

# **Planning Committee**

## **Thursday, 17 December 2015**

**Attendees:** Councillor Peter Chillingworth (Group Spokesperson), Councillor Helen Chuah (Member), Councillor Jon Manning (Chairman), Councillor Pauline Hazell (Member), Councillor Brian Jarvis (Member), Councillor Michael Lilley (Member), Councillor Jessica Scott-Boutell (Deputy Chairman), Councillor Patricia Moore (Member), Councillor Rosalind Scott (Group Spokesperson), Councillor Jo Hayes (Member)

**Substitutes:** Councillor Roger Buston (for Councillor Jackie Maclean), Councillor Gerard Oxford (for Councillor Laura Sykes)

### **249 Site Visits**

Councillors Buston, Chillingworth, Chuah, Hayes, Hazell, Jarvis, Lilley, Manning, Moore, G. Oxford, Scott and Scott-Boutell attended the site visit.

### **250 Minutes of 22 October 2015**

The minutes of the meeting held on 22 October 2015 were confirmed as a correct record.

### **251 Minutes of 5 November 2015**

The minutes of the meeting held on 5 November 2015 were deferred for consideration at the next meeting.

### **252 150239 Land to north/south of Tollgate West, Stanway**

**Councillor Scott-Boutell (in respect of her acquaintance with the objectors to the application and her attendance at a pre-application exhibition) declared a non-pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5).**

**Councillor G. Oxford (in respect of his membership of the Local Plan Committee) declared a non-pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered an outline application for mixed development of leisure uses

(use class D2) including cinema and retail (use classes A1, A2, A3, A4, and A5) with associated parking including multi-storey car park, public realm improvements, access, highways, landscaping and associated works at land to the north/south of Tollgate West, Stanway, Colchester. The application had been referred to the Committee because the application was a major departure from the Adopted Development Plan, had attracted a significant level of public interest and been called in by former Councillor L. Scott-Boutell, for reasons of prematurity and transparency of decision making and, in certain circumstances, could require referral to the Secretary of State for Communities and Local Government. The Committee had before it a report and an amendment sheet in which all the information was set out. The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

Vincent Pearce, Planning Projects Specialist, together with Karen Syrett, Place Strategy Manager; presented the report and assisted the Committee in its deliberations. Also in attendance were Simon Cairns, Major Developments and Planning Projects Manager; Laura Chase, Planning Policy Manager; Peter Wilks, from Nathaniel Lichfield and Partners; David Martin, Environmental Protection Officer; Jim Leask, Enterprise Officer and Martin Mason, Essex County Council, Strategic Development Engineer.

Nick Diment, on behalf of G L Hearn for M and G Real Estates addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He explained that his company had submitted an objection to the application as it was not considered to be appropriate and he felt this view was still valid in terms of its significant departure from the Development Plan and the associated harm to the town centre. He considered the application to be speculative as no details of potential final occupiers had been revealed, too large in terms of scale within the sub-regional location, contrary to policy in relation to retail provision and of harmful impact upon the town centre. He was also concerned about the effect upon the Vineyard Gate development which needed more time to come to fruition and the impact of free parking spaces outside the town centre. In his view the loss of strategic employment land would not be justified, whilst the correct course of action would be to pursue a change in allocation through Local Plan review.

Ron Levy, on behalf of Colchester Retail Business Association (CoRBA) addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He explained that he was representing over 200 independent retailers in the town centre, many of whom had struggled through the recession but were fearful of the impact of the proposed Tollgate Village application which they considered would cause stagnation for many years ahead. He referred to the application's divergence from Local Plan policies and the need for priority for the town centre to be maintained.

Hugo Fenwick addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He referred to the

National Planning Policy Framework and quoted Greg Clark - 'Our historic environment - buildings, landscapes, towns and villages - can better be cherished if their spirit of place thrives not withers.' and went on to state that the town centre needed to support vitality and that Colchester town centre was as culturally significant as Colchester itself. He considered the proposals would do irreparable harm to the town centre. The Castle Museum was a prime example of this as well as the large department stores, many small boutiques and vast array of small retailers which all fed off each other. He referred to the significant investment in the town centre recently by Fenwick as well as in Culver Square and Red Lion Walk which was contributing to the future of Colchester as the pre-eminent retail and leisure destination in the region. He referred to the presumption of Town Centre first in the adopted retail hierarchy where investment was more expensive and took longer to deliver. This was reflected in town centre charges for car parking whereas out of town developments, in the case of Tollgate Village, less than five miles from the town centre and providing for 300 parking spaces were at liberty not to charge. If the application was approved he considered that future investment would disappear and the vitality of the town would dissipate.

Stephen Mann, on behalf of Stanway Parish Council, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He explained that Stanway was an urban growth area which was currently undergoing a major expansion. It was a vibrant and popular area to live in and to visit. However, the former Sainsbury site had been the subject of neglect. Stanway Parish Council broadly supported the proposals for Tollgate Village, subject to the provision of infrastructure improvements which came with it. The vision contained within the plans had received overwhelming public support, despite the views of the Planning Officers that it would attract out of area shoppers and be harmful to the town centre. He referred to recent investments which had taken place in the town centre, at Red Lion Walk and the Hub located in the former Police Station and he was of the view that similar examples would continue to come forward. The proposals represented £65million with 480 construction jobs and 580 permanent jobs, together with associated socio-economic benefits.

Jayne Gee on behalf of the Tollgate Partnership addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. She referred to the planning permission originally granted to her father in the 1980s to provide for Tollgate Road and its first tenants, Seapets, followed by Sainsbury and Pappus House. the latest developments were a part of what was now a very successful urban district centre. The proposals for Tollgate Village were the result of various meetings and a consultation over a period of three years and had benefitted from a phenomenal level of public support. Much of the infrastructure required in the area was also included in the proposals and further investment would come forward in the future which would mean car journeys would be reduced. She was of the view that expert opinion had shown that there would be minimal harm to the town centre and to address these issues the development company had offered to reduce the size of some of the

shopping units.

Paul Newton for Barton Willmore addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He was disappointed with the report and the presentation and referred to the many merits of the proposals which had been overlooked, including no objections from statutory consultees, phenomenal public support, investment in highway improvements, fully funded not speculative development which can be delivered immediately. He also confirmed that the proposals had met the sequential test. He was of the view that investment in the town centre would not be negatively affected, as evidenced by the introduction of a Primark store and the deal with Curzon for a cinema and, as such the town centre would continue to attract investment. He considered that funding for Vineyard Gate had yet to be secured whilst the references to the Northern Gateway were erroneous as planning permission had not been granted for leisure development. He was also of the view that there was a significant over supply of land for employment purposes and that Tollgate represented the best area to create a new urban heart for the town which would benefit Colchester as a whole.

In response to certain specific issues raised the Planning Projects Specialist explained despite the large majority of support for the proposals from the residents in Stanway the Committee needed to consider the wider implications for the Borough as a whole and the Local Plan policies which placed the town centre at the top of the retail hierarchy. He also reminded the Committee that the consultants engaged to independently assess the impact of the proposals had confirmed that the impact would be significantly adverse for the town centre as a whole.

Peter Wilks, from Nathaniel Lichfield and Partners who had conducted the employment land needs assessment and retail studies for Colchester, explained that there was concern in terms of the way Tollgate Village would utilise the capacity that would result from future growth. He went on to explain that the findings from their report had shown that if the Tollgate Village development proceeded the town centre would not be able attract future investment and that developers would only consider investments in schemes where there was scope for a return on that investment.

Councillor J Maclean attended and, with the consent of the Chairman, addressed the Committee. She was of the view that a decision to refuse the application would affect local residents adversely. She was of the view that the ward councillors were trying to respond to the strong views expressed by their electorate whilst the Planning Officers had given their expert advice to the Committee, it was still for the Committee members to make their own decisions. The Local Plan had provided a vision for the local area but it was very restrictive and it was in the process of being redrafted. She considered the proposed development would not be of detriment to the town centre as the problems associated with the decline in town centre activity was due to technology improvements and people choosing to do their shopping online. The proposal had clear economic benefits such as greater choice, more local jobs and decreased congestion which would

mean that Colchester would be able to compete with Chelmsford and Braintree. She did not consider that the Northern Gateway proposals would be adversely affected whilst there would be clear employment benefits not requiring travel into Colchester town centre. She further considered that the proposed road network infrastructure works would provide considerable traffic improvements and that the employment allocation would be able to be the subject of a swap for land in North Colchester.

Councillor Sykes attended and, with the consent of the Chairman, addressed the Committee. She had concluded that the application should be approved. The Parish Council had been encouraged to produce a Village Plan which had been adopted by the Borough Council with the expectation that its contents would carry some weight in the determination of planning applications in Stanway. The landowners had taken the Village Plan into account when putting together their proposals. Consultations had also been undertaken and the ward councillors had been involved in the discussions with the developers. All parties had been encouraged to put forward ideas for the area and these had not been ruled out by the Council in accepting the Village Plan. The Council seemed to be pinning its hopes on the delivery of Vineyard Gate but this was unlikely to come forward before 2019, in which case, she saw no reason not to approve this application. She considered the proposal would generate both employment and wealth as well as a different shopping experience, creating good competition therefore it would be good for Stanway and good for Colchester. 1000 new properties had been constructed in Stanway and these new residents required new facilities and Tollgate Village was part of this future.

Councillor Frame attended and, with the consent of the Chairman, addressed the Committee. He was speaking in his role as a Councillor for Castle ward and as the Portfolio Holder for Economic Growth and Planning. He did not support the proposal on the basis that the Adopted Local Plan needed to stand the test of time and not be departed from. The proposals would mean the loss of important employment land for which demand was increasing. In addition there would be a serious viability impact for the town centre which would affect its future sustainability. There would be no guarantee that recent investments would continue and he also stated his view that the contents of the Stanway Village Plan could only be adhered to if they were not in conflict with the Council's Local Plan policies.

Councillor Liddy attended and, with the consent of the Chairman, addressed the Committee. He explained that he had sympathy with the Committee members. An application bringing with it new job opportunities should be welcomed. However the Council's Local Plan policies were not applied in a vacuum. Whilst the developers had presented an attractive scheme with much to commend it he could see no valid reason for the Committee members to make an exception to the Local Plan policies. He was concerned that a decision to approve the application would set a precedent, would mean that the Local Plan had been discredited, that the Council would be open to accusations of mismanagement and a lack of vision towards the town centre. He also referred to the difficulties which would be encountered by the Council administration following the local

elections in May 2016, should approval be given to the application.

Some members of the Committee highlighted the need to support the growth in the Stanway area and the considerable support for the development within the local community. It was also acknowledged that the proposal was likely to lead to additional traffic in the Tollgate area which was already experiencing congestion problems. These issues had also impacted the residential road networks such as Lakelands and, as such, the highway infrastructure improvements included in the development proposal were welcomed. There was also the view that the potential to deliver high quality retail units on the site would not only create employment for the area but also attract shoppers to Tollgate and to Colchester town centre.

A number of Committee members expressed the view that out of town shopping areas and town centre shopping were distinct from each other, not in competition and with the potential for each to benefit from the development rather than for it to be a threat to growth in the town centre. The recent refurbishment of Williams and Griffin, undertaken by Fenwick was welcomed and it was hoped further investment in the town centre would continue. References to the negative impact of the Tollgate proposal on plans for Vineyard Gate were not considered to be relevant given the lack of progress in the development of this area of the town centre. Reference was also made to the views set out in the Stanway Village Plan, such as the need for employment to be situated near to where people live, which were in accordance with the proposals contained in the application. It was considered that the development represented a considerable investment which would be of benefit to the whole of the Borough. It was not considered appropriate to turn down this investment opportunity on the basis that it had sufficient merits to justify an exception to the Council's Local Plan policies.

Other members of the Committee, whilst acknowledging the representations made in support of the application and the need to consider very seriously the large amount of investment the proposal would bring with it, referred to the need for the Committee to adhere to the National Planning Policy Framework and the Council's Local Plan which was currently being reviewed but was up to date and continued to be valid. In addition, Government guidance advised that planning applications were required to be determined in accordance with current policies unless there were exceptional reasons to depart from them. The Council's planning policies provided a vision for Colchester and the surrounding Borough, including a provision for high value employment. The proposals contained in the application, whilst of merit, did not comply with either national or local planning policies in terms of the application site which was currently in part allocated as a Strategic Employment Zone with its loss having a detrimental impact on Colchester's economic future and in relation to the retail hierarchy which gave priority to the town centre and needed to be maintained. It was further considered that the proposals were too large in scale for an urban district centre but would provide benefits for Stanway which were only short term and the development was likely to lead to considerable parking and traffic problems. The ability to retain the higher level employment allocation for the site was considered to be of better long term benefit to

Stanway and the Borough as a whole as it would provide for greater flexibility and maximise potential for Colchester.

In response to specific questions the Planning Projects Specialist explained that the Council's Local Plan allowed for landowners within the urban district centre at Tollgate to intensify use provided it would not compete with the town centre. The proposal was considered, however, to compete with the town centre at a sub-regional level and, as such would have a significant detrimental impact on the town centre. He went on to explain that it was difficult to predict precisely how many jobs would be created from the development as it was not yet possible to identify likely occupiers. The number of jobs, nevertheless would be significant but may be better located within the town centre as the primary retail centre. He also stressed the importance of retaining the Strategic Employment designation for the site due to the very good access links to the A12. He acknowledged the potential for exceptions to be made to policy in exceptional circumstances but he was of the firm view that the proposals being considered by the Committee did not represent an exceptional circumstance. He further explained that it was for the Local Plan Committee over the forthcoming months to determine the appropriate location for large scale development in Colchester.

Peter Wilks explained that the findings from their report had shown that the type of development proposed would divert trade from Colchester town centre, with a small proportion from other nearby town centres. In turn this would lead to stagnation in the town centre with further trade being lost to shopping areas in Braintree, Ipswich and Chelmsford.

A proposal, which had been seconded, to refuse the application was lost (SIX voted FOR, SIX voted AGAINST and the Chairman exercised his casting vote AGAINST).

A further proposal which had been seconded, to approve the application suggested that the Committee may be minded to determine the application contrary to the officer's recommendation in the report. In accordance with the Committee's Deferral and Recommendation Overturn Procedure (DROP) the Chairman invited the Planning Projects Specialist to indicate the significance of the associated risks should the Committee overturn the Officer's recommendation in this instance. It was explained that the risks in this instance would be significant as such a decision would be contrary to the Council's planning policies, the decision would need to be referred to the Secretary of State and, permission was granted, it would require associated conditions to be agreed. In the light of this advice the Chairman determined that the DROP be invoked.

*RESOLVED* that the Deferral and Recommendation Overturn Procedure be invoked and a further report be submitted to the Committee giving details of the risks to the Council, the financial implications including the need to refer the matter to the Secretary of State for Communities and Local Government, together with recommended conditions and Heads of Terms should the application be granted.

**Councillors Lilley, G. Oxford and Scott-Boutell here left the meeting.**

**253 150972 Wormingford Airfield, Fordham Road, Wormingford**

**Councillor Chillingworth (in respect of his membership of the Council for the Protection of Rural Essex and his acquaintance with some members of the Gliding Club) declared a non-pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered an application for the additional use of one Touring Motor Glider (TMG), all other existing uses to remain the same at Wormingford Airfield, Fordham Road, Wormingford. The application had been referred to the Committee because the application had been called in by Councillor Chapman and there had been considerable local interest in the proposal. The Committee had before it a report in which all the information was set out. The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

James Ryan, Principal Planning Officer, presented the report and, together with David Martin, Environmental Protection Officer, assisted the Committee in its deliberations.

Jill Bruce addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. She was of the view that the noise readings had all been conducted on occasions when the glider had been operated as quietly as possible and were therefore unrepresentative of the experience of local residents. She referred to the noise disturbance experienced from the glider on take-off, during extended circling manoeuvres and when the engine was started up again in mid-flight. She explained that she had watched the activity at the airfield increase over time and considered local residents should be compensated for loss of peace and tranquillity in the neighbourhood. She considered local residents had been flexible and sought, at the least, a restriction on the extended use to weekdays only.

Nick Durlacher addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He explained his considerable concerns regarding the impact of the proposal on local residents which he considered to be in relation to both noise and privacy. He referred to the loss of peace and tranquillity and the loss of the enjoyment of gardens for local residents. He requested the restriction on the extended use to weekdays only on the basis that the winch operated mechanism, rather than a powered solution, was a workable option. Alternatively he sought a time limited permission to give the opportunity to assess the impact of the activity.

Robert Godden, Chairman of Essex and Suffolk Gliding Club, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He referred to an invitation to local residents to attend a meeting to explain the proposals had resulted in an attendance of 15. The Club was an approved training



facility and, as such, needed to move to a powered take off glider in order to provide flexibility in operations and to respond to demand as it arose. Every gliding club was moving to this option and it was therefore vital to the club's viability in terms of training facilities.

Elisa Hampson addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. She explained that it was both beneficial and essential. The TMG had been owned by the Club for eight years and was currently used four times per year. The Club needed provide more flexibility to stay viable and the noise assessments had demonstrated that there was no detrimental disturbance caused by its use. The application had accommodated issues raised by local residents in terms of time restrictions for use and the Club had also offered to maintain a log to demonstrate the level and times of usage.

Councillor Chapman attended and, with the consent of the Chairman, addressed the Committee. He thanked the Committee members for undertaking a site visit to the airfield and congratulated the Planning Officer on the report. If the Committee was minded to approve the application he requested consideration of limits being placed on the hours of operation, particularly during the summer months and he also sought a formal liaison to be established in order to improve the relationship between the Club and the local residents.

The Principal Planning Officer confirmed that the Environmental Protection Officer had reported no noise disturbance issues as a result of assessments conducted at the airfield and that the application was not for flights on 365 days but to have the opportunity to use the TMG on any day of the year for up to eight occasions between the hours of 8:00 am to 9:00pm.

Some members of the Committee acknowledged the concerns of residents whilst accepting the need for activities to take place in the countryside such that it was necessary for a compromise to be reached. Reference was also made to the lack of intrusive noise witnessed on the site visit and, as such, disappointment that the Club and the local residents were unable to come to a mutual acceptable compromise.

Other members of the Committee were of the view that a compromise would potentially be harmful to the commercial viability of the Club given no noise issues had been witnessed during noise assessments or on the site visit.

*RESOLVED* (SIX voted FOR and THREE voted AGAINST) that the planning application be approved for a temporary period of three years subject to the conditions set out in the report.

## **254      150213 Land west of 58 Queens Road Wivenhoe**

The Committee considered an application for the erection of a detached dwelling with associated parking facilities, resubmission of 112284, at land west of 58 Queen's Road,

Wivenhoe. The application had been deferred at the Planning Committee meeting on 30 July 2015 for legal advice on the liability arising from a grant of consent in relation to flooding risk. The Committee had before it a report in which all the information was set out.

Sue Jackson, Principal Planning Officer, presented the report and, assisted the Committee in its deliberations. She explained that legal advice had been received from Holmes and Hills Solicitors and a meeting had taken place with the Environment Agency, together with an assessment of the sequential and exception tests.

Some members of the Committee were concerned about the comments on the application from the Environment Agency which implied that their lack of objection was conditional upon the Council's consideration that the application was acceptable. There continued to be concern about the effectiveness of the proposed mitigation measures. It was also considered that the Neighbourhood Plan was clearly opposed to development in the flood plain as well as including proposals to extend the conservation area which adjoined the application site. Reference was also made to national policies in relation to development in Flood Zone 3 and the need for an Exception Test for such development.

Other members of the Committee acknowledged the concerns expressed but referred to the continuing recommendation for approval from the Principal Planning Officer despite these issues. It was considered that liability in respect of danger to life would not rest with the Council but with the Environment Agency.

In response to specific questions the Principal Planning Officer explained that development in Flood Zone 3 required an Exception Test and that the proposal had successfully passed this test. She also referred to recent bad weather conditions and her own visits to the site which had revealed that the site was coping adequately with rain water levels.

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

- (i) The planning application be approved subject to the signing of a legal agreement under Section 106 of the Town and Country Planning act 1990 within six months of the date of the Committee meeting;
- (ii) In the event that the legal agreement is not signed within six months, authority be delegated to the Head of Commercial Services to refuse the application, or otherwise be authorised to complete the agreement to provide for the submission of details and approval of a maintenance schedule for the void and trash screens and agreement of the legal responsibility for implementing the approved maintenance schedule for the life of the property;
- (iii) On completion of the legal agreement, the Head of Commercial Services be authorised to grant planning permission subject to the conditions set out in the report.

**255      152344 Old Heath Recreation Pavilion, Recreation Road, Colchester**

The Committee considered an application for the redevelopment of the Old Heath Tennis Pavilion into a community cafe at Old Heath Recreation Pavilion, Recreation Road, Colchester. The application had been referred to the Committee because Colchester Borough Council was the applicant. The Committee had before it a report and an amendment sheet in which all the information was set out.

*RESOLVED* (UNANIMOUSLY) that the planning application be approved subject to the conditions set out in the report.