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Item No: 7.4

Application: 162639

Applicant: Mr P. Bentley

Agent: Mr Edward Gittins

Proposal: Change of use and alterations to rural outbuilding to form 1 No. dwelling with new access - Resubmission of 160537 (additional plans received)

Location: White Lodge, Roundbush Road, Layer Marney, Colchester, CO5 9UR

Ward: Marks Tey & Layer

Officer: Mark Russell

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 Ellis for the following reasons:

Outbuilding incorrectly treated as a heritage building in previous determination. The effect on the listed building is a value judgement which members can evaluate for themselves. Effectively a brownfield site, albeit in the countryside. It's important for small rural communities to be able to achieve limited growth and Layer Marney wish to do this. This conversion would cause no harm. Had this been an agricultural building, there would be no issue with its conversion, unlike some other authorities Colchester has no policy for on the conversion of rural buildings although para 55 of NPPF refers to redundant and disused buildings and could be interpreted favourably for this application.

- 1.2 OFFICER COMMENT – For the avoidance of doubt, the applicant believed that the building was curtilage listed and therefore submitted a Listed Building Application (ref: 160538) which accompanied Planning application 160537. The application was thus determined as such. The applicant is now stating that the building is not listed. The fact that it is not listed, further counts against the proposal.
- 1.3 Regarding the reference to agricultural buildings, this is of no relevance to this planning application.
- 1.4 Finally, in terms of the NPPF, Paragraph 55 contains much within it which militates against the proposal at hand. These points are explored in greater depth in the main report section.

2.0 Synopsis

- 2.1 The following report briefly describes the proposal site and its surroundings and explains what this application seeks to achieve. Consultation replies are reported which are largely neutral.
- 2.2 The main report section then explores the following issues:
- i) Background: Namely the refusal of a similar application in 2016. It is explained that this was refused under delegated powers and that the resubmitted scheme is little different;
 - ii) The Brownfield v Greenfield debate: It is explained that this issue has become confused, but that there is no policy encouragement for new dwellings in locations such as this;

- iii) Sustainable development: It is explained that the site is wholly unsustainable, being several kilometres away from all services (with the exception of a shop at Smythes Green 1200 metres away). A recently dismissed appeal at a nearby location is quoted, where similar matters were considered;
- iv) Heritage issues: It is explained that the building, previously claimed to be listed, is not. The proposal is at best neutral and as currently submitted is negative to the wider setting of the host listed building and there are no heritage reasons to go against policy and approve this application;
- v) Housing needs: It is explained that there is some demand for housing, but that Colchester Borough Council will not support any site in the parish as a preferred location for housing given its unsustainable location.

2.3 It is concluded that, because Colchester Borough Council has a five year housing supply and because the proposal is against policy, there is no overriding reason to approve this application. There is no heritage justification and no other supporting policy document either at a Borough or Parish level which supports this scheme.

2.4 Refusal is, therefore, recommended.

3.0 Site Description and Context

3.1 The site comprises a black weather-boarded and clay roof-tiled outbuilding within the curtilage of the early 19th century Grade II Listed Building White Lodge. It is post 1948 and, therefore, not curtilage listed. The land around the building is currently laid to hardstanding.

3.2 It is separated from White Lodge by a line of trees and has a hedge planted to the front to the Roundbush Road aspect.

3.3 To the north is a residential dwelling, whilst opposite the site is the dwelling "Little Winters".

3.4 The site is 600 metres as the crow flies (700 metres by any usable route) from the nearest part of any settlement boundary and is, therefore, classified as being in the countryside.

4.0 Description of the Proposal

4.1 It is proposed to demolish a section of the walls to the outbuilding to allow vehicular access to the rear of it and to introduce what is described as an "archway." It is also proposed to fenestrate the building (but not on the road-facing side).

4.2 It is then proposed to use the building as a separate residential dwellinghouse with its own garden and parking to the rear.

5.0 Land Use Allocation

5.1 Unallocated.

6.0 Relevant Planning History

6.1 160537 (and Listed Building application 160538) - Proposed partial demolition and conversion of Rural Outbuilding to a Dwelling and formation of new Access. Refused 16th May 2015.

6.2 89/1291 – Erection of detached garage. Approved 24th August 1989.

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 also be taken into account in planning decisions and sets out the Government's planning policies to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
H1 - Housing Delivery
H3 - Housing Diversity
ENV2 - Rural Communities

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):

DP1 Design and Amenity
DP12 Dwelling Standards
DP14 Historic Environment Assets
DP16 Private Amenity Space and Open Space Provision for New Residential Development
DP19 Parking Standards

- 7.4 Further to the above, the adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

n/a

- 7.5 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

n/a

8.0 Consultations

- 8.1 Historic Buildings Officer:

If, as asserted in the Heritage Statement, it was built in the second half of the 20th century, this outbuilding at White Lodge is not curtilage listed. Nor is it a building of historic interest or architectural importance, though of traditional appearance constructed of traditional materials. Although its footprint is quite large, it is a low building, and it does not have an adverse impact on the grade II listed White Lodge. The proposed residential conversion would involve few changes to the external appearance of the building. I have no objection to the conversion on the grounds of impact on the listed building, but I note that there is little information about the definition of boundaries and boundary treatments, and this matter should be covered by a condition were consent to be granted.

Note – These comments were first made before receipt of the drawings showing the proposed works. Following receipt of these, he has further commented:

To reduce its impact, the opening should be as narrow as reasonably possible, and should be framed by well defined posts with braces to the top plate

- 8.2 Highway Authority: No objections, but conditions. These include the provision of visibility splays of 2.4 metres x 43 metres as measured on the carriageway edge.
- 8.3 Environmental Control: Suggested standard demolition and construction advisory note.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

9.0 Parish Council Response

- 9.1 The Parish Council has not commented on the application.

10.0 Representations

10.1 No third party representations.

11.0 Parking Provision

11.1 Two spaces are shown, this complies with standards. The host dwelling would be deprived of its garaging, however there does appear to be ample space on the remainder of the site for the parking of vehicles.

12.0 Open Space Provisions

12.1 n/a

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

14.1 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 (S106) of the Town and Country Planning Act 1990.

15.0 Report

Background:

15.1 Members are reminded that Planning application 160537 was refused at delegated Officer level, on fundamental reasons of principle (in addition to other reasons) without being called to Committee. With the exception of some physical works (detailed below) the application at hand is, in principle, the same as that already refused by your Officers. Therefore very little has changed.

15.2 Much of the early part of the Design and Access Statement reads as an appeal statement, indicating where the applicant believes there were flaws within the decision. As earlier stated, it was the applicant who erroneously described the building as being listed, that matter has now been resolved. It is also pointed out that the Council incorrectly used the phrase “erection of a new dwelling”, where the phrase “presence” would have been correct. This point is accepted (although, by way of clarification, the proposal was fully understood to be a conversion and was treated as such). Your Officers do not agree with the rest of the criticism within the statement and a court ruling on a case in Dartford, which is also used in the statement, is explored at length below.

- 15.3 To remind Members, the key paragraph of the previous refusal read: *“In this instance, the application site lies in a remote location, far removed from any settlement boundary where the erection of a new dwelling is opposed in principle in line with the above guidance and policies.”*
- 15.4 The recommendation for refusal, at the end of this report, will be reworded to avoid any doubt so that the applicant will not be able to use these arguments in any appeal.
- 15.5 Intuitively, it does not appear acceptable to create new units of residential accommodation in a location such as this. The applicant’s three main strands appear to be: i) The location is brownfield; ii) It *is* sustainable; iii) Heritage benefits (i.e. to the setting of the main listed building White Lodge).

Brownfield v Greenfield:

- 15.6 The issue of whether this is brownfield or greenfield is looked at first. The applicant has quoted a high court ruling (Dartford Borough Council v Secretary of State for Communities and Local Government 9CO4129/2015 – henceforward “the Dartford case”). In this case, the judge found that, as the definition of Previously Developed Land (PDL or “brownfield land”) has now been altered to explicitly exclude gardens within towns (i.e. “land in built-up areas, such as private residential gardens”), then gardens in rural areas had not been so excluded and, therefore, were still considered as being PDL. However counter-intuitive and contrary to the NPPF this may seem and whether this was a deliberate omission or was unintentional is not clear. However, the same judge felt there was a rational justification as “garden grabbing is a particular phenomenon of built-up areas” whilst rural gardens are already protected by a host of other guidance. His judgement was clear though, a site such as this is PDL.
- 15.7 It would be misleading, however, to presume that this has strengthened the case for housing on a site such as this. All this means is that sites such as that at hand, are still technically considered to be PDL (or brownfield) rather than greenfield and in that sense nothing has changed. The same considerations are at hand now as would have been at hand at any previous time since John Prescott’s announcement in 2000. The only point to consider is whether the encouragement to use PDL in a rural setting is now so fundamental to the NPPF that it outweighs all other considerations within that document and the policies of our adopted local plan – both of which have sustainable development as a central tenet. Your Officer will demonstrate below that it is not so fundamental and refusal is still strongly justified.
- 15.8 In fact, one is brought back to two fundamental truths in Planning guidance which must inform our every decision: i) **Sustainable Development** as the golden thread of Planning and ii) Proposals needing to comply with the **Development Plan** unless other material considerations dictate otherwise.

Sustainable Development:

- 15.9 As stated above, the NPPF supports sustainable development. Colchester Borough Council's Core Strategy policy SD1 (Sustainable Development) accords with this and policy H1 directs housing to sustainable locations. The site is, unquestionably, in an unsustainable location. The fact that it is near to some other buildings (some of them agricultural, or diversified from agriculture) does nothing to alter that fact. The application documents describe the site as being sustainably located as it is 1,000 metres from a bus stop. This is clearly an unusual interpretation of the word "sustainable" and without question, it is clear that all or most journeys to and from the proposed dwelling would be by motor vehicle.
- 15.10 Returning to the NPPF, this tells us that "Sustainable Development" has three strands: i) Economic, ii) Social and iii) Environmental.
- 15.11 Successive appeals have shown that Inspectors recognise an (if brief) economic benefit with the building of a house as it supplies work to a builder and also the social benefit of the provision of a house in providing somewhere for someone to live. This point could be made about any new house at any time, anywhere and only forms part of the consideration. It is worth recalling that this application is not even for a new build; thus any economic benefit would be somewhat less, as a conversion would be quicker and less profitable for a builder.
- 15.12 Regarding the supposed social benefit, it is accepted that in principle this might occur as the village of Layer Marney would be one house and, perhaps, a few people to the better. However, there is no supporting evidence from the applicant to suggest that the house would be of any social benefit and there is no supporting evidence from the Parish Council, nor is there any particular document one can turn to to support the claim that this would be of any social benefit. As will be seen below, the site is so far from any services it is difficult to muster any argument that the addition of a single dwelling would be socially beneficial to the village, or economically beneficial to any local businesses.
- 15.13 Inspectors have then also considered the environmental aspect. Whilst there has recently been a mixture of appeal decisions, most fall against promoting dwellings in locations such as this. The applicant may quote exceptions to this which support their case and may do so at appeal, but the general thrust is not in their favour. The geographical location is of importance in terms of the proximity (or lack of) of services and whether the future occupier would be likely to use anything other than a motor car.
- 15.14 The site in question is, undeniably, remote from any sort of services. The supporting statement contains an extraordinary claim that, as the site is "only about 1.0 km south" of the B1022 with its bus services, then the site cannot be described as remote. This is, in your Officer's opinion, one of the most remote parts of the borough and, without question, occupiers of

the dwelling would need to use motor vehicles for most, if not every, activity; which is against the interests of sustainable development.

- 15.15 In more detail, there are no schools or pubs in Layer Marney, there is a shop at McCreadie's garage about 1.2km away in Smythe's Green (wholly accessed by road, with no footpaths) and which has planning approval for residential redevelopment, the Hare and Hounds public house is 2km away in Layer Breton and the nearest school is about 3km distant in Birch. Realistically, any meaningful comprehensive services and facilities are 3-4km away in Tiptree. This cannot, therefore, be considered a sustainable location.
- 15.16 There are very few dwellings in Layer Marney outside of its tiny settlement boundary (Smythes Green), running to about twenty dwellings. Many are of a high standard of architecture and about a dozen are listed. Some of those which are listed have outbuildings which are also listed. It is logical to conclude that if the application at hand were granted permission, the owners of these other properties might wish to do likewise, effectively increasing the "outside the village envelope" housing stock by over 50 per cent.
- 15.17 Whilst it might be claimed by the applicant that the risk of precedent is not a material consideration, it is noted that two cases of precedent are indeed quoted in their supporting statement and if permission were to be granted at the site in hand, it would be quoted as precedent by subsequent applicants/appellants on other sites in the vicinity.
- 15.18 The most recent appeal precedent in the vicinity of Layer Marney was at Palmer's Farm on Blind Lane, Birch (our reference 151264). This sought permission for a dwelling (albeit a new build) in a location similarly remote to that at hand. Similarly, the nearest facility was the shop at Macreadies. The following paragraphs are of note:

"10. Layer Marney/Smythe's Green would not cater for the everyday needs of any future residents of the appeal proposal. For everyday needs, future residents of the proposal would likely need to travel to Tiptree, Birch Green and further afield. Access to Tiptree or Birch Green on foot or by bicycle would be along the B1022 for a considerable distance. There are few pavements and no dedicated cycle lane along this route and I observed that traffic moved at speed. As such, I would not describe the facilities available in these settlements as a convenient or comfortable walking or cycling distance from the appeal site and I have seen no substantive evidence to counter this view.

11. Layer Marney/Smythe's Green is located on a bus route. The Number 75 bus is a reasonably regular service connecting this settlement with Tiptree, Colchester and Maldon. However, there is no pavement connecting the appeal site with the bus stop and to access the bus stop it would be necessary to negotiate an 'S' bend in the B1022. Consequently, the walking route to the bus stop would be unattractive, especially to

vulnerable pedestrians (including parents with push chairs and children and those with mobility problems) and particularly in the evening as there is no street lighting. As such, I do not consider it likely that future occupants of the proposed dwelling would travel regularly by bus.

12. Given the distance, unattractive walking and cycle environment and the relative inaccessibility of the bus stop I consider it highly likely that future residents would be predisposed to rely on a private car to access necessary services and facilities. As such, I find that the proposed development would be functionally isolated from services and would be in an unsustainable location.

13. The isolated location would result in harm when considering the social and environmental dimensions of sustainable development. It would leave future occupants of the proposed dwelling largely reliant on a private vehicle with limited travel choices. It would also undermine the Framework's aims of locating new dwellings in rural areas close to local services and facilities. Moreover, the proposal would conflict with the Framework's aim of reducing unnecessary travel by car, with its associated carbon emissions, as a measure to cumulatively limit the effects of climate change."

15.19 The Inspector concluded that there were no special circumstances to justify a dwelling in this location and duly dismissed the appeal.

Heritage Matters:

15.20 Part of the applicant's case is based around a claim that the building is a "heritage asset", however the building in question is a 1980s garage block, described by the applicant as "of no particular historic or architectural merit." Your Officers do not fully agree with this appraisal; whilst of no outstanding quality, its form and choice of materials mean that it is sympathetic to its immediate setting and in its contribution to the wider rural setting.

15.21 Our Historic Buildings Officer has described a relationship between the subject building and the listed White Lodge which suggests that the proposed works would have little impact on that building. That being the case, the works can at best be described as neutral and therefore there is no overriding reason to go against policy, especially as there is no heritage asset requiring a viable use.

15.22 In fact, the works as currently proposed are, in your Officer's opinion, visually negative. The applicant's proposed treatment of what it describes as a "heritage asset" (i.e. a building near to a listed building) is to knock part of it down and form what is described as an "archway" through it. In fact, the proposal is not even an arch, it is just a missing section with a very thin support on the right-hand-side which looks structurally weak and is visually jarring.

- 15.23 Architecturally this is very poor in any context, let alone in a sensitive rural setting close to a listed building. It is acknowledged that, through negotiation, a more sensitive solution to this issue might be found, but, given that your Officers fundamentally oppose the scheme, it would not be profitable to spend time on it here. A condition for amendments can be appended to the Council's appeal statement should that be necessary.
- 15.24 Housing Needs: It is stated that the statement has been made: *"It is important for small rural communities to be able to achieve limited growth and Layer Marney wish to do this."* Layer Marney has not undertaken a Neighbourhood Plan. However, it did commission a Housing Needs Survey, with a report on this being published in October 2016.
- 15.25 The survey form was sent out to 86 households in Layer Marney, of which 37 (44 per cent) responded. Eleven of these indicated some form of housing need (of which only one would require it within the next two years and seven more within two to five years). Twenty seven stated that they would be in favour of "some form of small development" typically up to four dwellings. A similar number of respondents stated that they would be supportive if affordable units were included.
- 15.26 It is of note that none of the respondents is on the Local Authority or Housing Association waiting list.
- 15.27 Several sites were suggested by locals, but White Lodge was not one of them.
- 15.28 Our Policy section has confirmed that no sites in Layer Marney have been taken forward to Local Plan proposal sites as it would be contrary to our spatial strategy to do so.
- 15.29 There is, therefore, no policy or document which supports the principle of housing in this location.

Other Matters:

- 15.30 In their supporting statement, the applicant has quoted the Prior Notification process for the conversion of agricultural buildings to dwellings. The relevance of this is unclear. The building at hand is not agricultural, therefore it does not enjoy Permitted Development rights to convert in to a dwelling.
- 15.31 For Members' information, still very few agricultural buildings have been granted Approval for residential conversion in the Borough of Colchester – only nine in all. None of these have been in Layer Marney.

16.0 Conclusion

- 16.1 The application is hereby recommended for refusal on the grounds of sustainability. The application is against policy and there is no overriding reason to approve it. There is no heritage justification and no other supporting policy document either at a Borough or Parish level which supports this scheme. Colchester Borough Council has a five year housing supply and has no reason to go against its adopted policies, policies which stood up at appeal in May last year on a similar scheme in the vicinity.

17.0 Recommendation

- 17.1 REFUSE planning permission for the reasons set out below.

18.0 Refusal Reasons

- 18.1 Paragraph 55 of the NPPF states that Local Planning Authorities should avoid new isolated homes in the countryside unless there are special circumstances. This informs Policy H1 of Colchester Borough Council's Core Strategy, adopted 2008 (revised 2014) which provides that the majority of housing development will be located within the urban areas of Colchester and indicates in table H1a a hierarchy of where new housing will be permitted. This does not include sites outside of village settlement boundaries. Further, policy SD1 of the Core Strategy provides that growth throughout the borough will be located at the most accessible and sustainable locations.

In this instance, the application site lies in a remote location, far removed from any settlement boundary where the presence of a new dwelling is opposed in principle in line with the above guidance and policies. As Colchester Borough Council has a five year housing supply and there are no overriding extenuating circumstances such as concerns over heritage matters, there is no cogent reason for approving this application.

Policies UR2 of the Core Strategy and DP1 of the Development Policies (adopted 2010, reviewed 2014) provide that all development must be of a high standard and respect and enhance the character of the site in terms of its design and respect its landscape setting and contribute to the surrounding area.

In this instance it is proposed to partly demolish a building close to a listed building in a sensitive rural area and erect a visually weak supporting flank wall and place a new entrance in an exposed position with the resultant loss of hedgerow. This, when combined with removal of hedgerow, required to obtain the desired vision splays, would add to the disappointment in this sensitive rural setting. For these reasons the application is hereby refused.