

# Planning Committee Meeting

**Online Meeting, Virtual Meeting Platform  
Thursday, 20 August 2020 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. Attendance between 5.30pm and 5.45pm will greatly assist in enabling the meeting to start promptly.

## Information for Members of the Public

### Access to information and meetings

You have the right to observe all meetings of the Council, its Committees and Cabinet including those which may be conducted online such as by live audio or video broadcast / webcast. You also have the right to see the agenda (the list of items to be discussed at a meeting), which is published on the Council's website at least 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>.

Occasionally certain issues, for instance, commercially sensitive information or details concerning an individual have to be considered in private. When this is the case an announcement will be made, the live broadcast will end and the meeting will be moved to consider in private.

### Have Your Say!

The Council welcomes contributions and representations from members of the public at most public meetings. Planning Committee meetings, other than in exceptional circumstances, are subject to one representation in opposition and one representation in support of each application. Representations can be a statement or questions of no longer than three minutes when spoken (maximum 500 words) submitted online by noon on the working day before the meeting date. Please use the form [here](#).

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>.

**COLCHESTER BOROUGH COUNCIL**  
**Planning Committee**  
**Thursday, 20 August 2020 at 18:00**

**The Planning Committee Members are:**

Councillor Cyril Liddy	Chairman
Councillor Lyn Barton	Deputy Chairman
Councillor Helen Chuah	
Councillor Pauline Hazell	
Councillor Brian Jarvis	
Councillor Derek Loveland	
Councillor Jackie Maclean	
Councillor Philip Oxford	
Councillor Martyn Warnes	

**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:**

Christopher Arnold	Kevin Bentley	Tina Bourne	Roger Buston
Nigel Chapman	Peter Chillingworth	Nick Cope	Simon Crow
Robert Davidson	Paul Dundas	Andrew Ellis	Adam Fox
Dave Harris	Theresa Higgins	Mike Hogg	Mike Lilley
Sue Lissimore	A. Luxford Vaughan	Sam McCarthy	Patricia Moore
Beverley Oxford	Gerard Oxford	Chris Pearson	Lee Scordis
Lesley Scott-Boutell	Lorcan Whitehead	Dennis Willetts	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 6 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:  
<https://www.youtube.com/user/ColchesterCBC>

**1 Welcome and Announcements (Virtual Meetings)**

The Chairman will welcome members of the public and Councillors to the meeting and remind those participating to mute their microphones when not talking. The Chairman will invite all

Councillors and Officers participating in the meeting to introduce themselves. The Chairman will, at regular intervals, ask Councillors to indicate if they wish to speak or ask a question and Councillors will be invited to speak in turn by the Chairman. A vote on each item of business will be taken by roll call of each Councillor and the outcome of each vote will be confirmed by the Democratic Services Officer.

**2 Substitutions**

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

**3 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.

**4 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 pecuniary interest or non-pecuniary interest.

**5 Have Your Say! (Virtual Planning Meetings)**

At meetings of the Planning Committee, members of the public may make representations to the Committee members. Each representation, which can be a statement or a series of questions, must be no longer than three minutes when spoken (500 words maximum). One single submission only per person and a total limit of 30 minutes (10 speakers) per meeting. Members of the public may register their wish to address the Committee members by registering online by 12 noon on the working day before the meeting date. In addition, a written copy of the representation will need to be supplied for use in the event of unforeseen technical difficulties preventing participation at the meeting itself. The Chairman will invite all members of the public to make their representations at the start of the meeting.

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 9 July 2020 are a correct record.

**Planning Committee Minutes 09 July 2020**

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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(i) **191093 Land at Berechurch Hall Road, Colchester** 11 - 40

Residential Development of 32 no. detached and semi-detached dwellings and flats complete with garages, access and open space

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).

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



**PLANNING COMMITTEE**  
**09 July 2020**

*Present:* - Councillors Barton, Chuah, Hazell, Jarvis, Liddy, Loveland, Maclean, P. Oxford and Warnes.

*Substitutes:* -

**802. Minutes**

The minutes of the meeting held on 18 June 2020 were confirmed as a correct record.

**803. 183046 Land to the north of Mill Buildings, Wakes Colne Mills, Colchester Road, Wakes Colne, Colchester**

The Committee heard that this application had been deferred from the meeting of the Planning Committee held on 4 July 2019, and as such there were no speakers making any further representations.

The Committee had before it a report and detailed amendment sheet in which all information about the application was set out, together with various written representations which had been presented at the meeting.

Lucy Mondon, Principal Planning Officer, presented the report and, together with Simon Cairns, Development Manager, Place and Client Services, assisted the Committee in its deliberations. Lucy Confirmed that the application related to the demolition of solid fuel processing buildings; removal of built up levels, with hard surfaces against north wall of coach house with associated regrading of land; removal of wider coal yard hard surfaces; conversion of coach house to dwelling with single storey extension; erection of a pair of attached dwellings on coal yard; reorientation of yard access road; erection of detached four bay garage; associated hard and soft landscaping including improvements to public footpath corridor and biodiversity; implicit change of use from coal yard to two residential properties (Class C3) with private meadow.

The Committee were reminded of the specific legislation, policy and guidance relating to the consideration of heritage impact, which were contained in the report and in the representations from local residents which Members had read.

The Committee were shown an aerial photograph of the site to illustrate its context in the built and natural environment, together with the location of individual buildings in the site. The Committee members had been provided with video clips of the site and nearby footpaths taken by the planning officer to assist in their assessment of the

impact of the proposals upon the locality and the suitability of the proposals for the site.

The Committee heard that the proposals had been revised, and a much more traditional approach had been taken with the new buildings proposed in terms of a main two-storey range and single storey additions. A computer generated image was shown to the Committee of the proposed new dwellings which were of barn-like design, with industrial elements intended to reflect the history of the site. The proposed development would also be a redevelopment of previously developed land, which was supported by the Government, and there would be remediation of contamination of the land in terms of removal of coal dust and oil spillages from the site. The scheme also had environmental and local economy benefits, and the less than substantial harm identified in terms of heritage matters was clearly outweighed by these benefits. An additional condition had been suggested in the amendment sheet in relation to details of walls and fences, together with an informative concerning landscape works to be carried out.

Various Members of the Committee considered the heritage impact of the proposals on the building group, the importance of which had been recognised through the listed building status, and in particular the height of the proposed new buildings on the site. Furthermore, the impact upon the character and appearance of the conservation area was also considered.

Concerns were also raised about the impact of the increased traffic, which would be attendant on the new development, on the Mill House.

The Principal Planning Officer confirmed that the proposed buildings were to be set back from the Coach House and the intended planting would create an additional filter to wider views where the group is seen in its landscape context and between the two buildings. It was clarified that the area is not an Area of Outstanding Natural Beauty, although some of the area was a conservation area. The Committee heard from the Development Manager, Place and Client Services, who spoke to the contribution made by the setting to the significance of the Mill. He made the point that the location of the mill was functionally derived, and only incidentally picturesque, and that the building group had undergone organic changes in shape and structure over the preceding years. The historic significance of the mill was largely due to its technical advancements, and not to the picturesque location, and although the proposal would result in additions to the built form, the change to the character of the setting would not, in his view, be material. The setting would retain its original characteristics, with the additional changes that would be made and the heritage value of the mill would be largely unaffected particularly as the growth of the screening trees matured. The Test in S.66 of The Act was therefore satisfied, as the listed mill in its setting would not be harmed by the development. The development of the coachyard would remove a brownfield site, which when seen at close quarters from the footpath detracted from the rural qualities of the area. The impact on the significance of the conservation area designation was also explained. The mill group was assessed to represent a distinctive character area within the conservation area whose significance would not be harmed by the addition of the new buildings through the addition of further slated roofscape in the background to the listed mill group.



Members of the Committee raised further concerns about the road access to the new development. The Principal Planning Officer advised that the Highway Authority had commented on the original scheme, and they were re-consulted on the revised scheme with regard to the increased use of the access way, and the junction leading to the site. The Highway Authority had no concerns in respect of this, subject to the conditions that had been recommended that were set out in the report.

**RESOLVED** (FIVE voted FOR, FOUR voted AGAINST) that –

- (i) The Assistant Director Place and Client Services be authorised to approve the planning application subject to the conditions set out in the report, including this additional condition and additional informative;

**Condition (Details of Walls and Fences)**

No works shall take place to install or erect any walls or fences as shown on drawing 2818-0106 Revision P05 until precise details (to include elevations at scale 1:50 and details of materials) have been submitted to and approved, in writing, by the Local Planning Authority. The walls and fences shall then be installed or erected as approved and thereafter retained as such.

**Informative (Landscape Works)**

In respect of Condition 19, the applicant/developer is advised that the planting shown to the north of the Coach House on drawing 2818-0106 Rev P05 shall be appropriate tree planting with which to filter views of both Plot 1 and 2 when viewed from the south of the application site to advise that the landscape buffer screening belt should include a significant proportion of native evergreens.

**804. Applications Determined in Accordance with Officer Scheme of Delegation**

Simon Cairns, Development Manager, Place and Client Services, presented the report and assisted the Committee in its deliberations. The report set out details of the applications which have been determined since the last meeting in accordance with the revised scheme of delegation agreed at the Committee's meeting on 18 June 2020.

**RESOLVED** (EIGHT voted FOR, ONE ABSTENTION) that –

That the applications listed in the attached Appendix which have been determined under the revised scheme of delegation be noted.





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**Item No:** 7.1

**Application:** 191093

**Applicant:** Mr Harding

**Agent:** Mr Robert Pomery

**Proposal:** Residential Development of 32 no. detached and semi-detached dwellings and flats complete with garages, access and open space

**Location:** Land at, Berechurch Hall Road, Colchester

**Ward:** Shrub End

**Officer:** James Ryan

**Recommendation:** Approval

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

- 1.1 This application is referred to the Planning Committee because it is a major application which is a departure from the Adopted Local Plan and a number of objections have been raised.

## **2.0 Synopsis**

- 2.1 The key issues for consideration are the weight that can be afforded to the Emerging Local Plan site allocation and the specifics of the proposal in terms of design and layout and viability.
- 2.2 The application is subsequently recommended for approval.

## **3.0 Site Description and Context**

- 3.1 The application site measures approximately 1.44 Hectares and is located to the south of Berechurch Hall Road and adjacent to the small housing cul-de-sac known as Catkin Mews.
- 3.2 The application site is undeveloped amenity land, which is suitable for use as horse paddocks etc. The land is generally level and contains a number of trees and hedgerows to all boundaries.

## **4.0 Description of the Proposal**

- 4.1 This scheme proposes a residential development of 32 detached and semi-detached dwellings and flats complete with garages, access and open space.

## **5.0 Land Use Allocation**

- 5.1 The site is unallocated land in the adopted Local Plan but is an allocation in the Emerging Local Plan. This matter will be dealt with in the Principle of Development Section.

## **6.0 Relevant Planning History**

- 6.1 There is no relevant planning history relating to this site.

## **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 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

- SD1 - Sustainable Development Locations
- SD2 - Delivering Facilities and Infrastructure
- SD3 - Community Facilities
- H1 - Housing Delivery
- H2 - Housing Density
- H3 - Housing Diversity
- UR2 - Built Design and Character
- PR1 - Open Space
- PR2 - People-friendly Streets
- TA1 - Accessibility and Changing Travel Behaviour
- TA2 - Walking and Cycling
- TA3 - Public Transport
- TA4 - Roads and Traffic
- TA5 - Parking
- ENV1 - Environment
- ENV2 - Rural Communities
- ER1 - Energy, Resources, Waste, Water and Recycling

- 7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

- DP1 Design and Amenity
- DP2 Health Assessments
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP4 Community Facilities
- DP12 Dwelling Standards
- DP14 Historic Environment Assets
- DP16 Private Amenity Space and Open Space Provision for New Residential Development
- DP17 Accessibility and Access
- DP19 Parking Standards
- DP20 Flood Risk and Management of Surface Water Drainage
- DP21 Nature Conservation and Protected Lanes

- 7.4 The site is unallocated in the adopted local plan.

- 7.5 The site is not in a neighbourhood plan area.

- 7.6 Submission Colchester Borough Local Plan 2017-2033:

The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

1. The stage of preparation of the emerging plan;
2. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
3. The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo a full and final examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

7.7 In particular, Policy SC1 of the Emerging Plan is relevant to this scheme as it covers this emerging allocation. This will be considered in the 'Principle of Development' section detailed below.

7.8 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  
 Backland and Infill  
 Affordable Housing  
 Community Facilities  
 Open Space, Sport and Recreation  
 Sustainable Construction  
 Cycling Delivery Strategy  
 Sustainable Drainage Systems Design Guide  
 Street Services Delivery Strategy  
 Planning for Broadband 2016  
 Managing Archaeology in Development.  
 Developing a Landscape for the Future  
 ECC's Development & Public Rights of Way  
 Planning Out Crime

## **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.

### Anglian Water

No objection – conditions suggested.

### Arboriculture

Following updated layout this scheme has been discussed with the tree officer and it is accepted that the layout adequately mitigates the impacts on trees in a manner which is held to be acceptable.

### Archaeology

An adequate pre-determination trial-trenched evaluation has been undertaken by the applicant, in accordance with an adequate WSI submitted to the LPA. Although an adequate report on this work still needs to be submitted and approved by the LPA, based on the results of the fieldwork stage (monitored on 24 April), there are now no grounds to consider refusal of permission in order to achieve preservation *in situ* of any important heritage assets. A condition is recommended.

### Contaminated Land

Based on the information provided to date, it would appear that this site could be made suitable for the proposed use, with the remaining contamination matters dealt with by way of planning condition.

### ECC Education

No contribution requested.

### ECC Highways

Provided the development is carried out in accordance with in planning application drawing number 6727-1103-P7 produced by Stanley Bragg Architects, from a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to the following requirements:

1. Prior to commencement of the development a construction traffic management plan, to include but shall not be limited to details of vehicle/wheel cleaning facilities within the site and adjacent to the egress onto the highway, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the agreed plan
2. No occupation of the development shall take place until the following have been provided or completed:
  - a) A priority junction off Berechurch Hall Road to provide access to the proposal site as shown in principle on the planning application drawings
  - b) A footway/cycleway between the proposal site access and the footway/cycleway which currently terminates at St. Michael's Primary School & Nursery in Camulodunum Way (details shall be agreed with the Local Planning Authority prior to commencement of the development)

c) Residential Travel Information Packs in accordance with ECC guidance

Environment Agency

No comment.

Environmental Protection

No objection – suggest conditions.

Essex County Fire and Rescue

No comment received.

Essex Wildlife Trust

No comment received.

HSE

Does not cross any consultation zones – no objection.

Landscape

As previously recommended: Any revised proposals need to look to allow development to be set sufficiently back (2m) from hedge B (i.e. the hedge along the southern boundary of the site) to allow the resulting communal strip to be managed by a management company and this strip demonstrably accessible for maintenance. This in order that the prominence of this valuable landscape feature can be maintained, as it will still form the boundary to the adjacent landscape character area post any adoption of the emerging new local plan residential allocations, and may be damaged/lost if directly abutting any rear garden, through for instance the unauthorised disposal of materials (e.g. grass/garden clippings) over the back garden fences.

*Following discussion with the Landscape Advisor:*

Note: It is understood the above recommendations are currently being assessed by the planning officer within the planning balance, should the above recommendations be applied, or not (if outweighed within the balance), then conditions and an informative are suggested.

Natural England

No objection raised, secure off-site disturbance mitigation via RAMS.



## NHS

Due to the number of dwellings being below 50, we will not be seeking a healthcare contribution on this occasion.

### **9.0 Parish Council Response**

9.1 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. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.
- 10.2 14 objections were received and 13 representations of concern were received but a number were from the same addresses. Following the most recent consultation on the 12/5/2020, 6 representations were received.

These raised the following issues:

- Berechurch Hall Road can't take any more traffic.
- It's very busy at peak times and during school runs.
- People speed illegally along this road.
- It's an accident blackspot.
- Other highway safety issues.
- The access is in the wrong position.
- The site is important ecologically with protected species on site.
- The scheme will ruin our open outlook.
- The dwellings will overlook us.
- The dwellings are too high.
- The dwellings are out of character.
- The scheme is too dense.
- The dwellings are too close to the neighbours.
- 12 dwellings would be better.
- Greenfield sites should be preserved.
- The scheme will cause disturbance.
- Why is this scheme acceptable when I had my application for a dwelling refused?
- The build phase will cause disturbance to neighbours.
- This proposal will be especially harmful to the residents of Catkin Mews.
- The scheme will increase pollution and decrease air quality.
- The local services can't cope as it is.
- The streetlighting and paths in the area are inadequate.

## 11.0 Parking Provision

- 11.1 This scheme proposes 16 no. parking spaces for affordable units with 1 bed units x 1 parking space each 2,3,4 bed units x 2 parking space each. The scheme has 48 no. residents parking spaces (a minimum of 200%) and 8 x visitor parking spaces (25% of total 32 units).

## 12.0 Accessibility

- 12.1 It is noted that the affordable housing element of this proposal has one fully wheelchair compliant ground floor flat that will be Building Control M4 (Cat 2B) compliant. This is to be welcomed.

## 13.0 Open Space Provisions

- 13.1 As can be seen from the submitted Public Open Space plan, this scheme proposed a central area of public open space and then a number of small sections of incidental open space. Together they add up to over 10% of the site area. It must also be noted that the scheme is affording additional pedestrian access points to the proposed 'Outer Colchester Orbital' which is located outside, but adjacent to the site. This will be discussed in the report but is held to have significant public benefit.

## 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 elsewhere.

## 15.0 Planning Obligations

- 15.1 The application was considered by the Development Team and it is considered that the following Planning Obligations should be sought via Section 106 (s.106) of the Town and Country Planning Act 1990;

**ECC Highways** – see requested off site works that will be dealt with via condition.

**Parks and Recreation** - £139,000 for off-site provision, £8985 for on-site maintenance if adopted.

**Communities** - £57,600.00

**Archaeology** – £17,553 dependant on finds requiring display.

The RAMS mitigation contribution will also be dealt with by the s.106 Agreement, as will the eventual blocking-up of the access point.

## **16.0 Report**

16.1 The main issues in this case are:

### The Principle of Development

#### **Introduction**

The proposal for 32 dwellings on land at Berechurch Hall Road is on land which is outside of the settlement boundary in the current adopted local plan. The proposed site forms part of an allocation in the Emerging Local Plan (Policy SC1 - South of Berechurch Hall Road).

The planning policy approach to the proposal reflects the Council's current position in the plan-making process where both an adopted and an emerging local plan are relevant. The relationship of the proposal to each of those Plans and the compliance of relevant adopted and emerging policies with the 2019 NPPF are accordingly key variables in assessing the 'planning balance'.

It is considered that the fundamental principles of both the Adopted and Emerging Local Plans are compliant with the new NPPF. The analysis below will consider whether there are any relevant non-compliant elements of CBC policy with the NPPF that justify a reduction in the weight to be given to the policy in assessing the planning balance in this case. For the Emerging Local Plan, the following analysis reflects the NPPF criteria on the weight to be given to policies, which depends on the stage of preparation of the plan; the extent to which there are unresolved objections to relevant policies; and the degree of consistency of the relevant policies to the Framework (see paragraph 48).

#### **Adopted Local Plan**

The NPPF continues to support the Policy approach in the Adopted Local Plan in principle, in respect of the key policies on settlement hierarchy relevant to this proposal, SD1 and ENV1. As the Council is able to demonstrate a 5-year housing land supply these policies are relevant to the decision making on this proposal. Policy SD1 accords with Paragraphs 10-12 of the 2019 NPPF which provide for a presumption in favour of sustainable development. Policy SD1 is consistent with the NPPF's approach to decision-taking which entails approving proposals that accord with the Local Plan unless material considerations indicate otherwise, and which involves the LPA working proactively with applicants. It is noted, however, that the housing and jobs target provided in the policy no longer remain current. Whilst the supply figure itself may be out of date the principle of the overarching spatial strategy and the settlement hierarchy are not and as such weight should still be afforded. The requirements of policy ENV1 for the conservation and enhancement of Colchester's natural and historic environment is in accordance with paragraph 170 which clearly recognises the intrinsic character and beauty of the countryside and demonstrates that planning policies should contribute to and enhance the natural local environment via protection, maintenance, and preventing unacceptable risk.

Based on the protection afforded to land outside Settlement Boundaries (SBs) and outside of the most sustainable locations in SD1 and ENV1, the proposal is not considered to be compliant with these adopted policies.

### **Emerging Local Plan (ELP)**

The ELP is considered to be at an advanced stage having been submitted in 2017 with examination hearings taking place in January and May 2018. Following a pause in examination for the preparation of additional evidence base documents; a technical consultation was held from 19 August to 30 September 2019. Additional examination hearings on this further work occurred in January 2020.

The North Essex Authorities (NEAs) received a letter from the Section 1 Inspector on 15 May 2020. The Planning Inspector agreed that the Plan could be made sound and legally compliant by incorporating Major Modifications which would be subject to consultation. The Inspector has also said that the Local Plan has met the legal requirements including the Duty to Co-operate.

Following Local Plan Committees held at each of the NEAs w/c 13 July 2020, the NEAs have resolved to modify the plan as the Inspector has suggested – and proceed to a main modifications' consultation.

The site subject to this application, forms part of an allocation in the Emerging Local Plan as outlined in Policy SC1. This is set out below:

### ***Policy SC1: South Colchester Allocations***

***Allocations as shown on the policies map will be safeguarded for residential uses. In addition to the requirements of Policy PP1, proposals will be required to satisfy the Local Planning Authority with regard to the site specific requirements as identified below.***

#### ***South of Berechurch Hall Road***

***Development of this site will be supported where it provides:***

- 1. Up to 150 new dwellings of a mix and type of housing to be compatible with the surrounding development;***
- 2. Contributions to/delivery of improvements to the local road network;***
- 3. New bus stop provision to service the site and improve sustainable transport links to Colchester town centre; and***
- 4. A comprehensive approach to development of the three separate parcels of land which together make up the allocation.***

The key policies in the ELP relevant to this scheme are considered to be highly consistent with the NPPF and should therefore be afforded considerable weight. The final issue to be taken into account when considering the weight to be afforded to the ELP is the level of unresolved objection to the relevant policies.

Accordingly, further consideration of the issues raised in representations to Policy SC1 is necessary to guide the judgement of the weight which should be given to the emerging policies in this case.

Two representations were received relating to the Berechurch Hall Road allocation specifically, and two broader representations which relate to SC1 as a whole. There were seven representations in total to SC1, but the remaining three relate to the now approved Gosbecks Phase 2 scheme and are not relevant to this proposal.

These representations are summarised below:

*Policy SC1 South Colchester Allocations (South of Berechurch Hall Road)*

- Area of land to north of Earlswood Wood and area of land south of Berechurch Hall Road and west of Selby Close are incorrectly shown as public open space. These are areas within the Merville Barracks;
- No measures shown to alleviate increased volume of traffic generated in Shrub End and connections to A134 and A12, also notably at Layer Road junction;
- Partnership formed to promote and bring forward Berechurch Hall Road allocation, with a number of studies being commissioned and discussions begun to progress towards submission of a planning application. A draft housing layout has begun, with intention of continuing to develop layout informed by ongoing technical assessments. Suggestion that allocation may be able to accommodate additional units. Delivery of entire development will be possible within the next 5 years;
- Further technical assessments undertaken which demonstrate there are no insurmountable problems in delivering the site. Scope to extend allocation to the south to address 200 unit shortfall in trajectory following appeal decision on former Sainsbury's site at Tollgate Village. Additional land could be brought forward in the event of delays in delivery at Middlewick Ranges.

It is noted that a proposed modification is included in the '*Schedule of Minor Modifications to the Publication Draft Colchester Local Plan: Section Two*' October 2017 to correct the mapping error of Map SC1-3 which incorrectly shows land used for military purposes at Merville Barracks as designated open space.

The Planning Statement outlines that the partnership which had been established as outlined in the representation to the Local Plan, has since broken down. This is due to the largest land parcel development partner withdrawing. The larger parcel has since generated further interest from another party and is still likely to come forward in the near future. In principle, the Council do not object to this parcel being brought forward in isolation, however it must be ensured that this does not prevent the other sites which collectively form the wider allocation, from being delivered.

It is noted that through a series of conversations between the applicant and the Council, a revised proposal has been prepared addressing a number of concerns including the lack of affordable housing provision, the impact on the neighbours and the potential to jeopardise the rest of the allocation.

As will be set out in detail below, following negotiation the provision of 9 affordable dwellings to meet the 30% affordable housing contribution as outlined in Policy DM8 is highly welcomed. The proposal now also included a footpath link to the outer Colchester Orbital, which was previously considered a missed opportunity.

The Revised Design and Access Statement does outline a potential access link to the remaining two portions of the allocation. As outlined in Policy SC1 clause ii) and iii), there is a requirement for a contribution to improvements to the local road network and the provision of a new bus stop respectively. As statutory consultee to this application, no objection has been received from the Highway Authority and they have not requested a new bus stop for this section of the allocation. They have requested off site works which will be discussed in detail in the highways section of the report below.

In principle, there is no objection to this parcel of land being brought forward in isolation, provided that it does not prevent the other sites, which collectively form the allocation, from being delivered and all necessary infrastructure from being delivered across the allocation.

A signed letter from both the landowners (this site and the larger site to the east that eventually this will be served from) confirms delivery of the overall allocation in compliance with policy SC1. The scheme can therefore be supported in principle.

It is noted that no agreement has been provided from the landowner to the west. The applicants have advised the Council that they have approached the landowners but they are not interested in bringing this small section forward at the current time. The proposed layout provides a link to this section in case it does ever materialise.

The weight that the Emerging Plan and policy SC1 can be afforded is one for the decision maker to weigh in the planning balance. In this instance the objections to the policy are held to be surmountable and therefore officers consider that significant weight can be given to policy SC1.

#### Affordable Housing Provision

As submitted the scheme did not proposed any affordable housing and the applicants provided a viability appraisal to demonstrate the scheme was not able to provide any. This was independently tested via an external consultant who did not accept the findings of the viability appraisal.

After a great deal of negotiation over a period of months, officers were clear that whilst it was not going to be possible to reach an agreement between the two parties on the matter of viability, it would not be possible to recommend approval on an emerging allocation ahead of the Examination in Public if the scheme did not provide policy compliant affordable housing on site. The developers decided to rework the scheme

to that which is now before members and that does provide the requisite on-site affordable units that can be seen on plots 18 to 26. This is a significant public benefit of the scheme which must be weighed in the planning balance.

### Design and Layout

In considering the design and layout of the proposal, Core Strategy policy UR2 and Development Plan policy DP1 are relevant. These policies seek to secure high quality and inclusive design in all developments, respecting and enhancing the characteristics of the site, its context and surroundings.

This site has been the subject of a number of detailed designed meeting with the Council's in-house Urban Design officer.

The house types proposed have a strong traditional design language, utilising Essex Design Guide principles. External materials are from the local vernacular palette, including facing brickwork, smooth render and weatherboarding, along with plain tiles and slate.

It would be fair to say that the applicants are keen to provide a number of house types that go beyond the standard estate house types, with an increased richness in detail that will help to create a sense of place. The amended drawings have left two/two and a half storey dwellings in locations (for example plots 3 and 7) where the height they afford gives presence in the street scene and ensures that there is a good degree of visual variety on the site.

On the small Berechuch Hall Road frontage, the scheme has been amended to soften the impact on the dwelling at 1 Catkin Mews and to do so the scheme has been changed to include two bungalows (plots 1 and 2) rising up to a two storey building at plot 3 which increases the street presence on the corner of the temporary access. The two and a half storey dwelling is a well detailed and attractive building.

Plots 8 to 11 have specifically designed to overlook the proposed open space on the adjacent site and will help provide a strong frontage that frames that space. They include balconies/roof terraces that will overlook this space and will provide natural surveillance to it. This design means the rears of these dwellings front the public open space within this site. This rear elevation treatment has been dealt with a wall and gates to allow vehicular access from the rear. The detail of these wall gates and piers will be conditioned but space has been left in front for a planting belt for softening. Taking this approach allows a simple footpath to the front elevations reducing the impact of car movements to the proposed public open space on the adjacent site.

Further into the site the scheme is primarily single storey (plots 12 to 17 and 27 to 32) around the central open space. The bungalows proposed are interesting in design and include a level of detail that will set them apart from the ordinary. Plots 28 and 29 turn a corner and have been designed specifically to response to the constraints of that section of the site.

Plots 18 to 26 are the Affordable Housing units. Plots 18 and 19 are semi-detached dwellings, 20 to 23 are a set of four flats and 24 to 26 are chalet bungalows. The dedicated parking area is set behind the flats in the corner of the site.

Whilst the dwellings at 18 and 19 are relatively simple in terms of elevations. They have traditional detailing (stone cills and arches) and are not devoid of interest – with quality materials they will be attractive, but simple dwellings.

The flats are attractively designed in a block made from two connected ranges. The fully wheelchair accessible ground floor flat (plot 20) has its own entrance.

The chalet bungalows, one detached and two in a pair of semi-detached dwellings have interesting front elevations and fenestration. They have catslide roofs and gable features pulled forwards of the front elevation.

In terms of layout, this proposal has been the subject of extensive discussions over a number of years with Council officers (and in particular the Council's in-house Urban Designer). The layout has evolved considerably since the first iteration and is now a scheme that is held to successfully respond to the site's broadly L-shaped shape. The central open space will become a focal point of the site. The layout has also taken the rest of the allocation into account and this will eventually be served via a access though the larger land parcel to the east. Space has been left to enable access to the last section of the allocation to the west also, although this does not look like it will come forward in the immediate future.

This scheme has direct links to the proposed 'outer orbital route' which is a wider strategic aspiration for the Council. The orbital route is outside of the applicant's ownership or control so the best they can contribute is to facilitate a pedestrian access to it. It is noted that the outer orbital sits on land controlled by the landowners of the adjacent site that makes up the larger proportion of the allocation. It is therefore important to futureproof this scheme to take advantage of this proposed route and the applicants have done this.

In terms of amenity provision, generally gardens are well in excess of adopted standards. Plots 9 and 10 are a little under the standard in terms of their respective areas (by 4m<sup>2</sup> and 15 m<sup>2</sup> respectively) but the all dwellings have good quality, usable areas.

### Impact on Neighbouring Amenity

Development Plan policy DP1 requires all development to be designed to a high standard that protects existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, and daylight and sunlight.

This section of the wider allocation is arguably the most complicated in terms of neighbour impact. Plots 24 to 32 and 1, 4, 5 and 6 all back on to existing dwellings in Amber Court and Catkin Mews.

Following the original submission, the applicants were asked to review these relationships which they did. The benefit of the reworked scheme is that a number of the dwellings close to Catkin Mews have been changed to bungalows and that significantly reduces the impact of the scheme on neighbour amenity in terms of overlooking and oppressiveness/light. The two/two and a half storey dwellings are



located away from the site boundary where they will not be harmful to the privacy nor amenity of neighbours.

It is therefore held that the scheme is acceptable in terms of its impact on neighbouring amenity.

### Highways and Parking

Core Strategy policy TA4 seeks to make the best use of the existing highway network and manage demand for road traffic. The policy makes it clear that new development will need to contribute towards transport infrastructure improvements to support the development itself and to enhance the broader network to mitigate impacts on existing communities. Development Plan policy DP17 requires all development to maintain the right and safe passage of all highways users. Development Plan policy DP19 relates to parking standards in association with the Vehicle Parking Standards SPD (see Section 11 of this report for details of parking requirements).

It is important to note that this scheme has an access point on Berechurch Hall Road that sits directly adjacent to the existing field access to the east that will eventually serve the whole allocation. This means that the access point on the drawing will eventually be closed off by bollards and the development will be served by the access from the larger site (pedestrians and cyclists will still be able to use this access). This cannot happen until the adjacent site comes forward however so this scheme has been designed with an access that can be used until the intended access is constructed. It is also acceptable in its own right on a permanent basis if the adjacent site does not come forward.

The Highway Authority have assessed the scheme and, as amended, it has now reached a point where it is an adoptable layout.

The scheme provides parking as set out in the relevant section of the report above. It is considered that the scheme has sufficient parking to serve the development and will not cause materially harmful on street parking; either within this site or elsewhere.

### Off-site Highway Works

The Highway Authority have requested a number of off-site works to mitigate the impact of this proposal. They require the applicant to deliver a footway/cycleway along the proposal's Berechurch Hall Road frontage and across into Camulodunum Way as far as St. Michael's Primary School and Nursery.

The applicants are happy to provide the footway across the road frontage of the site, but they consider that the upgraded footway all the way to St Michael's Primary School exceeds that which would mitigate the impact of this development (as required by the CIL Regulations).

Officers agree with the applicants in this instance. There is a chance to get the footway in question upgraded when the larger part of the allocation comes forward but officers consider the footway upgrade to the frontage of this site to be a reasonable compromise in this instance.

## Contamination

Development Plan policy DP1 requires new development to undertake appropriate remediation of contaminated land. This scheme has come with an acceptable interim contamination risk assessment report for Environmental Protection's purposes. It is noted that some contamination has been identified in the made ground in the north west of the site, associated with the former piggery. It has been recommended that further risk assessment is undertaken following site clearance, as only limited access for sampling was possible in some areas (chiefly in the north west). The spoil mounds are also recommended for sampling and laboratory analysis.

With the usual suite of contaminated land conditions, it is held that the site can be made safe for the intended residential purpose.

## Ecology

Section 40 of the Natural Environment and rural Communities (NERC) Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity and a core principle of the NPPF is that planning should contribute to conserving and enhancing the natural environment. Development Plan policy DP21 seeks to conserve or enhance biodiversity and geodiversity in the Borough. New developments are required to be supported by ecological surveys where appropriate, minimise the fragmentation of habitats, and maximise opportunities for the restoration, enhancement and connection of natural habitats. Policy ENV1 of the emerging Local Plan states that the Local Planning Authority will conserve and enhance Colchester's natural and historic environment, countryside and coastline. Furthermore, proposals for development that would cause direct or indirect adverse harm to nationally designated sites or other designated areas, protected species or result in the loss of irreplaceable habitats such as ancient woodland, important hedgerows and veteran trees will not be permitted.

This site has been subject to onsite assessment from a qualified ecologist and a Phase 1 Ecology report has been provided. The site has active badger setts on the boundaries and has reptile populations also.

Badger setts and badger activity were recorded on site during 2017 – 2019. The applicants ecologist arranged for a badger mitigation expert Andrew Crace-Calvert to visit the site on 19<sup>th</sup> March and assess the current status and activity levels. Previous surveys had identified one subsidiary sett and four outlier setts within the site boundary, these were all re-located during the visit. The visit recorded very low levels of badger activity and the status of all setts as on site as inactive.

As it is uncertain at this time when construction, including initial site clearance will begin there will be a need to undertake a pre-construction assessment, immediately before start on site. If the levels of activity remain the same as recorded previously (no active setts) a licence under the Protection of Badgers Act 1992, will not be required but the applicants ecologist would recommend appropriate general precautions to prevent harm to badgers during construction and to maintain an ecological watching brief during construction.

Previous surveys of the site identified the presence of low populations of three common reptile species, grass snake, common lizard and slow worm. These species are protected from killing and injury under the Wildlife and Countryside Act 1981. As site clearance and construction are likely to kill or injure these animals and there is insufficient space to retain them within suitable habitat in the development site the ecologist considered that it was necessary to translocate them to a suitable site elsewhere.

As part of a reptile mitigation strategy, temporary reptile exclusion fencing was installed on site with artificial capture objects (at a density of above 100 / ha of suitable habitat) last autumn. A number of potential receptor sites were assessed based on standard suitability criteria and a privately owned site within a half hour drive (to minimise travel time and maximise animal welfare) was selected. The proposed translocation site was surveyed during September 2019 with low populations of common lizard and slow worm recorded (although no grass snake).

It is several times larger than the donor site and has more than sufficient suitable habitat to support additional reptiles, with recently cleared area of trees and scrub under powerlines increasing available habitat. No grass snakes were recorded but there is suitable habitat (a large pond) and available prey (frogs and toads) are present on site.

The ecologist has advised that reptile captures on site commenced during March (when reptiles usually start to emerge from hibernation), with three rounds completed in March and a further twelve rounds completed up to the 12<sup>th</sup> April and is ongoing. The capture rounds are only completed during conditions of suitable temperature and weather. Weather and temperatures in March were mostly too cold and / or wet, other than on the days visited and unusually for April, some days so far have been too warm. A minimum of 30 capture rounds will be completed and then continue until five rounds clear of captures or observations are recorded or 60 capture rounds have been completed.

## RAMS

It is necessary to assess the application in accordance with the Habitats and Species Regulations 2017 (as amended). The whole of Colchester Borough is within the zone of influence of a European designated site and it is anticipated that the development is likely to have a significant effect upon the interest features of relevant habitat sites through increased recreational pressure, when considered either alone or in combination with other plans and projects. An appropriate assessment was therefore required to assess recreational disturbance impacts as part of the draft Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS).

The applicants have agreed to pay the RAMS contribution to mitigate the impact this scheme will have on off-site receptors and on a scheme of less than 100 dwellings that is an approach that is in line with Natural England's advice. This will be secured via the legal agreement.

### Landscape

Core Strategy Policy ENV1 seeks to conserve and enhance Colchester's natural and historic environment, countryside and coastline, with Development Plan Policy DP1 requiring development proposals to demonstrate that they, and any ancillary activities associated with them, will respect and enhance the character of the site, context and surroundings in terms of (inter alia) its landscape setting.

The Councils in-house Landscape Advisor has required that the rear boundary fences of the dwelling that back on to the proposed outer orbital route are shifted in to create a buffer between the potential path and those gardens. Unfortunately the loss of the garden space along this whole stretch would have fundamental impact on the layout to the detriment of the workability of the scheme. On that basis the applicants would like the scheme assessed as it stands.

This has been discussed with the Landscape Advisor as can be seen in the consultations section above. As he notes this a matter for the planning balance and in this instance this issue is not considered to warrant a refusal of the scheme. The suggested landscaping conditions will be imposed.

### Environmental and Carbon Implications

The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030.

The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives.

This report has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. The site is located in a sustainable location that the Council has allocated for future residential development in the Emerging Local Plan. There are good connections to bus routes that run up Layer Road for easy access to the town centre. There are also off road cycle links close to the site that run through/adjacent to the Garrison also towards the town.

In addition, Environmental Protection have suggested EV charging points to be secured via condition and the applicants have agreed to a condition requiring approval of a scheme for EV charging. This will help facilitate the uptake of ultra-low emission vehicles.

It is therefore considered that on balance the application is considered to represent sustainable development.

## 17.0 Conclusion and Planning Balance

- 17.1 National policy requires planning to be genuinely plan-led. The proposal is considered to accord with the emerging local plan but is contrary to the adopted Local Plan as the site is outside the current settlement boundary of Colchester. The National Planning Policy Framework (the Framework) makes it plain that the purpose of the planning system is to contribute to the achievement of sustainable development and identifies three dimensions to sustainable development: economic, social and environmental. In respect of the first of these, the current proposal would provide **economic** benefits, for example in respect of employment during the construction phase, as well as support for existing and future businesses, services, and facilities by introducing additional residents that would make use of them and provide future spend in the local economy.
- 17.2 The **social** role of sustainable development is described as supporting strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations and by creating a high-quality built environment with accessible local services that reflect the community's needs and support its health, social and cultural well-being.
- 17.3 The proposal is considered to meet these objectives as it would contribute towards the number of dwellings required to support growth in the south of Colchester, including 30% affordable housing, and is located within walking distance of a number of key local services and facilities required for day-to-day living.
- 17.4 In respect of the third dimension (**environmental**), the proposal will provide housing in a sustainable location so that future residents would not be wholly reliant on private car, being able to walk, cycle or use public transport to access necessary services and facilities, thereby minimising environmental impacts; ecological enhancements can also be secured as part of the development.
- 17.5 There is also sufficient evidence to be confident that overall the development would not cause significant harm to the amenity of nearby residents or have a severe impact upon the highway network. The scheme as amended is held to constitute good design. Whilst the proposed development would have an impact on the existing character of the site (i.e. by introducing built development where there is none currently) through a general suburbanising effect on the wider setting, which carries some weight against the proposal, the positive economic and social effects, as well as the sustainability of the proposal would weigh in favour of this scheme as does the significant weight afforded to the supply of new homes in the Framework.
- 17.6 In conclusion, it is considered that the benefits of the scheme convincingly outweigh any adverse impacts identified and the planning balance tips in favour of an approval.

## **18.0 Recommendation to the Committee**

18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 to secure the developer obligations identified, within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Service to refuse the application, or otherwise to be authorised to complete the agreement. The permission will also be subject to the following conditions the precise wording of which may also be amended under delegated authority:

### **1. ZAA - Time Limit for Full Permissions**

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

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

### **2. 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:

6727-1103-P7  
6727- 1105-P5  
6727-1212-P6  
6727-1104-P1  
6727-2003-P1  
6727-1213-P1  
6727-2002-P1  
6767-2001-P2  
6727- 210-P2  
6727-1211-P2  
6727-1209-P2  
6727-1201-P2  
6727-1202-P2  
6727-1203-P2  
6727-1204-P2  
6727-1205-P2  
6727-1206-P2  
6727-1207-P2  
6727-1208-P2

Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

### **3. ZBC - Materials To Be Agreed**

No external facing or roofing materials shall be used in the construction of the development hereby permitted until precise details of the manufacturer, types and

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colours of these have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.

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

#### **4.ZBF - Surfacing Materials to be Agreed**

Prior to the laying down of any surface materials for private, non-adoptable accessways, driveways, footpaths, courtyards, parking areas and forecourts, full details of these materials shall be submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

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

#### **5.ZCE - Refuse and Recycling Facilities**

Prior to the first occupation of the development hereby permitted, refuse and recycling storage facilities shall be provided in accordance with a scheme which shall have been previously submitted to and agreed, in writing, by the Local Planning Authority. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times.

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

#### **6.Archeology**

No works shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation that has been submitted to and approved, in writing, by the Local Planning Authority. The Scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
  - b. The programme for post investigation assessment.
  - c. Provision to be made for analysis of the site investigation and recording.
  - d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  - e. Provision to be made for archive deposition of the analysis and records of the site investigation.
  - f. Nomination of a competent person or persons/organisation to undertake the works.
- The site investigation shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority. The development shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance with Policy SD1 and ENV1 of Colchester Borough Council's Core Strategy (2008).

## **7.ZCM – \*SUDS**

No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and certified as technically acceptable in writing by the SUDs approval body or other suitably qualified person(s) . The certificate shall thereafter be submitted by the developer to the Local Planning Authority as part of the developer's application to discharge the condition. No development shall commence until the detailed scheme has been approved in writing by the Local Planning Authority. The approved scheme shall subsequently be implemented prior to occupation and should include but not be limited to:

- Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure. Tests should be undertaken in all locations where infiltration is proposed.
- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
- Provide evidence that the base of all soakaways have a minimum distance of 1m from the highest groundwater level.
- Demonstrate that features are able to accommodate a 1 in 10 year storm events within 24 hours of a 1 in 100 year event plus climate change.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

Reason: To prevent surface water flooding and to mitigate any environmental harm that may be caused to the local water environment.

## **8.SUDS**

No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.

Reason: The National Planning Policy Framework paragraph 163 and paragraph 170 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution. Construction may lead to excess water being discharged from the site. If dewatering takes place to allow for construction to take place below groundwater level, this will cause additional water to be discharged. Furthermore the removal of topsoils during construction may limit the ability of the site to intercept rainfall and may lead to increased runoff rates. To mitigate increased flood risk to the surrounding area during construction there needs to be satisfactory storage of/disposal of surface water and groundwater which needs to be agreed before commencement of the development.



## **9.SUDS**

No works shall take place until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.

Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.

Reason: To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk. Failure to provide the above required information before commencement of works may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.

## **10.SUDS**

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason: To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

## **11.ZDC - Removal of PD for All Residential Extensions & Outbuildings**

Notwithstanding the provisions of Classes A, B, C, D and E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no extensions, ancillary buildings or structures shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority.

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

## **12.ZDE - Removal of PD for Open Plan Fences/Walls**

Notwithstanding the provisions of Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no fences, walls, gates or other means of enclosure, other than any shown on the approved drawings, shall be erected in advance of any wall of the dwelling to which it relates (including a side or rear wall) which faces a highway (including a footpath or bridleway) unless otherwise subsequently approved, in writing, by the Local Planning Authority.

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

## **13. ZDI - \*Removal of PD for Windows Above Ground Floor Level\***

Notwithstanding the provisions of Classes A, B and C of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no windows, rooflights or other openings shall be installed above ground floor level within the WALL(S) or roof FACE(S) of the DWELLINGS unless otherwise approved, in writing, by the Local Planning Authority.

Reason: To protect the privacy of adjacent dwellings.

#### **14. Tree and Hedgerow Protection: General**

All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site in accordance with the submitted Tree Survey/AIA ref : SHA 671 Revision C 15 May 2020 and the Local Planning Authorities guidance notes and the relevant British Standard. All existing trees and hedgerows shall then be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

Reason: To safeguard the continuity of amenity afforded by existing trees and hedgerows.

#### **15. ZFK - Smallscale Residential Boundary Treatments**

The dwelling(s) hereby approved shall not be occupied until details of the provision, siting, design and materials of screen walls and fences have been submitted to and agreed, in writing, by the Local Planning Authority. The approved screen walls and fences shall then be erected prior to the first occupation of the dwelling to which they relate and shall thereafter be retained in the approved form.

Reason: There are insufficient details within the submitted application to ensure that the boundary treatments are satisfactory in relation to amenities and the surrounding context.

#### **16. ZGX - Contaminated Land Part 1 of 4 (Site Characterisation)**

No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

(i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;

(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

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

#### **17. ZGY - Contaminated Land Part 2 of 4 (Submission of Remediation Scheme)**

No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and then submitted to and agreed, in writing, by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

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

#### **18. ZGZ - Contaminated Land Part 3 of 4 (Implementation of Approved Remediation Scheme)**

No works shall take place other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

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

#### **19. ZG0 - Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 16 and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 17, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 18.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried

out safely without unacceptable risks to workers, neighbours and other offsite receptors.

#### **20. ZG3 - \*Validation Certificate\***

Prior to the first OCCUPATION/USE of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 19.

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

#### **21. ZPA – Construction Method Statement**

No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:

- the parking of vehicles of site operatives and visitors;
- hours of deliveries and hours of work;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- wheel washing facilities;
- measures to control the emission of dust and dirt during construction;
- measures to control noise; and
- a scheme for recycling/disposing of waste resulting from demolition and construction works.

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

#### **22. ZPD - Limits to Hours of Work**

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

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

#### **23. Electric vehicle charging points**

The development shall not commence above damp-proof course level until a scheme for the provision and implementation of electric vehicle (EV) charging points has been submitted to, and approved in writing by, the Local Planning Authority. The EV charging points shall be installed prior to the first occupation of their respective dwellings.

Reason: In the interests of sustainability and air quality by encouraging the use of ultra-low emission vehicles.

## **24. Parking**

Prior to the first occupation of the development, the vehicle parking area indicated on the approved plans, including any parking spaces for the mobility impaired, shall have been hard surfaced, sealed, marked out in parking bays and made available for use to the satisfaction of the Local Planning Authority. The vehicle parking area shall be retained in this form at all times and shall not be used for any purpose other than the parking of vehicles that are related to the use of the development.

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

## **25.Retaining Garage for Parking**

The garage accommodation forming part of the development shall be retained for parking motor vehicles at all times and shall not be adapted to be used for any other purpose, including other uses ancillary to the residential use, unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: To retain adequate on-site parking provision in the interest of highway safety

## **26.Landscaping**

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

- Finished levels or contours, where changes are proposed.
- Means of enclosure.
- Car parking layouts.
- Other vehicle and pedestrian access and circulation areas;
- Hard surfacing materials.
- Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.).
- Proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. Indicating lines, manholes, supports etc.).
- Earthworks (including the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform).
- Planting plans.
- Written specifications (including cultivation and other operations associated with plant and grass establishment).
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
- Implementation timetables and monitoring programs.

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

## **27. Landscape Management Plan**

Prior to the first occupation of the development, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas other than small, privately owned, domestic gardens shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved at all times.

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

## **28. Highways**

No occupation of the development shall take place until the following have been provided or completed:

- a) A priority junction off Berechurch Hall Road to provide access to the proposal site as shown in principle on the planning application drawings
- b) A footway across the site frontage as shown in drawing 6727-1103-P7
- c) Residential Travel Information Packs in accordance with ECC guidance

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking, in accordance with policy DM1, DM9 and DM10 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011

## **29. Street Name Signs**

Prior to the first occupation of any of the dwellings hereby approved street name signs shall have been installed at the junction of the new highway with the existing road network.

Reason: To ensure that visitors to the development can orientate themselves in the interests of highway safety.

## **30. Ecology**

The proposed development shall not be carried out except in complete accordance with the submitted ecology report REP17019/HH, including the mitigation and enhancements sections of that report.

Reason: In the interests of ecology and the potential protected species on site.

## **19.0 Informatives**

19.1 The following informatives are also recommended:

### **1.ZU1 - SUDS**

A Suitably Qualified Person(s) must have a background in flood risk and be assessed by staff at Essex County Council before reviewing and providing any supporting statements to say that an application is technically acceptable. The assessment of a suitably Qualified Person will be carried out by members of the Development and Flood Risk team and may be liable to a charge. Following the initial assessment of a

Suitably Qualified Person(s) subsequent reviews will take place and if deemed necessary Qualified Person status may be withdrawn or the person(s) assessed may be required to carry out further training and assessment at additional charge. The applicant may use ECC SuDS Planning Written Advice service to have their FRA/ Drainage strategy reviewed to provide a formal letter confirming this is acceptable issued. Further details on the SuDS Planning Advice service can be found at: <https://flood.essex.gov.uk/new-development-advice/apply-for-suds-advice/>

## **2.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.

## **3.ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via [www.colchester.gov.uk/planning](http://www.colchester.gov.uk/planning) or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

## **4.ZTB - Informative on Any Application With a Site Notice**

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

## **5. Highway Notes:**

- To enable the road layout to be adopted as highway, all shared surfaces should have a 500 mm no build zone on all sides (which should be hardened and adopted as highway) and traffic calming features to enable implementation of a 20-mph zone
- All residential developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to the Advance Payments Code, Highways Act 1980. The developer will be served with an appropriate notice within 6 weeks of building regulations approval being granted and prior to commencement of the development must provide guaranteed deposits, which will ensure the new street is constructed in accordance with a specification sufficient to ensure future maintenance as highway by the Highway Authority

- Prior to any works taking place in the highway the developer should enter into an agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works
- All or some of the above requirements may attract the need for a commuted sum towards their future maintenance (details should be agreed with the Highway Authority as soon as possible). All work within or affecting the highway should be laid out and constructed by prior arrangement with and to the requirements and satisfaction of the Highway Authority, details to be agreed before commencement of the works. An application for the necessary works should be made to [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or SMO1 – Essex Highways, 653, The Crescent, Colchester Business Park, Colchester, CO4 9YQ



## 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 scrapyards 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.*



