



The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use. This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2017

Item No: 7.2

Application: 220739

Applicant: Mr Mark Briggs

Agent: N/A

Proposal: Erection of a 1.37m fence and pedestrian gate to enclose a garden area for the exclusive use of the tenant of the ground floor flat at 24 Ken Cooke Court.

Location: 24 Ken Cooke Court, East Stockwell Street, Colchester, Essex, CO1 1FF

Ward: Castle

Officer: Hayleigh Parker Haines

Recommendation: **Approve** subject to conditions

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee due to the Applicant of the application being Colchester Borough Homes.

2.0 Synopsis

- 2.1 The key issues for consideration are the principle of the development, design of the development and the impact on the character and appearance of the site, surrounding area and the Conservation Area.

- 2.2 The application is subsequently recommended for Approval.

3.0 Site Description and Context

- 3.1 The application site sits to the eastern side of East Stockwell Street and the western side of Maidenburgh Street, the site is relatively central within Ken Cooke Court. The site is occupied by flatted accommodation, within a predominately residential area and the Colchester Area 1 Conservation Area.

4.0 Description of the Proposal

- 4.1 Planning permission is sought for the construction of a 1.37 metre high fence and associated change of use from communal space to private residential garden; this will have a length of 11.3 metres (including the pedestrian gate). The proposed fence would replace the existing fence which was constructed without planning permission in 2021. The current fence has a height of 1.8 metres.

5.0 Land Use Allocation

- 5.1 Public open space associated with the development

6.0 Relevant Planning History

- 6.1 The most recent relevant planning history is set out below:

82/0416 – Erection of 24 flats, 11 houses and the demolition of existing outbuildings – Approved subject to conditions.

7.0 Principal Policies

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

7.2 Local Plan 2017-2033 Section 1

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

- SP7 Place Shaping Principles

7.3 Local Plan 2017-2033 Section 2

On 4th July 2022 Full Council resolved to adopt the modified Section 2 Local Plan in accordance with Section 23(2)(b) of the Planning and Compulsory Purchase Act 2004. The following policies are considered to be relevant in this case:

- ENV1 Environment
- DM13 Domestic Development
- DM15 Design and Amenity
- DM16 Historic Environment
- DM17 Retention of Open Space and Recreation Facilities

7.4 The application site does not fall within a Neighbourhood Plan Area.

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

- The Essex Design Guide
- External Materials in New Developments

8.0 Consultations

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

8.2 The Historic Buildings and Areas Officer has objected to the proposal; due to the loss of the communal green areas which are considered to mitigate the hard landscaping and surrounding buildings and result in the courtyards being generally pleasant areas. The impact is somewhat negative but could establish a precedent that could easily culminate in several of the important areas of communal planting being enclosed which would be greatly harmful.

These developments were designed to be reasonably permeable and as such they can be used as walking routes. Also there are many glimpsed views into these developments from the main streets in the Dutch Quarter. The Dutch Quarter has a similar built density to the developments in question but gardens are almost always private and to the rear. Thus the planting in the more modern developments of the area are valuable to the wider area, as relatively

tranquil shared spaces where the passing seasons can be experienced in the changing foliage.

8.3 The Tree Officer has raised no objection to the proposal.

8.4 Colchester Civic Society object to the proposal on the following grounds:

- The interior open space was always designed to be a shared space for the immediate residents
- No reasoned argument in the application for agreeing to any fencing provision for this one tenant or the destruction of communal space.
- The fencing does not improve or enhance this carefully designed development and destructive in its effect.

9.0 Parish Council Response

9.1 The site falls within the Castle Ward which is Non-Parished

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. 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.

Objecting Neighbouring Comments (9th May)	Officer Response
The installation/replacement fence and sheds will diminish the appearance of Ken Cooke Court as a conservation Area with visiting tourists	Comments noted and discussed below
Risk to tree root structure, vitally important as could put surrounding homes in jeopardy if the tree were to die. Roots already been cut and exposed.	Comments noted
The garden should return to being a communal area for all the residents to enjoy as it has been since the 1980's	Comments noted
If the proposed fence is installed the unsightly contents of the garden will be visible.	Comments noted
The gardens located in the car park are left as open spaces and one has previously been rejected for private use for the same reason	Comments noted
Ken Cooke Court won an award many years ago for its outstanding beauty and is renowned for maintaining its open spaces	Comments noted

Since the shrubbery in this area has been removed it has had a significant impact on wildlife	Comments noted
Not in keeping with open natural beauty of the conservation area	Comments noted and discussed below
Loss of communal space	Comments noted and discussed below
Tenant fails to keep garden tidy	Comments noted.
A path has been made for the mobility scooter but it has never been used, it remains outside the main door.	Comments noted.
The mobility scooter is used infrequently by one person not two at the address	Comments noted
The original fence was constructed without planning permission and gave the new tenant an idea it was a better swap. Causing stress to the neighbourhood who would have gladly received a free private grassed area of their own	Comments noted
This is a small community that has been disrupted by not being treated fairly or given the chance to object in the first place	Comments noted
This is unfair on all levels, to the conservation area, the residents of Ken cooke court, the public, the environment and to morale of everyone causing conflict over something that should not of happened in the first place. It has even been said this tenants relation works within the system and knows how get this planning approved. If this is true, it's so very wrong	Comments noted.
Following previous objections the mobility scooter has been moved. Feels like a lot of 'game playing' is going on	Comments noted

10.2 The Dutch Quarter Association objects to the proposal on the following grounds:

- Ken Cooke Court is part of an award-winning housing complex. It is important to support the original planning brief and preserve the pleasant character of these gardens and their enhancement of the Conservation Area

- 10.3 It should be noted that a number of objections mention the construction of sheds and paths which **do not** form part of this current application. As outlined above this application is solely for the construction of a 1.37 metre high fence.

It is also relevant to note that a petition has been submitted and signed by 21 neighbouring occupiers objecting to the proposed development. This petition does not introduce any other concerns from those summarised above.

11.0 Parking Provision

- 11.1 The proposed development would not have an impact on the parking provision required or provided on site.

12.0 Accessibility

- 12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. This application has been made on behalf of the Occupant of 24 Ken Cooke Court and supporting information has been provided which identifies that the potential refusal of planning permission, in this instance has the potential to result in a specific disadvantage being suffered by an individual as a result of their protected characteristics – specifically in relation to accessibility and security. Given this a standalone bespoke equality impact assessment has been undertaken to assess this issue, in light of the Council's Public Sector Equality Duty under the Equality Act 2010. This assessment is held on the planning record but is confidential as it contains personal information. It is considered the Council can suitably discharge their duties under the Equality Act as appropriate action has been taken to remove or minimizing disadvantages suffered by people due to their protected characteristics and the granting of planning permission is not considered to present conflict with any other arms of the Public Sector Equality Duty. This is discussed further within the below assessment.

13.0 Open Space Provisions and landscaping

- 13.1 Policy DM17 advised that existing public and private open spaces, including allotments, within the Borough, represent important assets serving the communities in which they are located (or in some instances wider areas). This importance can relate not only to their function, but also to the amenity value and contribution they make to the character of an area in general by providing a 'green lung', opportunities for a well-designed and inclusive public realm, and visual breaks in the built environment. If such provisions are lost to other uses it can be extremely difficult to find alternative locations particularly as open land is scarce and, therefore, at a premium

The proposed development is to utilise land which as part of the original development approved under the terms of 82/0416 was intended as an open communal area and landscape feature; whilst the change of use and construction fence would result in an increase in private, usable amenity space for the occupant of 24 Ken Cooke Court, it is considered to reduce the amount of shared

amenity space afforded to other occupiers of the wider development. This is discussed further below

14.0 Air Quality

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

15.0 Planning Obligations

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

16.0 Report

16.1 Principle of Development

Recently Adopted Plan policy DM17 seeks to protect and enhance the existing network of green links and open spaces. Development including change of use, of any existing public or private open space, including allotments, will not be supported unless it can be demonstrated that:

- (i) Alternative and improved provision will be created in a location well related to the functional requirements of the relocated use and its existing and future users; and,
- (ii) The proposal would not result in the loss of an area important for its amenity or contribution to the green infrastructure network or to the character of the area in general; and
- (iii) It achieves the aims of any relevant prevailing strategy relating to open space and recreation.

Development proposals resulting in a loss of open space must additionally demonstrate that:

- (iv) There is an identified excess provision within the catchment of the facility and no likely shortfall is expected within the plan period; or
- (v) Alternative and improved provision will be supplied in a location well related to the functional requirements of the relocated use and its existing and future users.

In all cases, development will not be permitted that would result in any deficiencies in public open space requirements or increase existing deficiencies in the area either at the time of the proposal or be likely to result in a shortfall within the plan period.

Additionally, development that would result in the loss of any small incidental areas of open space, not specifically identified on the policies map but which contribute to amenity value and the character of existing residential

neighbourhoods, and any registered common, heathland or village green or which contribute to green infrastructure will not be permitted

The surrounding area is characterised by low-rise high density flats arranged around courtyards with communal outside areas. This high density could easily appear oppressive, but the generous planting of shrubs and perennials in the common areas make a considerable contribution to mitigating the hard landscaping and surrounding buildings, and the courtyards are generally pleasant areas. As part of this application, no evidence has been provided to suggest that this area of open space is no longer required and is surplus to requirements, or that the proposal has resulted in the replacement of the land with new open space and the land is not for alternative sports or recreational provision. Therefore, it is not considered that the construction of a fence and a change of use to garden land would be acceptable, and the development is contrary to DM17.

Notwithstanding the above, it is pertinent to note that the Occupant of the site has protected characteristics, an appropriate Equalities Impact Assessment has been carried out whereby it was concluded that the refusal of this application would have the potential to result in a specific disadvantage being suffered by these individuals. Therefore, in this instance, subject to conditions to ensure that the development and associated change of use of this land, is only used and present whilst this Occupant is a tenant at 24 Ken Cooke Court, and is subsequently returned to communal land with all operational development and residential paraphernalia removed following the termination of this tenancy, it is considered for the Council to suitably discharge their duties under the Equalities Act, this weighs heavily in favour of the proposed development, and it is therefore, in these personal circumstances, considered acceptable in principle.

16.2 Design and Impact on the Character and Appearance of the Site, Surrounding Area and Conservation Area.

Policy ENV1 seeks to conserve and enhance Colchester's natural and historic environment. Policies DM15 and DM16 set out design criteria that new development must meet, seeking to enhance and protect the historic environment and its setting. These require new development to be of a high quality and respect the character of the site and its context

The application site contains a residential dwelling and the land in question, up until recently, was an open piece of land for public benefit. Close boarded fencing has been erected around the boundary of the site. It should be noted that the property to the south does benefit from similar fencing; however, this forms part of a separate site whereby there is no planning history readily available to suggest that this fencing was not part of the original submission for the development and if not that this is lawful and therefore, is of limited weight in the assessment of this application. Furthermore, each application must be determined on its own merits.

The introduction of a 1.8 metre close boarded fence in this location is considered to be an incongruous feature within Ken Cooke Court, this is further exacerbated

by its prominent location on what is classed as public land, that previously contributed open views within a relatively high-density residential area. Furthermore, as the site is bordered by a public footpath and is public amenity land, the fencing is considered to be a dominant and obtrusive form of development.

The change of use of this land to residential curtilage and the associated fencing is considered to have a detrimental impact on the character and appearance of the site and surrounding area as by its very nature it has removed the essential characteristic and reason for its protection as public open space, which is to enhance the quality of the residential area as a whole. Furthermore, as noted earlier, the built form by way of the fencing is a discordant and highly visible feature resulting in the introduction of residential paraphernalia onto the land, and although the fence would prevent this from being highly visible, it would result in the domestication of the land to the detriment of the locality.

The introduction of a fencing in this location has had a marked impact on the character of the immediate area and if approved, could set a realistic precedent for similar development within the surrounding area. Whilst any subsequent planning applications would need to be assessed on their own merits, precedent creation can be a material consideration to be given weight in the decision making process where applications for the same type of development are likely to be made at other locations with similar circumstances which future decision makers could not resist in all fairness; this is considered to be the case with Ken Cooke Court, given the small pockets of open communal areas close to residential properties, whereby occupants could also wish to construct fencing similar to that proposed. Site characteristics are considered suitably similar for there to be a risk of precedent should the fencing be approved, and this would be of further detriment to planning policy requirements of DM15.

The application site sits within the Colchester Area 1 Conservation Area; Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Council to pay special attention to desirability of preserving or enhancing the character or appearance of the conservation area. This stance is mirrored in the recently adopted section two plan policy DM16.

The development was originally designed to be reasonably permeable and as such they can be used as walking routes. Also there are many glimpsed views into Ken Cooke Court from the main streets in the Dutch Quarter. The Dutch Quarter has a similar built density to the developments in question but gardens are almost always private and to the rear. Thus the planting in the more modern developments of the area are valuable to the wider area, as relatively tranquil spaces where the passing seasons can be experienced in the changing foliage. Therefore, the removal of this open space is considered to have resulted in harm to the character of the conservation area contrary to policy DM16 of the Local Plan, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Section 197 of the NPPF.

Notwithstanding the above, it is pertinent to note that the Occupant of the site has protected characteristics, an appropriate Equalities Impact Assessment has

been carried out whereby it was concluded that the refusal of this application would have the potential to result in a specific disadvantage being suffered by these individuals. Therefore, in this instance, subject to a condition seeking supplementary planting to the western boundary of the site, on what remains communal land, it is considered for the Council to suitably discharge their duties under the Equalities Act, this weighs heavily in favour of the proposed development, and it is therefore, in these personal circumstances, considered acceptable in principle.

16.3 Neighbouring Amenity

The application site is bordered by a number of neighbouring properties. To the north are 18, 21, 22 and 25 Ken Cooke Court, to the west are 13-15 Ken Cooke Court and to the south are 5 and 6 Ken Cooke Court. The proposed fence would sit over 8 metres from the neighbouring properties to the west and south (with the southern neighbouring properties occupying higher ground), due to this degree of separation it is not considered that the proposed development would represent an unneighbourly form of development in relation to these neighbouring occupiers.

The proposed fence would sit approximately 3 metres from neighbouring windows to the properties to the north of the site, due to this degree of separation, alongside the orientation of the properties, it is not considered that the proposal would represent an unneighbourly form of development in relation to these neighbouring occupiers in terms of loss of light, or having an overbearing nature. However, Policy DM19 requires sufficient shared amenity space to be provided for flatted accommodation, this was evident in the original approval for the development (82/0416), therefore, the loss of this communal area has resulted in an unacceptable level of communal amenity space being provided to neighbouring residents. However, extensive public open space is available in Castle Park only short distance from the site.

16.4 Other Matters

The proposed development does not impact on the parking provision required or provided on site.

It is noted that there is a tree of significant amenity value to the west of the proposed fence. A letter from Colchester Borough Homes Tree Manager advises that the footings for the existing fence do not appear to have significantly disturbed the roots of the tree or to have made it unstable. No response had been received from the Council's Tree Officer at the time of writing this report, however, should this be received prior to committee a member's update will be provided

17.0 Conclusion

- 17.1 To summarise, the permanent use of this semi-public amenity land as residential curtilage and construction of a fence, due to lack of evidence and sufficient justification, is not acceptable and therefore would not comply with Policy DM17

of the recently adopted Local Plan and therefore, the principle of this development is not founded. Similarly, the construction of a fence and change of use of land to residential, by reason of their location and design has a detrimental impact on the character and appearance of the surrounding area and conservation area contrary to Policies ENV1, DM15 and DM16 of the LDP.

- 17.2 However, in light of the personal circumstance and protected characteristics of the Occupier of the residential Unit 24 Ken Cooke Court, alongside the duty of the Council under the Equalities Act and the potential impact and disadvantage suffered by the Occupant of the dwelling should the application be refused, it is considered that appropriate conditions ensuring that this is a personal permission, and that supplementary planting is implemented, mitigates the permanent harm identified. The site would return to its former condition and use when the current tenancy of the property ceases.

18.0 Recommendation to the Committee

18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

1. Time Limit

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

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

2. Development to Accord With Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers: Proposed Site Plans - 10 and Proposed Elevations - 12

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

3. Materials

The external facing and roofing materials to be used shall be those specified on the submitted application form

Reason: To ensure that materials are of an acceptable quality appropriate to the area

4. Personal Permission

This permission shall be personal to Ms Elizabeth Smith and shall not enure for the benefit of the land.

Reason: For the avoidance of doubt as to the scope of this permission because the development is granted solely in recognition of the personal situation and individual circumstances of this case and would not have otherwise been acceptable to the Local Planning Authority.

5. Removal of Permitted Development Rights (outbuildings)

Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A, B and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no provision of buildings, enclosures, swimming or other pool shall be erected except in accordance with drawings showing the design and siting of such building(s) which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: The site is already heavily constrained and any further development on the site would need to be considered at such a time as it were to be proposed.

6. Soft Landscaping Scheme

Within 6 months of the date of this permission, a scheme of soft landscaping works for the publicly visible parts of the site shall have been submitted to and agreed, in writing, by the Local Planning Authority. The scheme as agreed shall be implemented within the first available planting season, in line with the approved details and retained in perpetuity.

This scheme shall include any proposed changes in ground levels and also accurately identify positions, spread and species of all existing and proposed trees, shrubs and hedgerows on the site, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission. It is recommended that this scheme references the existing planting within the surrounding area.

Reason: In order to ensure that there is a sufficient landscaping scheme for the relatively small scale of this development and to mitigate the loss of a communal area and the associated harm to the character and appearance of the surrounding area as a result of the close boarded fence

7. Removal of Fence and Reinstatement of Land as Communal.

Within 6 months of the termination of Ms Elizabeth Smiths tenancy at 24 Ken Cooke Court, the development hereby granted shall be removed and

the associated change of use shall cease. All residential paraphernalia shall be removed from the site as outlined in red and the site shall return to communal open space (with associated planting in line with the wider development) and retained as such, in perpetuity.

Reason: The proposed development is considered unacceptable in principle and design terms, however, in light and having due regard, to the Occupants specific personal circumstance, it is considered necessary and therefore, following the cessation of their tenancy at the property, it is considered necessary to ensure that this temporary development and use is not retained on site to the detriment of the surrounding environment.