

# Planning Committee Meeting

**Council Chamber, Town Hall, High Street,  
Colchester, CO1 1PJ**

**Thursday, 01 October 2015 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. Attendance between 5.30pm and 5.45pm will greatly assist in noting the names of persons intending to speak to enable the meeting to start promptly.

## 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, which is usually published five working days before the meeting, and minutes once they are published. Dates of the meetings are available at [www.colchester.gov.uk](http://www.colchester.gov.uk) or from Democratic Services. Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

### Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to most public meetings. If you wish to speak at a meeting or wish to find out more, please refer to Your Council> Councillors and Meetings>Have Your Say at [www.colchester.gov.uk](http://www.colchester.gov.uk)

### Audio Recording, Mobile phones and other devices

The Council audio records all its public meetings and makes the recordings available on the Council's website. Audio recording, photography and filming of meetings by members of the public is also permitted. The discreet use of phones, tablets, laptops, cameras and other such devices is permitted at all meetings of the Council. It is not permitted to use voice or camera flash functionality and devices must be kept on silent mode. Councillors are permitted to use devices to receive messages and to access papers and information via the internet and viewing or participation in social media is at the discretion of the Chairman / Mayor presiding at the meeting who may choose to require all devices to be switched off at any time.

### Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to the Library and Community Hub, Colchester Central Library, 21 Trinity Square, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

### Facilities

Toilets with lift access, if required, are located on each floor of the Town Hall. A water dispenser is available on the first floor and a vending machine selling hot and cold drinks is located on the ground floor.

### Evacuation Procedures

Evacuate the building using the nearest available exit. Make your way to the assembly area in the car park in St Runwald Street behind the Town Hall. Do not re-enter the building until the Town Hall staff advise you that it is safe to do so.

Library and Community Hub, Colchester Central Library, 21 Trinity Square,  
Colchester, CO1 1JB

telephone (01206) 282222 or textphone 18001 followed by the full number you wish to call  
e-mail: [democratic.services@colchester.gov.uk](mailto:democratic.services@colchester.gov.uk)

[www.colchester.gov.uk](http://www.colchester.gov.uk)

## 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 withstand 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*

## 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.*



**COLCHESTER BOROUGH COUNCIL**  
**Planning Committee**  
**Thursday, 01 October 2015 at 18:00**

**Member:**

Councillor Jon Manning  
Councillor Jessica Scott-Boutell  
Councillor Peter Chillingworth  
Councillor Helen Chuah  
Councillor Jo Hayes  
Councillor Pauline Hazell  
Councillor Brian Jarvis  
Councillor Mike Lilley  
Councillor Jackie Maclean  
Councillor Patricia Moore  
Councillor Rosalind Scott  
Councillor Laura Sykes

Chairman  
Deputy Chairman

**Substitutes:**

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

Councillors Christopher Arnold, Lyn Barton, Tina Bourne, Roger Buston, Kevin Bentley, Nigel Chapman, Barrie Cook, Robert Davidson, Beverly Davies, Andrew Ellis, Annie Feltham, Bill Frame, Ray Gamble, Dominic Graham, Annesley Hardy, Marcus Harrington, Dave Harris, Julia Havis, Peter Higgins, Theresa Higgins, Cyril Liddy, Sue Lissimore, Fiona Maclean, Kim Naish, Nigel Offen, Gerard Oxford, Philip Oxford, Will Quince, Peter Sheane, Paul Smith, Dennis Willetts, Julie Young and Tim Young.

**AGENDA - Part A**

(open to the public including the press)

Members of the public may wish to note that Agenda items 1 to 6 are normally brief and agenda items may be considered in a different order if appropriate.

An Amendment Sheet is available on the Council's website by 4:30pm on the day before the meeting (see Planning and Building, Planning Committee, Planning Committee Latest News). Members of the public should check that there are no amendments which affect the application in which they are interested. Members of the public please note that any further information which they wish the Committee to consider must be received by 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.

**1 Welcome and Announcements**

- a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to silent;
- the audio-recording of meetings;
- location of toilets;
- introduction of members of the meeting.

## **2 Have Your Say! (Planning)**

The Chairman to invite members of the public to indicate if they wish to speak or present a petition on any of the items included on the agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

These speaking provisions do not apply in relation to applications which have been subject to the Deferral and Recommendation Overturn Procedure (DROP).

## **3 Substitutions**

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

## **4 Urgent Items**

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent, to give reasons for the urgency and to indicate where in the order of business the item will be considered.

## **5 Declarations of Interest**

The Chairman to invite Councillors to declare individually any interests they may have in the items on the agenda. Councillors should consult Meetings General Procedure Rule 7 for full guidance on the registration and declaration of interests. However Councillors may wish to note the following:-

- Where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest, whether or not such interest is registered on his/her register of Interests or if he/she has made a pending notification.
- If a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting, he/she must not participate in any discussion or vote on the matter at the meeting. The Councillor must withdraw from the room where the meeting is

being held unless he/she has received a dispensation from the Monitoring Officer.

- Where a Councillor has another pecuniary interest in a matter being considered at a meeting and where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgement of the public interest, the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

**6 Minutes of 27 August 2015 17 - 26**

To confirm as a correct record the minutes of the meeting held on 27 August 2015.

**7 Planning Applications**

In considering the planning applications listed below, the Committee may choose to take an en bloc decision to agree the recommendations made in respect of all applications for which no member of the Committee or member of the public wishes to address the Committee.

**7.1 151235 Cosway Caravan Park, Fen Lane, East Mersea 27 - 38**

Removal of condition 02 of planning permission 132270 in order to allow the extended season to apply without time limitation

**7.2 151401 Severalls Hospital, Boxted Road, Colchester 39 - 70**

Removal/variation of conditions 1, 3a, 4, 6, 7, 9, 15, 19, 24, 29, 36, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55 of planning permission

**7.3 151331 Eld Lane Square, Colchester 71 - 86**

Erection of a cafe unit (use class A3) together with ancillary external seating area, public realm enhancements and ancillary services; including removal of two trees, at Eld Lane Square

**7.4 150702 Homecroft, Chapel Lane, West Bergholt 87 - 98**

**NOTE: THIS ITEM HAS BEEN WITHDRAWN FROM CONSIDERATION AT THIS MEETING**

Proposed formation of a private drive, erection of two detached bungalows, erection of a two storey house, extensions and alterations to an existing bungalow to form a two storey dwelling, erection of garages and provision of associated parking facilities

**7.5 151611 78 Maldon Road, Colchester**

99 - 108

Proposed Change of Use from Use Class D1 to use class: Sui Generis (HMO with in excess of 6no. residents). Proposed ground floor, single-storey extensions to the front and side of the existing property to provide improved internal accommodation. Proposed dormer roof extension and new rooflights to provide additional accommodation at 2nd floor. Associated external works including cycle store and reinstatement of existing railings.

**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)



# Planning Committee

Thursday, 27 August 2015

- Attendees:** Councillor Peter Chillingworth (Group Spokesperson), Councillor Jackie Maclean (Member), Councillor Helen Chuah (Member), Councillor Jon Manning (Chairman), Councillor Laura Sykes (Group Spokesperson), 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:** No substitutes were recorded at the meeting

## 194 Site Visits

The following members attended the formal site visit: Councillors Chillingworth, Chuah, Hayes, Hazell, Jarvis, Lilley, Maclean, Manning, Scott, Scott-Boutell and Sykes.

## 195 Minutes of 16 July 2015

The minutes of the meeting held on 16 July 2015 were confirmed as a correct record, subject to minute no 180 being amended to read:

“The following members attended the formal site visit: Councillors Buston, Chillingworth, Chuah, Cook, Hayes, Jarvis, Maclean, Moore, Scott, Scott-Boutell and Sykes.”

## 196 151216 Land off United Way, Colchester

The Committee considered a reserved matters (access, appearance, landscaping, layout, scale) application for the construction of a leisure centre pursuant to the outline planning permission granted on 21 March 2006, ref: O/COL/01/1622, at land off United Way, Colchester. The application had been referred to the Committee because it included a Section 106 agreement offered by the Applicant company. The Committee had before it a report in which all the information was set out.

Vincent Pearce, Major Development Manager, presented the report and assisted the Committee in its deliberations. He explained that an additional condition providing for parking facilities at least 39 bicycles, referred to in the report also needed to be added to those proposed on the recommendation.

Members of the Committee acknowledged the substantial development proposed and

welcomed the interesting and unobtrusive design of the building. Questions were raised about the retention of hedgerow planting, the use to be put of Tower Lane, a designated bridleway, the proposed composition of the car park surfacing, whether it would be possible to provide multi-storey parking in order to reduce the area of land to be allocated, the lighting arrangements for the Multi Use Games Area (MUGA) and whether it was possible to consider the use of a green roof for the leisure centre building.

Councillor Hayes requested that her regret for the loss of a large section of hedgerow be recorded.

The Major Development Manager explained that the MUGA was intended to be marked out for a whole range of sports to be played, lighting would be switched off at night-time and the facilities would be managed by David Lloyd Ltd on behalf of the Council. He was doubtful that any profit generated would be substantial but it was hoped that it would be sufficient to enable funds to be reinvested such that the MUGA would be adequately maintained for the future. The existing hedgerow would be supplemented with additional planting as the importance of reading the historic landscape was acknowledged. He also provided an explanation of the planned bridleway and footpath network to be created through the North of the town. It was explained that the Sustainable Drainage Scheme had yet to be approved but it would be possible for negotiations to continue to provide for the use of a permeable surface for the car park. In terms car parking land area, the proposals to secure the delivery of a shared multi-storey car parking provision in the North Colchester area were outlined and investigations were continuing to identify whether it was considered possible for a green roof to be provided for the leisure centre building.

*RESOLVED* (UNANIMOUSLY) that –

(i) 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, authority be delegated to the appropriate Head of Service to complete the agreement and to provide the following, as freely offered by the developer/operator within their operational ethos in building links with the community beyond its own membership:-

(a) Delivery of the proposed MUGA for community use at nil cost to the Council on an agreed basis and for this facility to be retained and managed by David Lloyd Ltd (or successors in title) to an agreed standard in the community interest in perpetuity unless otherwise agreed by the Council;

(b) An agreed recruitment scheme which facilitates the Council and the Job Centre being advised of forthcoming suitable job vacancies ahead of the new facility opening;

(c) An agreed user and coaching scheme which allows 200 hours of free court time per annum to nominees being coached by Council coaches

and

- (ii) Subject to the receipt of further information showing and/or describing:-
  - (a) Full external lighting details including light spillage diagrams;
  - (b) Full external mechanical plant and associated acoustic screening (including dome inflation apparatus);
  - (c) Full drainage details including calculated flow rates and capacity calculations for the attenuation ponds;
  - (d) Full external material specification;
  - (e) Highways England confirming in writing that it had not appreciated the reserved matters nature of the proposal and in the light of this it withdraws its objection;
  - (f) Full landscaping details

and that information being considered acceptable by the Council as Local Planning Authority (after appropriate discussion with its relevant consultation partners) then:-

- (iii) The appropriate Head of Service be authorised to grant planning permission subject to conditions including:-
  - (a) Condition to ensure that conditions applied to the outline planning permission ref O/COL/01/1622 where relevant continue to apply;
  - (b) condition to require the implementation of such details as shall have been approved as a result of this approval or as a result of the additional information required above being submitted and found satisfactory prior to the use commencing and thereafter being retained;
  - (c) Retention of the community MUGA for community use and not to be incorporated into club membership use;
  - (d) As may be required by consultees where these are, in the view of the Local Planning Authority, appropriate;
  - (e) Condition providing for cycling parking facilities for at least 39 cycles.

**197 151141 Birch Airfield, Blind Lane, Birch, Colchester**

**Councillor Chillingworth (in respect of his involvement with the applicant in the preparation of agricultural reports for proposals outside of the Borough) declared a pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5) and left the meeting during its consideration and determination. He had also withdrawn from participation in the visit to the location undertaken by the Committee members.**

**Councillor Lilley (in respect of his acquaintance with the applicant's agent)**

**declared a non-pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered an application for an extension to the Solar Farm approved under application no 145133 to allow for re-planning of the existing scheme and inclusion of a Community Solar scheme at Birch Airfield Blind lane Birch. The application had been referred to the Committee because it was a Major application, in response to which, objections had been received. 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 proposal upon the locality and the suitability of the proposal for the site.

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

**198      151071 Bungalow Diner, 45 London Road, Marks Tey, Colchester**

The Committee considered an application for the erection of one fascia sign measuring 1.000 height x 4.000 width and 0.150 depth and one other sign measuring 5.000 height x 0.200 width and 0.100 depth at the Bungalow Diner, 45 London Road, Marks Tey. The application had been referred to the Committee at the request of Councillor Blundell. 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 proposal upon the locality and the suitability of the proposal for the site.

Andrew Tyrrell, Planning Manager, presented the report and assisted the Committee in its deliberations.

Joseph Greenhough addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that the Diner had been a busy independent transport café for a number of years and it currently employed seven full time members of staff. The current owner was seeking to provide a distinct identity for the business in order to attract new customers. The application had avoided the use of any neon lighting on the basis that a restrained approach which would not cause amenity harm was preferred. He considered the officer's report to be very thorough and requested the Committee to support the recommendation.

Councillor Blundell attended and, with the consent of the Chairman, addressed the Committee. She explained that she had lived in Copford for 40 years and was familiar with the café which had been operating for a considerable proportion of that time. She was concerned about the garish colours of the new signs, the proposal for external lighting and the proposed five metre height of the forecourt sign. She referred to recent problems for neighbouring residents due to noise disturbance from café users' vehicles and the fact that the café did not currently have any restriction on its hours of operation. She understood the wish for the owner to attract more customers but she was of the view that the proposed forecourt sign would be distracting to road users, cause highway

and safety problems and would have a harmful effect on the appearance of the location. She considered the application may have an impact on crime and may increase residents' fear of crime. She requested the Committee to refuse the application and for the application to be replaced with a proposal for a sign of a lower height.

Some members of the Committee questioned the appropriateness of the American themed design of the signage as well as the proposed five metre height of the forecourt sign. Other members were of the view that the existing signs tended to create a cluttered overall appearance and acknowledged benefit would be gained if the erection of the sign at the top of a pole would lead to the removal of various existing signs on the site boundary and the boundary of the neighbouring detached house. Reference also was made to the need for the times of illumination of the signs to be regulated. Notwithstanding differing opinions about the design and height of the signs, generally it was considered that there were insufficient grounds to refuse the application whilst its approval would provide the opportunity to tidy up the existing signage.

The Planning Manager confirmed there were other signs further along London Road which were of a similar height although slightly lower but more solid in appearance and that standard night time hours were usually deemed to be after 11pm and before 7am.

*RESOLVED* (ELEVEN voted FOR and ONE voted AGAINST) that the planning application be approved subject to the conditions set out in the report with the proposed condition 5 being amended to provide for the sign illumination to be switched off at 11pm or at the closing time of the Diner, whichever is earlier and with an additional condition to provide for the removal of the existing advertising signs along the frontage of the Diner and the neighbouring detached house upon the erection of the new signs.

## **199     151269 11 Glen Avenue, Colchester**

The Committee considered an application for a proposed replacement dwelling for private use (existing dwelling and garage to be demolished) at 11 Glen Avenue, Colchester. The application had been referred to the Committee at the request of Councillor Buston. 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 proposal upon the locality and the suitability of the proposal for the site.

Andrew Tyrrell, Planning Manager, presented the report and assisted the Committee in its deliberations.

Dick Barton addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He was addressing the Committee on behalf of a number of objectors. He explained that the existing building was a originally a farmhouse and was the only building on the Eastern side of Lexden Parish. He regretted the building did not benefit from any form of protection as a result of any listing designation and he considered that the opportunity should have been taken to renovate

the building rather than replace it. He was concerned about the size of the proposed redevelopment, bearing in mind what he considered to be a small site. He also considered the development would have an adverse effect on neighbouring properties in Bramley Close. He welcomed the numerous conditions recommended in the report and hoped they would all be enforced vigorously

Councillor Buston attended and, with the consent of the Chairman, addressed the Committee. He confirmed that he had called in the application on behalf of local residents. He was disappointed that the existing house had 'fallen through' the listing process as he was of the view that it was uniquely charming and of unique construction. It was an 1850s built farmhouse which would be unacceptable to lose. The proposed new dwelling was three times the size of the existing building and, by definition, would be overbearing and out of character so far as the neighbouring properties were concerned. He did not consider the issue of overlooking from the existing plot to be relevant as the farmhouse had existed before the neighbouring properties were built. He acknowledged it wasn't possible to preserve old buildings indefinitely but he was of the view that the applicants should reconsider their proposals and seek to preserve the existing building.

The Planning Manager explained that the applicants did not require planning permission to demolish the existing building and, as a consequence, its loss had to be accepted. Additionally, the building had not been listed as it was not considered to be of adequate quality. He also explained that the planning system was intended to assist and facilitate owners of property rather than to obstruct their intentions. Bearing this in mind, the size and character of the proposed dwelling was considered to be in-keeping and of an acceptable size compared to many in the neighbourhood.

Members of the Committee acknowledged the unusual gothic character of the old farmhouse with its pleasing window features, the mixed design context of the neighbourhood as well as the predominantly Georgian design features proposed for the new dwelling. Generally however, members of the Committee were of the view that there were no grounds upon which to base a refusal of permission. Reference was made, however, to the possibility of photographic records of the existing building being preserved and for a condition to be attached to provide for the retention of trees on the site.

The Planning Manager confirmed the possibility of adding a condition to provide for the recording of the existing building, that an existing condition already provided for the retention of trees the need for a minor rewording to Condition 16 and he also suggested the addition of a further condition to provide for the removal of permitted development rights in respect of outbuildings and extensions.

**RESOLVED** (TEN vote FOR and TWO ABSTAINED) that the planning application be approved subject to the conditions set out in the report with Condition 16 being amended to include the word 'place' after the word 'take' and additional conditions to provide for

the:-

- (i) Removal of permitted development rights for outbuildings and extensions
- (ii) Recording of the existing building prior to its demolition.

**200 151516 123 Gosbecks Road, Colchester**

**Councillor Lilley (in respect of his Board membership of Colchester Borough Homes) declared a non-pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered an application for the replacement of existing PVCU framed double glazed windows and doors and the installation of a new external fire escape staircase at 123 Gosbecks Road, Colchester. The application had been referred to the Committee because the agent for the applicant was Colchester Borough Homes. 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 conditions set out in the report.

**201 151318 35 Yorick Road, West Mersea, Colchester**

**Councillor Moore (in respect of her close association with the applicant's family and the location) declared a pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5) and left the meeting during its consideration and determination.**

**Councillor Chillingworth, on behalf of the members of the Conservative Group, (in respect of their acquaintance with the applicant) declared a non-pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5).**

**Councillor Lilley (in respect of his acquaintance with the applicant's agent) declared a non-pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered an application for first floor and rear extensions at 35 Yorick Road, West Mersea. The application had been referred to the Committee because the applicant was related to a Borough Councillor. The Committee had before it a report and amendment sheet in which all the information was set out.

Chris Harden, Planning Officer, presented the report and, together with Andrew Tyrrell, Planning Manager, assisted the Committee in its deliberations.

Mary Neville addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She voiced her concerns that the objections she had submitted to the proposal had been over ridden. She

referred to the increase in height to the flank wall, the larger area of the gable end by 30% and the cladding and soffits being within 25 inches of the boundary. She considered this to be overbearing with a negative effect on the amenity of her property due to loss of light. She also referred to the proximity of the proposed extension to the property at no 33 Yorick Road and she referred to the potential for the roof to be raised in the future under permitted development rights to provide for additional bedrooms. She mentioned an error in the report in relation to the correct elevation of the bathroom window. She acknowledged the variety of house sizes in Yorick Road but considered that the larger houses were located on larger plots. She considered the proposal to use cladding would not be in-keeping with the street scene and she asked the Committee to consider all her comments in coming to its decision.

Jamie Kelly addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that the proposal was to increase the ridge height of the property and to provide a first floor and single storey extension. The original proposals had been revised in order to accommodate the concerns of the neighbours. He considered that the size and scale to be acceptable given other properties of higher dimensions existing in the street. The retention of the eaves at the existing height would reduce the impact to the neighbouring property in addition to revisions to the original proposal which would improve privacy.

The Planning Officer confirmed that the reference to the elevation of the bathroom window was in correctly stated in the report but was correct in the suggested condition and that the glazing to the bathroom window would be obscured. He suggested that the removal of permitted development rights would provide future control in relation to windows at the rear of the property and the height of the roof but this had not been considered necessary as it was already adequately controlled in the General Permitted Development Order. He considered the proposed increased height of the roof to be relatively modest and, as such, avoided any detrimental impact on neighbouring properties.

The Planning Manager indicated his view that, given the views expressed by the objector, the Committee may consider it appropriate to provide for the removal of Permitted Development rights in relation to the addition of a box dormer window.

Members of the Committee confirmed that, from a planning point of view, the impact of the proposal was reasonable, as such, the proposal was considered acceptable and the suggestion to remove permitted development rights in relation to a dormer window was prudent.

*RESOLVED* (UNANIMOUSLY) that the planning application be approved subject to the conditions set out in the report and an additional condition to provide for the removal of Permitted Development rights in relation to a box dormer window.



## **202 Garrison Urban Village Development // Amendment to mortgagee exclusion**

The Committee considered a report by the Head of Commercial Services giving details of a request from Chelmer Housing Partnership for a deed of variation to the Garrison legal agreements (both the Section 299a agreement and the Section 106 agreement signed in relation to the development of Area S2SW) in respect of mortgagee exclusion.

Alistair Day, Principal Planning Officer, presented the report and assisted the Committee in its deliberations. He explained that the Outline Garrison Urban Village development had been granted planning permission in June 2003 and was subject to legal agreements, which covered, amongst other obligations, the provision of affordable housing. However, the mortgagee exclusion in the agreements was considered defective by lenders to the Registered Providers and, as such, they would only lend finance at a reduced value. The proposed variation to the legal agreements would enable Chelmer Housing Partnership, as the Registered Provider, to raise additional finance for the provision of affordable housing and would not affect the number of affordable housing units that had been agreed as a part of the Garrison Urban Village development.

The amendment sheet acknowledged that it was considered likely that other providers of affordable housing would seek similar amendments in the future and an amended recommendation was proposed to reflect this.

*RESOLVED* (UNANIMOUSLY) that:-

- (i) The requested Deeds of Variation to the Section 299a agreement dated 30 June 2003 and the Section 106 agreement dated 22 May 2012 in request of the requested changes to the mortgagee exclusion clauses be endorsed
- (ii) The Head of Commercial Services be given delegated authority to approve further Deeds of Variation in respect of the mortgagee exclusion clauses should other Registered Providers on the Garrison development request such a change.

## **203 Planning Performance End of Year Report for 2014/15**

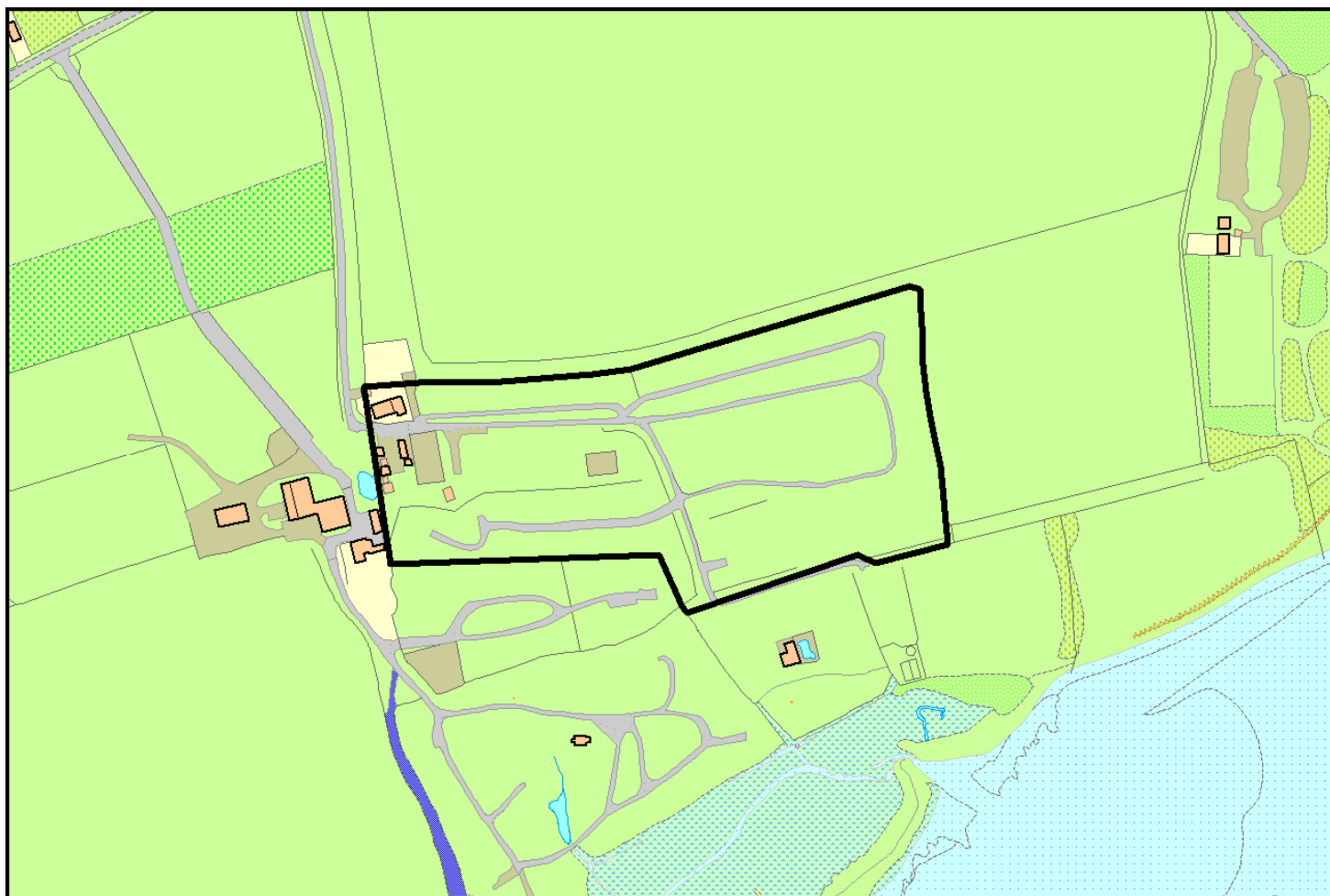
The Committee considered a report by the Head of Professional Services giving details of the Planning Services' performance against various measures and Key Performance Indicators for the period 1 April 2014 to 31 March 2015 with comparative figures for previous periods in order to give some context to the performance achieved.

Andrew Tyrrell, Planning Manager, presented the report and assisted the Committee in its deliberations. He also confirmed that he was not aware of any enforcement prosecutions being unsuccessful.

Members of the Committee welcomed the information provided in the report and congratulated the Planning Officers on the performance achieved. It was noted that a very small number of Committee decisions had been the subject of appeal and further

information as to which decisions these related to was requested.

*RESOLVED* that the performance of the Planning Service for the 2014/15 year be noted and arrangements be made for a detailed breakdown of Committee decisions subject to subsequent appeals to be presented to the Committee at a future meeting.



**Application No:** 151235

**Location:** Cosway Caravan Park, Fen Lane, East Mersea, Colchester, CO5 8UB

**Scale (approx):** 1:2500

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use.

This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2015



## Committee Report

Agenda item

**7**

To the meeting of **Planning Committee**  
on: **1 October 2015**  
Report of: **Head of Professional/Commercial Services**  
Title: **Planning Applications**

**7.1 Case Officer: Sue Jackson Due Date: 02/10/2015**

**MINOR**

**Site:** Cosway Caravan Park, Fen Lane, East Mersea, Colchester, CO5 8UB

**Application No:** 151235

**Date Received:** 9 June 2015

**Agent:** Mr Ian Butter Bsc FRICS MRTPI

**Applicant:** Cosways Holiday Park Ltd

**Development:** Removal of condition 02 of planning permission 132270 in order to allow the extended season to apply without time limitation.

**Ward:** Pyefleet

**Summary of Recommendation:** Conditional Approval

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

- 1.1 This application is referred to the Planning Committee because it is a Major Application and objections have been received.

### **2.0 Synopsis**

- 2.1 The key issues explored below are Government advice in respect of 12 month occupancy, the objections and issues raised by the parish council and residents are responded to, and details of the measures undertaken by the applicant to control occupancy are also described.

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

- 3.1 The holiday caravan park is situated at the eastern end of Mersea Island. It is accessed from the East Mersea Road close to the access to East Mersea Country Park. The site adjoins Fen Farm Holiday Park. The application site extends to approximately 4.99ha.

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

- 4.1. The site currently has a temporary 18 month permission for 12 month occupancy. The proposal is for a permanent permission providing for holiday use across 12 months of the year for static caravans. The site also includes caravans closer to the coast which are excluded from this application and a small number of caravans which can be rented for holiday use.

### **5.0 Land Use Allocation**

- 5.1 The site is identified as a caravan park.

### **6.0 Relevant Planning History**

- 6.1 132233 Use of land for the stationing of static holiday caravans and children's play area approved
- 6.2 132270 Variation of holiday occupancy period from 1st March - 31st December to allow for a 12 month year round holiday season. Resubmission of 131667. Temporary permission for 18 months
- 6.3 144759 Change of Use and Conversion of Existing Store Building to Laundrette. Approved
- 6.4 144856 Construction of bulk gas compound and installation of 6no.2T bulk LPG vessels including access road, footpath and fencing. Approved
- 6.5 146091 Application for removal or variation of a condition 3 following grant of planning permission 111597 to permit the opening period of the shop and reception to coincide with that for the holiday park as a whole. Approved
- 6.6 146377 Retention of new extension to reception/shop and enlargement of adjacent service vehicle parking area within Cosways Holiday Park. Approved
- 6.7 151175 Demolition of existing and erection of new building to provide A1 (Shop), A5 (Hot Food Takeaway), B1 (Business), B8 (Storage), Games Room and Laundrette uses with ancillary facilities, together with Children's Play Equipment, Entrance Gateway, associated access, security barriers, parking, change of use to B8 (storage) and associated facilities. Approved
- 6.8 151231 Application for removal or variation of condition 02 of planning permission 132233 - variation of approved layout plan for additional caravans. Approved

## **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 are 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:

UR2 - Built Design and Character  
TA5 - Parking  
ENV1 - Environment  
ENV2 - Rural Communities

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

DP1 Design and Amenity  
DP3 Planning Obligations and the Community Infrastructure Levy  
DP9 Employment Uses in the Countryside  
DP10 Tourism, Leisure and Culture  
DP19 Parking Standards  
DP20 Flood Risk and Management of Surface Water Drainage  
DP21 Nature Conservation and Protected Lanes  
DP23 Coastal Areas

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

East Mersea Village Plan and Design Statement

## **8.0 Consultations**

8.1 Natural England comment "Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development".

Natural England currently has no comment to make on the removal of condition 2.

Please refer to our letter dated 19 December 2013 (our ref 105176) for our previous comments.

Should the proposal be amended in a way which significantly affects its impact on the natural environment then, in accordance with Section 4 of the Natural Environment and Rural Communities Act 2006, Natural England should be consulted again. Before sending us any further consultations regarding this development, please assess whether the changes proposed will materially affect any of the advice we have previously offered. If they are unlikely to do so, please do not re-consult us.

- 8.2 Highway Authority has assessed the highway and transportation impact of this proposal and raises no objection as it is not contrary to policy
- 8.3 Environmental Protection wish to make the following comments:-  
No comment
- 8.4 Environment Agency - Our maps show this application site falls entirely within Flood Zone 1. We therefore have no comment to make.

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 East Mersea Parish Council objects to this application for the following reasons:

"EMPC are very concerned about proposed permanency of the 12 month season at Cosways. This is actually more of a generic concern that that particularly focussed on Cosways. A 12 month season makes it particularly difficult for a Borough, Town or Parish Council to police effectively a site in order to ensure that individuals are not living there permanently and hiding behind a 12 month holiday season. This policing is made more difficult if the caravan site managers are not meticulous in their own management and checking of the site to ensure no one is living there permanently. There is concern that individuals have been living at Cosways permanently and the PC understands that children have been going to school from the site.

In addition there is a growing concern nationally from Natural England about caravan seasons being extended well into the winter season on sites alongside SSSI's. Across the country there are concerns about the detrimental effect to wildlife from increasing usage and disturbance of caravan site users in the winter. The overwintering birds on the East Mersea Flats are the main feature of the SSSI / Special Protection Area designation and there is a concern this area could easily lose that importance if bird numbers reduce or disappear.

In East Mersea the area of mud in front of Cudmore Grove/Cosways is one of the most popular areas of mudflat for waders as it's one of the first to be uncovered by the outgoing tide. Gathering flocks of many internationally important wader species such as ringed plover, sanderling and redshank arrive here to feed during the winter months when their food is in short supply, the weather often harsh and opportunities to feed limited to when the tide is out. Flying around unnecessarily burns up vital energy reserves. There are already regular occasions when wader flocks are disturbed close into the beach either by walkers or by their dogs. The internationally important flock of Brent geese around the Mersea foreshore, also spend a lot of the winter early morning in front of the western end of the country park cliff, feeding on the algae on the mud.

There is already a lot of disturbance to this feeding ground for Brent geese in the middle of winter and this disturbance would increase even more from an extension to the caravan site season. Some of the disturbance to wildlife is also due to an increase in leisure activities seemingly permitted on the grass field adjacent to the beach and have been witnessed over the last couple of years such as paramotor landings and take-offs, flying of petrol-fuelled model aircraft and motorbike scrambling as well as an increase in jet-ski usage from the beach. This has changed the feeling of peace and quiet for many visitors to the country park especially in the south-west corner.

Having a longer season for caravan site users would provide more opportunities to create more noise for park users and more disturbance to wildlife and will definitely

spoil the experience of park visitors. Cosways is now a bigger site than it used to be a couple of years ago, so potentially more users will be using the beach through the winter period.

In the event that a 12 month permanent season is granted there will need to be exceptionally strict and well policed conditions to ensure that the 12 month season is strictly for those on holiday and is not being breached by those living there permanently. In addition the management of the site will need to ensure that breaches of the 12 month season are not being condoned - this will need

CBC regular advisory visits and inspections to ensure adherence.

These conditions should be no less than that in 133270; ie

- The caravans shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence.
- The operators of the caravan park shall maintain an up-to-date register of the names of all owners of caravans/chalets on the site and of their main home addresses and shall make this information, together with details of drivers licences, Council tax bills and utility bills as appropriate, available at all reasonable times to the local planning authority.
- The occupants of the caravans and chalets cannot go to work or attend school from the Cosway Holiday Park.
- All subletting shall be subject to these requirements.(Borough and Parish Councillors to be involved in monitoring the site)

Reason: To ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation."

## **10.0 Representations**

### **10.1 1 support 2 objection**

### **10.2 Objections**

- As the applicant lives away from the site and the consultant lives up in the north of England - I fail to see how they can state The extended season has not given rise to any detrimental circumstances and has been a positive benefit in supporting the upgrading and improvement of this tourism asset
- An increase in traffic along East Road into and out of the site has caused a series of near misses over the last 12 months.
- It has been noticed that there is an increase in rubbish along Bromans Lane and East Road which may or may not be attributable to the users of the site.
- Noise levels have fluctuated throughout the year - but it has been noticed and commented by locals that an increase in noise and light pollution has occurred in winter months - which in a rural area cannot be right.
- The site has still seen no development as per 151175 - so to allow 12 months full use prior to any new build would then not allow a revision of timings if the new restaurant and complex proved to be out of keeping, light polluting and noisy in this rural area.
- The local community has yet to see any gain from the site in terms of jobs, add back to the schools or primary healthcare organisations and until this is proved then the extension of season seems redundant.
- CBC agreed to monitor usage of the site and there is concern amongst residents over illegal occupation of the site



- In the village plan - 97% of villagers objected to an increase in the size of the site, further development and any increase to operating periods. CBC now need to act on the views of their locals and support them in what is a rural area.

### 10.3 Support

- I am a caravan owner on Cosways since 2008, as I am an avid nature lover and bird watcher I chose this site for the wonderful natural surroundings and I too share the Parish Council concern for the birds that overwinter here, however I strongly disagree with the remarks they made about Cosways caravan owners. A vast number of the visitors to Cudmore are dog walkers who drive there to exercise their dogs, all year round, (creating more traffic on the narrow lanes of East Mersea) and not caravan owners from Cosways, who walk there.
- a lot of the other caravan owners and most of them are like me, worked all our lives approaching or in retirement and are not irresponsible people
- As for people playing games on the field by the beach; in January and February people don't normally play ball games outside, and in any case the birds on the mudflats are not likely to be too bothered.
- The vast majority of people don't use the site in this period anyway so the numbers are going to be very small, as an avid birdwatcher I find it the best time of the year for birdwatching so I would appreciate the chance to stay in these months.
- I and all the caravan owners I have talked to have not got a problem with producing council tax and household bills to prove house residence.
- Many of the issues raised by the Parish Council have nothing to do with the caravan owners as inferred. As for the motorcycle scrambling, I do not believe anyone on Cosways is likely to be doing that, and this would certainly be in breach of the site rules and likely to be dealt with by site management as all the other caravan owners would certainly complain about that
- The para glider that has been flying around I believe is from a house and not caravan owner as inferred
- It seems that the Parish Council is trying to dig up anything it can to tarnish the reputation of responsible caravan owners who take a pride in their caravans and the surrounding area, and many as I do use local shops and the village pub for food and drinks so helping keep the community facilities alive.

The full text of all of the representations received is available to view on the Council's website.

## 11.0 Parking Provision

11.1 The site has ample parking space for the caravan users.

## 12.0 Open Space Provisions

12.1 There is adequate open space within the site.

## 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 classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. It was considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990. The development team considered that contributions would only be appropriate if the site were to be used for residential use not holiday use.

## **15.0 Report**

### Policy issues

- 15.1 The National Planning Policy Framework (March 2012) recognises that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development (paragraph 28). This includes support for sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. Such support should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres.
- 15.2 CBC Development Policy DP10: Tourism, Leisure and Culture states:  
“Development for new and extended visitor attractions, leisure and cultural facilities, along with visitor accommodation (including hotels, bed & breakfast accommodation, self-catering accommodation, holiday lodges, static and touring caravans and tenting fields) will be supported in suitable locations. Proposals for tourism, leisure and culture development should promote accessibility by a choice of means of transport and must not cause significant harm to the amenity of people living and working nearby.  
In rural areas, locations suitable for tourism, leisure and culture development should help to support existing local community services and facilities. The proposals must be compatible with the rural character of the surrounding area and avoid causing undue harm to the open nature of the countryside or designated sites. It is recognised that not all rural locations are readily accessible by public transport. Where accessibility is poor, proposals should be small scale and/or comprise the conversion of suitable existing rural buildings or limited extension to existing visitor accommodation. In locations where residential uses would be inappropriate, developments of visitor accommodation will be limited to holiday use only and/or certain periods of the year in order to prevent permanent or long-term occupation.  
Urban areas of Colchester will be the focus for larger scale tourist, leisure and culture facilities and accommodation in line with the need to concentrate development at the most sustainable and accessible locations. The Council will also support proposals for a youth hostel, the preferred location being within Colchester Town Centre in line with the sequential approach, although proposals elsewhere will also be supported where appropriate”.

- 15.3 Government policy supports the principle of 12 month occupancy and this is not precluded by our Development Plan policy. Further evidence of the governments support for such proposals is provided in appeal decisions. Tendring District Council lost an appeal in January 2013 for 12 month holiday occupancy of a caravan site in Clacton-on-Sea. The Inspector identified one of the main issues was “whether the proposed development would lead to the caravans being occupied as full-time residential accommodation”.
- 15.4 He stated “The Council has misgivings in respect of the efficacy of the condition in addressing the issue of permanent occupancy but no compelling evidence has been put forward to substantiate this fear. From the Guide and other appeal decisions submitted by the appellants it seems to me that use of the condition is not unusual and I have no reason to doubt that it could be effective. I conclude that subject to imposition and execution of the condition the proposed change of use would not lead to the caravans being used as full-time residential accommodation”.
- 15.5 The appeal was allowed and the following condition imposed “caravans shall be occupied for holiday purposes only and shall not be occupied as a person’s sole or main place of residence. The operators of the caravan park shall maintain an up-to-date register of the names of all owners of caravans on the site and of their main home addresses and shall make this information available at all reasonable times to the local planning authority”.
- 15.6 A similarly worded condition has been imposed on other appeals for 12 month occupancy in other parts of the country.
- 15.7 Other local plan policies, seek to protect the countryside and open coast DP23 and residents and general amenity DC1. This application does not involve an expansion of the site but the continuation on a permanent basis of a temporary planning permission. It is considered the proposal is not in conflict with these policies. A temporary permission was granted as there were concerns about the adequacy of controls to prevent residential use. Government advice is that temporary permissions should only be used in exceptional circumstances and that a second temporary permission should not normally be granted

Comments on the representations received from the parish council and residents

- 15.8 The parish council has raised concerns about possible impact on Cudmore Grove and the SSSI. It should be noted that Natural England has not objected to the application. The Highway Authority has also raised no objection.
- 15.9 Since the temporary planning permission was granted officers from the Licencing and Investigation Teams have made unscheduled visits to the site to inspect the register and check for residential use; during these visits they found no evidence of residential use.

15.10 Neighbours suggest 12 month occupancy should not be determined until the development granted under application 151175 has been implemented. Application 151175 includes a new building to provide Shop, Hot Food Takeaway, Business, Storage, Games Room. The planning permission includes a range of conditions including opening hours, and a requirement for details of extract equipment and sound insulation to be submitted. It would be unreasonable to delay a decision for the reason suggested by residents.

15.11 The case officer has also made an unscheduled visit to the site. When requested the register was immediately made available and was an up to date and comprehensive record. The applicant also supplied a copy of documents given to caravan owners explaining holiday use. He also indicated annual checks are made. The applicants licence agreement also explains holiday use and sets out the documents to be submitted to demonstrate main residence.

## **16.0 Conclusion**

16.1 The application is not for an expansion of the site but permanent consent following a temporary permission for an 18 month period. The temporary planning permission was granted due to concerns about possible residential use on the site. The applicant has demonstrated that a comprehensive and up to date register is kept on site and is available for officers to inspect.

16.2 Planning permission is recommended subject to conditions

## **17.0 Recommendation**

17.1 APPROVE subject to the following conditions

## **18.0 Conditions**

### **1 - Non-Standard Condition/Reason**

The caravans shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The operators of the caravan park shall maintain an up-to-date register of the names of all owners of caravans/chalets on the site and of their main home addresses and shall make this information, together with details of drivers licences, Council tax bills and utility bills as appropriate, available at all reasonable times to the local planning authority. The occupants of the caravans and chalets cannot go to work or attend school from the Cosway Holiday Park. All subletting shall be subject to these requirements.(Borough and Parish Councillors to be involved in monitoring the site).

Reason: To ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation.

### **2 - Non-Standard Condition/Reason**

The approved signs displayed within the site making it clear the use of the site is for holiday purposes only shall remain in place in perpetuity .

Reason: To ensure occupants are aware the authorised use of the site is for holiday purposes only.

### **3 - Non-Standard Condition/Reason**

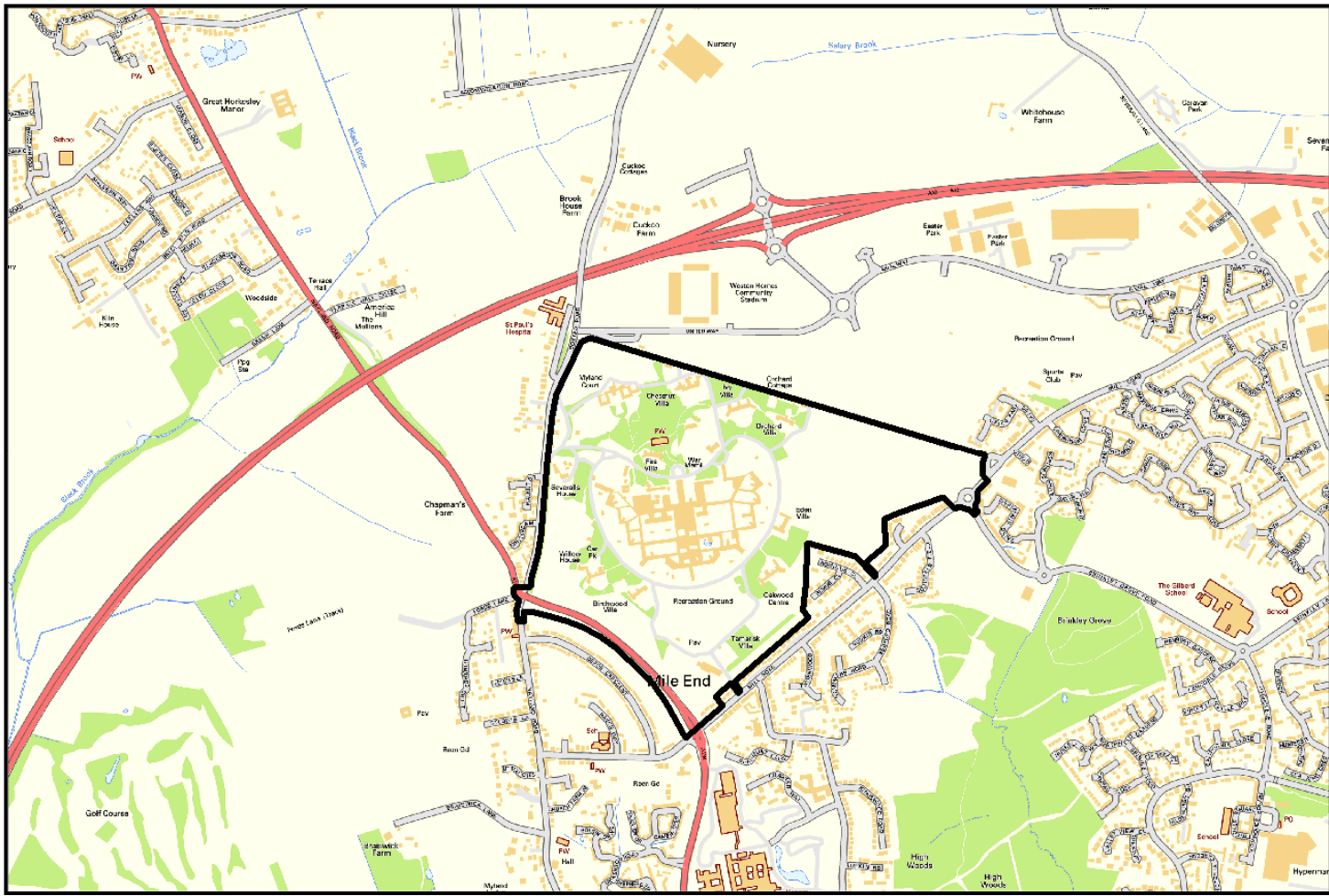
The development hereby permitted relates to the caravans within the red line application site of PLAN RUPC.2 shall be carried out in accordance with the details shown on the submitted location plan drawing unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.

## **19.0 Positivity Statement**

- 19.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.





**Application No:** 151401

**Location:** Severalls Hospital, Severalls Hospital, Boxted Road, Colchester, CO4 5HG

**Scale (approx):** NOT TO SCALE

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use.

This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2015

**7.2 Case Officer: Vincent Pearce****MAJOR**

**Site:** Severalls Hospital, Boxted Road, Colchester, CO4 5HG

**Application No:** 151401

**Date Received:** 29 June 2015

**Agent:** Mr Oliver Bell, Nexus Planning

**Applicant:** North Essex Mental Health Partnership Trust

**Development:** Removal/variation of conditions 1, 3a, 4, 6, 7, 9, 15, 19, 24, 29, 36, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55 of planning permission.

**Ward:** Mile End

**1.0 Reason for referral to the Planning Committee**

- 1.1 This application is referred to the Planning Committee because it includes proposed amendments to a S106 Agreement that fall outside of the scheme of delegation and constitutes a major application where a limited part objection has been received.

**2.0 Synopsis**

- 2.1 The key issue raised by this proposal is - Are the proposed amendments to conditions reasonable in the light of the justification provided and are the changes to the current S106 being proposed reasonable in the light of viability evidence supplied by the applicant?
- 2.2 The issue of viability is a legitimate material consideration for the Council as local planning authority as clearly identified by paragraph 173 of the NPPF. (as described below in the section 'viability references').
- 2.3 As part of the application the applicants (the land owners) have submitted a viability appraisal provided by the prospective purchasers of the site which has been carefully analysed by the Council's own independent external viability specialists BPS over a period of weeks and through a series of updates and iterations. (these appraisals are bound by commercial confidentiality).



- 2.4 Discussion on viability was ongoing right up to the point of writing this report and a common understanding on the question of scheme viability has now been reached. This has resulted in a new package of adjusted s106 that is now being recommended to Members on the basis that the compromise represents a fair and reasonable balance that achieves project viability whilst ensuring that key Council priorities are delivered for the community.
- 2.5 **Members in considering this application and the associated issues are therefore being asked accept that the proposed reduction in the overall cost to the developer of the agreed s106 package is reasonable and justified in the light of a range of factors that will be explored in detail in this report.**
- 2.6 **The conclusion of this report is that the proposed s106 amendments are reasonable and acceptable and as such should be agreed with the caveats set out in the recommendation.**
- 2.7 **The report also recommends that within the host of condition amendments now being proposed the Committee accepts some as reasonable whilst rejects the amendment of others for reasons that are made clear in this very detailed report.**
- 2.8 **This report must by the very nature of the issues raised be detailed and complex because development of Severalls Hospital affects a wide existing Community that has over the years been promised much on the back of the redevelopment. The Community has been on tenterhooks waiting for development to begin (let alone finish) for more than 15 years whilst the future of the site has been in limbo pending its sale following a protracted planning process period between 2001 and 2006.**

#### **TECHNICAL TERMS USED IN THIS REPORT:**

**Extant planning permission:** *This refers to a planning permission that remains live as a result of either (1) having time remaining in which it can be commenced before it formally expires (controlled by planning condition) or (2) has been commenced and is therefore 'live' in perpetuity*

**S73 application:** *This refers to s73 of the Town & Country Planning Act 1990 (as amended) which makes it possible to apply to the local planning authority to vary or remove a condition/s attached to an extant planning permission.*

**Qualifying unit:** *This refers to a residential unit considered by Essex County Council as local education authority as likely to generate pressure for school places. Reference to qualifying units is used when requiring education contributions within S106 Agreements. Ordinarily a one-bedroom unit would not be considered to*

*constitute a qualifying unit for the reason that it is too small to accommodate school age children as the only bedroom would be occupied by an adult/s.*

## **ABBREVIATIONS USED:**

*CAMHS Unit: Child & Adolescent Mental Health Service Unit*

*HCA- Homes & Communities Agency*

*NEPFT: North Essex Partnership University NHS Foundation Trust*

*NPPF: National Planning Policy Framework*

## **S106 REFERENCES:**

**NAR:** *means the Northern Approach Road Any number that follows NAR identifies the relevant phase of road delivery. Therefore NAR3 refers to the third phase and is what has been re-named 'via Urbis Romanae'. (NAR1 comprised the works to north station roundabout and bridge associated with the Turner Rise retail development. NAR2 was the section of new road from Phase 1 northwards to Mill Road and Fords Lane associated with then residential development on land to the west of the District General Hospital)*

**Phase 1:** *This is phase 1 of comprehensive site redevelopment This refers to the Crest Nicholson Homes development known as 'Rosewood' being the first and currently only phase of former Severalls Hospital residential development being undertaken. It was the only phase where reserved matters were submitted (and subsequently approved). The site sits to the south-east of what is now via Urbis Romanae*

**Phase 2:** *this refers to the comprehensive redevelopment of the largest part of the former Severalls Hospital site that sits to the north-west of what is now Via Urbis Romanae. It comprises the main complex of redundant hospital buildings and grounds.*

**NAR Phase 5:** *confusingly this refers to Phase 5 of the NAR highway works rather than a phase of comprehensive redevelopment of the former hospital. It is often preceded by the abbreviation NAR Phase 5. It comprises a new footway along the Hospital's Boxted Road frontage and a crossing over NAR2.*

## **VIABILITY REFERENCES:**

### **NPPF 'viability' reference:**

*"Paragraph 173:*

*Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. **To ensure viability, the costs of any requirements likely to be applied to development, such as***

***requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal costs of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.***” (emphasis in **bold italic text** is that of this report’s author but the text is a quote from the NPPF).

**Community Infrastructure Levy Regulations 2010 (as amended) - The C.I.L. tests for S106 Agreements.**

**PART 11, Regulation 122**

- (1) This regulation applies where a relevant determination is made which results in planning permission being granted for development**
- (2) (2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:-**
  - (a) Necessary to make the development acceptable in planning terms;**
  - (b) Directly related to the development; and,**
  - (c) Fairly and reasonably related in scale and kind to the development**

### **3.0 Introduction**

- 3.1 This report explores potential adjustments to the latest Severalls Hospital planning permission. (ref: 131221). The need for adjustments has been triggered by changing circumstances in terms of development undertaken to date, the need to consolidate and harmonise previously approved changes of conditions and s106 terms and most recently by the stalled sale of the Severalls Hospital site (Phase 2 land) to an interested consortium of national house builders due to the continued fragility of scheme viability.
- 3.2 Discussion with the Consortium and land owners is at an advanced state and exchange of contracts is expected subject to resolution of all the matters discussed in this report. The Consortium has entered into a comprehensive Planning Performance Agreement (PPA) with the Council to facilitate the ultimate submission of reserved matters for the entirety of Phase 2 before Spring 2016 but first they must secure the purchase of the site.
- 3.3 Members are being asked to make concessions in terms of the originally agreed S106 package in order to facilitate development. This is the reason why this report will make reference to the Government’s position in respect of the need for local planning authorities to facilitate sustainable development and have regard to ensuring they do not make s106 demands that render projects unviable.

- 3.2 These adjustments have four component parts delivered either by a variation of planning condition or by amendment to the current s106 Agreement. They can be summarised as follows:-
- 3.2.1 Variation of conditions to ensure that current unintended mismatches between certain occupation triggers and drawing references on the Severalls Hospital planning permissions (most recently 131221) and the latest S106 Agreement (2013) and agreed Broadway Malyan masterplan (2012) are resolved in what amounts to tidying-up via an act of technical housekeeping; and,
- 3.2.2 Variation of certain conditions attached to the Severalls Hospital outline planning permission for comprehensive redevelopment to reflect changed circumstances since the matter was last visited - (including completion of NAR 3 phase 3 north of Mill Road – now named “Via Urbis Romanae”); and ,
- 3.2.3 Consequent amendment to the current S106 Agreement (2013) relating to the Severalls development to ensure that varied conditions from 3.2.2 above and related clauses within the extant s106 Agreement are in harmony; and,
- 3.2.4 Adjustments to the composition of the overall S106 package of developer obligations to reflect the proposed significant reduction in dwellings expected to be built. (the reduction in numbers being prompted by the fact that NEPF(nhs)T built a new Child and Adolescent Mental Health Service (CAMS) Unit (St Aubyn Centre) on a large part of the Severalls site – thereby reducing the residual total developable area). At the time of granting the original outline permission (2006) the application site included a large parcel known as “the retained land” where NEPF(nhs)T had yet to determine whether it would develop the site for its own mental health purposes or include it in the sale for residential purposes. That is clearly no longer an unknown.

#### **4.0 The Site**

- 4.1 The site known as Severalls Phase 2 comprises what was the main cluster of buildings and grounds of the former mental hospital. Its boundaries are defined by adjacency to:- Via Urbis Romanae (south-east and east); NAR2 (south-west); Boxted Road & St Aubyn Centre (Child & Adolescent Mental Health Service Unit [CAMHS] (west) and Tower Lane (north).
- 4.2 The site is now largely redundant and parts of the built fabric are decaying and becoming overgrown. The site is still dominated by heavily wooded areas.

## 5.0 Description of the S73 (variation/removal of condition) Proposal

5.1 Application ref: 151401 relates to proposed changes to the following conditions:-

- 1d reserved matters and reference to masterplan
- 3a reserved matters, phasing and reference to masterplan
- 4 reference to masterplan and design code
- 6 restriction on development prior to delivery of new highway infrastructure
- 7 phased restriction on occupancy prior to delivery of specified highway infrastructure
- 9 phased restriction on occupancy prior to delivery of specified highway infrastructure
- 15 footpath and cyclepath delivery and reference to masterplan
- 19 control of potential construction nuisance
- 24 building retention and reference to masterplan
- 29 restriction of prescribed pd on retained buildings and reference to masterplan
- 36 delivery of phased play areas and reference to masterplan
- 46 pd restriction
- 47 pd restriction
- 48 pd restriction
- 49 delivery restriction and reference to masterplan
- 50 use restrictions in mixed use area and reference to masterplan
- 51 use restrictions in mixed use area and reference to masterplan
- 52 floorspace restrictions in mixed use area and reference to masterplan
- 53 advanced signage advising of future school
- 54 requirement for further details on new primary school
- 55 community building and reference to masterplan

5.2 Proposed amendments to the current S106 Agreement will be described and considered in detail in the report.

## 6.0 Land Use Allocation

6.1 The site is allocated in the Adopted Local Plan (July 2014) for residential purposes and benefits from an extant outline planning permission (ref: O/COL/01/1624) granted 21 March 2006 for mixed but predominantly residential development. **That permission effectively expires 20 March 2016 if an application for reserved matters for Phase 2 development has not been submitted before that date.**

## **7.0 Relevant planning history**

- 7.1 **O/COL/01/1624 (approved 21 March 2006)** The original permission Outline planning permission for the comprehensive redevelopment of former Severalls Hospital (largely for residential purposes). This permission is currently extant.
- 7.2 **100502 (approved 4 August 2011)** - Reserved Matters for 248 dwellings (Severalls Hospital Phase 1) (Crest Nicholson)
- 7.3 **100035 (approved 3 March 2011)** – variation of conditions following grant of outline planning permission O/COL/01/1624 (HCA)
- 7.4 **121559 (approved 23 August 2012)** – variation of condition 2 attached to planning permission ref: 100502 (change of elevational treatment) (Crest Nicholson)
- 7.5 **131221 (approved 23 November 2013)** - variation of condition 8a of 100035 to increase from 75 to 125 number of dwellings which can be occupied prior to completion of NAR3. (Crest Nicholson)
- 7.6 **146284** variation of condition 7 & 9 attached to 13221 (in abeyance pending outcome of 151401) (NEPU nhsFT)
- 7.7 **151401** current application

## **8.0 Principal Policies**

- 8.1 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. 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.
- 8.2 As this report relates to a S73 application (variation/removal of specified conditions) this report will not dwell in detail on specific policies where these relate to the principle of development as the planning permission to which the application relates is extant.

8.3 The **NPPF** has five strands of advice of particular relevance to the consideration of this application and the associated issues:-

8.3.1 Section1: Building a strong, competitive economy - particularly paragraph 19

*“The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.”*

8.3.2 Section 4: promoting sustainable transport –particularly paragraph 32

*“All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:*

- *the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;.....”*

8.3.2.1 and paragraph 34

*“Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas.”*

8.3.3 Section 6: delivering a wide choice of high quality homes – particularly paragraph 50

*“To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should....*

- *where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.”*

#### 8.3.4 Section 7: Requiring good design – particularly paragraph 57

*“The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.”* (Members will be anxious to ensure that where development viability is fragile design quality is not compromised in the search for a viable starting point. Severalls is almost certainly in most peoples’ eyes the most prestigious development site with the finest natural character available in the Borough. Negotiations with the Consortium are predicated on design quality (i.e. the highest) being non-negotiable.

#### 8.3.5 Ensuring viability and deliverability – particularly paragraph 173

*“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”*

#### 8.4 The **Adopted Core Strategy** (December 2008 revised July 2014). Of particular relevance are:-

##### 8.5 **H1: Housing Delivery**

Northern Colchester is identified as a main focus for residential development within the North Growth Area. This is relevant to Severalls.

##### 8.6 **H2: Housing Density (revised July 2014)**

As a result of part of the Severalls site being redeveloped for health purposes there are knock on impacts for total number of units capable of being delivered. H2 requires the efficient use of land and the retention and enhancement of local character.

##### 8.7 **H3: Housing Diversity (revised July 2014)**

This requires the provision of affordable housing and homes suitable to the needs of older persons, persons with disabilities and those with special needs. At the heart of the consideration of the merits of the current proposal sits the extent to which a reasonable number of affordable housing units that can be delivered within a viable wider development



## **8.8 H4: Affordable Housing (revised July 2014)**

This policy reduces the affordable housing requirement in new developments to 20%. Previously policy had been set at 25% (at the time of the original Severalls approval) and then 35% thereafter. H4 acknowledges that viability may be an issue that needs to be balanced against delivery when it states:-

“In exceptional circumstances, where high development costs undermine the viability of housing delivery, developers will be expected to demonstrate an alternative affordable housing provision”

- 8.8.1 In this particular case, the redevelopment of the former Severalls Hospital (a brownfield /previously developed site) carries with it a number of potentially high abnormal costs. (Including extensive backfilling of underground corridor networks, demolition costs, asbestos removal costs and other possible contamination remediation requirements and woodland husbandry). Provisionally these costs have been identified as in excess of £13m (million).

## **8.9 UR1 Urban Renaissance Policies**

Severalls is identified in Table UR1 as a key project site in terms of making an important contribution towards overall housing delivery.

## **8.10 TA1 Accessibility and Changing Travel behaviour and TA3 Public Transport**

Both make it clear that the Council will work with partners to further improve public transport and Table TA3 identifies delivery of the Northern Transit Corridor (which includes the busway) as a key strategic transport infrastructure project.

## **8.11 Table 6d Key Facilities and Infrastructure**

This identifies a number of key projects that are dependent upon [in part or in their entirety] development at Severalls funding them (including transit corridor, allotments, community centre, sport recreation and youth facilities. strategic open space, new primary schools and expanding secondary capacity).

## **9.0 Consultations**

- 9.1 **Highways England** formally “offer no objection”.

- 9.2 The **Environmental Control Service** has specifically commented on four of the proposed condition adjustments: Condition 19, 49, 50 & 51. Namely:-

“Condition 19. [control of dust] The development is still being constructed behind Mill Road and Thomas Wakely Close and therefore the scheme should still be implemented so the condition cannot be removed at this. An Abatement Notice has been served on the developer to abate dust nuisance”

*[Officer comment: Whilst the current application has been submitted with a view to Phase 2, the Environmental Control officer's concerns are noted and it is legitimate to retain controls not just on the uncompleted Phase 1 works but also to ensure that developers of Phase 2 are also required to submit a scheme for the control of dust in the interest of protecting amenity and then be required to follow such protocol as has been agreed. Retaining this condition will not prejudice the sale of the site or the start of development but will help to ensure that the risk of nuisance from dust is limited – **Removal of this condition is considered inappropriate from a planning perspective]***

- 9.3 “Condition 49. [control of business and delivery/dispatch hours in commercial/mixed use areas] To protect resident's amenity from noise disturbance this condition should not be removed at this time. In future when the development is complete it may be acceptable for individual uses to seek to vary delivery or dispatch times.”

*[Officer comment: The current condition restricts operating and delivery dispatch times in the commercial area/mixed use areas within Severalls to between 08.00 and 18.00 hrs (Mon-Sat) and at no times on Sundays and Bank Holidays. This was considered prudent at the time of granting outline planning permission because the predominant character of development within Severalls was to be and will continue to be residential. As the nature of final users in the non-residential areas was and remains unknown the risk of nuisance was and continues to be difficult to assess. This is of particular concern as the mixed use areas could easily include residential uses on the upper floors. Whilst it is accepted that the hours may eventually prove to be unduly restrictive it is considered inappropriate to change them at this stage because the nature of final uses is as yet known and the applicant has not suggested alternative timings.*

- 9.4 A resident of Mill Road has written to say the situation seems unnecessarily complicated but understands now that the NAR and A12 link have been provided some change is needed. He questions the need to change the education clauses. (reasons are explored in this report).

## **10.0 Parish Council Comments**

**Myland Community Council** following routine and regular liaison with the Planning Projects Team at regular liaison meetings has made the following detailed commentary:-

Condition Number	Application proposal	Response
1	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
3a	To be removed to reflect works already completed or no longer relevant	Vincent Pearce to confirm if there is any retained land other than the St Aubyn Centre. If all the retained land has been used then OK - if not needs to stay.
4	Variation to allow for updated Design Code	LEAVE AS IS. Apart from updating the Design Code and correcting the Masterplan drawing reference there is no need to vary the condition. The proposed change dilutes the condition.
6	To be removed to reflect works already completed or no longer relevant	OK to remove on the basis that planned Junction 28 (A12) highway works referred to have now been completed.
7	Removal as obligation is now dealt with in S106	DO NOT REMOVE. Reword as per the S106: No more than 1000 dwellings in total on Phase 1 and 2 of the development (as per BM-26779-01) shall be occupied until Phase 1, 2 3 and 4 of the Northern Approach Road/Phase 3 as illustrated by the Highways Phasing Plan Drawing No. SBA/N91641/PL0003 has been completed. Reason: In the interests of highway safety and to provide adequate visibility for drivers and to ensure the safety of pedestrians and vehicles.
9	To ensure consistency with S106	DO NOT REMOVE. Reword as per the S106: The following works shall be completed prior to the occupation of 250 housing units on Phase 2 of the development as identified in the attached Severalls Phasing Plan (BM-26779-01): • A footway/cycleway along Boxted Road between the existing Boxted Road Link/Nayland Road/Boxted Road/Ford Lane roundabout junction and the A12 Trunk Road/Boxted Road bridge.
15	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035

### Myland Community Council comments part 1 of 2

Condition Number	Application proposal	Response
19	To be removed to reflect works already completed or no longer relevant	DO NOT REMOVE. This has only been partly complied with. The scheme for the control of dust and mud has been made, however the second part of the condition "The scheme as agreed shall be implemented ...." is NOT being complied with and is currently subject to enforcement action it is therefore MOST CERTAINLY still very relevant. The removal of this condition should NOT be agreed.
24	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
29	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
36	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
46	Reference to the updated General Permitted Development Order	No problem - simple date revision from 1995 to 2015
47	Reference to the updated General Permitted Development Order	No problem - simple date revision from 1995 to 2015
48	Reference to the updated General Permitted Development Order	No problem - simple date revision from 1995 to 2015
49	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
50	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
51	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
52	To be updated to reference the correct approved Masterplan	No Problem - already has permission granted to be amended under 100035
53	To be removed to reflect works already completed or no longer relevant	No problem - now dealt with by the School approved application

## Myland Community Council comments part 2 of 2

## 11.0 DETAILED REPORT

### 11.1 Resolving current unintended mismatches (conditions/S106) to address discrepancies in various iterations of legal agreements and associated conditions

11.1.1 Specific detail as to the mismatch is provided below:-

11.1.2 Clause 5.4 of the 2013 Agreement (July 2013) requires that no more than 1000 housing units (or such higher number as may be agreed) on Phase 1 and Phase 2 be occupied before the NAR 3 busway and NAR2 busway works are completed.

**Condition 7** attached to the planning permission of 2013 (131221) requires that no more than 475 dwellings be occupied before the same sections of busway are complete.

11.1.3 Clause 5.3 of the 2013 Agreement (July 2013) requires that no more than 250 housing units on Phase 2 be occupied before the NAR 3 Phase 5 works (footway and crossing to Boxted Road) are completed.

11.1.4 **Condition 9** attached to the planning permission of 2013 (131221) requires that no dwellings on Phase 2 of the Severalls development be occupied before the NAR3 Phase 5 works are complete.

11.1.5 As members will see there is now a tension between conditions 7 & 9 attached to the 2013 planning permission and the relevant related clauses within the associated S106 of 2013. This is summarised Fig1 below:-

requirement	Condition trigger (2013)	S106 trigger (2013)
Completion of NAR3 and associated busway and NAR2 busway	No more than <b>475</b> occupations (phase 1 & 2) [Condition 7] before	No more than <b>1000</b> occupations (phase 1 & 2) before [clause 5.4]
Completion of Phase 5 works (Boxted Road footpath and crossing)	<b>no occupations</b> (phase 1 & 2) before [Condition 7]	No more than <b>250</b> occupations (phase 1 & 2) before [clause 5.3]

**Fig 1: Comparative table showing unintended contradiction between conditions and s106 clauses**

11.1.6 The S106 Agreement of 2013 was signed as a precursor to the release of the amended planning application of 2013 and the tension between the two, as described above, was not intended.

11.1.7 The land owners - The Homes & Communities Agency (HCA), the North Essex Partnership Foundation (NHS) Trust (NEPF(nhs)T) and the prospective purchasers of the Severalls Hospital Phase 2 site have applied to vary the said conditions to bring the triggers into alignment so as to establish certainty and clarity because financial viability of the development is fragile and trigger dates have an important impact on project cash flow. In amending the S106 it was the Council's intention to ease some of the early phase payment requirements and push them to slightly later into the build; thereby facilitating sale and commencement. It is therefore entirely consistent and reasonable to adjust the associated conditions to secure that end as should have occurred in 2013.

11.1.8 **Conditions 1, 3, 4, 15, 24, 29, 36, 49, 50, 51, 52 and 55** of the 2013 planning permission (131221) referred to Severalls Masterplan Drawing No 00.186/3M received 30 June 2003 (the original masterplan) when in fact the relevant masterplan drawing number was (02)301 that having been agreed with the submission and approval of Phase 1 reserved matters. This was an error that needs to be corrected to reflect what was previously approved. The original masterplan that accompanied the 2006 permission was produced by Andrew Martin Associates. This was subsequently updated and revised by Broadway Malyan Architects who acted for Crest Nicholson when submitting reserved matters details for Phase 1. At the same time Broadway Malyan revised and refreshed the Design Statement that supports the masterplan. These are now the principle supporting documents having superseded those from the original approval. In reproducing the new permission for the variation of condition approval (S73) previous conditions were 'cut and pasted' across without having regard to the fact that the masterplan reference needed changing.

## 12.0 Recognising changed circumstances

12.1 Since the last amendment of the Severalls Hospital planning permission in 2013 (131221) circumstances on the ground have moved on and some conditions now refer to delivery triggers for things that have effectively been delivered. The land owners and prospective purchaser wish to tidy up existing conditions to reflect the current position in respect of restrictions relating to trigger events that have been reached or past. (thereby removing certain constraints):-

12.1.1 **Condition 6** refers to a restriction on commencement until junction 28 works have been completed. These works are complete and the condition is now redundant and can therefore be removed.

12.1.2 **Condition 19** refers to the need to submit and then operate the agreed scheme for dust suppression (etc). Crest Nicholson satisfied the condition in respect of Phase 1 and their submission of details but recent complaints of dust nuisance have prompted the service of an abatement notice by the Council's Environmental Protection Team. As a result of this it is not considered prudent to remove this condition and it is reasonable to require the developer/s of Phase 2 to provide their own details as to



how the site will be managed during construction to avoid nuisance. Having been approved the developer/s should then continue to be bound by such control measures as have been agreed. **It is therefore not recommended that condition 19 be removed or varied even if the Environmental Protection team has access to Environmental legislation to prevent the worst excesses of nuisance as local residents reasonably expect their general amenity to be protected by the local planning authority when development is approved and the construction process is under way. When receiving such details as required by condition the planning team liaises closely with the Environmental Protection Team and the former can take planning enforcement action where it is considered expedient to do so if a serious breach of condition occurs. Whilst securing a remedy may be a speedier process under Environmental legislation that may not always be the case.**

- 12.1.3 **Conditions 46, 47 & 48** each relate to restrictions on permitted development and in doing so they refer to The Town & Country (General Permitted Development) Order 1995. Whilst these conditions also extend to reference to include any Order revoking or re-enacting that Order with or without modification) it is considered appropriate to take this opportunity to amend the reference to specifically refer to the current Order - The Town & Country Planning (General Permitted Development ) Order 2012. This is a case of simple technical housekeeping. The restrictions on permitted development are retained.
- 12.1.4 **Condition 49** also restricts operation and delivery times relating to commercial components within the mixed use area to between 08.00hrs and 18.00hrs on weekdays and Saturdays and at no times on Sundays or Public holidays. Members will have noted the concern expressed by the Environmental Control team about relaxing these hours without knowing what uses will occupy the space. Of particular concern is the potential nuisance that may be caused to residential uses on upper floors. In the circumstances it is not considered prudent to amend the hours in condition 49 at this stage. Whilst the mixed use area will be transferred to the Council as a result of the amended s106 package (if agreed) the need to safeguard residential amenity is applicable to any developer no matter whom that is. It will be for the Council to make a case for relaxation at a later date if that can be justified as a result on the nature of the use/s and its compatibility with residential neighbours.
- 12.1.5 **Condition 53** refers to there being no commencement unless a sign has been erected to announce the intended use of the school site. The school site land has now been transferred to Essex County Council for the purpose of building a new primary school. Consequently the condition is now redundant because the County Council has granted itself planning permission for a new school and intends for it to be open by September 2016. The condition is therefore now unnecessary and can be removed as the completion of the school is now likely to precede residential occupations and so anyone considering purchasing a home near the school will be aware of its existence.

- 12.1.6 Until Essex County Council forward funded the school with a funding mechanism agreed with the land owners it was expected that delivery of the new school would follow a significant number of residential occupations and therefore such signage alerting potential buyers to the future location of the school was felt to be important to informing decisions to buy close to what would later be a school site. (in terms of amenity and practically for those with young children)
- 12.1.7 **Condition 54** requires the submission of details of the proposed new school building. Essex County Council has now granted itself full planning permission for a new school on the school site and so the condition is now redundant and can be removed.
- 13.0 Consequent S106 amendments**
- 13.1 Economic conditions have thrown in question the ability of any prospective developer to deliver the full busway works south of Mill Road. Project viability continues to remain fragile.
- 13.2 As a result the Council has sought to secure a sizeable contribution towards the cost of full delivery rather than require full delivery by the developer. The sum negotiated is £2m. (Two Million Pounds). The overall cost of NAR2 busway delivery has been estimated at more than £5m (five million pounds). A developer could within the current s106 Agreement seek to limit the number of new dwellings to below 1000 (Phase 1 and 2) and thereby not trigger any busway payment on the basis that this remains financially preferable to building out the full 1500 units and making a full busway payment. In such circumstances it would not be possible to properly mitigate the impact of the approximate 750 dwellings on the public transport infrastructure within the Agreement as it currently stands.
- 13.3 The position is complicated by the fact that the construction of the new CAMHS Unit (St Aubyn Centre) now means that achieving a total of 1500 units on the whole original Severalls site is compromised as building at a density to achieve that many units on what remains is likely to be excessive (especially as the original scheme included significantly more flats). Therefore the Council will look to any developer to deliver significantly less than the 1272 units (after deducting the 248 units arising from Phase 1 – Crest Nicholson Homes) that remain within the currently extant permission.
- 13.4 The CAMHS unit site occupies some 3.5ha which at, let's say a density of 40 dwellings per hectare, equates to some 140 dwellings). Members will also be anxious to ensure that development does not intrude into or prejudice the retained woodland areas and open space areas within the designated Historic Park & Garden.





***Fig 2: The 'Retained Land'***

## **14.0 Adjustment to components within S106**

14.1 The two main (but not exclusive) areas for proposed adjustments revolve around busway works and affordable housing delivery. These are now described in detail.

### **14.2.1 Busway:**

14.2.2 The development of the St Aubyn's Centre Child & Adolescent Mental Health Service (CAMHS) Unit on what was described in the Severalls Hospital S106 Agreement as 'the retained land' has effectively reduced the developable area within the original outline planning permission red line. (i.e. the development site). The 2006 outline planning permission permitted a total of 1500 dwellings across what emerged as 2 distinct phases. (Phase 1 south of the new NAR3 & Phase 2 north of the new NAR3). Crest Homes are developing phase 1 comprising a total of 248 dwelling units. This means that a possible 1252 dwelling units could be built out within Phase 2. However the development of the St Aubyn's Centre means that it is not possible to develop the remainder of land within Phase 2 at an appropriate density, scale, massing and character if 1252 dwelling units are proposed. The prospective purchasers of the site have indicated that they are looking to build some 752 units which would mean overall numbers (Phase 1 and 2) would not exceed 1000 units.

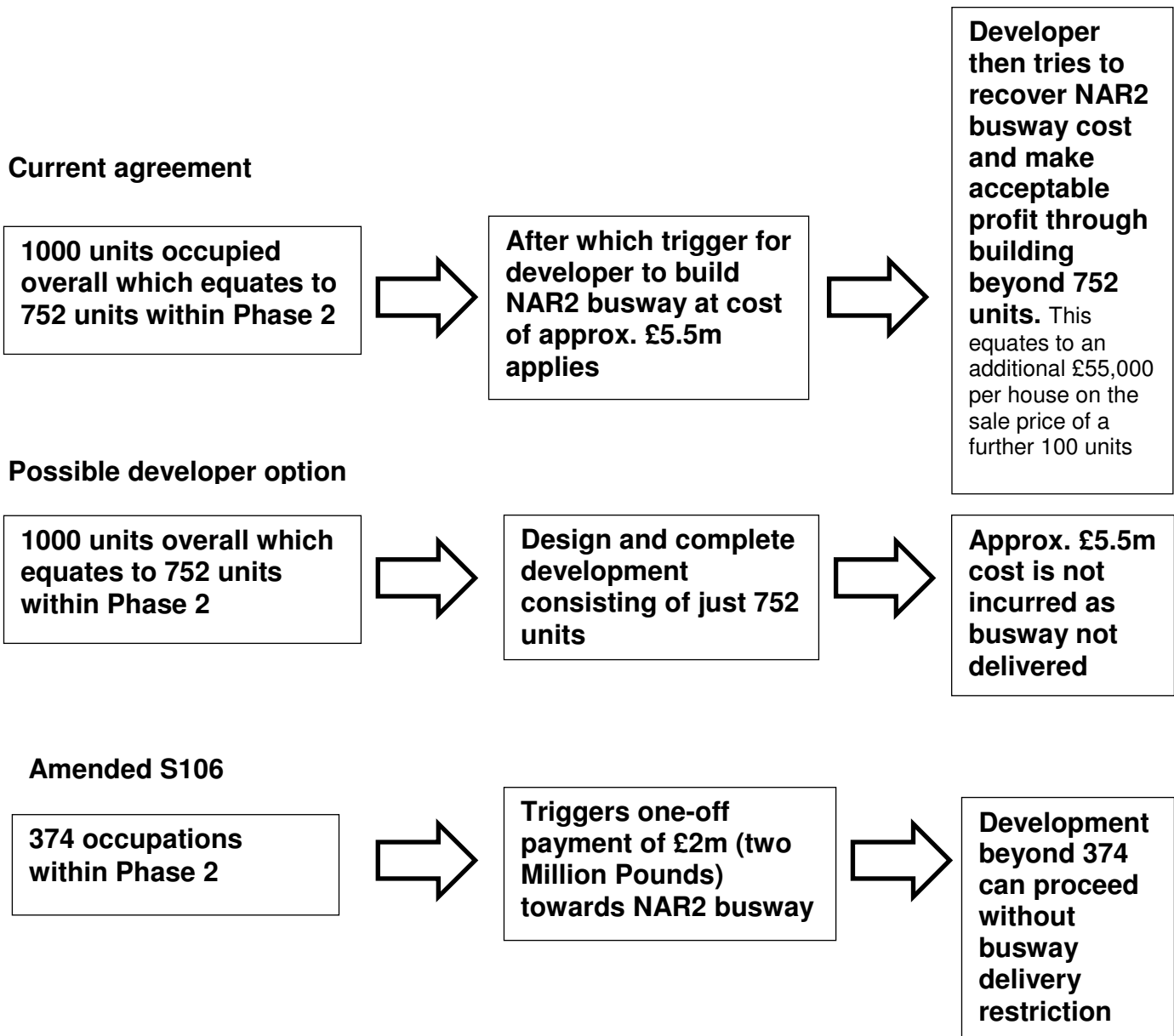


**Fig 3: The new St Aubyn's Centre**

- 14.2.3 Members will have noted that the tension between condition 9 and clause 5.4 of the Agreement referred to earlier has at its heart the trigger for busway delivery by the developer. The Council cannot disregard the fact that the signed S106 sets the trigger for occupation of units on Severalls Hospital (Phase 1 and Phase 2) at no more than 1000 before the NAR2 busway is provided by the developer. In the circumstances now envisaged by the prospective purchasers of Severalls Hospital Phase 2 that point will never be reached and therefore NAR2 busway would not be delivered by the Severalls Hospital development.
- 14.2.4 Since the 2013 Agreement was signed Essex County Council has forward funded construction of the NAR3 (Via Urbis Romanae) and the NAR3 busway with a contribution from the HCA. Essex County Council has also delivered a new Park & Ride facility north of the A12 on land owned by Colchester Borough Council.
- 14.2.5 This has meant that two key strands of the strategic transport strategy for the town are now in place. Delivery of NAR2 busway has yet to be secured and its ultimate delivery will represent a major milestone.
- 14.2.6 The prospective purchasers of the Severalls Hospital Phase 2 site are however proposing to make a substantial contribution towards the NAR2 busway works reflecting the fact that their smaller than originally envisaged development will necessitate public transport improvements as mitigation (i.e. encouraging people to use their cars less frequently for local journeys such as those into the Town Centre via the park & ride facility). The prospective developers have indicated that a sum of £2,000,000 (two million) would be made available. This will not fund full construction of the planned works and funding from other sources would be needed to complete the NAR bus corridor.

- 14.2.7 That said if the current package is agreed by the Planning Committee a significant sum will have been secured that could be used to underpin match funding bids. (e.g.: to the Local Enterprise Partnership - L.E.P.).
- 14.2.8 On this basis the Council should accept that a contribution of £2 million pounds towards the NAR2 busway is reasonable and meets the CIL tests. Essex County Council as highway authority has also accepted the position. The local authorities will then have to source the additional funding from other sources using the contribution as match funding. That is something that both authorities working collaboratively have been able to achieve on a range of other major infrastructure projects.

**Fig 4 Busway delivery options**

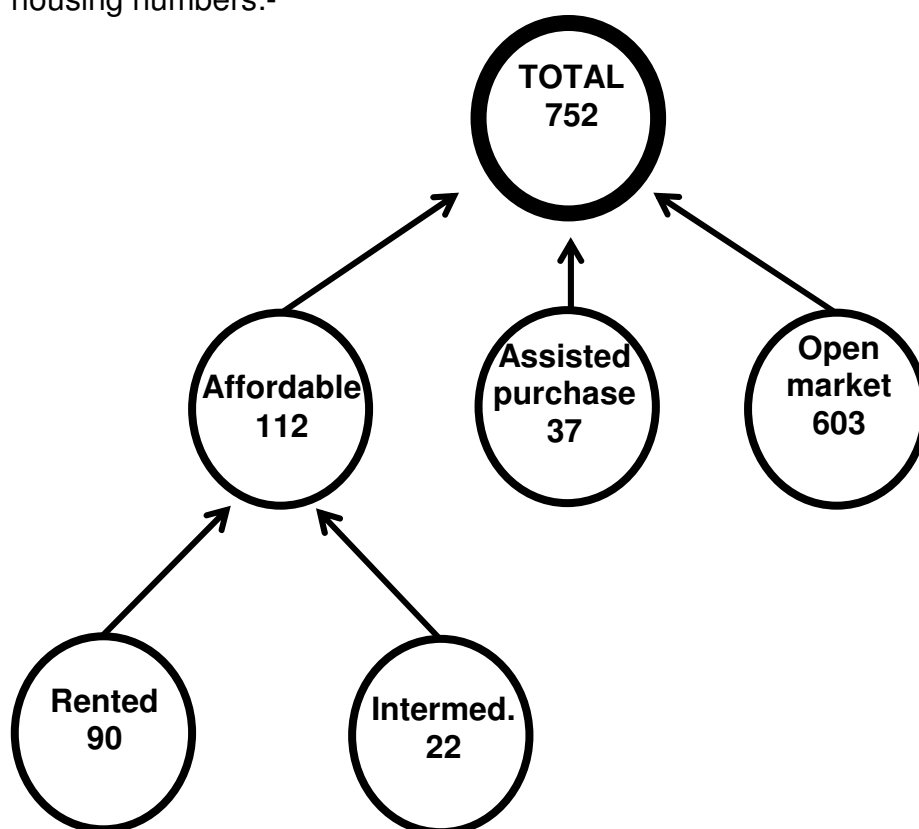


- 14.2.9 Delivery of the full busway remains a corporate objective in that it will further improve the efficiency of public transport and enhance the chances of encouraging modal shift the closer buses get to achieve free-flowing access to the town centre on routes not available to general traffic. The delivery of the full busway also supports the release of major regeneration sites within the Northern Gateway.
- 14.2.10 Members could accept that if concessions and compromises on the overall S106 package are required and reasonable they could seek to either increase or decrease the size of this contribution to the busway by seeking its reallocation in part or in its entirety to other infrastructure that may also be subject to proposed reductions or respectively from other infrastructure to it.
- 14.2.11 Members will inevitably and understandably want to know what will happen to the £2 million of busway funding in the event that suitable match funding cannot be found on the basis that other relevant community benefit will have been foregone to achieve this contribution? It has been agreed that in such an event the £2m contribution will cascade as contributions towards other community benefits in the shape of:-
- £1 million will cascade to the Council as a contribution towards the delivery of specific affordable housing projects with the busway land becoming open space (linear park)
  - £1 million will cascade to Essex County Council as a contribution towards specific alternative transport enhancements
- 14.3.1 **Affordable Housing:**
- 14.3.2 **Members will be acutely aware of the issues that surround the difficulties being experienced in securing the delivery of affordable housing, particularly in the light of the report that was considered by the Committee on 17 September 2015. Affordable housing build out rates associated with speculative housing development have recently been low because of the Government's emphasis on encouraging an open-market housing-led economic recovery.**
- 14.3.3 Since the original S106 Agreement was signed (and subsequently amended) the Council's policy in respect of the percentage of affordable housing to be secured within new residential development has changed. The percentage has been lowered from 25% to 20% in recognition of the fact that the national economic downturn dramatically slowed the rate of building across the UK as project viability became increasingly fragile and the Government required local planning authorities to have regard to viability. (i.e. they were not to ask for s106 contributions that prejudiced sustainable growth from occurring).

- 14.3.4 As discussed earlier Severalls development viability remains fragile and the currently interested parties (the prospective purchasers) have now been able to better cost out the project based on a reduced number of units and a more informed (but not full) view of abnormal development costs. (e.g.: the site is criss-crossed by an unseen network of subterranean service and access corridors – these all have to be filled and service ducts contain asbestos).
- 14.3.5 In negotiating potential amendments to the existing s106 officers of both the planning and housing services have sought to minimise any impact on what has been secured in terms of reducing the overall quantum of affordable housing being delivered. That said some reduction in the proportion has been necessary to achieve a level of viability that should ensure development proceeds. In accepting some reduction officers have also sought to prioritise the delivery of affordable housing ahead of other areas of possible compromise.
- 14.3.6 Whichever way this is wrapped up - countenancing, let alone agreeing to such a reduction will be a bitter pill for Members to swallow.
- 14.3.7 The sugar coating, if it can be considered such, is that at a time when in recent months Members have decried the paucity of schemes coming before Committee with affordable housing the current amendment if agreed would ultimately provide 112 affordable units for families/households in need. (particularly the 90 who will secure rented accommodation)
- 14.3.8 Members will also wish to consider what will happen if the current permission lapses in March 2016 without the site being sold and reserved matters submitted. If that were to occur then no development could proceed on the back of the 2006 permission and the site would sit vacant whilst a new application was worked up. In such circumstances no affordable housing would be delivered for some time. Whilst some Members may feel this is being expressed in a way that is like a '*gun to the head*' (something nobody likes and not what is intended here) it is now a real and pressing possibility.
- 14.3.9 The pointed and somewhat blunt question for the Council and the people of North Colchester is - "is half a loaf (or in this case 3/5ths) better than none", particularly at a time when the Government has little sympathy with local authorities that "unreasonably" "hold- up" residential development.
- 14.3.10 The Severalls Hospital Agreement of 2006 (and subsequent amendments) set affordable housing delivery at 25%. The land owners and prospective purchasers are seeking a reduction to reflect current policy, improve project viability and facilitate the offered £2,000,000 busway contribution to mitigate impact of a reduced development on the local public transport infrastructure.

- 14.3.11** Phase 1 (Crest Homes) is delivering affordable housing at 25% That said the majority of S106 contributions are triggered by Phase 2 of the Severalls Hospital development as that is how the overall development was loaded in order to get Phase 1 successfully away. On this basis proposed changes if agreed will not apply to Phase 1 development.
- 14.3.12** Current Council policy sets the affordable housing requirement within residential developments at 20% of the total as opposed to the 25% required at the time outline permission was granted for this development. Viability of the current proposal means that it is not possible to achieve this level of delivery and for the development to proceed. Officers have successfully negotiated proposed adjustments that mean 15% of the total number of units will be affordable rather than accepting significantly lower numbers. In the circumstances it is considered that this represents a good outcome and will mean development is likely to proceed and 112 households will have access to affordable housing rather than none if the development was not to proceed. (i.e.: 25% of nothing is nothing however much we might wish we could have achieved the 25%).
- 14.3.13** As described at the head of this section of the report the Government's position is clear in terms of its drive to ensure the planning system facilitates housing growth and does not frustrate such development by making 'unreasonable' S106 claims in the face of proven viability fragility. Whilst it is not usual to openly consider appeal prospects in Planning Committee reports it is considered appropriate in this case to suggest that it is unlikely that the Council will be supported at appeal for holding out to secure the originally agreed 25% in the light of all the circumstances that now apply in this particular case.
- 14.3.14** Members will be aware that the Severalls Hospital Phase 2 site has sat empty since 2006 and is gradually falling into disrepair - Something that is ever more evident since the opening of Via Urbis Romanae and the renewed opportunities it has now brought for the public to look across the former cricket ground towards the old hospital buildings. Finding a viable redevelopment solution is becoming ever more pressing as the site is one of the first things that you see when approaching the town from the north via junction 28. It is a poor advertisement. It is also important to see the magnificent parkland restored, managed and rehabilitated to its former glory and for sympathetic development to proceed. The 752 units represent a significant contribution towards the overall number of units needed in Colchester to meet housing demand.
- 14.3.15** However in exploring the potential adjustment the Planning Projects Team and Strategic Housing Team have sought to improve the mix of units within the affordable housing quotient to better reflect the need identified in the current Strategic Housing Market Assessment (SHMA). That is a move away from smaller 1-bed 'rented' units towards more 3-bed rented units and the inclusion of fully wheel chair accessible bungalows.

- 14.3.16 Members have also urged officers to try and secure fully wheelchair enabled bungalows in larger developments. In this case the prospective purchasers have agreed to three such units where previously there were none. Again this is welcomed.
- 14.3.17 Within the affordable housing allocation the percentage of rented units will be 80% and intermediate 20% – in line with current policy. As has been the case in recent years within parts of the Garrison redevelopment (via deeds of variation to accommodate changed viability circumstances) the negotiated, in this case 15% affordable, is accompanied by an additional 5% (of the total number) assisted purchase element . This 5% does not qualify as affordable housing but does represent the inclusion of units attractive to first time buyers as a result of targeted Government incentives. This is considered important as it will open the door to buyers who would otherwise be excluded from homeownership as a result of the difficulties raising deposits. On that basis it is welcome and helps to redress some of the imbalances in the current housing market. It will also help to allow more households to sink new permanent roots in Colchester.
- 14.3.18 Therefore the balance reached within the negotiated amended s106, if agreed by members, will be
- 15% affordable housing (80% rented) : (20% intermediate)
  - 5% assisted purchase
  - 80% open market
- 14.3.19 Based on an overall total number of units of 752 this equates to the following housing numbers:-



**Fig 5: Proposed amended tenure composition-Severalls Phase 2**

DC0901MW eV3

- 14.3.20 Proposed adjustments to the current s106 are not restricted to the above two main core areas and this report now considers the other areas of proposed change.
- 14.3.21 **Why are officers not recommending a review clause within the amended S106 to uplift affordable housing numbers in circumstances where profitability improves over the life of the project?**
- 14.3.22 Ordinarily you might expect the Council to build-in a claw-back mechanism within an Agreement where viability some years hence is uncertain due to current market volatility. In straight-talking terms “What stops the community being ‘sold-short’ or ‘ripped-off’ if the developer ultimately makes much more profit than was predicted, having been ‘let off’ having to make the full contributions originally expected”
- 14.3.23 This site is unusual in that it is very difficult to accurately establish full development costs because so much is still unknown about the ‘abnormals’ and the extent to which these will multiply as more is uncovered. These include:-
- the cost of filling in the maze of underground service tunnels that burrow mole-like beneath and around the site
  - the cost of safely removing asbestos from around pipes within the tunnels
  - the constraint on developable area defined by the requirement to retain extensive tracts of woodland and established planting
  - the risk of having to use expensive ‘no-dig’ construction methods and piled foundations.
- 14.3.24 Viability can go up or down. Whilst we all expect house prices to increase over time recent events have shown that isn’t necessarily guaranteed in the short-term. The build life of the Severalls scheme if it comprises some 750 units is likely to be somewhere in the region of 7 years. In that time costs and prices will fluctuate and the Consortium is potentially taking a calculated risk by taking on this site compared to a simpler green field site.
- 14.3.25 Officers of the Major Development and Housing Strategy Service have worked closely with the Consortium to identify an alternative method of capturing future potential for adding to the 15% of affordable housing that does not depend upon a requirement to estimate enhanced value through a review which can be complex and troublesome as parties are bound to dispute the figures.
- 14.3.26 In this case a novel solution has been found and agreed in principle between parties. As part of the amended S106, the Consortium will transfer the ‘Mixed Use Area’ of land within the Masterplan to the Council for a peppercorn. This will allow the Council to develop the land itself in ways that will ensure that the residential element on the Mixed Use Area facilitates the provision and delivery of housing for people within the Borough of Colchester whose housing needs are not met by the open market housing. This makes the Council more of a ‘Master of its Own Destiny’ compared to hoping for something from a review clause that may never pay-out. It also means that the developer is better able to minimise project risk.





***Fig 6: Mixed Use Area***

14.3.27 On this basis the Consortium's offer is welcome and well-made and is an acceptable alternative to a review clause

#### **14.4.1 Community Building**

**14.4.2** In re-negotiating the S106 Agreement officers have accepted that the projected reduction in the overall number of residential units warrants a corresponding reduction in the overall size of the Community Building contribution secured within the original agreement. Clearly a development that is 2/3 the size of what was originally expected will necessitate a commensurate reduction in the respective Community Building contribution. If the C.I.L. test is to be passed as it can only be required to mitigate the actual impact of the development rather than anything wider.

**14.4.3** The original S106 required Phase 2 to provide the community building for the entire development (Phase 1 and Phase 2). This facilitated commencement of Phase 1 with an early delivery of 25% affordable housing by reducing its exposure to wider S106 costs.

**14.4.4** The contributions are a pro-rata calculation based on an overall number of units of circa 1000. As the original contribution was calculated on 1500 units overall the pro-rata contribution will be 2/3 of the original. In the event that numbers subsequently exceed 752 (1000 overall) a pro-rata 'per-unit' sum will be applied for those additional units beyond the 752 threshold (1000 overall) units as a further top-up contribution. This means contributions meet the C.I.L. test as they relate to the overall number of units and the mitigation required rather than being a blanket sum. This also provides the Council with the certainty that in the event of numbers ultimately pushing above 752 (1000 overall) it has retained a mechanism for securing additional contributions.

#### **14.5.1 Open space woodland etc**

**14.5.2** S106 clauses will be adjusted to reflect the fact that the prospective purchasers intend to manage all open space and woodland areas via a management company rather than pass these areas to the Council for adoption with a commuted sum. This is acceptable in principle as it means future management and maintenance responsibility does not fall on the Council or the public purse.

**14.5.3** Members will however wish to be reassured that such 'public areas' are accessible to the general public and that the public's right of access lasts in perpetuity. The amended s106 as negotiated will safeguard the public's right to access and use these areas in perpetuity. This arrangement has the benefit to the prospective purchaser that a large commuted sum is no longer required to be passed to the Council thereby improving cash flow and reducing total S106 costs.

#### **14.6.1 Play areas**

- 14.6.2 The prospective developer under the terms of the re-negotiated s106 will be responsible for providing the requisite number and range of play areas and for ongoing maintenance. These will be accessible to the public in perpetuity. Again this means the developer is not required to make significant financial contributions to the Council for the delivery and maintenance of these facilities with the consequent benefits for cash flow and capital outlay. The Council will define the specification for the various areas.

#### **14.7.3 Sports contributions**

- 14.7.4 The level of contribution required will be reduced under the re-negotiated S106 to reflect the reduction in the overall number of units. The contributions are a pro-rata calculation based on an overall number of units of circa 1000. As the original contribution was calculated on 1500 units overall the pro-rata contribution will be 2/3 of the original.  $1000/1500$ . In the event that numbers subsequently exceed 752 (1000 overall) a pro-rata 'per-unit' sum will applied for those additional units beyond the 752 threshold (1000 overall) units as a further top-up contribution. These means contributions meet the C.I.L. test as they relate to the overall number of units and the mitigation required rather than being fixed blanket sum. This also provides the Council with the certainty that in the event of numbers ultimately pushing above 752 (1000 overall) it has retained a mechanism for securing additional contributions.

#### **14.8.1 Education**

- 14.8.2 The Council has not sought to amend the basic education contribution arrangements because the overall size of contribution in the original s106 Agreement was geared to the overall number of 'qualifying units' and was set to go up or down depending on the total number eventually built out. (i.e.: a per unit contribution).

#### **14.9.1 Indexation**

- 14.9.2 The S106 Agreement of 2006 and subsequent amendments all required financial contributions where indexed to be linked to 2003 when it was first resolved to grant planning permission subject to completion of an appropriate s106 Agreement (which was eventually concluded in 2006). Officers have not agreed to amend this reference date in the latest re-negotiations and this position has been factored into the viability appraisal work of the prospective purchasers. In some instances the indexation equates to some 40% of the agreed contribution. Clearly the agreed reductions in overall contribution size described above will result a reduction of total contribution received although the size of the contribution will then be uplifted by the indexation rate.

14.9.3 To illustrate this, a simple example is provided below:-

- Original contribution  
= **£1 million**
- Contribution after pro-rata reduction to reflect drop in overall unit numbers (2/3)  
= **£750,000**
- Reduced contribution + 40% indexation (750,000 + £300,000)  
= **£1,050,000**

14.9.4 In describing the outcome in this way there is a danger that the report could be fairly criticised for trying to deceive the eye with the quickness of the hand. To avoid this it is pointed out that the 40% indexation if applied to the original £1 million would have generated a total sum of £1.4 million. However securing any contribution is dependent on the site being sold and the development implemented and without this package of financial compromises there is a strong risk of no development proceeding.

#### 14.10.1 Summary of other main non-highway occupancy trigger adjustments

<b>CBC relevant triggers</b>	<b>current</b>	<b>amended</b>
Sports off-site sum 1*	<b>251</b>	<b>200</b>
Sports off-site sum 2*	<b>476</b>	<b>350</b>
Sports off-site sum 3*	<b>750</b>	<b>500</b>
Sports off-site sum 4*	<b>476</b>	
Sports off-site sum 5*	<b>476</b>	
Reconciliation		<b>700</b>
Occupation restriction prior to approval of mixed use site marketing strategy	<b>250</b>	<b>150</b>
Occupation restriction prior to completion of full marketing period	<b>750</b>	<b>600</b>
Occupation prior to community building spec approval (if building delivery rather than contribution option triggered)	<b>275</b>	<b>200</b>
Occupation prior to delivery of chosen community facility delivery option	<b>475</b>	<b>400</b>
Occupation prior to delivery of allotments	<b>1000</b>	<b>650</b>
*relating to occupancy of Phase 2 units		

**Fig 6: Summary of other main non-highway trigger changes**

### 14.11.1 Summary of condition changes

condition	recommendation
1(d)	Agree to vary reference to masterplan number
3(a)	Agree to vary reference to masterplan number on basis that the retained land continues to substantially include all of the of the St Aubyn Centre shown at the time of approval for nhs healthcare use
4	Agree to vary reference to masterplan number  <b>BUT REFERENCE TO THE AGREED DESIGN CODE SHALL NOT BE REMOVED (as this sets a vital benchmark for quality) ALTHOUGH A VARIATION TO PERMIT THE SUBMISSION OF AN AMENDED DESIGN CODE WITH RESERVED MATTERS CAN BE AGREED</b>
6	Agree can be removed
7	Agree can be removed on the basis that the £2million fixed contribution towards NAR2 busway is secured within the associated amended s106
9	Agree to vary trigger from no occupations until NAR Phase 5 works complete to 'no more than 250 occupations
15	Agree to vary reference to masterplan number
19	<b>NO VARIATION AGREED</b>
24	Agree to vary reference to masterplan number
29	Agree to vary reference to masterplan number and update the legislative pd reference source
36	Agree to vary reference to masterplan number
46	Agree update the legislative pd reference source
47	Agree update the legislative pd reference source
48	Agree update the legislative pd reference source
49	Agree to vary reference to masterplan number <b>BUT NOT TO VARY OPERATION AND DELIEVRY TIMES WITHIN MIXED USE AREA</b>
50	Agree to vary reference to masterplan number
51	Agree to vary reference to masterplan number
52	Agree to vary reference to masterplan number
53	<b>Agree to remove</b>
54	<b>Agree to remove</b>
55	Agree to vary reference to masterplan number

**Fig 7: Summary of recommendations in respect of proposed condition changes/removals**

## 15.0 Conclusion

- 15.1 The proposed amendments discussed above (to s106 and conditions) are considered acceptable in the light of the fragility of current project viability and in view of the circumstances identified in this report other than the removal of condition19 and variation of condition 49.

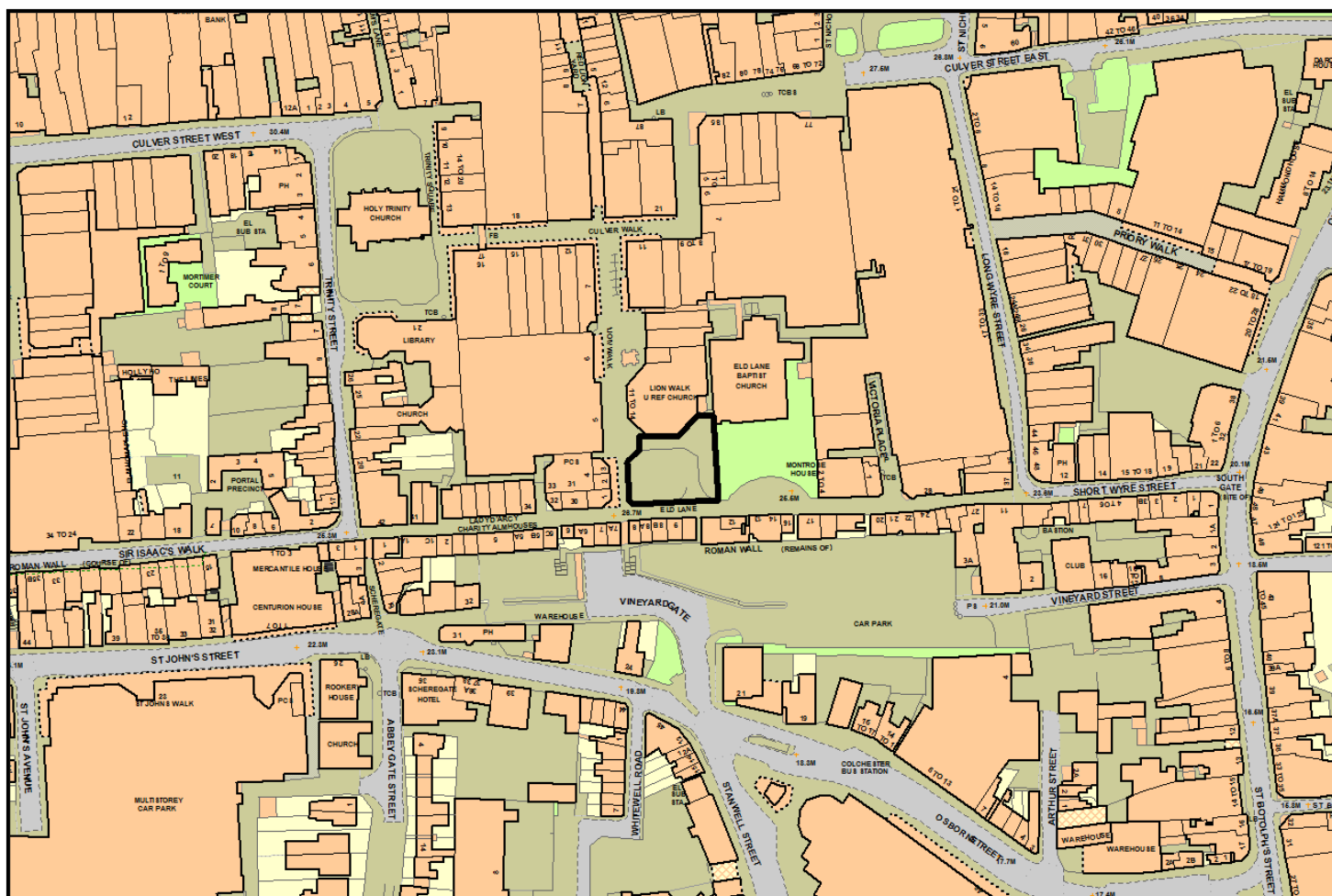
## **16.0 Recommendations:-**

**A:**

**That the Head of Commercial Services be authorised to issue an amended planning permission under the reference 151401 subject to the same conditions as 131221 except where amendment or removal has been agreed in Figure 7 above; PROVIDED THAT :-**

**B:**

**The interested parties first sign the amended S106 Agreement, the key components of which are described in this report and which may in the opinion of the Head of Commercial Services need further adjustment to facilitate completion, including the transfer of the Mixed Use Area land to the Council; PROVIDED THAT: further amendments do not reduce the overall percentage of affordable rented units below 15% of the total within Phase 2.**



**Application No:** 151331

**Location:** Eld Lane Square, Colchester

**Scale (approx):** 1:1250

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use.

This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2015

**7.3 Case Officer: Simon Cairns**

**Due Date: 05/10/2015**

**MINOR**

**Site:** Eld Lane Square, Colchester

**Application No:** 151331

**Date Received:** 25 June 2015

**Agent:** Mr Adam Kindred, CBRE

**Applicant:** Miss R Duffield

**Development:** Erection of a cafe unit (use class A3) together with ancillary external seating area, public realm enhancements and ancillary services; including removal of two trees, at Eld Lane Square.

**Ward:** Castle

**Summary of Recommendation:** Conditional Approval

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

- 1.1 This application is referred to the Planning Committee because a significant number of objections have been received and the application, although not a Major application, has attracted some controversy. A late request for “call-in” was received from Cllr Josephine Hayes. The grounds raised are: - loss of tree, impact on setting of listed buildings, Town Walls & Conservation Area; - Concerns over noise adjacent to places of worship.

## **2.0 Synopsis**

- 2.1 The key issues explored below are the impact of the development on the setting of nearly listed buildings, the character of the conservation area and the operation of adjacent places of worship.

## **3.0 Site Description and Context**

- 3.1 Eld Lane Square was created as part of the Lion Walk redevelopment through the demolition of the former Victorian United Reformed Church. The existing square was created from the site of the former church and associated yard. The former church tower is retained as a feature in Lion Walk. The application site is located in the north east corner of the square; bounded by the retail unit occupied by River Island to the north west, the substantial Eld Lane Baptist Church to the north east and historic Eld Lane to the south. The site presently comprises an area of paved terrace forming an indenture between the octagonal-shaped River Island retail unit and the front elevation of the adjacent grade II listed Baptist Church. The site sits immediately in front of the fire escape to the United Reformed Church that occupies the upper floors above River Island. A standard variegated Norway Maple tree is sited at the centre of the application site set within the existing paving with two benches set within the space. .



## **4.0 Description of the Proposal**

- 4.1 The proposal comprises a single storey pavilion of substantially glazed form attached by a masonry link to the blind south east face of the octagonal shaped retail unit (River Island). The proposed development is for A3 (café) use. The proposed servery is set within the masonry link section with a seating area within the proposed glazed pavilion. The attached masonry linking section is designed to read as a screen wall that runs parallel to the buttress that defines the south eastern corner of the octagon. This masonry section is faced in Kentish Ragstone, rock-faced coursed rubble and red stock brickwork to match the detailing on the adjacent retail unit/United Reformed Church. This rear/side elevation would obliquely address the adjoining listed Baptist Church albeit with views screened/filtered by intervening mature trees that define the boundary.
- 4.2 The existing fire escape at ground floor level that serves the United Reformed church would remain unobstructed by the proposal with a gated pathway leading from the escape into the open space of the square fronting Eld Lane. A series of seven tilted and glazed structural frames create a contemporary pavilion of concertina form with mono-pitched roof. The whole structure would project obliquely by approximately 13 metres in total with the pavilion section being 6 metres in width. The pavilion section is approximately between three and four metres in height with the highest part of the parapet screen wall being approximately 4.5 metres in height. The structure would largely occupy a dead space set between a blank face of the octagonal retail unit (River Island) and the boundary of the square adjoining the Baptist Church. The proposals provide for extensive improvement works to the wider public realm in the square. These works are extensive and include: replacement of concrete slabs with Yorkstone flags, replacement of concrete coping and reduction in height of perimeter wall to south and east edge of square with polished granite to serve as informal seating; new granite steps with stainless steel handrail in north west corner of square, a new Ragstone retaining wall to contain the existing shrubbery in south east corner of square.

## **5.0 Land Use Allocation**

- 5.1 The site is allocated for Town Centre uses (Policy DP6) and is sited within the Colchester Area Town Centre (No.1) Conservation Area.

## **6.0 Relevant Planning History**

- 6.1 None of direct relevance to the proposals.

## **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 are 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  
CE1 - Centres and Employment Classification and Hierarchy  
CE2 - Mixed Use Centres  
CE2a - Town Centre  
UR2 - Built Design and Character  
PR1 - Open Space  
ENV1 - Environment

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

DP1 Design and Amenity  
DP6 Colchester Town Centre Uses  
DP14 Historic Environment Assets  
DP15 Retention of Open Space and Indoor Sports Facilities  
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:

SA TC1 Appropriate Uses within the Town Centre and North Station Regeneration Area

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

Sustainable Construction  
The Essex Design Guide  
External Materials in New Developments  
Shopfront Design Guide  
Better Town Centre SPD

## 8.0 Consultations

- 8.1 **Archaeological Advisor:** comments that the proposal is located in an area of high archaeological importance within the Roman legionary fortress, colonia and later walled town. Adjacent excavations have identified important stratified Roman remains and there is good reason to suppose that archaeological remains of a similar nature will be encountered in the current site area. There is also high potential for encountering later postmedieval burials, as confirmed by the submitted desk-based archaeological assessment.
- There is high potential for encountering buried archaeological remains (and potentially further burials) at this location, given the proximity to known remains. Groundworks relating to the proposed development has the potential to cause significant ground disturbance that has potential to damage any archaeological deposits that exist.
- Our Advisor is now satisfied 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 141), 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.

Two conditions are recommended (included in suggested conditions) in order to protect belowground archaeological remains.

- 8.2 **Highway Authority:** The Highway Authority does not raise any objections to the proposal.
- 8.3 **Environmental Protection:** Recommend that a condition be imposed restricting opening hours to Monday - Saturday 08.00 - 19.00 and Sunday 09.00 - 17.00. This is included in the suggested conditions.
- 8.4 **Arboricultural Officer:** Confirms that the submitted tree reports in support of the removal of three trees are acceptable. In particular, no objections are raised to the removal of a standard variegated Norway maple that is currently sited in the corner of the square within paving. This is reverting to type and the imposition of conditions is recommended to secure tree protection (included in suggested conditions).
- 8.5 **Landscape Officer:** Comments that he is satisfied with the landscape content of the proposals and recommends that conditions are imposed regarding landscaping and management thereof.
- 8.6 **Urban Design Officer:** Comments "There is an existing uncomfortable relationship between Sovereign Land's public (publicly accessible) space and the adjoining private forecourt of the church. This is due to the latter being primarily fenced in, whilst a side of the octagonal building turns its back on the space and lacks active frontage at ground floor in a way which leaves a leftover lifeless nook/cranny. ....In response to the above context, the proposal is successfully configured to provide active frontage facing onto and contributing to the public space in a way which might justify the loss of space...."

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's views

9.1 N/A

## 10.0 Representations

10.1 Some sixteen letters of objection and two letters of support were received from members of the public. The following points are raised by objectors:

- Increase in noise levels for residents of Eld Lane;
- Loss of trees with adverse impact on carbon and wildlife;
- No need for another café;
- Loss of tranquil urban oasis;
- Noise and fumes disruptive to worship in adjoining churches;
- Loss of car parking and occasional outdoor worship space;
- Contrary to adopted policy CE2a;

- Competition for existing traders;
- Obstruction to church fire escape
- Encourage to sit and chat disrupting worship;
- Conflict between seating and car parking;
- “Religious persecution of Christian community”;
- Will increase litter;
- Not viable;
- No provision for trade waste
- Adverse impact on burial vault beneath square.

10.2 The following points are raised in support:

- Attractive scheme to improve and develop Eld Lane Square;
- Would animate unused corner and promote enjoyment of space.

10.3 A letter of objection was submitted on behalf of River Island, the occupiers of the adjacent retail unit. The following points are raised:

- Proposal would have a negative economic impact affecting the viability and vitality of the town centre;
- Proposal would conflict with adopted national and local planning policies including Paragraph 23 of the NPPF that seeks to support the vitality of the town centre;
- Contrary to development Policy DP6 that seeks to maintain 85% A1 retail uses on each street frontage in the primary retail frontages (17 A1 units to each A3 units)
- Would result in loss of south elevation of River Island store and seating would obscure south-west frontage thereby diminishing business;
- Café would obstruct key pedestrian thoroughfare and reduce footfall thereby undermining viability and vitality of existing store;
- Adverse impact on trade could force River Island to re-assess presence in Colchester.

*(Officer Comment: The agents have issued a rebuttal statement in response to this letter of objection)*

The full text of all of the representations received is available to view on the Council’s website.

## **11.0 Parking Provision**

11.1 There is no parking proposed as part of the scheme. The introduction of a built form and reconfiguration of the seating arrangements will marginally reduce the area available for informal parking by users of the adjacent church. This is a private interest and not a material planning matter. There are many public car parks close by (including Vineyard Gate) and given the central location, the site is well served by sustainable modes of transport.

## **12.0 Open Space Provisions**

12.1 None provided or required for an A3 unit in the Town Centre.

### **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**

#### Design and Layout

- 15.1 The proposal has been designed to animate a dead corner of an existing public square (in private ownership). The existing space is under-used as it is unattractive and lacks active frontage with a blind elevation to the retail unit occupied by River Island and a blank fire escape door serving the United Reformed Church on the upper floor. The introduction of a potentially busy café unit with outdoor seating area in conjunction with the significant planned public realm enhancement that form part of the scheme could transform the space into a very attractive place to linger and socialise.
- 15.2 The proposal comprises a bespoke and unusual pavilion form with a substantially glazed elevation addressing the square with a light and airy character. The structure would reflect the character of a kiosk rather than a masonry structure and the highly transparent elevations would add activity and help activate this under-used backwater. The proposed works to the public realm would transform the existing tired and low quality finishes into a contemporary square with a sophisticated, metropolitan flavour. The use of Yorkstone flags and polished Granite copings and paving as proposed would revitalise the square as a major asset of the town centre.

#### Compliance with Adopted Local Plan and National Policy

- 15.3 The application site is within the Town Centre policy area. Core Strategy policy CE2a seeks to support Colchester’s role as prestigious regional centre and to deliver more attractive public spaces and streetscapes in the Town Centre. The policy continues to state that “the Council will encourage developments that create safe and attractive public spaces and a more balanced night time economy”. It is considered that this proposal would directly help to achieve these aims. Policy DP6: Colchester Town Centre Uses seeks to maintain a high level of retail use (85% A1 on each street frontage) and this policy is quoted in objections submitted on behalf of River Island (the adjoining retail unit). In this instance, as the unit proposed represents the creation of an additional unit rather than the loss of an existing retail unit (A1) to café use (A3) and it is not considered to compromise this policy. The policy confirms that A3 uses will be supported where they contribute to the vitality of the town centre and would result in no more than 15% of the frontage being used for non-retail purposes with no more than three consecutive non-retail uses. In this instance the proposal would increase active street frontage and would add to vitality. It is considered that the

proposal is in conformity with the strategic aims of this policy. Furthermore, in terms of compliance with the NPPF and in particular Paragraph 23 which encourages planning authorities to pursue policies that support the viability and vitality of town centres; it is considered that the proposals would contribute to delivering these aims.

#### Impact on the Viability and Vitality of Town Centre

- 15.4 Objections submitted on behalf of River Island contend that the proposals would serve to harm the Viability and Vitality of the town centre. It is assumed that this would be as a result of an alleged adverse impact upon the trading environment of the store. This is not accepted and indeed, the creation of a more attractive public realm could in reality improve the footfall and linger time of shoppers and visitors in the locality. The development is more likely therefore to enhance the vitality and viability of the town centre.

#### Impact on amenity of Neighbouring Residential and Church Properties

- 15.5 Objections were received from a resident of Eld Lane expressing concerns regarding the impact of the proposed café on residential properties. Given the town centre location of the proposal within a busy shopping area, it is not considered that a modest café would be likely to adversely affect amenity in terms of noise and disturbance. Nevertheless, a condition restricting hours of opening is suggested by Environmental Protection and this has been included in the suggested conditions (Monday - Saturday 08.00 - 19.00 and Sunday 09.00 - 17.00)
- 15.6 The majority of objections received were from members of the congregation of the adjacent churches. These included concerns that the café would disrupt their ability to worship in peace. This is considered highly improbable and indeed such uses are to be expected in such a town centre location and many such A3 uses are already to be found in the locality. It is not accepted that the proposed development should affect the ability to enjoy quiet worship in the neighbouring churches (Eld Lane Baptist Church and the United Reformed Church). It should be noted that the square is in the ownership of the church. It has been suggested that the Church uses the corner of the square for occasional outdoor worship and that the development would preclude this in the future. This is not considered a planning matter but rather a private interest that the church needs to address directly with their tenants. The proposal also maintains access to the fire escape via a gated pathway to the eastern flank of the proposed building.

#### Impact of adjoining retail unit (River Island)

- 15.7 Objections submitted on behalf of River Island (tenants of the applicants) contend that the scheme could harm the trading position of their store and cause them to review their presence in Colchester. It is suggested that the development would obscure the retail frontage of their store and decrease footfall, and by association, sales and profitability. Whilst a planter is proposed in front of the southern shop frontage of the store, the remainder of the development would attach to a blind return elevation of the octagonal shop unit. Instead, in the opinion of officers, the improved environmental quality would enhance the attractiveness of the area to shoppers and visitors and should boost the footfall through the square. It is not accepted that the proposals would detract from the prominence or street presence of the unit and the detailed form

of the proposed planter can be controlled by landscaping condition to ensure that it is contextually appropriate.

#### Loss of Informal Parking and trees

- 15.8 The removal of three trees is proposed as part of the scheme. Only one tree (a variegated Norway Maple) is directly affected by the proposals. The Council's Arboricultural Officer has considered the submitted tree reports and agrees with their conclusions and does not raise any objections to the tree loss but suggests that conditions are imposed to provide adequate tree protection. The Council's Landscape Officer also has no objections.
- 15.9 The greatest number of objections have been received with respect to the loss of private parking within the square that currently serves the congregation of the church. Whilst it is understood that many of these users are elderly and infirm, the loss of private parking is not a planning matter but a private right that the church needs to investigate with their tenants. There are many public car parks close to the site and the potential loss of some of this parking is significantly outweighed by the public benefits of the scheme.

#### Impact on character and appearance of conservation area and the setting of listed buildings

- 15.10 The application site is located within the Colchester Town Centre Conservation Area and adjoins the grade II listed Eld Lane Baptist Church. The Planning (Listed Buildings & Conservation Areas) Act 1990 imposes a statutory duty to pay special regard to the desirability of preserving and enhancing the conservation area. This duty is reflected in the adopted Local Plan (policies DP14, ENV1, UR2). In this case, the carefully designed unit and associated enhancement of the public realm is considered to comply with this statutory duty.
- 15.11 The Eld Lane Baptist Church is an important early Victorian Church of formal character with a Neoclassical stuccoed frontage set behind a substantial forecourt. The western boundary is marked by a line of mature trees with understorey shrubbery that provides the church with a secluded setting. The majority of these trees would be retained by the proposals and understorey planting enhanced through landscaping. There will inevitably be framed and filtered views across this landscaped area from the Baptist Church's forecourt area to the return elevation of the proposals. This elevation has been designed to reflect the materials employed in the existing elevation of the Octagonal "chapter house" of the United Reformed Church. It would appear contextually appropriate and low in scale and in the opinion of officers would not adversely or materially affect the setting of the neighbouring listed building.

### **16.0 Conclusion**

- 16.1 The proposed development would in the opinion of officers enhance the vitality and quality of the public realm within the application site in conformity with adopted local and national policies and relevant statutory duties identified above.

### **17.0 Recommendation**

- 17.1 APPROVE subject to the following conditions

## 18.0 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 6196/1101, 6195/1301 and 4604-D.

Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.

### 3 - Non-Standard Condition/Reason

No works shall take place until full details of the foundation design, and associated enabling works, have been submitted to and agreed, in writing, by the Local Planning Authority. The works must minimise disturbance to below ground archaeological remains. The development shall thereafter be completed in accordance with the approved details.

Reason: In order to ensure that there is sufficient protection to the underlying archaeological features where there is insufficient information within the submitted application.

### 4 - Non-Standard Condition/Reason

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 that has been submitted to and approved, in writing, by the Local Planning Authority. The Scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
- b. The programme for post investigation assessment.
- c. Provision to be made for analysis of the site investigation and recording.
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- e. Provision to be made for archive deposition of the analysis and records of the site investigation.
- f. Nomination of a competent person or persons/organisation to undertake the works.

The site investigation shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority. The development shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

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 Policy SD1 and ENV1 of Colchester Borough Council's Core Strategy (2008).



## 5 - Tree and Natural Feature Protection: Protected Areas

No works shall take place until all trees, shrubs and other natural features not scheduled for removal on the approved plans have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

## 6 - \*Full Landscape Proposals TBA

No works shall take place until full details of all landscape works have been submitted to and agreed, in writing, by the Local Planning Authority and the works shall be carried out prior to the occupation of any part of the development unless an alternative implementation programme is subsequently agreed, in writing, by the Local Planning Authority. The submitted landscape details shall include:

- PROPOSED FINISHED LEVELS OR CONTOURS;
- MEANS OF ENCLOSURE;
- CAR PARKING LAYOUTS;
- OTHER VEHICLE AND PEDESTRIAN ACCESS AND CIRCULATION AREAS;
- HARD SURFACING MATERIALS;
- MINOR ARTEFACTS AND STRUCTURES (E.G. FURNITURE, PLAY EQUIPMENT, REFUSE OR OTHER STORAGE UNITS, SIGNS, LIGHTING ETC.);
- PROPOSED AND EXISTING FUNCTIONAL SERVICES ABOVE AND BELOW GROUND (E.G. DRAINAGE POWER, COMMUNICATIONS CABLES, PIPELINES ETC. INDICATING LINES, MANHOLES, SUPPORTS ETC.);
- RETAINED HISTORIC LANDSCAPE FEATURES;
- PROPOSALS FOR RESTORATION;
- PLANTING PLANS;
- WRITTEN SPECIFICATIONS (INCLUDING CULTIVATION AND OTHER OPERATIONS ASSOCIATED WITH PLANT AND GRASS ESTABLISHMENT);
- SCHEDULES OF PLANTS, NOTING SPECIES, PLANT SIZES AND PROPOSED NUMBERS/DENSITIES WHERE APPROPRIATE; AND
- IMPLEMENTATION TIMETABLES AND MONITORING PROGRAMS.

Reason: To ensure that there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development within its surrounding context in the interest of visual amenity.

## 7 -Landscape Management Plan

Prior to the first occupation of the development, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas other than small, privately owned, domestic gardens shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved at all times.

Reason: To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area.

#### 8 - Refuse and Recycling Facilities

Prior to the first occupation of the development hereby permitted, refuse and recycling storage facilities shall be provided in accordance with a scheme which shall have been previously submitted to and agreed, in writing, by the Local Planning Authority. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times. Reason: The application contains insufficient information to ensure that adequate facilities are provided for refuse and recycling storage and collection.

#### 9 - \*Restriction of Hours of Operation

The use hereby permitted shall not OPERATE/BE OPEN TO CUSTOMERS outside of the following times:

Monday - Saturday 08.00 - 19.00 and

Sunday 09.00 - 17.00

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

#### 10 - Materials to be Agreed

No works shall take place until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.

Reason: In order to ensure that suitable materials are used on the development as there are insufficient details within the submitted planning application.

#### 11 - Litter

Prior to the first occupation of the development hereby permitted, equipment, facilities and other appropriate arrangements for the disposal and collection of litter resulting from the development shall be provided in accordance with details that shall have previously been submitted to, and agreed in writing by, the Local Planning Authority. Any such equipment, facilities and arrangements as shall have been agreed shall thereafter be retained and maintained in good order.

Reason: In order to ensure that there is satisfactory provision in place for the storage and collection of litter within the public environment where the application lacks sufficient information.

#### 12 - Tree Canopy Hand Excavation

During all construction work carried out underneath the canopies of any trees on the site, including the provision of services, any excavation shall only be undertaken by hand. All tree roots exceeding 5 cm in diameter shall be retained and any pipes and cables shall be inserted under the roots.

Reason: To protect trees on the site in the interest of visual amenity.

### 13 - Food Premises (Control of Fumes and Odours)

Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed shall thereafter be retained and maintained to the agreed specification and working order.

Reason: To ensure that there is a scheme for the control of fumes and odours in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

### 14 - Grease Traps Required

Prior to the first use of the development hereby permitted, any foul water drains serving the kitchen shall be fitted with grease traps that shall at all times thereafter be retained and maintained in good working order in accordance with the manufacturer's instructions.

Reason: To prevent unnecessary pollution of the groundwater environment quality in the area and/or blocking of the drainage system.

### 15 - Matching Brickwork

The new facing brickwork shall match the existing brickwork adjacent in respect of material, colour, texture, face bond and pointing.

Reason: In order to preserve the historic character of the conservation area.

### 16 - Sample Panel

Prior to the commencement of any works a sample panel of all new facing brickwork and stonework shall be constructed on site showing the proposed brick types, colours and textures, face bond and pointing, mortar mix and finish profile and shall be made available for inspection by the Local Planning Authority and the materials and methods demonstrated in the sample panel shall have been approved, in writing, by the Local Planning Authority. The approved sample panel shall then be retained on site until the work is completed and all brickwork shall be constructed in all respects in accordance with the approved details.

Reason: In order to ensure that the brickwork can be satisfactorily considered on site with regard to preserving the character of the conservation area.

### 17 - Additional Detail on Windows & Doors etc

Prior to the commencement of any works, additional drawings that show details of any proposed new windows, doors, eaves, verges, cills and structural glazed arches to be used, by section and elevation, at scales between 1:20 and 1:1, as appropriate, shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved additional drawings.

Reason: There is insufficient detail with regard to this 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.

## 18 - Construction Method Statement

No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for: the parking of vehicles of site operatives and visitors; hours of deliveries and hours of work; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; wheel washing facilities; measures to control the emission of dust and dirt during construction; and a scheme for recycling/disposing of waste resulting from demolition and construction works. Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable.

## 19 - Non-Standard Condition/Reason

Notwithstanding the details shown upon the approved drawings, no consent is implied for any advertisements and the applicant is advised that an application express consent should be submitted for any adverts that are required in due course.

Reason: For the avoidance of doubt as to the scope of the permission hereby granted.

### 19.0 Informatives

#### (1) **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.

(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

#### (3) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**

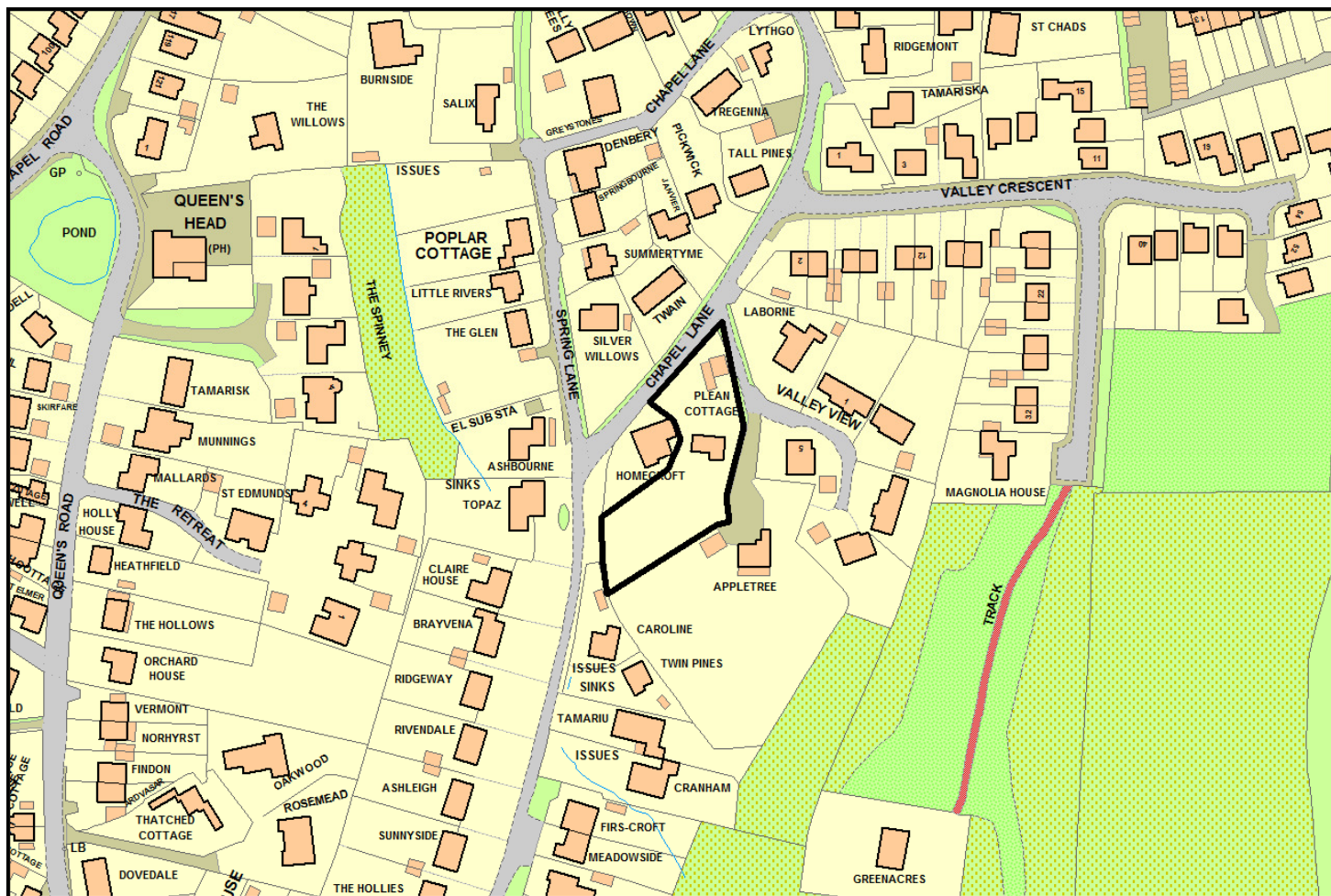
PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

(4) PLEASE NOTE that the site lies within a Conservation Area where the topping, lopping, felling or uprooting of most trees cannot be carried out without first giving the Local Planning Authority six weeks notice. Failure to comply with this statutory requirement may result in prosecution.

## **20.0 Positivity Statement**

- 20.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.





**Application No:** 150702

**Location:** Homecroft, Chapel Lane, West Bergholt, Colchester, CO6 3EF

**Scale (approx):** 1:1250

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use.

This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2015

**7.4 Case Officer: Carl Allen****MINOR**

**Site:** Homecroft, Chapel Lane, West Bergholt, Colchester, CO6 3EF

**Application No:** 150702

**Date Received:** 28 April 2015

**Agent:** Mr Steve Norman

**Applicant:** Woodman Properties

**Development:** Proposed formation of a private drive erection of two detached bungalows, erection of a two storey house, extensions and alterations to an existing bungalow to form a two storey dwelling, erection of garages and provision of associated parking facilities.

**Ward:** W. Bergholt & Eight Ash Green

**Summary of Recommendation:** Conditional Approval

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

- 1.1 This application is referred to the Planning Committee because Cllr Willets has called-in the proposal for the following reasons – ‘Whilst not opposed absolutely to the development of the site this proposal constitutes over development in this part of the village where the planning theme is rather more spacious development. The site is also in an elevated position and it seems little attention has been given in the design to its impact on the village scape. The site is served by narrow, sub-standard lane network, on which the impact of additional vehicle traffic has not been quantitatively evaluated’.

**2.0 Synopsis**

- 2.1 The key issues explored below are that of design, amenity, drainage and highways. It is considered that the scheme would not have any detrimental amenity impacts to neighbours, has an acceptable design and layout and provides off-street parking to the Parking Standard with no highway safety concerns. The site is not in a Flood Zone but with reports of localised flooding the applicant has included underground water storage tanks to reduce runoff from the site. Approval with conditions is recommended.



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

- 3.1 The Homecroft site is a plot of land that extends to the east and south of the house known as Homecroft and to the south of Plean Cottage. Homecroft fronts onto Chapel Lane – which is to the north, whilst Plean Cottage is a bungalow set further back into the site, to the east of Homecroft with a large garage to the north between it and the highway. East of Plean Cottage is a boundary hedge with the cul-de-sac of Valley View beyond. The southern and western parts of the site fall away and are on lower ground compared to the rest of the site. The site is in the settlement boundary and as could be expected there are neighbouring dwellings surrounding the plot. On the opposite side of Chapel Lane to the north are two houses, a chalet and a bungalow. To the east on the opposite side of Valley View is a bungalow ('Laborne' which fronts onto Chapel Lane) and houses (numbers 1 and 5 Valley View). To the south-east is 'Appletrees' a detached house whilst houses are on the opposite side of Spring Lane to the west.

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

- 4.1 The proposal is to extend and add a first floor to Plean Cottage – increasing the height by approximately 3.2m - to make it a three bed house. To erect a new, detached four bedroom house (Plot 1) to the north of Plean Cottage and for two detached three bed bungalows to the south of Homecroft. A new access would be installed between Homecroft and Plean Cottage and would serve Plean Cottage and the two new bungalows. Plot 1 would have its own access onto Chapel Lane. Plot 1 and the two bungalows would have their own garages and two off-street parking spaces. Plean Cottage would have two off-street parking spaces.

### **5.0 Land Use Allocation**

- 5.1 Residential.

### **6.0 Relevant Planning History**

- 6.1 None.

### **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 are 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  
UR2 - Built Design and Character

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):  
DP1 Design and Amenity  
DP12 Dwelling Standards  
DP13 Dwelling Alterations, Extensions and Replacement Dwellings  
DP16 Private Amenity Space  
DP19 Parking Standards  
DP20 Flood Risk and Management of Surface Water Drainage

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:

Backland and Infill  
Vehicle Parking Standards  
Sustainable Construction  
The Essex Design Guide  
External Materials in New Developments

## **8.0 Consultations**

8.1 Highways – No objection and recommend conditions.

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 have stated that they accept the site will be developed. Poor quality of the information makes it impossible to determine the relationship of the buildings proposed on a sloping site. The layout does not respect the site contours, some dwelling would be 1.5m out of the ground. The design does not compliment the neighbourhood – could be improved.

## **10.0 Representations**

10.1 Ten objections have been received and one comment stating support if good quality screening to the boundaries can be provided. The objections concern:

- large 4 bed homes are not suitable for the area
- site is too small for the number of homes
- would prefer bungalows only
- Plean Cottage should be left single-storey
- Plot 1 not suitable for 2 stories as out of keeping with nearby bungalows
- will overlook neighbours
- will spoil outlook for bungalows opposite the site by blocking views of the valley

- increasing height of Plean Cottage will reduce sunlight to their property
- room in the scheme to replace mature trees in the once beautiful garden
- the overcrowded development will be detrimental to the health and well-being of residents
- Chapel Lane has a high volume of traffic movement
- will result in at least 10 extra vehicle movements a day
- car parking is cramped on the site
- inadequate parking on site will lead to parking on the street
- will impact on safety at Chapel Lane
- rural lane will become very high density with 5 accesses within 35 yards onto an unlit, unpathed Chapel Lane
- will result in problems for emergency services
- already have new development in the village and this is one too many for the traffic congestion
- little garden space
- will sewers and drains be able to cope
- will increase flooding in the area
- Chapel Lane already experiences heavy surface water flows after rain
- hard surfacing will increase surface water runoff and there is a history of flooding in the area
- concerned over the impact to the structure of their property when the foundations are dug
- bungalows would be close to their dwelling which is timber construction. Foundation work may cause subsidence to their property
- integral garages would improve setting of the development
- gable end of garages front highway is contrary to the character of the area
- Plot 1 is too close to the highway and out of keeping with the area and a highway hazard
- Plot 1 should be set further back
- Applicants state that they will use 'free draining material' for hard-standing areas but they didn't use it in the refurbishment of Homecroft
- drainage is important as ditches and streams are overloaded
- foul water sewer can overflow into River Colne
- all surface water should be directed into engineered soakaways with sufficient capacity
- hollow claim about the environment when they have cleared the site of trees
- states existing boundary hedging to be retained but it has been already been removed

The full text of all of the representations received is available to view on the Council's website.

## **11.0 Parking Provision**

11.1 Eight off-street parking spaces (two for each dwelling).

## **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**

#### Amenity.

- 15.1 Amenity issues such as overlooking and overshadowing have been raised as concerns by neighbours. With regards to overshadowing the distances to neighbours would ensure that overshadowing would not be an issue. For instance, Plot 1 is approximately 21m from the nearest dwelling at Valley View (to the east) and 23m from the nearest dwelling on Chapel Lane to the north (and each has a road between it and the site), whilst Plot 3 (a bungalow) would be 20m from Appletrees (to the east of the plot). These distances alone would ensure that no neighbouring dwelling would be overshadowed. Homecroft itself would be 6m at the closest point with Plean Cottage but the orientation would ensure that there would be no shadows cast to the dwelling. Both Plean Cottage and Plot 1 would be houses with first floor windows and so the potential to overlook surrounding neighbours must be examined. Plean Cottage would have one first floor rear elevation window and it would not serve a habitual room. This window would be approximately 9m from the boundary with the nearest neighbour (number 5 Valley View). This boundary is the frontage and the neighbours dwelling is set back a further 8m, making a total of 17m from the window. As this window does not serve a habitual room there should be no meaningful opportunity to overlook this neighbour – especially with the boundary hedge in place (and strengthened). However, it would be prudent to remove Permitted Development Rights to insert any new rear elevation first floor openings or roof lights/dormer windows as these would have the potential to serve bedrooms and this could result in overlooking. The proposed rear elevation of Plot 1 would have two first floor windows – one serving a hallway and one serving a bedroom. This bedroom window would be 20m from the boundary with Laborne and 23m from the boundary with number 5 Valley View. These distances are acceptable and would not result in any amenity loss to these neighbours. The proposed front elevation would have three first floor windows – two serving bedrooms and one to a bathroom. The relationship here with the neighbour of ‘Twain’ (a bungalow) is closer, being approximately 19m from the front elevation of ‘Twain’, but is still acceptable that it is a front elevation which already has some public views into the frontage. It is therefore considered that the proposal comply with DP1 and DP13.

## Design.

- 15.2 Comments have been received that the scheme is cramped, an over-development, should only be bungalows and the gardens are too small. Policy DP16 requires three bedroom dwellings to have a minimum of 60 sqm of private amenity space and four bedroom dwellings to have a minimum of 100 sqm. The proposed scheme easily meets this standard with the smallest of the three bedroom dwellings (Plot 3) offering approximately 120 sqm of private amenity space and Plot 1 (four bedrooms) with around 110 sqm. None of these figures include the space taken up by parking spaces. Given these figures it cannot be agreed that the scheme is an overdevelopment. Whilst there are some very large gardens in the surrounding area, these exceptions to the more modest sized plots in the neighbourhood and the proposed plot sizes are in line with the character of the area and Policy DP16. The scheme is a mix of houses and bungalows and this does reflect the existing character around the site – with the bungalows located on the land that drops in levels. Whilst some of the objectors believe that having Plot 1 as a house is inappropriate for the area, there are several houses fronting Chapel Lane (including Homecroft itself). Plot 1 would be slightly closer to the highway than the existing properties, but would have a small garden to the front which would soften the visual impact in the street scene. The cul-de-sac layout is acceptable and the adjacent Valley View is a cul-de-sac itself so the scheme is not against the pattern of development in the area. The scheme was subject to a lengthy Preliminary Enquiry where the Council's Urban Designer had a strong input. This current application has the support of the Urban Designer who has recommended conditions regarding detailing. The comment that the garage gables facing the road is inappropriate seems misjudged as only one garage could be described as facing Chapel Lane and it is set back 13m from the highway and would have no real presence in the street scene. With these considerations the proposal complies with UR2 and DP1.

## Highways.

- 15.3 Chapel Lane is a narrow road - although capable of allowing traffic to pass in either direction. Chapel Lane outside the application area drops to the south-west where it meets Spring Lane. Objectors have claimed that Chapel Lane already has a high volume of traffic and is a rural road. In Officers opinion neither of these views are wholly correct. Chapel Lane is narrow with no kerb or road markings but is in a residential area. The proposed four new dwellings would all use Chapel Lane and concern over the resulting increase in vehicle movements/congestion has been raised. The Highway Authority at Essex County Council have commented that Chapel Lane has low traffic volume and low vehicle speeds and have not objected to the scheme. The physical attributes of Chapel Lane – the narrowness, lack of markings and gradient – would strongly suggest that drivers would be very unlikely to be driving at fast speeds. It is also considered that the resulting vehicle movements from the proposed dwellings would not significantly increase vehicles on the road or congestion in the area. The parking spaces that would be provided would provide adequate off-street parking. In the case of Plot 1 the garage has internal measurements to allow it to be considered as a parking space. Whilst one parking space is indicated in front of the garage another car could easily park on the drive in front of this space. Plots 2 and 3 have garages provided but the internal dimensions of them mean that they could not be considered to be a parking space, however two parking spaces are shown in front of the garages and like Plot 1, the drive could accommodate another vehicle on each

drive. Plean Cottage is shown to have two off-street spaces. Given these spaces the proposal provides off-street vehicle parking to the adopted Standard and accords with DP19.

#### Flooding/drainage.

- 15.4 Many of the objectors have expressed concern on how the proposed development would increase flooding in the area and have stated that flooding is a long standing issue in the area. First of all it should be noted that the site is not in any recognised Environment Agency Flood Zone. In fact, the nearest Flood Zone is approximately 700m south of the site around the stream at Newbridge Mill. However, given the topography of the site and the surrounding area, localised flooding would not be unexpected. To address this possibility and the concern raised by the neighbours, the applicant has offered to install rainwater harvesting systems at each of the proposed dwellings. The rainwater that would be harvested from each roof would be collected in underground tanks and used for toilet flushing, limited washing and for garden watering. The applicant has stated that the size of each tank would be determined by the provider of the systems based on the size of the dwelling and the roof area. The applicant has also restated that they would use only permeable material for hard standing. Both of these features should result in no increase in surface water leaving the site than the current arrangement and these features are considered to adequately address the flooding concerns of residents. It would be advisable to condition the precise details – such as the capacity of the storage tanks and the exact material for the hardstanding, along with the position of the soakaways. The proposal therefore accords with Policy DP20.

#### Other matters raised.

- 15.5 Comment has been made that the proposal will result in loss of outlook to the existing neighbours. Given the already stated distances to neighbours (over 20m in most cases), the proposed scheme would not impact on outlook. Some neighbours will of course have a view over the site altered, but loss of a private view is not a valid planning consideration.
- 15.6 The site has been cleared of vegetation in the centre but screening remains to the boundaries with neighbours. This existing screening should be conditioned to be retained and protected during the construction phase and should be enhanced in areas where there are gaps via a landscaping condition.
- 15.7 Concern has been raised over potential damage to existing dwellings by the digging of foundations. The two objectors who have raised this are both over 20m from the site so it would be doubtful if the digging of foundations could impact on dwellings such a distance from the development.
- 15.8 With regards to the visual impact and the impact on the village scape, the site is within the settlement boundary although close to the fringe. There are existing houses in the area and the two proposed houses would not fundamentally change the character of the immediate area or the village. Neither would they appear alien to the area, especially given that Plot 1 (that would front Chapel Lane) would be very similar in design to Homecroft.

## **16.0 Conclusion**

- 16.1 Whilst the proposal has attracted a lot of objection, the scheme accords with Policies that concern, amenity, design, parking and flooding.

## **17.0 Recommendation**

- 17.1 APPROVE subject to the following conditions

## **18.0 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 1502/1, 1502/2, 1502/3, 1502/4, 1502/5, 1502/6, 1502/8 and Location Plan unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.

### **3 - Non-Standard Condition/Reason**

Prior to the commencement of development, precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction shall have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: In order to ensure that suitable materials are used on the development as there are insufficient details within the submitted planning application.

### **4 - Non-Standard Condition/Reason**

Notwithstanding the provisions of Classes A, B and C of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no extensions, roof lights and dormers windows shall be erected/installed unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interest of visual amenity and to ensure the development avoids an overdeveloped or cluttered appearance.

#### 5 - Non-Standard Condition/Reason

Prior to occupation of the development, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 11 metres to the north east and 2.4 metres by 11 metres to the south west, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the access and those in the existing public highway in the interest of highway safety.

#### 6 - Non-Standard Condition/Reason

No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid the displacement of loose material onto the highway in the interests of highway safety.

#### 7 -Non-Standard Condition/Reason

Prior to occupation of the development the vehicular parking and turning facility, as shown on the submitted plan shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety.

#### 8 - Non-Standard Condition/Reason

Any vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space, retained in perpetuity.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety.

#### 9 - Non-Standard Condition/Reason

Prior to the commencement of development, there shall have been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard and soft landscaping works for the publicly visible parts of the site and boundaries, which shall include any proposed changes in ground levels and also accurately identify positions, spread and species of all existing and proposed trees, shrubs and hedgerows on the site, as well as details of any hard surface finishes and external works, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission.

Reason: In order to ensure that there is a sufficient landscaping scheme for the relatively small scale of this development where there are public areas to be laid out but there is insufficient detail within the submitted application.



#### 10 - Non-Standard Condition/Reason

All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details 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 trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, 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 development where there is insufficient detail within the submitted application.

#### 11 - Non-Standard Condition/Reason

Prior to the commencement of development, details of tree and/or shrub planting and an implementation timetable shall be submitted to and approved, in writing, by the Local Planning Authority. This planting shall be maintained for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

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

#### 12 - Non-Standard Condition/Reason

Prior to the commencement of development, all trees, shrubs and other natural features not scheduled for removal on the approved plans shall have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

#### 13 - Non-Standard Condition/Reason

No burning or storage of materials shall take place where damage could be caused to any tree, shrub or other natural feature to be retained on the site or on adjoining land (see BS 5837).

Reason: To protect the health of trees, shrubs and other natural features to be retained in the interest of amenity.

#### 14 - Non-Standard Condition/Reason

No development shall commence until a scheme for the surface water drainage systems (including soakaways) has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in their entirety prior to the first occupation of the units.

Reason: To prevent any increased risk of flooding by providing a satisfactory means of surface water disposal.

## 15 - Non-Standard Condition/Reason

No development shall commence until full and precise details of the underground rainwater storage containers (including the capacity of each container) has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in their entirety prior to the first occupation of the units, and shall be maintained thereafter.

Reason: To prevent any increased risk of flooding by providing a satisfactory means of rainwater storage.

## 19.0 Informatives

### (1) **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.

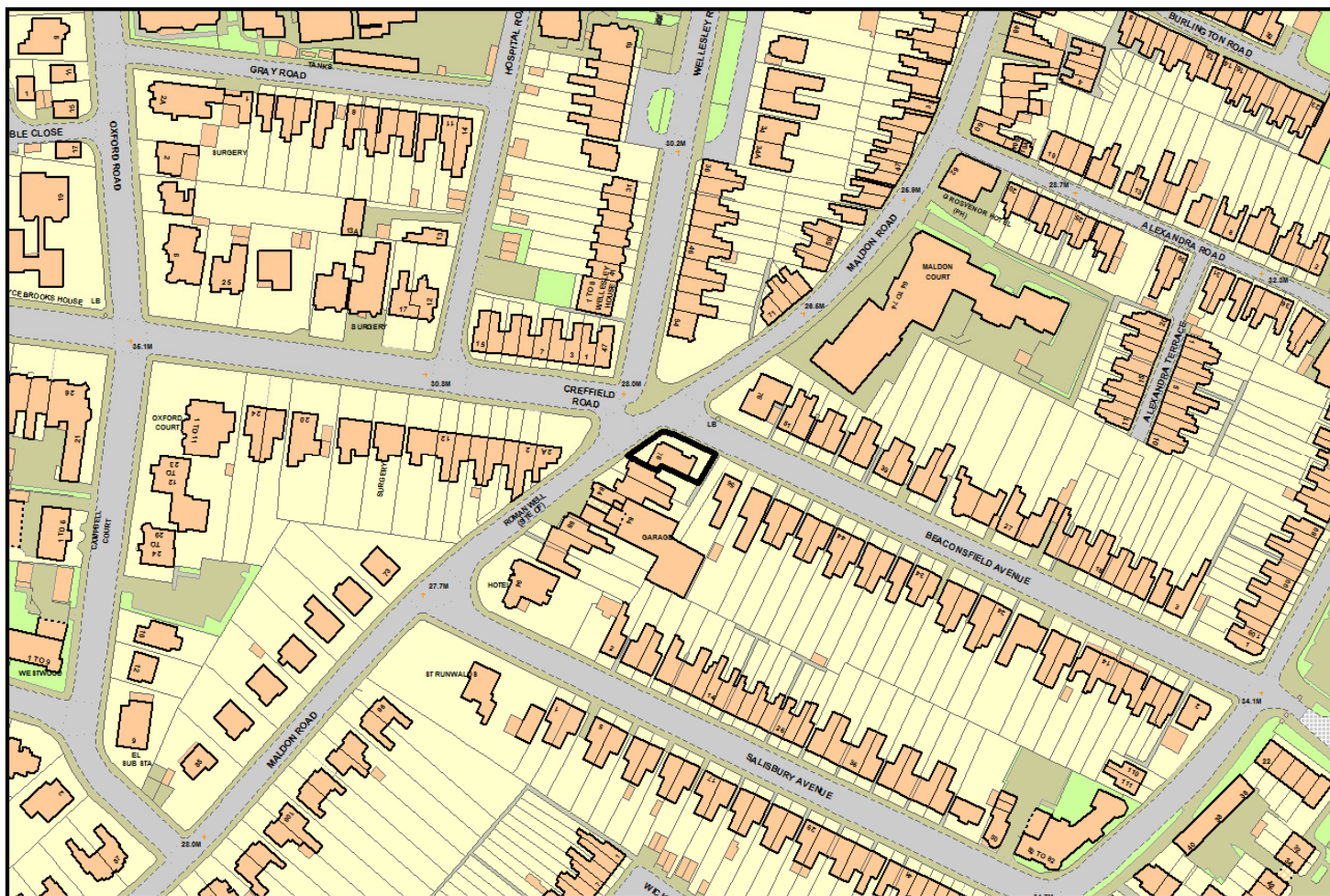
(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

### (3) **ZTA - 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. Please pay particular attention to these requirements.

## 20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



**Application No:** 151611

**Location:** 78 Maldon Road, Colchester, Essex, CO3 3AL

**Scale (approx):** 1:1250

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use.

This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2015

**7.5 Case Officer: Chris Harden****MINOR**

**Site:** 78 Maldon Road, Colchester, Essex, CO3 3AL

**Application No:** 151611

**Date Received:** 6 August 2015

**Agent:** Jonathan Green, Laurie Wood Associates

**Applicant:** Mr John Ready

**Development:** Proposed Change of Use from Use Class D1 to use class: Sui Generis(HMO with in excess of 6no. residents).Proposed ground floor, single-storey extensions to the front and side of the existing property to provide improved internal accommodation. Proposed dormer roof extension and new rooflights to provide additional accommodation at 2nd floor. Associated external works including cycle store and reinstatement of existing railings.

**Ward:** Christ Church

**Summary of Recommendation:** Conditional Approval

**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 Cope. Concern has been raised that the drawings are not sufficiently precise to demonstrate that the street scene would be maintained, that this is an inappropriate design for a house of multiple occupation and that an archway would be dismantled. Other concerns are that the proposal would represent an overdevelopment of the site, and that noise from the garden will disturb the occupants of No.80, who will also have their garden overlooked from the dormer on the top floor.

**2.0 Synopsis**

- 2.1 The key issues explored below are the relevant background policies relating to the case, the impact of the external alterations on the character of the existing building and street scene and any impact upon neighbouring residential amenity. Issues such as whether there will be adequate amenity space and parking provision are also considered.

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

- 3.1 The site lies within a predominantly residential area in Colchester and is within an area of High Archaeological Potential. The existing building is quite a large three-storey, semi-detached Victorian property constructed of gault brick and located on the corner of Maldon Road where it meets Beaconsfield Avenue. It is a Locally Listed Building. There is a relatively small area of amenity space to the rear and side and a shared driveway. Number 80 is the attached neighbouring property.

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

- 4.1 The proposal is to change the use of the building from Class D1 (Non-Residential Institution) to a Sui Generis use consisting of a House in Multiple Occupation (HMO) in excess of six residents. Eight bedrooms would be provided and there would also be a communal kitchen/dining room and a communal lounge.
- 4.2 The external areas around the lounge would be re-planned to form a landscaped garden with iron railings. There would be ground floor, single storey, extensions to the front and side of the property to accommodate a new lobby and bedroom. A bike store would be built to accommodate eight bikes and positioned in the southeast corner of the garden. The two bedrooms in the roof would use flush-fitting Velux roof lights. There would be a lead clad dormer on the East elevation that would provide headroom over the new staircase

### **5.0 Land Use Allocation**

- 5.1 Predominantly residential.

### **6.0 Relevant Planning History**

- 6.1 Permanent planning permission was granted for a D1 (a) use (Non-Residential Institution) in 2006 (F/COL/06/1875) for the mental health charity MIND. Previous to this the building had been used by Open Road (for drug rehabilitation), as a holistic therapy consulting rooms and before that as a Headquarters for Colchester Conservative Party. It was originally a dwelling house.

### **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 are 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  
H2 - Housing Density  
H3 - Housing Diversity  
UR2 - Built Design and Character  
TA5 - Parking  
ENV1 - Environment

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

DP1 Design and Amenity  
DP11 Flat Conversions  
DP12 Dwelling Standards  
DP13 Dwelling Alterations, Extensions and Replacement Dwellings  
DP14 Historic Environment Assets  
DP16 Private Amenity Space and Open Space Provision for New Residential Development  
DP17 Accessibility and Access  
DP19 Parking Standards

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

- Vehicle Parking Standards
- The Essex Design Guide

## **8.0 Consultations**

8.1 Highways Authority has no objections to the scheme and recommends a condition relating to number, location and design of cycle storage. A condition relating to the submission of a sustainable transport mitigation package is also recommended.

8.2 Environmental Protection has no objections subject to a condition relating to sound insulation and a note about demolition and construction.

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 N/A

## **10.0 Representations**

10.1 One letter of objection has been received from a neighbour making the following points:

- Property was previously a commercial use (owned by the charity Mind) and used only during daytime / weekday hours. Proposal will change this to an excessive 8 bedroom HMO, with shared accommodation, creating overcrowding.
- Communal dining area has window that would look into our garden area. Outline still visible through frosted glass.
- Noise levels from this communal area and from courtyard will be excessive, exceeding World Health Organization (WHO) recommendations for external amenity (including garden) areas.
- Significant front extension proposed- detail not sufficient to see if attached to our property. Also noise concerns from use of this extension. Extension will result in loss of architecturally significant arch.
- Side and front extensions will have a negative effect on character of dwelling. Sit close to boundary Cranfield Conservation Area.
- Bedroom 6 will be adjacent to child's bedroom- noise concerns.
- Loft dormer will overlook our private garden
- Scheme designed to generate as much revenue as possible – inappropriate number of units.

The full text of all of the representations received is available to view on the Council's website.

## **11.0 Parking Provision**

11.1 There is no on-site vehicular parking provision. There is no minimum parking provision standard for HMOs contained within the Essex County Council parking standards document.

## **12.0 Open Space Provisions**

12.1 There is no requirement for any public open space provision for this application.

## **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

### Principle

- 15.1 As the site lies within the physical limits of the town in a predominantly residential area, the principle of changing the use from D1 to a House in Multiple Occupation (HMO) is not ruled out on policy grounds and should be judged on its planning merits, having particular regard to the criteria outlined in Policy DP11 (Flat Conversions). Issues such as the intensity of use, access to services and the visual impact of the alterations upon the character of the street scene and upon the existing dwelling need to be assessed, as does any impact upon neighbouring residential amenity and highway safety. Amenity provisions and highway issues are also factors to be considered.

### Parking

- 15.2 The property is considered to lie in a sustainable location, with good access to shops and facilities, being on the main Maldon Road not far out of the central area of Colchester. The units are of a relatively small size and it is not considered that the nature of the HMO units warrants the provision of on-site parking, particularly as demand for parking from occupants is considered to be less than that for a family house or larger units.

### Design

- 15.3 There are a number of alterations proposed to facilitate the change of use of use to an HMO. Whilst in principle the alterations are considered to be acceptable, it is considered that some design amendments are required to ensure that the character of the property is retained. The covering of the existing entrance archway on the west elevation with an extension is a little unfortunate. However, it is considered that this would be acceptable providing the new entrance on the north elevation is amended to give it a higher status appearance in terms of additional detailing and form that reflects other front entrances in the vicinity. If satisfactorily amended this will be an adequate replacement for the existing archway entrance on the west elevation. There will also be other visual benefits to the site, including the removal of the close-boarded fence above the walling and the introduction of metal railings. This overall net visual benefit is considered to be a further justification for allowing the covering over of the archway with an extension.
- 15.4 It is considered that this front extension on the west elevation is of an appropriate scale and form, although it is desirable to continue the brick course below the eaves in order to reflect the existing character of the building. It is also considered that two rooflights on the north elevation should be grouped together in order to improve their appearance. Subject to the receipt of the above mentioned amendments, it is considered that the alterations would respect the character of the existing building and would not detract from the character of the street scene or nearby Conservation Area. Any amended plans received will be reported to the Committee.



- 15.5 The new dormer on the south elevation will be generally hidden from public view and is of an appropriate form and design to allow it to fit satisfactorily onto the building without detracting from its character. The applicant has, however, been asked to provide a drawing of the south elevation showing the dormer.

#### Residential Amenity

- 15.6 With regard to the impact upon neighbouring residential amenity, it is considered that the proposed use is acceptable and would not represent an over intensive use of the site. Environmental Health legislation can adequately control any potential noise disturbance from inside the property and from the external communal area. The cycle store lies between the neighbouring property and the outdoor communal area so this would give a degree of separation. The neighbours have raised concern about the overlooking of their property from various windows. The new dormer window on the south elevation is to be obscure glazed as it does not serve a room and is simply required to provide adequate head height for the stairs and for light. The ground floor kitchen window and toilet window will also be obscure glazed, so it is not considered that neighbouring privacy will be compromised. Conditions can be applied to ensure the obscure glazing is retained. A condition will also be applied to ensure that the two rooflights on the south elevation are high enough to ensure they would not allow overlooking.

#### Other Matters

- 15.7 In terms of the intensity of use, it is considered that the property is large enough to be able to satisfactorily accommodate the eight units without representing an overdevelopment of the site. The bedrooms and internal communal areas are of an appropriate size to provide a satisfactory living environment. There would also be provision of adequate external amenity space and secure cycle storage.
- 15.8 There have been no observations received from the Archaeological Advisor and it is considered that any impact upon items of archaeological importance is unlikely given that the small extensions are to be constructed on previously disturbed hard surfaces.

### **16.0 Conclusion**

- 16.1 In conclusion, it is considered that the principle of the proposal can be supported and that, subject to design amendments, the scheme will preserve the character of the existing building and street scene. It is not considered that the proposal represents an over intensification of use of the site or that there would not be any significant detriment to highway safety or neighbouring residential amenity.

### **17.0 Recommendation**

- 17.1 APPROVE following receipt of satisfactorily revised plans and subject to the following conditions.

## 18.0 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 224-01, 224-10, 224-11, 224-12, received 24/8/15 (subject to amendments to be received) and East elevation of dormer (to be received).

Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.

### 3 - Non-Standard Condition/Reason

No works shall take place until precise details of the following have been submitted to and agreed in writing by the Local Planning Authority:

- (i) manufacturer and types and colours of the external facing and roofing materials to be used in construction.
- (ii) railings
- (iii) rooflights, which shall be of the flush fitting Conservation style
- (iv) new external hard surfaces
- (v) cycle store, which shall be provided prior to occupation of the building.

Only the approved details shall be implemented.

Reason: In order to ensure that suitable materials are used on the development as there are insufficient details within the submitted planning application.

### 4 - Non-Standard Condition/Reason

Prior to the first use or occupation of the development as hereby permitted, the building shall have been constructed or modified to provide sound insulation against internally generated noise in accordance with a scheme devised by a competent person and agreed, in writing, by the Local Planning Authority. The insulation shall be maintained as agreed thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

### 5 - Non-Standard Condition/Reason

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the applicant shall, prior to occupation of the development hereby approved, submit details to the satisfaction of the local planning authority showing: a non-opening, obscured window to the south-facing dormer; details of obscuration and opening to the kitchen window; obscuration to the toilet window. Such measures shall be in place prior to any occupation and shall be retained at all times thereafter.

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

## 6 - Non-Standard Condition/Reason

The rooflights on the rear elevation shall have a lower cill level no less than 1.7 metres above the first floor level.

Reason: In the interests of neighbouring privacy

## 19.0 Informatives

### (1) **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.

(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

### (2) **ZTA - 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. Please pay particular attention to these requirements.

## 20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

