

# Planning Committee Meeting

**Grand Jury Room, Town Hall, High Street,  
Colchester, CO1 1PJ  
Thursday, 25 May 2023 at 18:00**

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

# Information for Members of the Public

## Access to information and meetings

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

Dates of the meetings are available here:

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

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

## Have Your Say!

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

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

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## Access

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**COLCHESTER CITY COUNCIL**  
**Planning Committee**  
**Thursday, 25 May 2023 at 18:00**

**The Planning Committee Members are:**

Members of the Committee Chair, and  
Deputy Chair to be appointed at the annual  
meeting.

**AGENDA**  
**THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING**  
**(Part A - open to the public)**

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

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

**Live Broadcast**

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

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

**1 Welcome and Announcements**

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

**2 Substitutions**

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

**3 Declarations of Interest**

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

**4 Urgent Items**

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

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

At meetings of the Planning Committee, members of the public may make representations to the Committee members. This can be made either in person at the meeting or by joining the meeting remotely and addressing the Council via Zoom. These Have Your Say! arrangements will allow for one person to make representations in opposition and one person to make representations in support of each planning application. Each representation may be no longer than three minutes(500 words). Members of the public wishing to address the Committee either in person or remotely need to register their wish to address the meeting by e-mailing [democratic.services@colchester.gov.uk](mailto:democratic.services@colchester.gov.uk) by 12.00 noon on the working day before the meeting date. In addition for those who wish to address the committee online we advise that a written copy of the representation be supplied for use in the event of unforeseen technical difficulties preventing participation at the meeting itself.

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

**6 Minutes of Previous Meeting**

No minutes of previous meetings are submitted for approval to this meeting.

**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) **230031 Land between 7 & 15 Marlowe Way, Colchester** 7 - 30  
Application for variation of condition 2 following grant of planning permission of application 212888 (Daylight and Sunlight report received). Reduced ridge height of plot 1 including introduction of two chimneys.
- 7(ii) **230959 Foundation House, 1 Long Wyre Street, Colchester** 31 - 38  
Poster to fit in window space of retail unit
- 8 **Exclusion of the Public (not Scrutiny or Executive)**  
In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).
- Planning Committee Information Pages v2** 39 - 50

## **Part B**

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





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## Item No: 7.1

**Application:** 230031  
**Applicant:** Mr John Beton  
**Agent:** Mr Robert Pomery  
**Proposal:** Application for variation of condition 2 following grant of planning permission of application 212888 (DAYLIGHT AND SUNLIGHT REPORT RECEIVED) Reduced ridge height of plot 1 including introduction of two chimneys.  
**Location:** Land between, 7 & 15 Marlowe Way, Colchester, CO3 4JP  
**Ward:** Prettygate  
**Officer:** Chris Harden  
**Recommendation:** Authority to Approve subject to consideration of any further consultation responses received on the amended plans.

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

- 1.1 This application is referred to the Planning Committee because it has been called in by Councillor Buston who raises the following concerns:
1. Over development
  2. Ignoring the Planning Conditions imposed in 21 2888 approved 21 Apr 21
  3. Development over a former publicly accessible Open Green Space
  4. The previous Application for development on this site ( 21 0304) was dismissed on 10 Sep 21 , citing , as reason for dismissal ( inter alia ) :  
" 1. The proposed three dwellings, by reason of their detailed design, form and scale (including being higher than the adjacent properties) would be out of keeping with and harmful to the character of the established street scene and surroundings."  
Thus that the current buildings have been erected on the site without reference to the plans Approved in 21 2888 , in particular the height of these buildings .  
Policies UR 2 and DP1 , and the (Borough) Council's adopted "Backland & Infill Development" SPD, are in particular infringed.
- 1.2 The application was deferred at the Planning Committee of 27<sup>th</sup> April 2023 to enable officers to discuss options with the developer for lowering the roof ridge of the constructed dwellings.

## **2.0 Synopsis**

- 2.1 Since the last Committee, revised plans have been submitted to show the roof ridge height of the dwelling on plot 1 reduced by the introduction of a flat roof strip along the ridge, hidden by chimneys either end. This would result in the roof ridge on plot 1 being 0.300m above the ridge height of No.7 compared to 0.715 m above as built. As before, the key issue for consideration of the overall scheme is the relationship of the new elevations as built with the previously approved dwellings in relation to neighbouring properties, particularly in respect of the comparative height which has been corrected on the street scene drawings to show the neighbouring properties at the correct, lower height (condition 2 of 212888) compared to the previous approval.
- 2.2 The application is subsequently recommended for approval subject to consideration of any further consultee responses received in respect of the latest revised plans. In summary, the site is within the settlement limits and is in a sustainable location so remains in accordance with latest adopted Local Plan settlement Policy. On the previously approved scheme, the neighbouring properties were drawn taller than they exist and the street scene drawings consequently showed the three new dwellings with roof ridge heights no higher than the neighbouring dwellings. This application corrects the street scene plan to show the neighbouring dwellings at their correct height and the relationship as constructed on site.
- 2.3 It is considered that the newly constructed dwellings are now shown correctly (with proposed revision on plot 1) and modestly higher than the neighbouring dwellings which, in the opinion of officers, does not undermine the character of



the street scene in a significant or material way. They are not considered to be overly dominant in the street scene and remain relatively modest in height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings. Consequently, it is not considered that a refusal can be justified or sustained on the grounds that the new dwellings as built are between 0.3 (plot 1) 0.674 (plot 2) and 0.587 (plot 3) metres higher than the neighbouring properties.

- 2.4 It should also be noted that the neighbouring dwelling No. 7 Marlowe Way was originally shown sited slightly further away than as existing and this has been corrected on the submitted drawings. This in itself is not considered to be materially detrimental to the street scene nor to undermine residential amenity. The rear flat roofed kitchens were also built to a height of 3.3 m, + 0.7 m higher than approved so the drawings have been corrected to reflect the scheme as built. This element is considered to be acceptable in height and sited sufficiently far enough away from neighbouring properties to avoid any detriment to neighbouring residential amenity, including loss of light.
- 2.5 Other issues relating to the application including impact upon neighbouring residential amenity, layout, design, impact upon vegetation, provision of amenity space and highway issues remain acceptable in the opinion of officers.

### **3.0 Site Description and Context**

- 3.1 The site lies within the settlement limits and was partly a gap site comprising an open grassed area with two TPO'd trees. It lies within an established housing estate that dates from the late 60's early 70's. Adjacent to the site are two storey dwellings on either side (nos.7 and 15 Marlowe Way) and to the rear is the property known as Lexden Manor which has received permission for extension works and conversion. Residential development on the site for three dwellings approved under 212888 is very advanced, including up to roof ridges for each dwelling. The TPO trees have been retained.

### **4.0 Description of the Proposal**

- 4.1 The current application is for variation of condition 2 following grant of planning permission of application 212888. Application 212888, which was approved at the Planning Committee was for the construction of three No. 4-bedroom detached houses, each with an integral garage, plus individual private driveways connecting to Marlowe Way. It included the demolition of a modern brick boundary wall to Lexden Manor, which had already been partly removed. This element was permitted development. The two protected (TPO) trees at the front of the site would be retained. Street scene elevation drawings were submitted that showed the new dwellings were proposed to be no taller than the existing neighbouring properties on either side of the site, as displayed at the Planning Committee.
- 4.2 During construction of the approved scheme 212888 it became apparent that the roof ridge heights of the newly constructed dwellings were higher than the

ridge height of the neighbouring dwellings. Instead of being in line with the roof ridge height of the neighbouring properties as shown in the approved street scene drawings, the ridge height of the new dwellings appeared higher. This is as a result of the neighbouring property heights not being shown correctly on the approved street view drawings. The new dwellings are constructed in accordance with the approved elevations for each unit.

4.3 The agent on this current application originally submitted front elevation street scene drawings showing the following:

- Plot 1 built to 7.790 m to roof ridge, +0.715m higher than the adjacent No. 7
- Plot 2 built to 7.790 m to roof ridge
- Plot 3 built to 7.671 m to roof ridge, +0.587m higher than the adjacent No. 15

The subsequent revision submitted since considered by members at the last Committee shows the ridge height of plot 1 to be lowered with a flat roof element, with chimneys set on either end so that the ridge height would be 0.3 m higher than the ridge height on the adjacent dwelling, No.7 Marlowe Way.

4.4 As condition 2 of the planning approval states that the development must be built in accordance with the approved drawings, this application now seeks to vary condition 2 (approved drawings) in order to reflect what has currently been built on site in relation to neighbouring properties and thus to show the accurate height of the existing neighbouring properties and also to reflect the proposed reduction in the ridge height of plot 1.

4.5 In the submitted planning statement the agent states:

“The drawing of relevance to this matter is 6817 / 1606 Rev E, which shows an illustrative streetscene. The drawing illustrates the proposed houses with a height or ridgeline, which is marginally lower than the two dwellings that flank the site, nos. 7 and 15 Marlowe Way. As built, the ridgeline of each house is now slightly taller than was illustrated on the streetscene drawing 6817 / 1606 Rev E, and taller than the two neighbouring dwellings nos. 7 and 15. As the houses have taller ridge lines than those shown in the approved drawing 6817 / 1606 Rev E, it can be said that the dwellings have not been carried out in accordance with the details shown on the submitted drawings. Therefore, this change from the approved plan needs to be regularised via an application to vary condition 02, to substitute approved plan 6817 / 1606 Rev E with the proposed plan 6817 / 1612, which illustrates the houses as built.”

4.6 In additional information submitted the agent also states: “the dimensions from the ridge to the DPC on each of the as built properties is broadly the same as the approved elevation drawings for each plot. That said, there is some minor variation, but it is inconsequential. Plots 1 & 2 are 116mm (4.5 inches) taller, so the height of one brick and Plot 3 is 3.0mm lower than was approved, so de minimis in planning terms.”

- 4.7 It should also be noted that in addition, through consultation on this application, a resident has highlighted a further inconsistency with the approved drawings in relation to the gap separating no. 7 Marlowe Way and Plot 1 of the development. This relates to approved drawing 6817/1105 Revision A, which was a drawing submitted showing the proposed layout of the development, including the siting of the new and existing dwellings and spaces between the new and existing neighbouring dwellings.
- 4.8 In response to this issue the agent states "This drawing was based on a digital Ordnance Survey map (OS map), purchased from a licensed seller of Ordnance Survey data. Since raising this concern, the applicants have looked into the point made by the resident and have discovered that the Ordnance Survey information is inaccurate, this is not unusual, as Officers will know; the OS map data is not a topographical survey. The resident is correct to point out that the gap between properties shown on drawing 6817/1105 Revision A, was 4.888m. The actual as built gap recently measured is actually 4.382m. It has been discovered that no. 7 is not shown on the OS Map in its correct position, it is in fact 506mm closer to the common boundary than is shown on the OS Map. This accounts for the discrepancy identified by the resident, however, what is important, is that Plot 1, is positioned no closer to the common boundary with no. 7, than was approved and that the gap remains consistent with the spaces between dwellings in the location."
- 4.9 A Daylight/Sunlight report has also been submitted.
- 4.10 It should also be noted that drawings have been submitted to show the revised heights of the single storey, flat roofed rear kitchens as built.

## **5.0 Land Use Allocation**

### **5.1 Settlement Limits**

## **6.0 Relevant Planning History**

- 6.1 212888 Construction of three 4-bedroom detached houses, each with an integral garage, plus individual private driveways connecting to Marlowe Way. Retention of two TPO trees. - Approved
- 6.2 210304 Demolition of brick boundary wall to Lexden Manor. Construction of three 4-bedroom detached houses, each with integral garage, plus individual private driveways connecting to Marlowe Way. Retention of two TPO trees.

Refused: *"The proposed three dwellings, by reason of their detailed design, form and scale (including being higher than the adjacent properties) would be out of keeping with and harmful to the character of the established streetscene and surroundings."*

- 6.3 210331 land adj Lexden Manor – Erection of 1 No.5 bed house. Approved & implemented.
- 6.4 192337 Conversion of Lexden Manor to create 5 flatted units. Approved
- 6.5 COL/89/1308, Conversion of the main dwelling into flats and additional cottages and apartments in the grounds. Refused. Appeal dismissed

## **7.0 Principal Policies**

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

### **7.2 Local Plan 2017-2033 Section 1**

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

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP4 Meeting Housing Needs
- SP6 Infrastructure & Connectivity
- SP7 Place Shaping Principles

### **7.3 Local Plan 2017-2033 Section 2**

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

SG1 Colchester's Spatial Strategy  
 SG2 Housing Delivery  
 SG5 Centre Hierarchy  
 SG6a Local Centres  
 SG7 Infrastructure Delivery and Impact Mitigation  
 SG8 Neighbourhood Plan  
 ENV1 Environment  
 ENV3 Green Infrastructure  
 ENV5 Pollution and Contaminated Land  
 CC1 Climate Change  
 PP1 Generic Infrastructure and Mitigation Requirements  
 DM1 Health and Wellbeing  
 DM2 Community Facilities  
 DM3 Education Provision

- DM4 Sports Provision
- DM9 Development Density
- DM10 Housing Diversity
- DM12 Housing Standards
- DM15 Design and Amenity
- DM16 Historic Environment
- DM17 Retention of Open Space
- DM18 Provision of Open Space and Recreation Facilities
- DM19 Private Amenity Space
- DM20 Promoting Sustainable Transport and Changing Travel Behaviour
- DM21 Sustainable Access to development
- DM22 Parking
- DM23 Flood Risk and Water Management
- DM24 Sustainable Urban Drainage Systems
- DM25 Renewable Energy, Water Waste and Recycling

7.4 Some “allocated sites” also have specific policies applicable to them but this is not applicable to this site.

7.5 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
- Urban Place Supplement
- Sustainable Drainage Systems Design Guide
- Street Services Delivery Strategy
- Planning for Broadband 2016
- Managing Archaeology in Development.
- Developing a Landscape for the Future

## 7.6 5 Year Housing Land Supply

Section 1 of the Colchester Local Plan 2017-2033 was adopted by the Council on the 1 February 2021, with Section 2 being adopted in July 2022. The complete Local Plan carries full statutory weight as the development plan.

Section 1 includes strategic policies covering housing and employment, as well as infrastructure, place shaping and the allocation of a Garden Community. Policy SP4 sets out the annual housing requirement, which for Colchester is 920 units. This equates to a minimum housing requirement across the plan period to 2033 of 18,400 new homes.

The Tendring Colchester Borders Garden Community is allocated in Section 1, all other site allocations are made within Section 2 of the Plan. Within Section 2

the Council has allocated adequate sites to deliver against the requirements set out in the strategic policy within the adopted Section 1. All allocated sites are considered to be deliverable and developable.

In addition and in accordance with the NPPF, the Council maintains a sufficient supply of deliverable sites to provide for at least five years' worth of housing, plus an appropriate buffer and will work proactively with applicants to bring forward sites that accord with the overall spatial strategy. The Council has consistently delivered against its requirements which has been demonstrated through the Housing Delivery Test. It is therefore appropriate to add a 5% buffer to the 5-year requirement. This results in a 5 year target of 4,830 dwellings (5 x 920 + 5%).

The Council's latest published Housing Land Supply Annual Position Statement (July 2022) demonstrates a housing supply of 5,074 dwellings which equates to 5.25 years based on an annual target of 920 dwellings (966 dwellings with 5% buffer applied) which was calculated using the Standard Methodology. This relates to the monitoring period covering 2022/2023 through to 2026/27.

In accordance with paragraph 73 of the NPPF, the adoption of the strategic housing policy in Section 1 of the Local Plan the adopted housing requirement is the basis for determining the 5YHLS, rather than the application of the standard methodology.

Given the above, it is therefore considered that the Council can demonstrate a five year housing land supply.

## **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 **Highway Authority** states:

The Highway Authority does not object to the proposals as submitted.

Informative1: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org).

8.3 **Environmental Protection** has "No comments."

8.4 **Tree Officer** has raised no concerns.

8.5 **Archaeologist** has raised no concerns.

## 9.0 Parish Council Response

9.1 Not 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 **15 letters of objection** have been received (some multiple representations from a single household) which make the following points:

- Architectural drawings do not fully represent close proximity of plot 3 to 15 Marlowe Way and don't clearly state what the measurement differential is for the higher ridge line compared to neighbouring properties.
- Application claims that neighbouring properties are marginally impacted by the revised height but no evidence to support that claim.
- Planners, committee and neighbouring properties need to see the BRE sunlight report before we can comment or decide on this application.
- House on plot 3 is 1 metre from the boundary of the existing neighbouring property (at the front of the build) and is a good 2-3 metres advanced of the living areas of 15 Marlowe Way. The higher ridge line on the gable end building on plot 3 may impact the amount of daylight in the living areas of that house.
- Bricks and design are totally out of keeping with the estate.
- clear when entering the estate that the roofs of the new houses are clearly not in align to the existing houses;
- Not aware that windows were going to be on the side of the first house; again not in keeping with the estate.
- Regulations need to be upheld by the project managers rather than allow new houses to be built which are clearly higher than stated in the plans. They must have known the height before they put the roofs on as now difficult to remove and we are left with their mistake.
- Development on a plot that is far too small.
- House will overlook others
- The plot has been used to hold communal events, since to my knowledge the 1970s this open space would be a great loss to local people.
- Gross, over development. Open spaces are at a premium due to the rising population Should be preserved for future generations.
- Speculative proposal.
- Ruins the open aspect which we now have and promoting more on.
- Street parking
- Houses are currently taller than permitted. Taller than all the other houses in the street.
- Extremely dominating and harmful to the character of the established street scene and surroundings.
- Original plans submitted by the developer featured houses that were taller than all the existing houses. This was refused.

- Enforcement action should now be taken so that these buildings reflect the drawings presented by the developer on which permission was granted.
- Deliberate flouting of the regulations. What are the penalties? Has this company done this before?
- Planning statement completely ignores the Planning Committees rational for refusal of their original application for this site under reference 210304.
- Height of the three dwellings is closer to original application reference 210304.
- Daylight and Sunlight Report" does not specifically address the increase in height.
- Report that is commissioned by a developer will favour their position.
- No doubt neighbouring properties had a lot of sunlight throughout the year but have probably now lost 100% of sunlight into back gardens during the winter equinox.
- Why has the report totally ignored the other neighbouring property apart from the overshadowing to garden (ie Garden 5 of Lexden Manor)?
- Single storey area at the rear of the properties, which again looks higher than the drawing approved by the Committee.
- Hope the committee stand up and make an example of developer and their professional advisors for blatant reach of planning permissions.
- Drawings are now known to be misleading, evident from the houses ridge heights being considerably higher than those either side.
- Built position of no. 9 is not in accordance with approved documents. The drawing, entitled Proposed site plan dated Sept/2021revision A 6817/1105, of the planning permission shows a measurement between the houses which promised a distance of 4.888 meters at the closest point. A very specific dimension shown in red. This measurement has now been checked by me and the new house found to be some 0.548 metres (1.8 feet) closer.
- Not known if the daylight calculations were based on actual as built dimensions or those shown on the drawing.
- Height difference is not inconsequential.
- Pictures don't show gaps between properties.
- Object to colour of bricks doors and windows.

#### 10.3 **One letter of observation** states:

- Question if additional height significantly affects the appearance of the buildings.
- Appreciate that those living immediately adjacent to the site may feel differently, but new ridge line is not excessively above the adjacent roof lines, certainly nothing like the original plans that were refused.
- To make alterations at this stage will both delay period of construction and are likely to affect the simple lines that currently exist. Rather than carry out major alterations could Developer be asked to offer local community an upgrade in landscaping in and around site?



## **11.0 Parking Provision**

11.1 2 car parking spaces per dwelling.

## **12.0 Accessibility**

12.1 With regards to the Equalities Act, the proposal has the potential to comply with the provisions of Policy DM21 (Sustainable Access) which seeks to enhance accessibility for sustainable modes of transport and access for pedestrians (including the disabled), cyclists, public transport and network linkages.

## **13.0 Open Space Provisions**

13.1 N/A

## **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. A Unilateral Undertaking is required to secure the appropriate contributions.

## **16.0 Report**

### Principle

- 16.1 The principle of three dwellings on this site has previously been approved under application 212888. Since the time of the previous approval, the new Local Plan has been fully adopted and the former Local Plan fully superseded. However, settlement policies remain essentially the same in respect of this application. Thus the site remains within the settlement limits and Policy SP1 of the Local Plan aims to direct such development to the most sustainable locations such as this site. Accordingly, the proposal should be judged on its planning merits, having regard to the difference between the current application and the previously approved plans. The differences relate to the neighbouring dwellings not being shown at the correct relative height on the approved street scene drawing and the neighbouring dwelling of No.7 not being correctly plotted, as detailed in the introduction section of this report. The layout, scale and design section of this report below will assess these differences and the planning implications.
- 16.2 It should be noted that the NPPF indicates a presumption in favour of sustainable development (which includes this site). The Council is able to demonstrate a five year housing land supply and as such paragraph 11(d) of the NPPF is not engaged.

- 16.3 For information, Appendix 1 contains an extract of the Committee report for the previously approved 212888 which explains why it was considered acceptable to develop on this partly open site with the three dwellings.

Layout, Scale and Design in respect of differences between the approved street scene and layout drawings.

- 16.4 The absolute heights of the three dwelling are essentially deemed to be virtually the same as previously approved. Just to reiterate, Plots 2 are 116mm taller, and Plot 3 is 3.0mm lower than was approved. Plot 1 would be lower, at 0.3 m above No.7. These minor differences are normally considered as de-minimis in planning terms, and generally an allowance of up to 300 mm is considered to be de-minimis and not requiring any enforcement action in respect of compliance with approved plans. Accordingly, the height of the dwellings as constructed is deemed to accord with the approved plans.
- 16.5 The key issue is therefore consideration of the incorrect height plotting of the neighbouring dwellings shown on the previously approved streetscene drawings. The originally approved drawings showed that the ridge height of the three new dwellings would be no higher and very slightly lower than the ridge height of the neighbouring dwellings either side (numbers 7 and 15 Marlowe Way). To reiterate, the dwellings have now been built as follows:
- Plot 1 built to 7.790 m to roof ridge, **+0.715m** higher than the adjacent No. 7
  - Plot 2 built to 7.790 m to roof ridge
  - Plot 3 built to 7.671 m to roof ridge, **+0.587m** higher than the adjacent No. 15

The subsequent revision since last Committee shows the ridge height of plot 1 to be lowered with a flat roof element, with chimneys either end so that the ridge height would be 0.3 m higher than the ridge height on No.7.

- 16.6 The fact that the new dwellings are higher than the neighbouring dwellings is unfortunate as at the time of the previous approval it was considered that having the dwellings no taller in height than neighbouring properties would help them to relate satisfactorily to the character of the street scene and surroundings and help ensure they were not overly dominant in the street scene.
- 16.7 However, the extent to which the newly constructed dwellings are higher than the neighbouring properties is comparatively small and has been reduced further in respect of plot 1 since last Committee. It is considered the dwellings would still visually relate satisfactorily to the character of the area without being visually dominant or intrusive in the street scene. The dwelling on Plot 1 being +0.3 higher than No.7 would still relate well to the scale and height of that neighbouring property and would certainly not tower over it or be overly dominant. Street scenes often contain dwellings that vary in height so there is nothing unusual in a dwelling being slightly higher than an adjacent dwelling. Similarly, the dwelling on plot 3 is only +0.587m higher than the ridge of number

15 and this too looks visually acceptable in terms of its height and relationship to the neighbouring dwelling in the opinion of officers.

- 16.8 The new dwellings are still comparatively modest in height for two storey dwellings, being 7.79 metres to the roof ridge, with plot 1 reduced a further 0.4 below this height. Often, two storey dwellings are approved at around the 8.4-8.5 metres in height. Nevertheless, the neighbouring dwellings are significantly lower than this so the context of the site clearly needs to be carefully assessed. The constructed dwellings have been viewed on site and it is considered all three dwellings relate satisfactorily to the character of the street scene and that the different height relationship to the neighbouring property does not materially harm the character of the area. The revised lowering of plot 1 would improve the relationship compared to what is built whilst still being visually acceptable, with chimneys either end hiding the flat roofed ridge. It should be noted that if the ridge height of the new dwellings is lowered, or lowered further, this could result in shallower pitched roofs which would be a retrograde step in aesthetic visual design terms. Uncharacteristically shallow roof pitches could appear alien and incongruous.
- 16.9 Overall it is considered that the fact that the newly constructed dwellings are modestly higher in ridge height than the neighbouring dwellings does not undermine the character of the street scene in a significant way. They would not be overly dominant in the street scene and would still be of relatively modest height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings and it is not considered that a refusal can be justified or sustained on the grounds that the new dwellings are between +0.587m and +0.3 metres higher to their ridge than the neighbouring properties. The agent has stated that "Altering the pitch of some or all of the dwellings is not a realistic or viable option and would result in an odd appearance."
- 16.10 Other issues remain acceptable as outlined in the original committee report précised in Appendix 1. In particular, there will still be visible separation gaps between the dwellings and between the side boundaries notwithstanding the fact that the dwelling (No.7 Marlowe Way) was plotted slightly further away from plot 1 owing to an ordnance survey error. There is no consequential terracing effect. The difference is +0.548m which does not undermine in a significant way the visual separation between the properties. Accordingly, the proposal will still not appear cramped or represent an overdevelopment.
- 16.11 The rear flat roofed kitchens were also built to a height of 3.3m, 0.6-0.7m higher than approved so the drawings have been corrected. They remain visually acceptable and not obtrusive in the street scene. They also remain acceptable in terms of impact upon the neighbours as will be discussed below.
- 16.12 The positioning and layout of the three dwellings remains very similar to the density of other development in the vicinity and garden sizes comply with and indeed exceed the standards outlined in Policy DM19. Glimpses of Lexden Manor beyond will still also be possible. It should be noted that Lexden Manor is neither Listed nor Locally Listed and, as before it is not considered that the proposal could be refused on the grounds of the proposal's impact upon its

setting, particularly having regard to the presumption in favour of sustainable development embodied in the NPPF. In planning terms, there is no duty to provide glimpses of an unlisted property set to the rear of a residential development outside a conservation area.

- 16.13 As before, two TPO trees at the front will also be retained and protected. A condition to ensure the front areas are not fenced off will once again be applied and so the site would retain a significant element of open, green spaciousness. It was concluded previously that the existing open space is not of such significance in the street scene in terms of its amenity value or contribution to the character of the area that would warrant its retention in its entirety and this view is maintained having regard to the latest adopted Local Plan. The loss of this open space did not form part of the original refusal reason (210304) as the Planning Committee overall did not object in principle to its development.
- 16.14 Overall, in terms of layout, design and impact on surroundings it is still considered the proposal would therefore comply with adopted Local Plan Policies SP7, DM15 and DM17 which provide that the Borough Council will secure high quality and inclusive design in all developments to make better places for both residents and visitors.
- 16.15 The proposal remains compliant with the provisions of the Backland and Infill SPD and is in general accordance with the Essex Design Guide. It is also considered to comply with the revised NPPF section 12 which promotes well-designed places.

Garden space:

- 16.16 As before, adequate amenity space for the new dwellings has been shown to be provided in accordance with Policy DM19, unchanged from the original approval. Indeed, garden space compares favourably with neighbouring properties. Policy DM19 provides that for dwellings with four or more bedrooms, a minimum of 100m<sup>2</sup> should be provided and in this case the dwellings are provided with over 100m<sup>2</sup> each (ranging from 136-150m<sup>2</sup>) which further emphasises that this is not an overdevelopment of the site.

Impact on Neighbour Amenities:

- 16.17 As previously concluded, it is not considered there is a significant adverse impact upon neighbouring residential amenity resulting from the development as built. The dwellings are positioned in the approved location, which is far enough from the side boundaries of neighbouring properties to avoid an overbearing impact. The Council policy sets out that a 45-degree angle of outlook from the mid-point of the nearest neighbouring windows should be preserved and it is considered that this proposal satisfies this requirement. This includes an assessment of the corrected position of number 7 Marlowe Way which is +0.548 closer than as shown on the originally approved plans.
- 16.18 There are also no concerns with regard to loss of light to neighbouring properties. The new dwellings have essentially been constructed as previously approved with only minor differences as previously clarified that are deemed *de minimis*.

The combined plan and elevation tests are not breached, and the proposal therefore satisfies the Council's standards for assessing this issue as set out in the Essex Design Guide.

- 16.19 A Daylight/Sunlight report has been submitted which has been undertaken by a chartered surveying company "following the guidelines of the RICS." The report states that "The assessment is limited to assessing daylight, sunlight and overshadowing to neighbouring windows, gardens and open spaces as set out in section 2.2, 3.2 and 3.3 of the Building Research Establishment (BRE) Guide" further to a site visit undertaken on 9 January 2023.
- 16.20 The report concludes the following: "All neighbouring windows (that have a requirement for daylight or sunlight) pass the relevant BRE diffuse daylight and direct sunlight tests. The development also passes the BRE overshadowing to gardens and open spaces test. In summary, the numerical results in this assessment demonstrate that the proposed development will have a low impact on the light receivable by its neighbouring properties. In our opinion, the proposed development sufficiently safeguards the daylight and sunlight amenity of the neighbouring properties."
- 16.21 Given the conclusions of this Daylight/Sunlight report that has been undertaken by Chartered Surveyors in accordance with BRE guidelines, it is not considered that an objection can be raised in terms of the impact from the development upon the amenity provided by daylight and sunlight to the existing neighbouring properties.
- 16.22 As concluded previously, the development does not include any additional new windows at first floor level that would offer an unsatisfactory angle of overlooking that harmed the privacy of the neighbouring properties, including their protected sitting out areas as identified in the above SPD. There is no change in this respect compared to the previous approval. The first floor windows on the side elevation of plot 3 would face onto the blank gable of the neighbouring property rather than look into private amenity space or habitable rooms. With regard to first floor openings on the side elevation of plot 1, a condition imposed as before can be applied to ensure that openings are obscure glazed and non-opening where they are not above 1.7 m above floor level. These serve a landing and bathroom. The same condition can be applied to the rear first floor openings on Plot 1-3 plot 3 (which have been minimised in any case) in order to avoid overlooking the amenity space of Lexden Manor and its rear windows. The residential amenity of the occupants of the new dwellings would still be acceptable with the application of the obscure glazing condition at 1.7 m.
- 16.23 The rear flat roofed kitchens were also built to a height of 3.3 m, 0.6-0.7 m higher than approved so the drawings have been corrected. They remain of an acceptable height and far enough away from neighbouring properties to avoid a detriment to neighbouring residential amenity, including loss of light. They do not breach the 45-degree angle of outlook from the mid-point of the nearest neighbouring windows as they are still single storey and are some way off the neighbouring boundary. The relevant test for impact upon neighbouring properties would consequently be satisfied.

- 16.24 Overall, in term of impact upon neighbouring residential amenity, the development thus complies with policy DM15 which provides that all development should avoid unacceptable impacts upon amenity (part V), including the protection of residential amenity with regard to noise and disturbance and overlooking.

Highway Matters:

- 16.25 As before, the Highway Authority have raised no objection to the scheme which is unchanged in respect of layout so the previous conditions will be applied. The proposal thus still complies with Policy DM22, with space for 2 car parking spaces for each dwelling.

Impact Upon Vegetation:

- 16.26 As previously concluded, the proposal is considered acceptable in terms of its relationship to the two TPO trees at the front of the site and the scheme is unchanged in this respect. Once again a condition can be applied to secure a schedule of arboricultural monitoring and site supervision. The scheme complies with adopted policy DM15 i).

Wildlife issues:

- 16.27 The application does not have any additional implications for wildlife so does not conflict with Local Plan Policy ENV1 which aims to protect and enhance biodiversity.
- 16.28 A RAMs wildlife payment can be referenced in a new Unilateral Undertaking as new dwellings would be created in a Zone of Influence for coastal sites subject to national designations as required by the Habitat Regulations to mitigate any adverse impacts. This payment will need to be made prior to commencement of development. An appropriate Habitat Regulation assessment has been undertaken.

Unilateral Undertaking:

- 16.29 The contributions required under the original Unilateral Undertaking have already been made so a new Unilateral Undertaking to secure developer contributions for community facilities and sport & recreation facilities is not required.

Environmental and Carbon Implications

- 16.30 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. The consideration of this application has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that, on balance, the application can contribute

to achieving sustainable development. The site is considered to be in a sustainable location and would minimise carbon emissions from trips generated to access services.

#### Other

- 16.31 Finally, in terms of other material planning considerations, the proposed development does not raise any concerns.
- 16.32. It should be noted that there has been a reconsultation undertaken on additional plans that have been submitted recently in response to the deferral of the item at the last committee showing the revised proposed height for plot 1 and newly annotated heights of the street scene drawings and any further consultation responses received will be reported to the Committee.

### **17.0 Conclusion**

- 17.1 In conclusion the proposal is considered acceptable for the following reasons:
- The site is within the settlement limits and is in a sustainable location so remains in accordance with latest adopted Local Plan settlement Policy.
  - On the previously approved scheme, the neighbouring properties were drawn taller than they exist and the street scene drawings showed the three new dwellings with roof ridge heights no higher than the neighbouring dwellings. This application corrects these inaccuracies in the approved street scene plan and also proposes the lowering of the roof ridge height on plot 1. It is considered the fact that the newly constructed dwellings are now shown correctly as modestly higher than the neighbouring dwellings does not undermine the character of the street scene in a material or significant way. The dwellings are not overly dominant in the street scene and would still be of relatively modest height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings as approved and is not considered that a refusal can be justified on the grounds that the new dwellings are between +0.3 (plot 1) 0.674 (plot 2) and 0.587 (plot 3) metres higher than the neighbouring properties.
  - The rear kitchens, being built at 3.3 m, which is approximately 0.6-0.7 m higher than as approved remain acceptable in terms of their impact upon visual and neighbouring amenity.
  - Other issues relating to the application including impact upon neighbouring residential amenity, layout, design, impact upon vegetation, provision of amenity space and highway issues remain acceptable.

## **18.0 Recommendation to the Committee**

18.1 The Officer recommendation to the Committee is for:

**Approve** subject to consideration of any further consultation responses received and subject to the following conditions (restated from the previous approval and adapted where necessary to reflect subsequently cleared details.)

### **1. ZAM – Development In accordance with Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers: To be confirmed.

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

### **2. ZBC- Materials**

Only materials approved under condition 3 of 212888 shall be used in the development.

Reason: In order to ensure that suitable materials are used on the development.

### **3. Non Standard Condition- Vehicular Access**

Prior to first occupation of the proposed development, each of the proposed vehicular accesses shall be constructed at right angles to the highway boundary and to a width of 5.5 metres and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway.

### **4.Non Standard Condition - Visibility Splays**

Any new or proposed boundary hedge shall be planted a minimum of 1m back from the highway boundary and 1m behind any visibility splays which shall be maintained clear of the limits of the highway or visibility splays thereafter.

Reason: To ensure that the future outward growth of the hedge does not encroach upon the highway or interfere with the passage of users of the highway and to preserve the integrity of the highway, in the interests of highway safety.

### **5.Non Standard Condition - Parking/Turning Area**

The development shall not be occupied until such time as the car parking areas for each dwelling, indicated on the revised drawings on application 221288 has been hard surfaced and sealed. The car 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 related to the use of the development thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety.

### **6.Non Standard condition - Cycle storage.**



The approved bicycle storage facility agreed under clearance of condition application 221184 shall be provided prior to the first occupation of the proposed development hereby permitted within the site and shall be maintained free from obstruction and retained thereafter.

Reason: To promote the use of sustainable means of transport.

#### **7. Non Standard Condition- Travel Information Packs.**

Prior to first occupation of the proposed development, the Developer shall be responsible for the provision, implementation and distribution of Residential Travel Information Packs for sustainable transport for the occupants of each dwelling, approved by Local Planning Authority, to include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the Developer to each dwelling free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

#### **8. Non Standard condition- No Unbound Materials**

No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.

Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety.

#### **9. ZPA Construction Method Statement**

The approved Construction Method Statement agreed under clearance of condition application 221184 shall be adhered to throughout the construction period.

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 and in the interest of highway safety.

#### **10. Non Standard Condition - Construction and Demolition**

No demolition or construction work or delivery of materials shall take place 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.

#### **11. Non Standard Condition - Refuse and Recycling**

Prior to the first occupation of the development hereby permitted, refuse and recycling storage facilities shall be provided in accordance with the submitted details agreed under clearance of condition application 221184. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times.

Reason: To ensure that adequate facilities are provided for refuse and recycling storage and collection.

## **12. ZFI- Tree or shrub planting**

The tree and/or shrub planting and an implementation timetable agreed under clearance of condition application 221184 shall be complied with and planting shall be maintained for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority 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.

Reason: To ensure an appropriate visual amenity in the local area.

## **13. Z00 – Electric Charging Points**

Prior to first occupation of the dwellings, one electric vehicle charging point shall be provided for each dwelling and thereafter retained as such.

Reason: To encourage the use of sustainable transport.

## **14. ZDF- Removal of PD- Obscure Glazing.**

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 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), the 1<sup>st</sup> floor windows in the West side elevation of plot 1, the rearmost first floor window in the East elevation of plot 3 and the rear first floor windows of plots 1-3 shall be non-opening and glazed in obscure glass to a minimum of level 4 obscurity both to a level a minimum of 1.7 m above floor level before the development hereby permitted is first occupied and all shall thereafter be permanently retained in this approved form.

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

## **15.ZCL- Surface Water Drainage**

No part of the development shall be first occupied or brought into use until the agreed method of surface water drainage as approved under clearance of condition application 221184 has been fully installed and is available for use.

Reason: To minimise the risk of flooding.

## **16. ZDD- Removal of RD Rights-**

Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A-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 additions, roof alterations, outbuildings or enclosures or other structures (the latter that are forward of the houses hereby approved) shall be erected except in accordance with drawings showing the design and siting of such structures/alterations res which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: In the interests of avoiding an overdevelopment of the site preserving the open character of the front of the site.

### **17. Arboricultural Monitoring**

Prior to commencement of development, precise details of a shall be submitted to and agreed in writing by the Local Planning Authority. The approved schedule of arboricultural monitoring and site supervision details agreed under clearance of condition application 221184 shall thereafter be complied with in their entirety.

Reason: In the interests of protecting the amenity value provided by the trees on the site.

## **18.0 Informatives**

18.1 The following informatives are also recommended:

1. The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

2. All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to: SMO1 – Development Management  
Essex Highways Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester,  
Essex  
CO7 7LT

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

### **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. \*\*The applicant is advised to ensure that existing verges and grassed areas in the vicinity of the site should not be damaged by vehicles associated with the construction works hereby approved.\*\***

WA1 Positivity Statement

## **Appendix 1 Extract from previous Committee Report of 212888:**

### Layout, Loss of open space, Design and Impact on the Surrounding Area

- 16.4 With regard to the planning merits of the proposal, it should be noted that the Planning Committee at the time of the previous refusal (210304) decided to refuse the proposal on the design, scale and form of the dwellings being harmful to the character of the street scene. It did not refuse the scheme on the grounds of the loss of the open space itself or the principle of residential development on the site. It is considered that this revised proposal now represents an acceptable layout that is in keeping with the character of the area and does not represent an overdevelopment of the site. Again, the positioning and layout of the three dwellings is similar to the density of other development in the vicinity and garden sizes comply with and indeed exceed the standards outlined in Policy DP16 (eLP DM19). The dwellings have been designed and positioned so that there will be visible gaps between the dwellings and between the side boundaries so the proposal will not appear cramped or represent an overdevelopment. Glimpses of Lexden Manor beyond will also be possible. It should be noted that Lexden Manor is not Listed nor Locally Listed and it is not considered that the proposal could be refused on the grounds of the proposal's impact upon its setting, particularly having regard to the presumption in favour of sustainable development embodied in the NPPF.
- 16.5 As with the previously refused scheme, there will clearly be some loss of open space although there will still be significant grassed areas retained at the front of the site, punctuated by the driveways. The two TPO trees at the front will also be retained and protected. A condition to ensure the front areas are not fenced off will also be applied and so the site would retain a significant element of open, green spaciousness. It is not considered that the existing open space is of such significance in the street scene in terms of its amenity value or contribution to the character of the area that would warrant its retention in its entirety. The loss of this open space did not form part of the previous refusal reason as the Planning Committee overall did not object in principle to its development. The proposal would therefore not conflict with Policies DP1 and DP15 (eLP Policies SP7 and DM15) in this respect.
- 16.6 Consideration of the design, scale and form of the dwellings needs particular care given that they are somewhat visually different from the designs of the surrounding properties. Overall, the dwellings are considered acceptable in this respect. The height of the dwellings has been reduced compared to the previous scheme so that the new dwellings would be the same height as the

existing dwellings either side of the plot. One of the dwellings has a gable facing the road and the other too have front facades and this is considered to give the dwellings an appropriate level of variety. Gable widths have also been narrowed during this submission so that they are similar to gable widths of existing dwellings in the vicinity.

- 16.7 The dwellings are considered to have their own contemporary detailing and styling whilst still relating well to the overall character and scale of existing dwellings on this part of the estate. With the use of high quality materials, it is considered that these dwellings would represent good design that would not detract from the character of the street scene and surroundings. The precise details of materials can be conditioned and there is the potential to introduce a little variety.
- 16.8 Overall, in terms of layout, design and impact on surroundings the proposal it is considered the proposal would therefore comply with Policy UR2 (eLP SP7) of the Local Plan Core Strategy which provides that the Borough Council will secure high quality and inclusive design in all developments to make better places for both residents and visitors.
- 16.9 The proposal is considered to comply with Policy DP1 of the Local Plan Development Policies document adopted 2010 (with selected Policies revised July 2014) which provides that all development must be designed to a high standard and respect the character of the site, its context and surroundings including in terms of layout. Policy DM15 of the emerging Local Plan has similar provisions.
- 16.10 The proposal is considered to comply with the provisions of the Backland and Infill SPD and is in general accordance with the Essex Design Guide. It is also considered to comply with the revised NPPF section 12 which promotes well-designed places.
- 16.11 It should be noted that if the scheme is implemented, the previously approved scheme for the conversion of Lexden Manor to flats (192337) could not be implemented as the sites overlap and the required communal garden could not be provided for the flats. However, it is understood that it is the approved dwelling within the grounds (210331) that is being implemented.





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**Item No:** 7.2

**Application:** 230959  
**Applicant:** Colchester City Council  
**Agent:** Mrs Alison Fogg  
**Proposal:** Poster to fit in window space of retail unit.  
**Location:** Foundation House, 1 Long Wyre Street, CO1 1LH  
**Ward:** Castle Ward  
**Officer:** Daniel Bird

**Recommendation:** **Advert Consent** be granted

## 1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee due to the applicant being Colchester Borough Council.

## 2.0 Synopsis

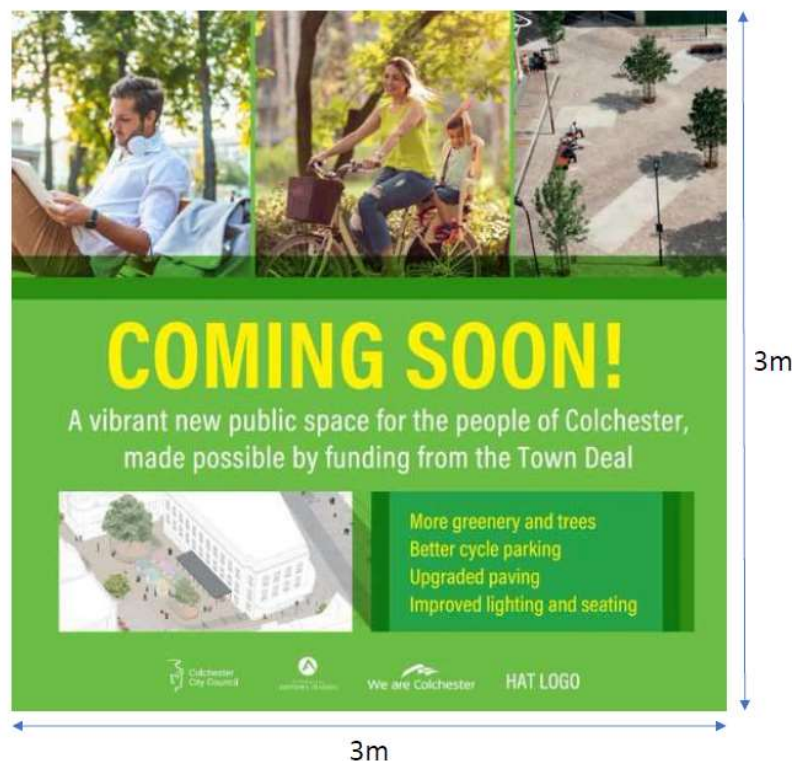
- 2.1 This application seeks advertisement consent for a poster in a retail unit window. The key issues for consideration are amenity and public safety.
- 2.2 The application is subsequently recommended for Approval, subject to conditions.

## 3.0 Site Description and Context

- 3.1 The application site is located on the corner of Long Wyre Street and Culver Street East. The site falls within Conservation Area 1, with the surrounding area formulated of retail usage, public realm, and limited residential units.

## 4.0 Description of the Proposal

- 4.1 Advertisement consent is sought for the installation of a poster in the window of the retail unit, which highlights the upcoming public space regeneration project. The poster will measure 3 metres by 3 metres and be affixed to the window of the retail unit known as Foundation House.





## **5.0 Land Use Allocation**

5.1 Window of existing retail unit

## **6.0 Relevant Planning History**

6.1 There is not particularly recent or relevant planning history in relation to this application.

## **7.0 Principal Policies**

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

7.2 Local Plan 2017-2033 Section 1

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

- SP7 Place Shaping Principles

7.3 Local Plan 2017-2033 Section 2

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

- ENV1 Environment
- TC2 Retail Frontages
- DM15 Design and Amenity
- DM16 Historic Environment

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
- Shopfront Design Guide

## **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 Civic Society have raised no objection.
- 8.3 The Historic Buildings and Areas Officer has raised no objection to the proposal.
- 8.4 The Highways Officer has raised objection to the detail provided within the application.

## **9.0 Parish Council Response**

- 9.1 The site is non-parished

## **10.0 Representations from Notified Parties**

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

No representations from interested parties have been received.

## **11.0 Accessibility**

- 11.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposed development does not raise any issues of potential direct or indirect discrimination.

## **12.0 Planning Obligations**

- 12.1 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.

## **13.0 Report**

- 13.1 Regulation 3 of the Town and Country Planning (Control of Advertisements) Regulations 2007 requires that local planning authorities control the display of advertisements in the interests of amenity and public safety, taking into account the provisions of the development plan, in so far as they are material, and any other relevant factors.
- 13.2 The National Planning Policy Framework (NPPF) confirms (at paragraph 132): "The quality and character of places can suffer when advertisements are poorly sited and designed. A separate consent process within the planning system controls the display of advertisements, which should be operated in a way which

is simple, efficient, and effective. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.”

### **Public Safety**

- 13.3 The National Planning Practice Guide (NPPG) states that all advertisements are intended to attract attention but proposed advertisements at points where drivers need to take more care are more likely to affect public safety. For example, at junctions, roundabouts, pedestrian crossings, on the approach to a low bridge or level crossing or other places where local conditions present traffic hazards. There are less likely to be road safety problems if the advertisement is on a site within a commercial or industrial locality, if it is a shop fascia sign, name-board, trade or business sign, or a normal poster panel, and if the advertisement is not on the skyline.

- 13.4 Development Plan policy DM21 requires all development to maintain the right and safe passage of all highways users.

In this case, the poster would be located on the in the shop window of the retail unit known as Foundation House. The poster would be affixed to the surface of the window, therefore it would not protrude beyond the existing face of the building. As a result, the poster is not considered to be distracting or obtrusive to passing pedestrians or vehicular traffic.

The Highway Authority have been consulted as part of the application and whilst they have raised concerns, the poster would be located in a primarily pedestrianised area and the nature of the signage as non-illuminated, is not considered to be distracting to drivers.

### **Amenity**

- 13.5 The NPPG confirms that “Amenity” is not defined exhaustively in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. It includes aural and visual amenity (regulation 2(1)) and factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest (regulation 3(2)(a)).
- 13.6 It is, however, a matter of interpretation by the Local Planning Authority (and the Secretary of State) as it applies in any particular case. In practice, “amenity” is usually understood to mean the effect on visual and aural amenity in the immediate neighbourhood of an advertisement or site for the display of advertisements, where residents or passers-by will be aware of the advertisement.
- 13.7 In assessing amenity, the local planning authority would always consider the local characteristics of the neighbourhood: for example, if the locality where the advertisement is to be displayed has important scenic, historic, architectural, or

cultural features, the local planning authority would consider whether it is in scale and in keeping with these features.

This might mean that a large poster-hoarding would be refused where it would dominate a group of listed buildings but would be permitted in an industrial or commercial area of a major city (where there are large buildings and main highways) where the advertisement would not adversely affect the visual amenity of the neighbourhood of the site.

13.8 In considering the design and character, Local Plan policies ENV1 and DM15 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.

13.9 The proposed signage is of a muted palette which would not be overly dominant within the surrounding area. Furthermore, due to its scale and siting, this is not considered to result in an overly dominant or incongruous addition that would significantly alter the character of the site and as such is not considered to have a detrimental impact on the character and appearance of the site or surrounding area.

#### **14.0 Conclusion**

14.1 Taking into account, the above assessment of the advertisement, it is considered, subject to conditions, the proposed interpretation panel would be acceptable in terms of public safety and amenity.

#### **15.0 Recommendation to the Committee**

15.1 The Officer recommendation to the Committee is for:

**Consent to display the advertisement be granted**, subject to the following conditions:

1. **Standard Advertisement Condition**

Unless an alternative period is specifically stated in the conditions below, this consent expires five years from the date of this decision and is subject to the following standard conditions:

1. Any advertisements displayed, and any site used for the display of advertisements, shall be maintained in a clean and tidy condition to the reasonable satisfaction of the Local Planning Authority.

2. Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a safe condition.

3. Where an advertisement is required under these Regulations to be removed, the removal shall be carried out to the reasonable satisfaction of the Local Planning Authority.

4. No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.

5. No advertisement shall be sited or displayed as to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air or so as otherwise to render hazardous the use of any highway, railway, waterway or aerodrome (civil or military).

Reason: In order to comply with the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

### **Informatives**

PLEASE NOTE: No works affecting the highway should be carried out without prior arrangement with, and to the requirements and satisfaction of, the Highways Authority. The applicant is advised to contact Essex County Council on 08456037631, or via email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to Essex Highways, Colchester Highways Depot, 653 The Crescent, Colchester, CO4 9YQ with regard to the necessary application and requirements.



## Material Planning Considerations

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

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

The following approach should be taken in all planning decisions:

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

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

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

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

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

The above list is not exhaustive

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

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

- matters specifically controlled through other legislation

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

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

## **Planning Obligations**

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

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

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

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

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

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

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



## Using Planning Conditions or Refusing Planning Applications

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

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

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

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

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

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

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

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



## **Colchester Borough Council Development Management**

### **Highway Safety Issues**

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

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

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

### **Parking Standards**

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

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

For residential schemes:

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

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



## **Colchester Borough Council Environmental Control**

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

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

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

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

##### **Noise Control**

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

##### **Emission Control**

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

## **Best Practice for Demolition Sites**

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

### **Noise Control**

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

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

### **Emission Control**

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

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

## **Class A1. Shops**

Use for all or any of the following purposes—

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

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

Use for the provision of —

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

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

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

## **Class A4. Drinking establishments**

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

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

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

## **Class B1. Business**

Use for all or any of the following purposes—

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

## **Class B2. General industrial**

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

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

Use for storage or as a distribution centre.

**Class C1. Hotels**

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

**Class C2. Residential institutions**

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

**Class C2A. Secure residential institutions**

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

**Class C3. Dwellinghouses**

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

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

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

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

**Class C4. Houses in multiple occupation**

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

**Class D1. Non-residential institutions**

Any use not including a residential use —

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

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

(c) for the provision of education,

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

(e) as a museum,

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

(g) as a public hall or exhibition hall,

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

**Class D2. Assembly and leisure**

Use as —

(a) a cinema,

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

(d) a dance hall,

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

### **Sui Generis Uses**

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

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

### ***Interpretation of Class C3***

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

### ***Interpretation of Class C4***

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

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

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

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

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

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



## Deferral and Recommendation Overturn Procedure (DROP) Flowchart

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

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

