considered to be acceptable. The proposed revisions to the approved scheme's design are, subject to submission of final revised plans, unobjectionable in terms of visual impacts. The proposal also does not give rise to any concerns with regards to other relevant material planning considerations.

## 18.0 Recommendation to the Committee

18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following condition:

### 1. ZAM - \*Development to Accord With Approved Plans\*

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 18.4033.01 Revision C and *[revised detailed design drawing - reference to be added when known]*.

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

## 19.0 Informatives

19.1 The following informatives are also recommended:

### 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.



## Material Planning Considerations

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

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

The following approach should be taken in all planning decisions:

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

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

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

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

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

The above list is not exhaustive

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

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

- matters specifically controlled through other legislation

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

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

## **Planning Obligations**

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

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

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

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

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

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

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

## Using Planning Conditions or Refusing Planning Applications

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

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

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

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

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

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

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

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



## **Colchester Borough Council Development Management**

### **Highway Safety Issues**

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

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

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

### **Parking Standards**

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

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

For residential schemes:

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

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



## **Colchester Borough Council Environmental Control**

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

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

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

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

##### **Noise Control**

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

##### **Emission Control**

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

## **Best Practice for Demolition Sites**

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

### **Noise Control**

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

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

### **Emission Control**

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



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

## **Class A1. Shops**

Use for all or any of the following purposes—

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

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

Use for the provision of —

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

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

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

## **Class A4. Drinking establishments**

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

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

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

## **Class B1. Business**

Use for all or any of the following purposes—

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

## **Class B2. General industrial**

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

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

Use for storage or as a distribution centre.

**Class C1. Hotels**

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

**Class C2. Residential institutions**

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

**Class C2A. Secure residential institutions**

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

**Class C3. Dwellinghouses**

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

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

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

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

**Class C4. Houses in multiple occupation**

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

**Class D1. Non-residential institutions**

Any use not including a residential use —

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

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

(c) for the provision of education,

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

(e) as a museum,

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

(g) as a public hall or exhibition hall,

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

**Class D2. Assembly and leisure**

Use as —

(a) a cinema,

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

(d) a dance hall,

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

**Sui Generis Uses**

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

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

***Interpretation of Class C3***

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

***Interpretation of Class C4***

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

## **Supreme Court Decision 16 October 2017**

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

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

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

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

## Deferral and Recommendation Overturn Procedure (DROP) Flowchart

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

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



