

# **Planning Committee**

## **Thursday, 18 February 2016**

**Attendees:** Councillor Peter Chillingworth (Group Spokesperson), Councillor Helen Chuah (Member), Councillor Jo Hayes (Member), Councillor Pauline Hazell (Member), Councillor Brian Jarvis (Member), Councillor Michael Lilley (Member), Councillor Patricia Moore (Member), Councillor Rosalind Scott (Group Spokesperson)

**Substitutes:** Councillor Roger Buston (for Councillor Jackie Maclean), Councillor Professor Peter Higgins (for Councillor Jon Manning), Councillor Gerard Oxford (for Councillor Philip Oxford), Councillor Julia Havis (for Councillor Jessica Scott-Boutell)

### **276 Site Visits**

Councillors Chillingworth, Chuah, Havis, Hayes, Hazell, P. Higgins, Jarvis, Moore and G. Oxford attended the site visit to Walter Radcliffe Road, Wivenhoe and, in addition, Councillors Havis and P. Higgins attended the site visit to Tollgate West Stanway.

### **277 Chairman**

Councillor G. Oxford was elected Chairman for the meeting.

### **278 Deputy Chairman**

Councillor Chuah was elected Deputy Chairman for the meeting.

### **279 Minutes**

There were no minutes for confirmation at the meeting.

### **280 152550 Bawley House, Walter Radcliffe Road, Wivenhoe**

The Committee considered an application for the variation of Condition 02 of planning permission 145776 to subdivide the ground floor into three B1 units at Bawley House, Walter Radcliffe Road, Wivenhoe. The application had been referred to the Committee because it had been called in by Councillor Liddy. 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.

Sue Jackson, Principal Planning Officer, presented the report and, assisted the Committee in its deliberations.

Asa Aldis on behalf of Wivenhoe Town Council addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He explained that when the application had been originally approved in November 2001 the intention was for a mix of residential and employment uses. He referred to other units which had been subject to change of use to residential and the Town Council wished to avoid the potential for this to happen in this instance. He therefore requested the Committee to consider the addition of a condition to the planning permission to prevent a future change to residential use.

Councillor Liddy attended and, with the consent of the Chairman, addressed the Committee. He explained that he was a former Wivenhoe Town Councillor and remembers when the original consent had been granted when it was envisaged that the proposals would create a vibrant mixed development. He explained that the commercial units had dwindled over the years although the development had been successful and was popular with house buyers. This unit would be the last remaining non-residential one and he considered it to be important that its commercial use was retained and these opportunities continued for future generations.

The Principal Planning Officer explained that if the application was approved and implemented then it would be possible for the use to be changed to residential without further permission being sought. She therefore considered the addition of a condition to remove the permitted development rights to enable a change to residential use would be appropriate.

Members of the Committee acknowledged the aspiration of the Town Council to retain a mixed development and its disappointment that some units had been changed to residential use as well as the needs of the applicant to adapt to changing circumstances by making the units more marketable. The suggestion to remove the permitted development rights in this instance was considered appropriate in the light of the continued aspiration to secure a mixed use development.

*RESOLVED* (UNANIMOUSLY) that 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 from the date of the Committee meeting, in the event that the legal agreement is not signed within six months, to delegate authority to the Head of Commercial Services to refuse the application, or otherwise to be authorised to complete a linking agreement to provide a financial contribution of £40,000 for affordable housing and the construction of the building within a specified period and 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 together with an additional condition to provide for the removal of permitted development rights to convert the units

from B1 office use to residential use.

**281 152882 Hallfields Farm, Manningtree Road, Dedham**

The Committee considered an application for variation of Condition 2 which lists the approved drawings of planning permission 146334 to allow amendments to the materials and windows to plots 4 and 5 at Hallfields, Manningtree Road, Dedham. The application had been referred to the Committee because it was a major application and objections had been received. The Committee had before it a report in which all the information was set out.

*RESOLVED* (UNANIMOUSLY) that the planning application be approved subject to the signing of a linking agreement under Section 106 of the Town and Country Planning Act 1990 within six months from the date of the Committee meeting, in the event that the linking agreement is not signed within six months, to delegate authority to the Head of Commercial Services to refuse the application, or otherwise to be authorised to complete the agreement to secure the same matters as the existing agreement for application 146334 and on completion of the linking agreement, the Head of Commercial Services be authorised to grant planning permission subject to the conditions set out in the report.

**282 150239 Land to north/south of Tollgate West, Stanway**

**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 a report by the Head of Commercial Services, in accordance with the Committee's Deferral and Recommendation Overturn Procedure which had been invoked by the Committee at its meeting on 17 December 2015 as there was a suggestion that the Committee may be minded to determine the application contrary to the officer's recommendation in the report. The outline application was 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.

Councillors Havis and P. Higgins both confirmed that they had undertaken planning skills training, they had listened to the audio recording of the Planning Committee meeting on 17 December 2015, had read the reports by the Head of Commercial Services for the meeting in December and this meeting and had undertaken a formal visit to the application site to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

Andrew Weavers, Monitoring Officer, clarified DROP and explained that consideration of the application had been deferred at the meeting on 17 December 2015 prior to the

Committee voting on a proposal to approve the application pending the submission of certain additional information relating to the financial implications including the need to refer the matter to the Secretary of State for Communities and Local Government, risks to the Council, recommended conditions and Heads of Terms should the application be granted. He reminded the Committee members that, prior to determining the proposal to approve the application, they would need to consider the contents of the reports and the amendment sheet as well as the officers' advice.

Vincent Pearce, Planning Projects Specialist, presented the report and, together with Karen Syrett, Place Strategy Manager and Simon Cairns, Major Development and Projects Manager, assisted the Committee in its deliberations.

The Committee had before it a report containing:

- Risks - existing Adopted Local Plan, Local Plan process, Stane Park appeals, Strategic Plan, Northern Gateway, impact on and investment in Town Centre
- Financial Implications – Judicial Review, departures from development Plan, call-in by Secretary of State and appeals
- Representations received since 17 December 2015
- Suggested conditions and Heads of Terms.

The report from the meeting on 17 December 2015 was also reproduced together with an amendment sheet with updates and representations since the agenda for the meeting had been published.

Some members of the Committee referred to the National Planning Policy Framework and the requirement for employment land to be protected only where there was a reasonable prospect of development for this purpose. Safeguarding the Town Centre from out of town competition was not considered to be an appropriate strategy for the long term benefit of Colchester as a whole. Reference was also made by some Committee members to the fact that CBRE, on behalf of the new owners, had confirmed the purchase of Red Lion Walk and that this seemed to be at a price higher than previously valued, indicating keen investor interest in the Town Centre. The need for consistency in relation to the recommendations presented to the Committee members as part of their consideration of differing applications in Stanway as well as other parts of the Borough was raised. The view was also expressed that the Tollgate Village proposals were considered to be a different shopping experience to Town Centre shopping and that both options could survive together as well as thriving from the competition one placed on the other. Recent closures of town centre retailers were considered to be as a result of high rental cost and lack of family succession rather than the attraction of out of town options, whilst concern was expressed regarding the negative response that the proposals for Tollgate had generated and a preference for a more open minded view to be taken. In addition these Committee members considered

that problems of stagnation would be as a consequence of the lack of competition.

Members of the Committee also stated the view that the application was so exceptional in terms of the proposed £65m investment and 500 new job opportunities that it was appropriate to make a case to divert from the Local Plan. Concern was expressed that if the application was not approved that these benefits for the whole of the Borough would be lost. The view was expressed that no progress had been made on the Vineyard Gate development for a considerable number of years and a planning application was still awaited from the developers. Notwithstanding this, the Town Centre had benefitted from a £30m investment from Fenwicks which, it was considered, supported the opinion that the economy was now improving and that the country had been coming out of recession for some time. This suggested there must be other factors preventing progress on sites such as Vineyard Gate. A further view was expressed regarding retail shopping habits which were changing with shoppers using Town Centres in different ways to access Museums and Art Galleries. Accordingly it was considered that the businesses in Town Centres needed to find ways to proactively address these changes.

Particular clarification was sought in relation to the recent application from Sainsbury at the current B&Q site which had been approved by the Committee in accordance with the officer recommendation despite evidence of adverse impact on the nearby Tesco store.

Other members of the Committee referred to the five clear reasons to justify refusal of the application set out in the report by the Head of Commercial Services which could be summarised in terms of the primacy of the Town Centre over the urban district, the loss of long term employment land, the fact that Colchester had an up to date Local Plan and there was no evidence of material considerations sufficient to outweigh these factors. It was considered that the proposal needed to be considered as part of the ongoing Local Plan review, whilst consideration was also given to the duty of co-operation with Tendring and Braintree and the need for the proposals to be properly consulted upon within the Local Plan process. Reference was also made to the lack of clarity in terms of potential occupiers of the retail units, the potential harmful impact on the Town Centre of the proposals which were, at least in part, speculative in nature and the difficulty of not adhering to the Local Plan in the light of these unknown factors. The overriding importance of adhering to both national and local policies was highlighted and that no planning considerations had been presented to make an exception to these policies.

In response to specific questions, the Planning Projects Specialist explained that the estimates of the financial impact on the Town Centre had been assessed by the Council's Retail Consultants using industry accepted methods but he was not in a position to confirm the margin of error included. He explained that there had been a recent uptake of interest in the small business uses in Stanway and that the Local Plan was seeking to encourage higher salaried jobs. He confirmed that the Tollgate Village proposals were contrary to the established retail hierarchy for the Borough and that competition from out of town retail centres meant that the Town Centre, as a sub-regional centre would become less able to compete with its sub-regional rivals in

Chelmsford and Ipswich. He highlighted the complications for development in Colchester Town Centre which required heritage assets to be incorporated and the corresponding increased timescales to secure investment as a consequence. He also confirmed that the retail consent sought at Tollgate included unrestricted retail (A1) use which was the type that was found in the Town Centre. Additionally, the applicants were not willing to accept a bulky goods restriction on new retail floor space, which, in the Planning Projects Specialists' opinion, suggested the character of retailing between the two locations could not be considered mutually exclusive.

The Place Strategy Manager explained the importance of land allocations being the subject of regular review and the need for the Land Plan process to be followed in order to adequately provide for such reviews. She referred to the significant growth that had occurred in Colchester which in turn required support in terms of employment and retail opportunities and the need for this to be planned strategically over the long term in accordance with the Local Plan process. She emphasised the importance of following this statutory process and the consultation requirements embodied within it and confirmed that the issue of prematurity was one which was applicable and of relevance in this instance.

The Major Development and Projects Manager responded to a particular question regarding the planning application from Sainsbury at the B&Q site. He explained that, in this case, the Sequential test had been satisfied and the Impact test had demonstrated that the impact on the Tesco store would be negative but not sufficiently adverse to warrant a refusal of the application and, as such, the officer recommendation had been for the application to be granted.

In accordance with the Deferral and Recommendation Overturn Procedure, the Chairman invited the Committee to vote on the proposal to approve the application. The proposal was lost (FOUR voted FOR and EIGHT voted AGAINST).

In the light of the additional information presented at the meeting, a Motion to refuse the application on the grounds set out in pages 67, 68 and 69 of the supplementary report was then proposed and seconded.

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

- (i) In the light of the additional information presented at the meeting, the application be refused on the grounds set out in pages 67, 68 and 69 of the supplementary report
- (ii) The Local Plan Committee be invited to fully investigate, as part of the preferred options process the employment land and retail expansion issues identified in the Planning Committee's consideration of this application.

