

Planning Committee Meeting

**Grand Jury Room, Town Hall, High Street,
Colchester, CO1 1PJ
Thursday, 16 February 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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www.colchester.gov.uk

COLCHESTER CITY COUNCIL
Planning Committee
Thursday, 16 February 2023 at 18:00

The Planning Committee Members are:

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

Chair
Deputy Chair

The Planning Committee Substitute Members are:

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

Councillors:

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

AGENDA

THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING

(Part A - open to the public)

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

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

Live Broadcast

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

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

1 Welcome and Announcements

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

2 Substitutions

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

3 Declarations of Interest

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

4 Urgent Items

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

5 Have Your Say(Hybrid Planning Meetings)

At meetings of the Planning Committee, members of the public may make representations to the Committee members. This can be made either in person at the meeting or by joining the meeting remotely and addressing the Council via Zoom. These Have Your Say! arrangements will allow for one person to make representations in opposition and one person to make

representations in support of each planning application. Each representation may be no longer than three minutes(500 words). Members of the public wishing to address the Committee either in person or remotely need to register their wish to address the meeting by e-mailing democratic.services@colchester.gov.uk 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 have been put forward for approval at 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.

7.1 220324 East Mersea Youth Camp, Rewsalls Lane, East Mersea, Colchester, CO5 8SX 7 - 20

Land Management is applying for planning permission to move some of the car parking at the Mersea Boating Lake to higher ground to the North presently used for agriculture.

7.2 222088 Holy Trinity Church, Trinity Street, Colchester, CO1 1JN 21 - 30

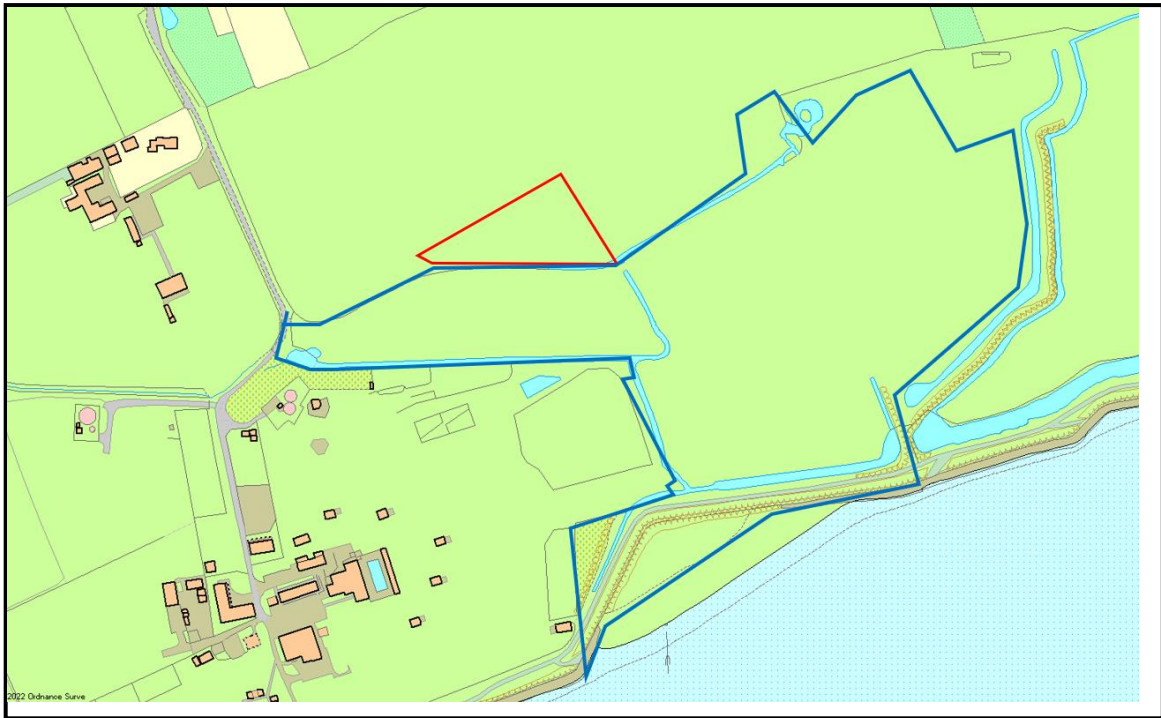
Re-roofing of south aisle and south chapel (reusing existing clay plain tiles where possible) Associated repairs to existing timber tissues, timber rafters and adjacent lead valley. Installation of remedial ties at eaves level within south chapel. Repairs to stone gable end wall and maintenance repairs to rainwater goods and drainage.

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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).

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



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Item No: 7.1

Application: 220324

Applicant: Mr. Shaun Barker

Proposal: Land Management is applying for planning permission to move some of the car parking at the Mersea Boating Lake to higher ground to the North presently used for agriculture

Location: East Mersea Youth Camp, Rewsalls Lane, East Mersea, Colchester, CO5 8SX

Ward: Mersea & Pyefleet

Officer: John Miles

Recommendation: Approval, subject to conditions.

[javascript:WebForm_DoPostBackWithOptions\(new WebForm_PostBackOptions\("dnn\\$ctr406\\$EditCMIS_BusinessItem\\$gridDocuments2\\$ctl00\\$ctl03\\$ctl01\\$InitInsertButton", "", true, "", "", false, true\)\)](#)

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because a director of the applicant company is an elected member of the Council.

2.0 Synopsis

- 2.1 The key issues for consideration are impacts on the character and appearance of the surrounding area (including landscape character), ecology, highways and parking, archaeology and flood risk.
- 2.2 It is considered that the scheme as revised, subject to the mitigation outlined, will not result in harm in terms of landscape character, ecology, or with regards to other material planning considerations.
- 2.3 The application is subsequently recommended for approval, subject to conditions.

3.0 Site Description and Context

- 3.1 The site contains a section of an existing arable field and is bound to the south by an existing hedgerow. The wider site under the applicant's ownership includes an existing boating lake and associated car parking area. The application site is set on higher ground than the existing parking area to the south.

4.0 Description of the Proposal

- 4.1 The application seeks to move a section of the existing car park onto the existing arable field, which is proposed to undergo a change of use. A single point of access to the new parking area is proposed from within the existing car park. The new access track and car park area are proposed to be finished in either Type 1 aggregate (commonly crushed rock) or road planings. The new car park is proposed to be enclosed by a new native hedgerow.

N.B. The final revised site layout is shown within the document indexed as 'Boating Lake Car Park Redesign'. A scaled standalone version of the drawing contained within this document is expected in advance of the Committee meeting and any updates will be reported on the amendment sheet.

- 4.2 The justification put forward for the proposals is that the existing area of the car park proposed to be replaced is particularly susceptible to flooding, while the proposed new car parking is set at higher ground and less susceptible to flooding.

5.0 Land Use Allocation

5.1 Agricultural land.

6.0 Relevant Planning History

6.1 This application follows application 212114 which concerned a similar proposal. This previous application was refused on the grounds of anticipated adverse landscape impact and potential harm to protected species (water voles).

6.2 The boating lake and existing car park area were approved under application 190949.

7.0 Principal Policies

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

7.2 Local Plan 2017-2033 Section 1

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

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

7.3 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
- ENV2 Coastal Areas
- CC1 Climate Change
- OV2 Countryside
- DM1 Health and Wellbeing
- DM2 Community Facilities
- DM4 Sports Provision
- DM5 Tourism, leisure, Culture and Heritage
- DM6 Economic Development in Rural Areas and the Countryside
- DM15 Design and Amenity
- DM16 Historic Environment
- DM22 Parking
- DM23 Flood Risk and Water Management

- 7.4 The site is not in an area covered by a Neighbourhood Plan.
- 7.5 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):
The Essex Design Guide
EPOA Vehicle Parking Standards
Managing Archaeology in Development.
East Mersea Village Design Statement

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.
- 8.2 **Archaeological Advisor:** The applicant's DAS assesses the potential archaeological impact of the scheme. However, this assessment is missing some key information, and there is no indication that it was carried out by an archaeological professional. The proposed development will be at the location of a red hill (Colchester Historic Environment Record no. 10110), likely dating to the Roman period, that has been identified from aerial photography. It is directly adjacent to an area of linear cropmarks (CHER no. 8726), also revealed in aerial photographs. The DAS states that these are not visible on the ground – they would never be. Cropmarks are only visible under very specific conditions, and can almost never be seen from the ground.

The red hill will have originally been a mound, gradually reduced due to erosion and modern ploughing, and the 300mm strip proposed for the car park could certainly impact on it.

There are no grounds to consider refusal of permission in order to achieve preservation in situ of any important heritage assets. However, in accordance with the National Planning Policy Framework (Paragraph 205), any permission granted should be the subject of a planning condition to record and advance understanding of the significance of any heritage asset before it is damaged or destroyed.

Archaeology condition recommended.

- 8.3 **Environment Agency:** No objections.
- 8.4 **Highway Authority:** No objections.
- 8.5 **Natural England:** No objection – Subject to appropriate mitigation being secured.
- 8.6 **Landscape Advisor:** If the arguments put forward by the applicant against the use of reinforced grass surfacing are accepted by Planning Officers, no objections (to the proposals as revised) subject to the imposition of a condition to secure an appropriate scheme of landscaping.

9.0 Parish Council Response

- 9.1 East Mersea Parish Council have raised no objection but have stated that “they feel strongly that the wildlife in the vicinity must be protected and that the new car park should not be too high as to be seen from surrounding areas.”

10.0 Representations from Notified Parties

- 10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties, however no comments have been received.

11.0 Parking Provision

- 11.1 The application seeks to replace an existing part of the car park with a new car parking area, set at higher ground. This is discussed in more detail in the main body of the report. Indicative layout drawings suggest the new car parking area will be able to accommodate around 40 cars.

12.0 Accessibility

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

13.0 Open Space Provisions

- 13.1 Not applicable.

14.0 Air Quality

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

15.0 Planning Obligations

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

16.0 Report

- 16.1 The main issues in this case are:
- The Principle of Development
 - Impact on the Surrounding Area
 - Ecological Impacts
 - Highways, Access and Parking
 - Archaeology
 - Flood Risk

- Other Matters

Principle

- 16.2 The site is located outside any defined settlement boundary, within the countryside and the designated Coastal Protection Belt. Development proposals in such locations must be considered on their own merits and assessed against relevant policy criteria, including that outlined under Policy ENV2: Coastal Areas.
- 16.3 This includes that development within the Coastal Protection Belt must require a coastal location, will be safe from flooding over its planned lifetime, will not be significantly detrimental to landscape and seascape character, provides opportunities and scope for adaptation to climate change, and will not hinder the future creation and maintenance of a continuous signed and managed England Coast Path. These issues and other relevant material planning considerations are considered below.

Impact on the Surrounding Area

- 16.4 When considering the visual impact of the proposed development, with the site within the defined Coastal Protection Belt, as already outlined Policy ENV2 must be given particular consideration, as well as Policy ENV1. These policies seek, amongst other things, to ensure development will not be significantly detrimental to the landscape and seascape character of the coast and protect important landscapes. Policy OV2 states proposals for sustainable rural businesses will be supported if they are of an appropriate scale, meet a local employment need, minimise negative environmental impacts, and harmonise with the local character and surrounding countryside where they are being proposed.
- 16.5 Policy SP7 requires development to respond positively to local character and protect and enhance assets of natural value. Paragraph 130 of the National Planning Policy Framework [NPPF] requires planning decisions to ensure development is sympathetic to local character, including landscape setting. Where development needs or is compatible with a rural location, it should be appropriate in terms of its scale, siting and design and protect, conserve or enhance landscape character.
- 16.6 With regard to landscape impacts specifically, it is important to note the reasons for refusal of previous application 212114 included landscape grounds. Since this previous application the proposals have however been revised and additional information submitted. The plans now include new sections of hedgerow and planting, with a view to help visually integrate the development into the surrounding landscape. The proposed new hedgerow also follows and partially reinstates the line of an historic hedgerow, evidenced on historic OS maps. The proposed mitigation measures are outlined in the submitted Landscape and Visual Impact Assessment [LVIA].
- 16.7 It should be noted that the hedge proposed to be breached to access the new car park is protected under the Hedgerows Regulations 1997 and has

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been assessed as being classified as 'Important' under those Regulations. As a result, there is a presumption against the removal of any part of the existing live hedge.

- 16.8 It is observed however that there are existing gaps within the hedgerow and sections of dead elm, providing opportunities for the access to be orientated in a manner such that impacts to existing live hedges are limited. The application also provides the opportunity to secure the 'gapping-up' of the existing hedgerow.
- 16.9 While further landscape mitigation has been requested by the Council's Landscape Advisor in the form of reinforced grass surfacing for both the access track and parking bays, the applicant has advised of technical concerns with the use of such, specifically that ground conditions coupled with the anticipated weight the surface would be subject to will lead to the formation of high and low spots, causing practical issues. Such a surface treatment has therefore not been included as part of the proposed mitigation measures.
- 16.10 Exact details on mitigatory planting and other landscape works can be controlled through the imposition of a suitably worded condition and it is considered that subject to appropriate details being secured, the proposed hedgerow planting will provide effective screening of the proposed development.
- 16.11 Taken as a whole, with the mitigation proposed, it is considered the proposal is acceptable from a landscape perspective and will, on balance, avoid material harm to existing landscape and seascape character and the character and appearance of the area more widely.

Ecological Impacts

- 16.12 Policy ENV1 seeks to conserve or enhance biodiversity of the Borough. Paragraph 174 of the NPPF states development should contribute to and enhance the natural and local environment and minimise impacts on biodiversity, with appropriate ecological surveys required when there is reason to suspect the presence of protected species.
- 16.13 The Natural Environment and Rural Communities Act 2006 [NERC] places a duty on public bodies and statutory undertakers to exercise due regard to the conservation of biodiversity in the carrying out of their functions.
- 16.14 The Council also has statutory obligations under the Habitats Directive and Birds Directive to protect important habitats and species designated as habitats sites. Specifically, under the Conservation of Habitats and Species Regulations 2017 (as amended) (the 'Habitats regulations'), as the Competent Authority for the purposes of this legislation for a proposal that is likely to have a significant effect on a designated site an appropriate assessment of the implications of a project on any such sites must be undertaken.

- 16.15 The proposal's potential to have an impact upon the interest features of Habitat sites [Colne Estuary SPA and Ramsar site, Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, Stour and Orwell Estuaries SPA and Ramsar site (south shore) and Essex Estuaries SAC] is considered twofold.
- 16.16 Firstly, were the proposal to facilitate increased visitor numbers (through an increase in car parking availability) this could have wider adverse ecological impacts through increased recreational pressures on the aforementioned SPA/Ramsar sites.
- 16.17 Secondly, it is considered that, without mitigation, there are potential adverse impacts arising from the physical works themselves. Though the new car park is 200m from the SPA/Ramsar site boundary, the now regularly flooded low ground just east of the boating lake, and the arable fields on the slope immediately to the south are known to be Functionally Linked Land [FLL] for SPA/Ramsar site waterbirds. The proposed works therefore affect land which is important ecologically in supporting the populations for which the sites have been designated or classified. There is also the potential for disturbance to be caused from the carrying out of physical works proposed.
- 16.18 For the reasons above, without mitigation, the proposal is considered likely to have a significant effect on the interests features of the aforementioned Habitat sites and an Appropriate Assessment [AA] is required under the habitat regulations.
- 16.19 The onus is on the Applicant to provide sufficient evidence to allow the Appropriate Assessment to be made, which is the stage at which avoidance and/or mitigation measures can be considered.
- 16.20 In this case an Ecological Statement has been provided, in addition to Winter Bird survey data. Mitigation has also been proposed in the form of compensatory grassland, identified on the revised plans as 'Mitigation Zones'. It has also been agreed that works will only take place outside the winter period (November-March inclusive) and the parking is only to be used by customers and/or staff of the boating lake. The creation of the identified Mitigation Zones will also require the closing off of areas of the existing car park, ensuring the proposal represents a relocation of the existing parking, and not an increase in the number of spaces. These zones will act as compensatory Functionally Linked Land (FLL) habitat, to replace the area proposed to be lost by the development.
- 16.21 In consultation with Natural England, it is considered that the information submitted, and mitigation proposed will ensure the proposal will not have an adverse effect on the integrity of identified habitat sites, either directly or indirectly. The Habitats Regulation Assessments undertaken are held on the planning file. The conditions recommended will ensure the mitigation outlined is carried out, and where appropriate retained in an appropriate form.

- 16.22 In addition to the above, consideration must also be given to potential on-site ecological impacts. An ecological survey has been provided to assist in the consideration of such. This document identifies the potential for adverse impacts to birds through the proposed hedgerow works, and potential impacts to water voles (a protected species), which are present on the wider site. It is considered adverse impacts to birds can be avoided through a condition restricting hedgerow works to outside bird nesting season, while the submission of a Water Vole Mitigation Strategy can be secured by condition. Such a condition also provides opportunities to secure appropriate enhancement works to ensure a net gain for the species.
- 16.23 For the reasons outlined above, subject to conditions, the proposal is considered acceptable from an ecological perspective.

Highways, Access and Parking

- 16.24 Policies DM15, DM20, DM21, and DM22 together seeks to make the best use of the existing highway network, manages demand for road traffic and parking, and provides particular emphasis on enhancing accessibility for sustainable modes of transport. The NPPF provides guidance on transportation matters, including that applications should only be refused on highway grounds if the impact (on safety or network capacity) is *severe*.
- 16.25 In terms of the internal site layout, the proposed new parking area is anticipated to operate in a similar manner to the existing informal parking areas on the existing site, which is understood to have operated without issue since the boating lake opened. Given the site's characteristics vehicle speeds would be expected to be low and there are no immediate concerns in terms of potential conflict between vehicles and pedestrians on the site.
- 16.26 As outlined in this case the proposal represents a relocation of existing parking, rather than a net increase. Access will be via the site's existing vehicular access and with no change in the nature or intensity of vehicle movements to and from the site expected, there are no concerns from a wider highway safety or capacity perspective.

Archaeology

- 16.27 Policy DM16 states that development affecting the historic environment should seek to conserve and enhance the significance of the heritage asset and any features of specific historic, archaeological, architectural or artistic interest.
- 16.28 The proposed development will be at the location of a red hill (Colchester Historic Environment Record no. 10110), likely dating to the Roman period, that has been identified from aerial photography. It is directly adjacent to an area of linear cropmarks (CHER no. 8726), also revealed in aerial photographs. It is considered there is the potential for the car park to impact this archaeological feature.

- 16.29 The Council's Archaeological Advisor has advised there are no grounds to consider refusal of permission in order to achieve preservation in situ of any important heritage assets. However, in accordance with the National Planning Policy Framework (Paragraph 205), any permission granted should be the subject of a planning condition to record and advance understanding of the significance of any heritage assets affected.
- 16.30 Subject to such a condition, the proposal is considered acceptable from an archaeological perspective.

Flood risk

- 16.31 Policy DM23 states the Local Planning Authority will seek to direct development away from land at risk of flooding in accordance with the National Planning Policy Framework and the Planning Practice Guidance. Development will only be supported where it can be demonstrated that the proposal meets flood management requirements in the NPPF, the PPG and Policy DM23.
- 16.32 It is noted that parts of the wider site are within Flood Zone 3. Acceptability of the wider use of the site from a flood risk perspective has however already been established through application 190949 and the application site is set at higher ground than the remainder of the wider site. Car parking is also considered to be a 'less vulnerable' use in flood risk terms.
- 16.33 In this respect it is important to note that part of the justification put forward within the application is that the proposed new parking area will be less susceptible to flooding and the scheme has been formulated mindful of the need to mitigate and adapt to climate change.
- 16.34 Taking the above factors in to consideration, it is not considered the proposal will materially increase flood risk on the site, or is likely to materially increase flood risk elsewhere, and there are no objections to the proposal in this regard.

Other Matters

- 16.35 While the proposal will result in the loss of existing arable land, the area to be lost is small and it is not considered the proposal will result in any material harm in this regard.
- 16.36 The proposal will also be supportive of the existing use of the wider site which provides employment opportunities and sport and leisure provisions, and this is given weight.
- 16.37 The proposal does not give rise to any concerns from a neighbouring amenity perspective with regards to noise or disturbance, particularly when the distance between the site and neighbouring properties is taken into account.

- 16.38 The works proposed are also not anticipated to hinder the creation and maintenance of a continuous signed and managed England Coastal Path (as required by Policy ENV2), while other matters around the potential formation of new footpaths and/or PROWs fall outside the scope of this application, nor do such proposals form part of the revised scheme. Furthermore, the proposal is not considered to present any conflict with the East Mersea VDS.
- 16.39 Finally, in terms of other usual planning considerations (e.g. contaminated land etc.) the proposed development does not raise any concerns.

17.0 Planning Balance and Conclusion

- 17.1 Taken as a whole the revised scheme, with the imposition of suitable conditions, is found to be in general conformity with relevant Council Policy, including Policy ENV2. The proposal is also considered to satisfactorily overcome the reasons for refusal of the previous application. Taking into account the factors outlined both above and in the main body of the report, in the absence of identifiable harm, it is officers' opinion that the planning balance tips towards an approval in this instance.

18.0 Recommendation to the Committee

- 18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

1. Time Limit for Full Permissions

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

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

2. Development to Accord with Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers *[TO BE ADDED WHEN KNOWN]*.

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

N.B. The final revised site layout is shown within the document indexed as 'Boating Lake Car Park Redesign'. A scaled standalone version of the drawing contained within this document is expected in advance of the Committee meeting and any updates will be reported on the amendment sheet.

3. Archaeology

No works shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has been previously submitted to and approved, in writing, by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
- b. Provision to be made for analysis of the site investigation and recording.
- c. Provision to be made for reporting, publication and dissemination of the analysis and records of the site investigation.
- d. Provision to be made for archive deposition of the analysis and records of the site investigation.
- e. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- f. The scheme of investigation shall be completed as agreed and approved in writing by the Local Planning Authority.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance with Section 2 (2021) Policy DM16 and the Colchester Borough Adopted Guidance titled Managing Archaeology in Development (2015).

4. Water Vole Mitigation

No works shall take place until precise details of a Water Vole Mitigation Strategy to minimise the impact upon water voles from the works proposed has been submitted to, and approved in writing, by the Local Planning Authority. Any such mitigation plan shall look to first avoid the need for displacement and/or trapping of water voles, where this is not possible suitable mitigatory provisions shall be identified. The submitted mitigation plan shall be in accordance with relevant recommendations contained within the submitted Ecological Survey and Site Appraisal document (Produced by Derek Gow, Dated November 2021), and shall include appropriate enhancement works to ensure a Net Gain for the species is achieved across the site on completion of the work. The approved details shall be carried out in full and complied with during the lifetime of construction work.

Reason: To ensure that the biodiversity of the site is maintained and enhanced in accordance with the NERC Act 2006 and policy ENV1 of the Adopted Colchester Local Plan.

5. Work Timings

No works shall be undertaken during the months of November – March (inclusive).

Reason: To ensure that the most sensitive time for wintering birds is avoided in order to minimise the risk of disturbance to SPA birds from construction noise disturbance effects.

6. Hedgerow Work Timings

No hedgerow works required in connection with the development hereby approved shall take place between 1st March and 31st August in any given year.

Reason: To ensure direct harm to nesting birds is avoided.

7. Compensatory Landscape/Mitigation Zones

No works shall take place until precise details of the proposed mitigation zone(s) and a corresponding habitat management plan have been submitted to and agreed, in writing, by the Local Planning Authority. Details shall include the exact areas of such (shown on an appropriately scaled drawing), proposed means of enclosure, surface finishes and any proposed planting, including details of the spread and species of any proposed native species-rich trees, shrubs and/or hedgerows. The area of the existing car park proposed to form a new mitigation zone shall be closed off from use as vehicle parking prior to the first occupation of the development hereby approved, and in the form agreed. The mitigation zone(s) shall thereafter be constructed as approved and retained and maintained in the form agreed for the lifetime of the development.

Reason: In the interests of ecology, to mitigate any adverse impacts to such, and as the application has been considered on the basis it represents a repositioning of existing car-parking and not an increase in the number of parking spaces.

8. Landscaping Scheme Details

No works shall take place until a scheme of hard and soft landscape works has been submitted to and agreed, in writing, by the Local Planning Authority. The submitted landscape details shall be in full compliance with the Councils Landscape Guidance Note LIS/B and include any significant changes in ground levels and also accurately identify positions and spread of all existing trees, shrubs and hedgerows on and adjacent to the site; proposed planting; details of any hard surface finishes and external works. The implementation of all the landscape works shall comply with the recommendations set out in the relevant British Standards current at the time of submission. The approved landscape scheme shall be carried out in full prior to the end of the first planting and seeding season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any hard or soft landscape works which, within a period of 5 years of being implemented fail, are removed or seriously damaged or seriously diseased shall be replaced, like for like, in the next planting season with others of similar specification/size/species/mix, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details.

Reason: In order to ensure that there is a sufficient landscaping scheme for the relatively small scale of this development where there are areas to be laid out but there is insufficient detail within the submitted application and to ensure that appropriate landscape mitigation works are carried out, as this is the basis on which the application has been considered.

9. Use Restriction

The parking hereby approved shall only be used/made available to customers and/or staff of the existing boating lake.

Reason: As this is the basis on which the application has been considered and any alternative use would require further consideration at such a time as it may be proposed, including in terms of potential increased recreational pressures on wildlife sites.

10. No Lighting

There shall be no external lighting on the site, including any floodlighting or bollard lighting.

Reason: In order to safeguard the amenity of the surrounding area by preventing the undesirable, disruptive and disturbing effects of light pollution and in order to minimise impacts upon wildlife.

19.1 Informatives

The following informatives are also recommended:

Informative on Conditions Stating Prior to Commencement/Occupation

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

Landscaping

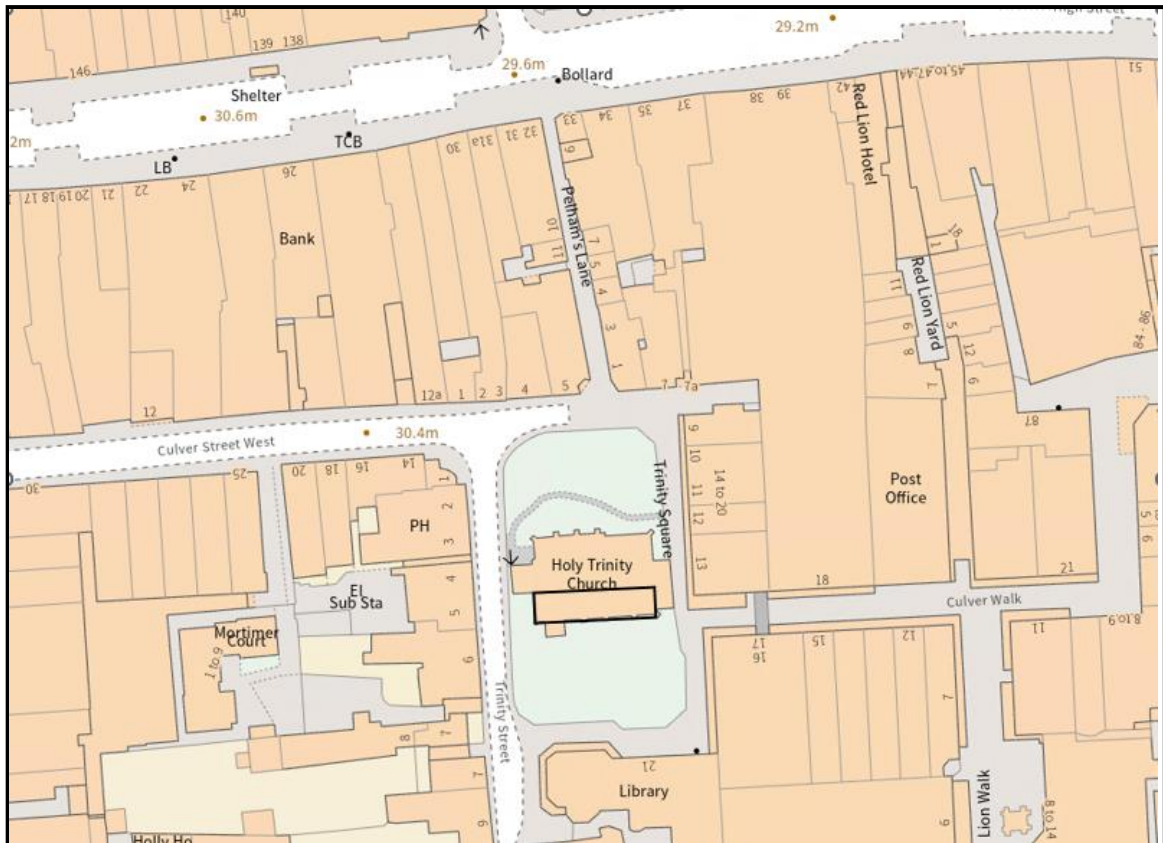
Detailed landscape proposals, if/when submitted in order to discharge landscape conditions should first be cross-checked against the Council's Landscape Guidance Note LIS/B (this available on this CBC landscape webpage: <https://www.colchester.gov.uk/info/cbc-article/?catid=which-application-form&id=KA-01169> under Landscape Consultancy by clicking the 'read our guidance' link)

Archaeology:

PLEASE NOTE The submitted scheme of archaeological investigation should be in accordance with an agreed brief. This can be procured beforehand by the developer from Colchester Borough Council. Please see the Council's website for further information: www.colchester.gov.uk

Waste Permit:

Please note a waste permit or exemption from the Environment Agency may be required for the works proposed.



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Item No: 7.2

Application: 222088

Applicant: Colchester City Council

Agent: Martin Leek

Proposal: Re-roofing of south aisle and south chapel (reusing existing clay plain tiles were possible) Associated repairs to existing timber trusses, timber rafters and adjacent lead valley. Installation of remedial ties at eaves level within south chapel. Repairs to stone gable end wall and maintenance repairs to rainwater goods and drainage.

Location: Holy Trinity Church, Trinity Street, Colchester, CO1 1JN

Ward: Castle

Officer: Eirini Dimerouki

Recommendation: Approval subject to conditions

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the applicant is Colchester Borough Homes on behalf of the Borough Council.

2.0 Synopsis

- 2.1 The application seeks consent to a program of repairs to the South Aisle and South Chapel of the former Holy Trinity Church. The former Church is listed at Grade I and is situated within the designated Colchester Conservation Area 1.
- 2.2 The key issue of consideration is the impact of the proposal on the special interest of the Grade I listed building.
- 2.3 Material planning considerations are taken into account in accordance with National and Local Planning Policy, along with consultation comments. The application is subsequently recommended for approval subject to conditions.

3.0 Site Description and Context

- 3.1 The application site is situated on the northern end of Trinity Street, one of the most attractive and picturesque streets in the historic town centre which comprises a high number of listed buildings. To the north, the site is bound by Culver Street West, a secondary commercial street that runs parallel to High Street; Pelham Lane which has been retained as a pedestrian link between the two commercial axes ends onto Trinity Square. Lion Walk Shopping Centre and Colchester Library, both erected in the 1970s, are located to the east and the south of the site respectively.
- 3.2 The site comprises the former Church and its churchyard that includes several trees and many tombs and monuments. The churchyard is enclosed by iron railings on top of a brick dwarf wall; to the east side, the enclosure is interrupted by the Vestry wall which is the subject of this application.
- 3.3 The former Holy Trinity Church is listed at Grade I (NHLE List Entry Number 1169575). Grade I listed buildings are of exceptional interest and only 2.5% of listed buildings are Grade I. The site was first listed on 25 February 1950 and its list entry describes it as follows: *“Particularly interesting for its fine pre-Conquest west tower, probably built mid C11, largely in Roman brick, 3 stages, pyramidal tiled roof; the west doorway has a triangular head and the windows are round-headed. This tower was built on to an earlier Church of circa 1000, of which only the west wall remains. The rest of the building is largely C14 and C15, much restored in 1886. There is an interesting monument - a mural alabaster monument to William Gilbert 1544-1603 famous for his researches into electricity.”*
- 3.4 A detailed description of the building is included in the “Inventory of the Historical Monuments in Essex, Volume 3, North East” of the Royal Commission on Historical Monuments of England, published in 1922. According to the account of the site’s development, the Vestry was added to

the east side of the Church when Holy Trinity was restored and extended with the North Aisle and North Chapel in the second half of the Nineteenth Century.

- 3.5 Holy Trinity was made redundant in 1956 and was briefly a museum and later, an arts centre and café. At present, it is vacant and not accessible to the public. Despite its vacant status, the historic site makes a very positive contribution to the Conservation Area. It is a green space between the busy commercial zones of Lion Walk Shopping Centre and Culver Street that contributes positively to the area by virtue of the aesthetic qualities of the historic church and the tranquil character of the churchyard.

4.0 Description of the Proposal

- 4.1 The application seeks consent to a program of repairs to the South Aisle and South Chapel of Holy Trinity. The proposed works include:
- removal of the existing clay plain tile roof covering to both slopes of the roof.
 - repairs to the timber trusses, timber rafters and adjacent lead valley, as appropriate.
 - installation of remedial ties at eaves level within the South Chapel.
 - reinstatement of the clay plain tile roof covering reusing existing clay plain tiles where possible and new handmade clay plain tiles to make up for the shortfall.
 - structural repairs to the rubble stone south-east gable end wall.
 - maintenance repairs to the existing rainwater goods and rainwater drainage.

5.0 Land Use Allocation

- 5.1 Residential, within Colchester settlement limits.

6.0 Relevant Planning History

- 6.1 The recent planning history of the site includes Planning Permission 110030 and Listed Building Consent 110031 for the "Change of use from former museum to a cafe with occasional music events and church services. General refurbishment and decoration to main church hall, addition of gate and railings to prevent access into tower. Refurbishment of kitchen and WC facilities including creation of new disabled WC.", granted on 23 March 2011. Advertisement Consent was granted in 2016 for the interpretation panel on the railings on Trinity Street. Application 211240 that sought consent to a permanent art mural on the external wall of the Vestry was refused in July 2021.

7.0 Principal Policies

- 7.1 Planning law requires that applications for Listed Building Consent must be determined in accordance with Section 16(2) of the Planning (Listed Buildings & Conservation Areas) Act 1990, having special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the Act requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Regard is also given to

Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

- 7.2 The National Planning Policy Framework (NPPF 2021) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. The NPPF's Section 16 "Conserving and enhancing the historic environment" provides the guidelines for the protection and conservation of heritage assets, including listed buildings and Conservation Areas. Paragraph 199 determines that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Paragraphs 201 and 202 identify and deal with two levels of harm respectively: substantial and less than substantial harm linking their justification to the public benefits that can potentially outweigh them.
- 7.3 Moreover, planning applications must be decided in accordance with the development plan, unless material considerations indicate otherwise. Continuing the themes of the NPPF, Colchester Local Plan 2017-2033 – Section 2 includes the adopted policy DP16- Historic Environment which seeks to conserve and enhance the historic environment and safeguard the Borough's history through the protection of and enhancement of sites of national, regional and local importance.
- 7.4 Further to the above, the Historic England Good Practice Advice Notes 1-3 (March 2015) should also be taken into account in the decision-making process for applications affecting listed buildings or the historic environment generally.

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 Historic England

"Holy Trinity is particularly interesting for its fine pre-Conquest west tower, probably built mid 11th century; largely in Roman brick, in three stage with a pyramidal tiled roof. The west doorway has a triangular head and the windows are round-headed. The tower was built on to an earlier Church of circa 1000, of which only the west wall remains. The rest of the building is largely 14th and 15th century and was much restored in 1886.

The former Church is listed at grade I in recognition of its outstanding architectural and historic interest.

Consent is sought for re-roofing of south aisle and south chapel (reusing existing clay plain tiles where possible). Associated repairs to existing timber trusses, timber rafters and adjacent lead valley. Installation of remedial ties at eaves level

within south chapel. Repairs to stones gable end wall and maintenance to rainwater goods and drainage.

On the basis of the information available to date, we offer the following comments.

Having considered the documentation submitted with the application, including the Heritage Statement, Roof Repairs Schedule and Roof Repairs Specification produced by Colchester Borough Homes Limited, we welcome the proposed works which will assist in safeguarding the overall future of the historic fabric of this grade I listed building.

We therefore support the application on heritage grounds."

8.3 Environmental Protection

"Should planning permission be granted Environmental Protection wish to make the following comments:-

ZPD - Limits to Hours of Work

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

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

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

Should permission be granted for development, Environmental Protection recommends inclusion of the following advisory note: -

NOTE: Demolition and Construction

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 the should contact Environmental Control prior to the commencement of the works."

The recommended informative will be added to the decision notice but not the suggested planning condition as this application seeks Listed Building Consent.

9.0 Parish Council Response

9.1 Not Parished.

10.0 Representations from Notified Parties

10.1 None received at the time of the report drafting.

11.0 Parking Provision

11.1 N/A.

12.0 Accessibility

12.1 N/A.

13.0 Open Space Provisions

13.1 N/A.

14.0 Air Quality

14.1 N/A.

15.0 Planning Obligations

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

16.0 Report

16.1 The main material consideration for the decision of the application involves the impact of the proposed work on the special interest of the Grade I Holy Trinity, including any harm from alterations, interventions or loss of historic fabric or detrimental changes to its character, appearance or setting. An additional consideration involves the potential of the proposal to affect the Conservation Area.

16.2 A condition survey of the church was carried out in 2021, including a structural inspection. The findings and recommendations of the structural assessment are presented in the Structural Engineer’s Report that accompanies the application.

16.3 The reports notes various defects in the fabric of the South Aisle and South Chapel, including depressions and movement in both the ridge line, eaves line and plane of the roof (rafter zone), lateral movement to the eaves/gutter line, a large crack along the inside edge of the eastern gable wall at roof level, damaged and loose roof tiles and deformation of the gable wall over the head of the gable window.

16.4 The report also explains that a small section of tiles and battens were removed prior to inspection, to expose some of the roof timbers. The exposed rafters appeared to be sound, with no obvious visible signs of decay but the report clarifies that the inspection opening was positioned away from the crack at the gable end (suggesting thus that water ingress from the crack may have affected the roof structure at that area). Moreover, at the subsequent review of the photographs taken on site, some mould growth was noted to the secondary timber forming the eaves, suggesting a damp environment. The exposed timber battens varied from structurally sound to badly degraded.

16.5 Moreover, the report draws attention to a visible outward lean, indicative of roof spread that was apparent to the southern elevation wall. The lean appears to start approximately between the two middle windows and worsens towards the south eastern corner at the easternmost window. The condition of the wall was further assessed with the help of photographs taken from the scaffold that was

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erected for the purposes of the inspection. The report notes cracks to the masonry wall around the foot, side and head on the eastern side of the easternmost window. These cracks are also visible from the interior. The adjacent corner buttress is also showing signs of movement with both cracking and opening of joints to the masonry units..

- 16.6 The remainder of the south elevation, including the South Porch appeared to be free of long cracks and signs of movement . However masonry weathering is still present throughout and typically worse near to ground level.
- 16.7 The report presents the findings from the internal inspection as well. The south elevation wall, towards the eastern corner, showed the same lean as from the outside. Cracks in the plaster are present, particularly at high level in the corner and over the gable window. The plaster appears to be damp suggesting water ingress from above. The timber trusses are partially concealed by the ceiling but the areas of damp in the plaster suggest the end timber truss is also wet.
- 16.8 The report concludes that there is a risk of the timber roof deteriorating from cracks at roof level or tiles are moved out of alignment which allow water ingress . The report notes that it is likely roof spread has started to occur at the south-eastern corner .The author clarifies that ,without access to the timber trusses, it is was not possible to determine their condition, but some timber degradation is likely to have occurred to the primary trusses and rafters given the pattern of internal damp and both external and internal cracking. The large spacing and style of the trusses also mean they are particularly susceptible to spreading. Some of the movement visible in the roof may be attributable to long term timber deflection or creep.
- 16.9 The recommendations include the opening up of the roof to reveal the primary structure and allow the detailed survey of the roof structure ; the findings of the survey would determine whether any damaged timbers would need to be replaced or repaired. Additionally, the roof spread can potentially be alleviated with remedial ties spanning across the eaves at truss feet positions. Further movement to the deformation on the south eastern gable can most likely be mitigated by use of suitable ties and pattress plates. Moreover, it is recommended that the cracks to the masonry are fully repaired, removing and replacing any badly damaged or split masonry units and repointing where required. A masonry strengthening and repair system such as Helifix may be appropriate. Finally the report recommends a program of monitoring for the external walls whose lateral stability may be compromised and the

- 16.10 The present application covers the remedial works for the South Aisle and South Chapel which are recommended by the Structural Engineer's Report. The details and specification in the submitted Repairs Specification and Schedule of Works are appropriate for the building. However, as noted in the Structural Engineer's report, the precise scope and nature of certain works (especially the requirement for any timber repairs and the requirement and details of metal ties) cannot be determined before the opening up of the roof. However, agreement over the precise scope and details of these works can be secured with the use of appropriate planning conditions. Additional conditions would ensure that the works are executed with the appropriate details and craftsmanship.

17.0 Planning Balance and Conclusion

- 17.1 In conclusion, the application seeks consent to repair works to the South Aisle and Chapel of Holy Trinity as per the recommendation of the submitted Structural Engineer's Report. The details and specification set out in the accompanying documents (Schedule of Repairs and Repairs Specification) are appropriate for the site. The use of planning conditions is pertinent to ensure that the scope, nature and details for certain repairs (timber repairs, use of metal ties) is fully evidenced, determined and considered following the opening up of the roof.
- 17.2 The proposed works are necessary in order to remedy defects that have appeared in the fabric of the church and address their cause, to ensure the Grade I listed building is protected and preserved in a good state of repair. Therefore, the application would not result in harm to the significance of the designated heritage asset, thus according with the legislation, national and local planning policies for the protection of listed buildings.

18.0 Recommendation to the Committee

- 18.1 The Officer recommendation to the Committee is for:
APPROVAL of Listed Building Consent subject to the following conditions:-

1. ZAB- Time Limit for LBCs

The works hereby permitted shall begin before the expiration of 3 years from the date of this consent.

Reason: To comply with the requirements of Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. ZLA – Only Works Shown Within Application

This approval is limited to the works described in the approved:

- T107-CBH-EB-ZZ-SP-B-0002: Holy Trinity Church – Roof Repairs - Specification (Colchester Borough homes, August 2022);
- T107-CBH-EB-ZZ-SP-B-0003: Holy Trinity Church – Roof Repairs - Schedule of Work (Colchester Borough homes, August 2022);
- T107-002-Rev.P01: Proposed Works,

and does not indicate approval for associated or enabling works that may be necessary to carry out the scheme. Any further works must be submitted to and approved, in writing, by the Local Planning Authority prior to any works commencing. Reason: For the avoidance of doubt as to the scope of the permission and to ensure that the historic building is preserved from any other potentially harmful works.

3. ZLT – Timber Frame Details

Prior to the commencement of the any necessary repairs to the roof timber frame over the South Aisle and South Chapel hereby approved, annotated drawings and/or photographs, showing the full extent of works to be carried out to the timber frame and identifying the extent to which those works will be carried out, together with the methodology and materials to be used, shall be submitted to and approved, in writing, by the Local Planning Authority. The works shall thereafter be carried out in accordance with the approved details.

Reason: To protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

4. Z00- Roof ties details

Notwithstanding the details hereby approved, no ties shall be incorporated in the roof before their details are submitted to and approved, in writing, by the Local Planning Authority. The works shall thereafter be carried out in accordance with the approved details.

Reason: To protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 where there is insufficient information within the submitted application.

5. Z00 – Sample tiles

Prior to any new roof tiles being laid, samples of the clay plain tiles to be used, together with samples of the existing tiles for comparison, shall be made available on site for inspection by the Local Planning Authority and shall be approved, in writing, by the Local Planning Authority. The works shall thereafter be carried out in accordance with the approved details.

Reason: In order to ensure that the tiles can be satisfactorily considered on site with regard to preserving the character of the listed building.

6.Z00 - Sample masonry repair

Prior to the execution of the masonry repairs hereby approved, a sample area showing the materials (rumble stones), lime mortar mix and pointing shall be prepared on site, inspected and approved in writing by the Local Planning Authority. The works shall thereafter be carried out in accordance with the approved details.

Reason: In order to ensure that the details of the masonry repairs can be satisfactorily considered on site with regard to preserving the character of the listed building.

7.ZLX – Matching Existing Works

Notwithstanding the details hereby approved, all internal works and finishes and works of making good to the retained fabric shall match the existing work adjacent in respect of materials, methods, detailed execution and finished appearance.

Reason: In order to preserve the historic character of the listed building.

8. ZLP – Hitherto Unknown

If hitherto unknown evidence of historic character that would be affected by the works hereby permitted is discovered, an appropriate record together with recommendations for dealing with it in context of the approved scheme shall be submitted for written approval by the Local Planning Authority

Reason: To secure the identification, recording and protection of features of historic and/or archaeological interest.

19.0 Informatives

19.1 The following informatives are also recommended:

ZUA - Informative on All Listed Building Consents

PLEASE NOTE: This listed building consent relates solely to the plans, drawings, notes and written details submitted with the application or as subsequently amended in writing and referred to in this notice. Any variation of the works or additional works found necessary before work starts or while work is in progress or required under the Building Regulations, or by the County Fire Services or environmental health legislation may only be carried out after approval by the Local Planning Authority. Unauthorised modifications, alterations or works not covered by this consent may constitute an offence under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and may render the applicant, owner(s), agent and /or contractors liable to enforcement action and/or prosecution.

ZUE - Informative When Leadwork is to Occur

PLEASE NOTE: All leadwork should follow the Codes and details recommended by the Lead Sheet Association.

ZT0 – Advisory Note on Construction & Demolition

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

Material Planning Considerations

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

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

The following approach should be taken in all planning decisions:

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

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

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

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

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

The above list is not exhaustive

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

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

- matters specifically controlled through other legislation

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

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

Planning Obligations

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

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

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

Human Rights, Community Safety and Equality and Diversity Implications

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

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

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

Using Planning Conditions or Refusing Planning Applications

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

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

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

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

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

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

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

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



Colchester Borough Council Development Management

Highway Safety Issues

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

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

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

Parking Standards

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

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

For residential schemes:

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

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



Colchester Borough Council Environmental Control

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

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

Best Practice for Construction Sites

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

Noise Control

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

Emission Control

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

Best Practice for Demolition Sites

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

Noise Control

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

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

Emission Control

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

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

Class A1. Shops

Use for all or any of the following purposes—

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

Class A2. Financial and professional services

Use for the provision of —

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

Class A3. Restaurants and cafes

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

Class A4. Drinking establishments

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

Class A5. Hot food takeaways

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

Class B1. Business

Use for all or any of the following purposes—

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

Class B2. General industrial

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

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

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

Class C2. Residential institutions

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

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

Class C3. Dwellinghouses

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

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

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

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

Class C4. Houses in multiple occupation

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

Class D1. Non-residential institutions

Any use not including a residential use —

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

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

(c) for the provision of education,

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

(e) as a museum,

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

(g) as a public hall or exhibition hall,

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

Class D2. Assembly and leisure

Use as —

(a) a cinema,

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

(d) a dance hall,

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

Sui Generis Uses

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

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

Interpretation of Class C3

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

Interpretation of Class C4

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

Supreme Court Decision 16 October 2017

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

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

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

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

Deferral and Recommendation Overturn Procedure (DROP) Flowchart

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

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

