

# Planning Committee Meeting

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

**Thursday, 09 January 2020 at 18:00**

**The Planning Committee** deals with planning applications, planning enforcement, public rights of way and certain highway matters. If you wish to come to the meeting please arrive in good time. Usually, only one person for and one person against each application is permitted. Attendance between 5.30pm and 5.45pm will greatly assist in enabling 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 (the list of items to be discussed at a meeting), which is usually published five working days before the meeting, and minutes once they are published.

Dates of the meetings are available here:

<https://colchester.cmis.uk.com/colchester/MeetingCalendar.aspx>.

Most meetings take place in public. This only changes when certain issues, for instance, commercially sensitive information or details concerning an individual are considered. At this point you will be told whether there are any issues to be discussed in private, if so, you will be asked to leave the meeting.

## Have Your Say!

The Council welcomes contributions and representations from members of the public at most public meetings. At Planning Committee meetings, other than in exceptional circumstances, only one person is permitted to speak in support of an application and one person in opposition to an application. If you would like to speak at a meeting and need to find out more, please refer to the Have Your Say! arrangements here:

<https://colchester.cmis.uk.com/colchester/HaveYourSay/HYSPlanning.aspx>.

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**COLCHESTER BOROUGH COUNCIL**  
**Planning Committee**  
**Thursday, 09 January 2020 at 18:00**

**The Planning Committee Members are:**

Councillor Cyril Liddy	Chairman
Councillor Andrea Luxford Vaughan	Deputy Chairman
Councillor Lyn Barton	
Councillor Pauline Hazell	
Councillor Brian Jarvis	
Councillor Derek Loveland	
Councillor Jackie Maclean	
Councillor Philip Oxford	
Councillor Martyn Warnes	

**The Planning Committee Substitute Members are:**

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

**Councillors:**

Christopher Arnold	Kevin Bentley	Tina Bourne	Roger Buston
Nigel Chapman	Peter Chillingworth	Helen Chuah	Simon Crow
Robert Davidson	Paul Dundas	John Elliott	Andrew Ellis
Adam Fox	Dave Harris	Theresa Higgins	Mike Hogg
Mike Lilley	Sue Lissimore	Sam McCarthy	Patricia Moore
Beverley Oxford	Gerard Oxford	Lee Scordis	Lesley Scott-Boutell
Lorcan Whitehead	Dennis Willetts	Julie Young	Tim Young

**AGENDA**  
**THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING**  
**(Part A - open to the public)**

**Please note that Agenda items 1 to 6 are normally dealt with briefly.**

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

**1 Welcome and Announcements**

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

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

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

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

**3 Substitutions**

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

**4 Urgent Items**

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

**5 Declarations of Interest**

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

**6 Planning Committee Minutes 28 November 2019**

7 - 16

The Councillors will be invited to confirm that the minutes are a correct record of the meeting held on 28 November 2019.

**7 Planning Applications**

When the members of the Committee consider the planning applications listed below, they may decide to agree, all at the same time, the recommendations in the reports for any applications which no member of the Committee or member of the public wishes to address the Committee.

**7.1 192733 Garage Site, Scarfe Way, Colchester**

17 - 32

Demolition of existing garages and the construction of new affordable housing to provide 6 No. 2 bedroom flats.

**7.2 192777 Garage Site, Buffett Way, Colchester**

33 - 52

Demolition of existing garages and the construction of new affordable housing to provide 6 No. 2 bedroom flats.

**8 Amendment to Scheme of Delegation to Officers**

53 - 58

A report by the Assistant Director Policy and Corporate concerning amendments to the Scheme of Delegation to Officers from the Planning Committee following a change of responsibility within the Senior Management team.

**Planning Committee Information Pages v2**

59 - 70

**9 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, 28 November 2019**

**Attendees:** Councillor Lyn Barton, Councillor Pauline Hazell, Councillor Brian Jarvis, Councillor Cyril Liddy, Councillor Derek Loveland, Councillor Jackie Maclean, Councillor Philip Oxford, Councillor Martyn Warnes  
**Substitutes:** Councillor Helen Chuah (for Councillor Andrea Luxford Vaughan)  
**Also Present:**

### **758 Site Visits**

Councillors Barton, Hazell, Higgins, Jarvis, Liddy, Loveland and J. Maclean attended the site visits.

### **759 Planning Committee minutes 31 October 2019**

The minutes of the meeting held on 31 October 2019 were confirmed as a correct record.

### **760 192337 Lexden Manor, 8 Colvin Close, Colchester**

**Councillor Hazell (by reason of her acquaintance with a neighbouring resident to the application site) declared a non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered a planning application for the conversion of the existing building to five apartments and new extension to provide four new build 2 bedroom apartments at Lexden Manor, 8 Colvin Close, Colchester. The application had been referred to the Committee because the application had been called in by Councillor Lissimore.

The Committee had before it a report in which all information was set out.

The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

Annabel Cooper, Planning Officer, presented the report and, together with Simon Cairns, Development Manager, assisted the Committee in its deliberations. Two further letters of objection had been received since the report had been published. The first letter queried measurements cited in the Committee report and the Planning Officer confirmed these

had been checked and were correct. The second letter raised issues and requested amendments to conditions regarding traffic management issues during the construction phase, vehicle parking, access for service vehicles, requests for a Section 106 Agreement, archaeology, resident consultation during the construction phase, a reduction to the proposed hours of working and ecological surveys. It was explained that the proposed conditions relating to archaeology and hours of working had been recommended by the Council's Archaeology Adviser and Environmental Protection Officer respectively, consultation during the consultation phase was not recommended. This application was not classed as a major application and, as such, there was no requirement for Section 106 planning obligations to be sought.

Marcus Gilsom addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He was concerned that the proposed development was out of character for the area, being of a large-scale, a lack of flats in the area and would have an adverse effect on the quality of lives of residents in the area. He considered Colvin Close to be narrow and was of the view that the proposed development would lead to an increase in traffic, on-street parking and problems for access by refuse and emergency vehicles. He also considered there would be a negative impact on air pollution and that the proposal was disproportionate to the quality of life for existing residents. He also referred to the objections submitted to the application from residents who did not wish the application to be approved.

Robert Pomery addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that the proposal involved a property which itself was out of character with the pattern of development around it, being a large house in substantial grounds and well screened from neighbours. He explained that the building was not listed or located in a Conservation Area. The proposed development represented an efficient use of space in a sustainable location, in an existing residential area. He referred to objections regarding overlooking, highway safety, over-development, character and appearance, impact on trees and the type of accommodation in response to which amendments had been made to the proposal to ensure that no adverse issues would materialise. He referred to a lack of objections from landscape, tree and highways officers. He also confirmed that the parking provision, amenity and design issues either met or exceeded the required standards and there were no issues of over-looking. As such, there could be no issues relating to over-development or on-street parking in Colvin Close. He explained that the proposals complied with all relevant national and local policies, represented sustainable development and, as such, the Committee's approval of the application was sought.

Councillor Lissimore attended and, with the consent of the Chairman, addressed the Committee. She explained the problems which had been experienced over a number of years by residents of Lexden Grove and Colvin Close in relation to parking issues and the abandonment of vehicles for long periods of time. There had also been access problems for emergency and refuse vehicles due to instances of double parking. She



was very concerned about vehicle movements and was of the view that any development would increase traffic and that the increase from the proposed development would be to an unacceptable level. She explained that the proposed parking provision had been located to the boundaries of the plot which would be detrimental to residents of Marlowe Way and Lexden Grove. She referred to the clearance of trees and shrubs which had opened up the site and would cause noise, air pollution and disturbance for existing residents. She raised concerns regarding over-development, density, bulk and scale and referred to a lack of flats in the area, with properties predominantly being three to five-bedroom family homes. She considered flats to be small, dense and out of context with the area. She referred to previous applications which had been withdrawn and the large nature of the proposed extension. She asked, in the event that the application was approved, that a number of additional conditions, the details of which had recently been sent to the planning officer and which had been referred to at the beginning of the meeting, be considered by the Committee members. These related to vehicles, construction and delivery vehicle movements, measures to ensure vehicles would not park on verges, a £10,000 Section 106 contribution to the North Essex Parking Partnership to address existing parking problems, the completion of a full archaeological assessment, replacement of trees and their maintenance, bird and bee surveys, removal of mud from Colvin Close and Lexden Grove and working hours as stated. She asked that the Committee members refuse the application on grounds of over-development, adequacy of parking and deliveries, traffic generation, noise and disturbance, layout and density.

The Planning Officer explained that previous applications had been withdrawn as they had been likely to be refused on design and parking grounds and in order to submit an alternative proposal. She confirmed that parking and traffic had been carefully considered and, whilst existing reports of parking problems were acknowledged, no objection had been received from the Highway Authority. The proposed parking provision exceeded the relevant policy standard, as such parking along Colvin Close was considered unlikely. She explained that the proposals could not be considered to be over-development due to the generous proposed parking and amenity provision. She acknowledged concerns in relation to increased air pollution and explained that the proposals included the provision of an electric vehicle charging points whilst the site was in close proximity to bus routes along Lexden Road. She explained that many of the requests made by the residents, including parking, delivery hours, unloading and loading of materials, plant storage, would be covered in the proposed Construction Method Statement. She also explained that the application was not classified as a major application and, as such, a Section 106 Agreement was not a requirement of the development.

Some members of the Committee referred to the grand nature of the property and the grounds, considering it to be a local asset and, as such, the proposed development was not considered to be in-keeping with the local area. Previous applications were referred to along with concerns regarding over-development. It was considered that the character

and local environment needed to be taken into account. Concern was expressed about the dominating location of the parking spaces to the front of the site; the extent of parking provision given the site's highly sustainable location; over-development, the size of the proposed units and whether they would be affordable for those wishing to live in the area. Reference was also made to the narrow dimension of Colvin Close at its junction with Lexden Grove and existing problems of on-street parking in the context of additional traffic generated by the proposal.

The Planning Officer explained that property was very well screened and the proposed extension would not be visible from Colvin Close, as such, impact could not be considered significant. She did not consider the proposals would constitute over-development whilst the proposed parking provision was considered acceptable given the sustainable location of the site together with the requirement for an electric vehicle charging point. She explained that the Council's Development Plan included a requirement to meet the Council's housing supply requirements and the conversion of a large dwelling into flats was a recognised method of meeting the requirement for smaller homes. She further confirmed that the proposal was not a major application meaning there was no provision for a Section 106 Agreement and, as such, it was not possible to seek an Affordable Housing contribution from the development.

Other members of the Committee considered the proposal to be an efficient use of the building and the land, given the Council's need for housing land. Reference was also made to the highly accessible location, the site's location within the settlement boundary and the close proximity of access to multiple bus routes whilst concerns relating to highway and access issues, trees, archaeology and construction phase had been satisfactorily addressed. In addition, comment was made about the frontage of the existing building being retained and the highly generous proposed parking provision.

A proposal was made to refuse the application contrary to the officer recommendation and duly seconded. On being put to the vote, the Development Manager having indicated there would be no specific risk to the Council, the proposal to refuse was lost (TWO voted FOR, SIX voted AGAINST and ONE ABSTAINED).

Clarification was sought regarding the proposed conditions referred to by Councillor Lissimore on behalf of the local residents and the Planning Officer confirmed the conditions set out in the report would adequately address the matters referred to on behalf of residents.

*RESOLVED* (SEVEN voted FOR and TWO voted AGAINST) that the application be approved subject to the conditions set out in the report.

**761      192562 Land adjacent to Mill Road Surgery, 47 Mill Road, Colchester**

**Councillor Chuah (by reason of her Governorship of Colchester Hospital**

**University NHS Foundation Trust) declared a non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered a planning application to permit temporary staff car parking until 1 January 2020 with no addition to the existing 70 parking spaces permitted for contractors for the hospital at land adjacent to Mill Road Surgery, 47 Mill Road, Colchester. The application had been referred to the Committee because it had been called in by Councillor Goss

The Committee had before it a report in which all information was set out.

The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

Nadine Calder, Senior Planning Officer, presented the report and, together with Simon Cairns, Development Manager, assisted the Committee in its deliberations.

Ken Stokes addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He explained that he lived next door to the application site. He was concerned about that the Hospital Management had disregarded the planning application process in relation to compliance with planning conditions. He referred to disputes since the first use of the land by the Hospital relating to the location and planting of boundary treatment and ongoing enforcement action. He considered parking was not complying with permitted hours or days of use and cited problems of noise, overnight use and late departures. He was concerned that the need for parking space would not be reduced from 1 January 2020 and considered there was a lack of control over types of users. He asked the Committee to refuse the application.

One member of the Committee voiced their concern in relation to boundary treatment disputes and considered, for the protection of residents, that evergreen fencing should be required and for a condition to be imposed to provide for forward-facing parking towards the fence line in order to avoid the impact of harmful emissions on local residents.

The Senior Planning Officer confirmed that enforcement action would be taken if conditions relating to boundary treatment were not complied with and that further enforcement action would be taken if breaches of condition were made in relation to hours of use. She further explained that the enforcement action related to breaches of conditions associated with a previous application and therefore was not within the remit of the current application. She did not consider a condition to require forward facing parking could be considered valid as it would not be possible to enforce it.

The Development Manager acknowledged the concerns expressed in relation to harmful

emissions but confirmed that such a condition would fail one of the tests of a planning condition, in that it would be unenforceable. He also confirmed that the scope of the current application was very specific, solely relating to who could use the car park for a limited period of time. He further confirmed that concerns expressed about breaches of condition regarding boundary treatment were captured within an ongoing enforcement notice.

Another member of the Committee sympathised with concerns about breaches of conditions but acknowledged that the application was for a short-term period only. Reference was made to the requirement of the Crime and Disorder Act for responses to instances of anti-social behaviour to be proportionate and, as such, clarification was sought regarding the duration of the reports of breaches of condition and the reason why the current application was being considered when only one month of the time period requested now remained.

The Senior Planning Officer acknowledged that the retrospective nature of the application was unfortunate but she confirmed such applications were catered for within the planning system. She also explained that the application was to permit the use of the car park by staff as well as already permitted contractors whilst it would not change the number of vehicles permitted to park nor the hours of use. She confirmed that the enforcement officer had not yet served an enforcement notice as the outcome of the current application had been awaited. She also confirmed that, where relevant, evaluations of the proportionate nature of responses to anti-social behaviour would be included in the case officer's report.

*RESOLVED* (EIGHT voted FOR and ONE voted AGAINST) that the application be approved subject to the conditions set out in the report.

**762     191984 89 Chapel Road, West Bergholt, Colchester**

The Committee considered a planning application for a new dwelling with associated parking and amenity following demolition of the existing dwelling and outbuildings at 89 Chapel Road, West Bergholt, Colchester. The application had been referred to the Committee because it had been called in by Councillor Barber.

The Committee had before it a report in which all information was set out.

Chris Harden, Senior Planning Officer, presented the report and, together with Simon Cairns, Development Manager, assisted the Committee in its deliberations.

Bill Pigeon addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He referred to the Village Design Statement and the Council's recent adoption of the West Bergholt Neighbourhood Plan. He explained that the application was within the designated Character Area and referred

to the street view of Chapel Road; the proposals not being in harmony; having an unacceptable impact on the neighbouring property; access provision onto a narrow, private un-adopted lane; inadequate parking space; problems associated with additional vehicles; scale, mass, height and form; respect of existing building lines and height of adjacent buildings; retention of existing roof height and pitch and respect of adjacent scale and design of buildings. He also referred to a covenant in relation to parking provision; the refusal of a previous application due to concerns about height and massing; the loss of three bungalows in close proximity to the current site and the need for new bungalows in the village.

Councillor Barber attended and, with the consent of the Chairman, addressed the Committee. He referred to the Neighbourhood Plan and the small number of references to the Plan and its policies in the report to the Committee, as such, he considered the application should be refused on this ground alone. He also referred to various detailed policies in the Neighbourhood Plan, including the Character Area in West Bergholt; high quality design; the Village Design Statement and objections raised by the Parish Council.

The Senior Planning Officer explained that the Neighbourhood Plan had been referred to in the report to the Committee and that the document was a public document and available to view online. He had given the Neighbourhood Plan careful consideration and he was of the view that there was no policy contained in it which was contravened by the application. He explained that the proposal was for a traditional, vernacular scaled dwelling, with steeply pitched roof, traditional shaped dormers and simple fenestration and he commented that the street scene was very varied, with dwellings of various storeys. As such, he considered the proposal was very in-keeping with the character of the street scene and did not contravene any of the policies contained in the Neighbourhood Plan or any other policies quoted, including building line; density and scale.

One member of the Committee sought clarification on the status of Spring Lane, the need to take note of the contents of the Neighbourhood Plan, as well as the number of individual objections to the application. Reference was made to residents' view that the proposal was over-development and over-bearing in a semi-rural area.

The Senior Planning Officer explained that there was contention regarding the applicant's right to park vehicles in Spring Lane and that, if this was the case, the applicant would be unable to implement the planning permission, should it be approved. He re-affirmed that the Neighbourhood Plan contained many of the similar policies to the Council's Development Plan and that, in his view, these policies had all been met.

The Development Manager confirmed that full weight must be given to the West Bergholt Neighbourhood Plan. However, he explained that all policies were open to interpretation as to whether the proposal was in harmony with the street scene. He also

confirmed that the Neighbourhood Plan did not contain a specific policy that no bungalows within the settlement would be lost to two storey dwellings. He reiterated that there were a variety of scales and forms in the street and that the proposal was a modest one for a single storey dwelling with accommodation in the attic space. He also commented that immediately adjoining the plot were dwellings with very similar scale to that contained in the proposal before the Committee. He did not consider the proposal would over-power the neighbouring property, which was already bounded by properties of a similar scale to that proposed. The case officer had also confirmed that he had given full regard to the Neighbourhood Plan policies. He also confirmed that the proposal included a one for one replacement of parking provision and, as such the parking provision would not change and, as such, he was of the view that disputes over access were irrelevant.

Another member of the Committee sought clarification as to whether the Neighbourhood Plan policies had to be adhered to in their entirety or whether there was discretion in interpretation was provided for as a consequence of the Council's Development Plan.

The Development Manager referred to the provisions within the Neighbourhood Plan referring to the promotion or reinforcement of local distinctiveness contained within the Village Design Statement and explained that the Committee members therefore needed to make a judgement about the architectural character of the existing street. He considered there were multiple examples of dwellings in the vicinity of the development site having first floor accommodation served by dormer windows and, as such, it could be argued that the proposal would be reinforcing local distinctiveness. He was also of the view that the proposal would have no landscape impact, no impact on views across the village, and that there were many examples of dwellings of similar scale. He acknowledged that the proposal was different to the existing dwelling but the Neighbourhood Plan did not require a conformity with an existing dwelling, rather that the context of the development within the wider street scene and whether the proposal would respect the character of its surroundings needed to be considered. He was of the view that the proposal respected the scale and form of existing development in the immediate vicinity of the site. In terms of the impact on the street scene, he considered that plans were available which illustrated the levels and that the report had included an analysis of the impact, including photographs taken from the neighbouring property. He did not consider the policies within the Neighbourhood Plan had been ignored but explained that it was for the Committee members to interpret the contextual policy criterion, having regard to the immediate vicinity within the wider street as well as analysing the existing character of development.

Other members of the Committee were generally of the view that the proposal did not contravene the Neighbourhood Plan, was not incongruous with the street scene and would therefore cause no material harm whilst the proposed parking provision, although in dispute, was intended to utilise an established access and would be beneficial to the applicant as well as existing residents.

A proposal had been made to refuse the application contrary to the officer recommendation and duly seconded. On being put to the vote the proposal was lost (THREE voted FOR, FIVE voted AGAINST and ONE ABSTAINED).

*RESOLVED* (FIVE voted FOR, THREE voted AGAINST and ONE ABSTAINED) that the application be approved subject to the conditions set out in the report.

**763      192560 65a John Kent Avenue, Colchester**

**Councillor Barton (by reason of her having expressed a prejudicial view on the application) declared an interest in the following item pursuant to the provisions of Meetings General Procedure Rule 9(5) and left the meeting during its consideration and determination.**

**Councillor Hazell (by reason of her having expressed a prejudicial view on the application) declared an interest in the following item pursuant to the provisions of Meetings General Procedure Rule 9(5) and left the meeting during its consideration and determination.**

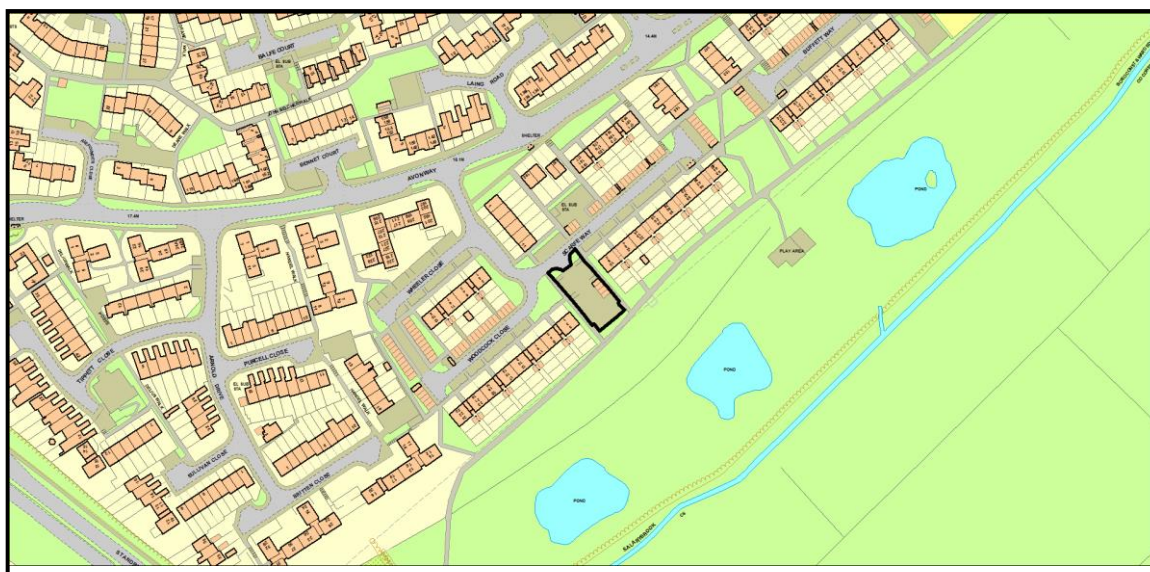
The Committee considered a planning application to vary condition 1 of planning permission 190212, to permit the relocation of a parking space to the improve visibility splay (parking for dwelling approved under application No. 170475) at 65a John Kent Avenue, Colchester. The application had been referred to the Committee because it had been called in by Councillor Hazell.

The Committee had before it a report in which all information was set out.

RESOLVED (UNANIMOUSLY) that the application be approved subject to the conditions set out in the report and the amendment sheet.







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## Item No: 7.1

**Application:** 192733

**Applicant:** Amphora Homes For

**Agent:** Mr Lee Spalding

**Proposal:** Demolition of existing garages and the construction of new affordable housing to provide 6 No. 2 bedroom flats

**Location:** Garage site, Scarfe Way, Colchester

**Ward:** Greenstead

**Officer:** Nadine Calder

**Recommendation:** Approval

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

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

## **2.0 Synopsis**

- 2.1 The key issues for consideration are the principle of the proposal, the design, scale and form, its impact on neighbouring amenity in terms of outlook, light and privacy and provision of parking. These matters have been considered alongside planning policy requirements and other material matters, leading to the application being subsequently recommended for approval.

## **3.0 Site Description and Context**

- 3.1 The application site lies within the defined settlement limits for Colchester. It once accommodated a flat-roofed block of four garages which were offered for rent (managed by Colchester Borough Homes), however, these have since been demolished. The site now appears to be used as unallocated open parking spaces. The adjoining development flanking the site comprises similar three storey blocks of flats.

## **4.0 Description of the Proposal**

- 4.1 The proposal includes construction of 2no. three-storey blocks of flats that are attached and served by a central communal entrance. Both blocks would provide 3no. 2-bed flats each, resulting in a total of 6no. 2-bedroom flats with associated landscaping, parking and private amenity provision. The proposal is to be 100% affordable and would be owned by Colchester Borough Council and managed by Colchester Borough Homes.

## **5.0 Land Use Allocation**

- 5.1 The site lies within the defined settlement limits for Colchester but has no other allocation.

## **6.0 Relevant Planning History**

- 6.1 There is no planning history that is particularly relevant to this proposal. The proposal was however the subject of preliminary discussions over the summer of 2019 which helped informing the final scheme.

## **7.0 Principal Policies**

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

Plan is in accordance with these national policies and is made up of several documents as follows below.

- 7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains 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

H4 - Affordable Housing

UR2 - Built Design and Character

- 7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

DP1 Design and Amenity

DP12 Dwelling Standards

DP16 Private Amenity Space and Open Space Provision for New Residential Development

DP17 Accessibility and Access

DP19 Parking Standards

- 7.4 The site does not lie in a Neighbourhood Plan area.

- 7.5 Submission Colchester Borough Local Plan 2017-2033:  
The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

1. The stage of preparation of the emerging plan;
2. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
3. The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo a full and final examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

- 7.6 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

The Essex Design Guide  
External Materials in New Developments  
EPOA Vehicle Parking Standards  
Backland and Infill  
Affordable Housing  
Open Space, Sport and Recreation  
Sustainable Construction

## **8.0 Consultations**

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.
- 8.2 The Arboricultural Officer is satisfied with the proposed development and the AIA provided. The proposal does require the felling of two B category trees and as such details of replacement planting will be required. This can be secured via condition.
- 8.3 The Contaminated Land Officer does not object to the proposal subject to a condition.
- 8.4 Environmental Protection raise no objection to the proposal subject to a condition requesting a Construction Method Statement prior to commencement of the works.
- 8.5 The Highway Authority does not object to the proposal subject to conditions.

## **9.0 Parish Council Response**

- 9.1 This area is non-parished.

## **10.0 Representations from Notified Parties**

- 10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.
- 10.2 One letter of representation was received supporting the principle of utilising underused land for the provision of affordable housing. The author however criticised the design ambition of the scheme and listed a number of ways how the scheme could be more energy efficient, such as installation of solar panels, providing only showers within the flats, installing electric vehicle charging points, harvesting rainwater for WC's.
- 10.3 *Officer Note: While the above comments are noted and appreciated, the development will have to be assessed on its merits based on the information*

*submitted. However, where relevant, the above comments will be addressed in the main body of the report.*

## **11.0 Parking Provision**

11.1 The adopted Vehicle Parking Standards SPD, to which Development Policy DP19 refers, provides the parking standards for residential development. The adopted standard for dwellings of two or more bedrooms is a minimum of two car parking spaces per dwelling; and a minimum of one secure covered cycle space per dwelling (unless a secure area can be provided within the curtilage of the dwelling). Visitor car parking is also required: 0.25 spaces per dwelling (rounded up to the nearest whole number).

11.2 The proposal provides a total of eight parking spaces for the development. The acceptability of this will be assessed in the main body of the report (paragraphs 17.12 – 17.15).

## **12.0 Accessibility**

12.1 With regards to the Equalities Act and compliance with policies DP12 and DP17 that detail requirements in terms of accessibility standards the proposal includes level access to the primary entrance with the dwellings following the general principles of Lifetime Homes. As the development will be owned and managed by Colchester Borough Homes there is the scope and budget to manage the units in accordance with the needs of the occupants.

## **13.0 Open Space Provisions**

13.1 The proposed dwellings have adequate amenity space overall.

## **14.0 Environmental and Sustainability Implications**

14.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. This development is within a highly accessible location.

14.2 The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives.

14.3 The consideration of this application has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that on balance the application represents sustainable development.

## **15.0 Air Quality**

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

## **16.0 Planning Obligations**

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

## **17.0 Report**

### Principle of Development

- 17.1 The application site lies within the built-up area for Colchester and in a predominantly residential area where development such as that proposed is considered to be acceptable in policy terms subject to the development satisfying all other aspects of the Development Plan. These are assessed in detail in the following paragraphs.

### Affordable Housing Need

- 17.2 Providing more affordable homes is a key corporate strategic priority of the Council, because of the unmet demand that exists. To this extent, the Council has set up a Housing Company, Colchester Amphora Homes Limited (CAHL), to develop mixed-tenure housing schemes with 30% affordable homes alongside private sale property. CAHL have also been appointed to deliver 100% affordable housing on a number of sites, including the development of garage sites.
- 17.3 This application is one of several submitted concurrently by CAHL for affordable housing on under-used Council owned, Colchester Borough Homes (CBH) managed garage sites. These applications are the result of ongoing work by the Council to find innovative ways of enabling more affordable housing to be built, in line with stated Council priority objectives.

### Design, Layout and Impact on Surrounding Area

- 17.4 At the heart of the National Planning Policy Framework (NPPF), there is a presumption in favour of sustainable development. Good design is a key aspect of sustainable development and the NPPF indicates that new development should respond to local character and should reflect the identity of its surroundings. This is reflected in Development Policy DP1 and Core Strategy Policy UR2. These policies state that all proposals should be well designed, having regard to local building traditions, and should be based on a proper assessment of the character of the application site and the surrounding built and natural environment.

- 17.5 The proposal consists of 2no. three-storey blocks of flats that are attached and served by a central communal entrance. Both blocks would provide 3no. 2-bed flats each. This, in principle, is reflective of the character of Scarfe Way to the north east and Woodcock Close to the south west of the site, which consists of three-storey link-attached blocks of flats, essentially forming a terraced form of development. The buildings as proposed would be positioned roughly centrally within the site, leaving reasonable space for a communal garden area to the rear while the front of the site would be used for parking (a total of 8no. parking spaces are provided). Secure refuse storage facilities would be provided opposite the entrance to the site.
- 17.6 There is a well-established building line from development along Woodcock Close the south-west with development slightly set back from the Close, allowing for parking and pedestrian access into the buildings as well as a grassed area between the building and the parking area. To the north east of the site, there is another very strong building line created by development along the southern side of Scarfe Way. These blocks of flats benefit from the same arrangements as existing development along Woodcock Close, with parking facilities to the front (north) of the dwellings and an attractive grassed area providing visual relief from the built up area.
- 17.7 The proposed development would be staggered between the established building line along Woodcock Close to the south west and Scarfe Way to the north east, thus acting as a link between the two established built forms. There is a relatively strong design uniformity of built development within the area with buildings along both Scarfe Way and Woodcock Close being brick built three storey blocks of flats with very shallow pitched roofs and gables to the sides. Whilst the development is proposed to be of brick build, a more modern design approach has been adopted, which is reflected in the choice of materials, including a mixture of yellow multi-brick and render, dark grey aluminium powder coated windows and doors and a concrete tiled roof.
- 17.8 While the proposed design and materials would result in the development departing from the existing architecture of built development surrounding the site, it should be noted that the design of the neighbouring buildings is slightly dated. The NPPF (paragraph 131) makes it clear that great weight should be given to proposals that help raise the standard of design in an area, so long as they fit in with the overall form and layout of their surroundings. Whilst the design of the proposed development in itself is not outstanding, as referred to in the NPPF, it is considered that a more contemporary approach to the proposed development would create some visual interest in an area that is otherwise very repetitive in design and appearance. The visual amenity of the surrounding site would therefore be improved and this would clearly outweigh the slight harm that would be caused by the proposal not repeating existing established design principles and materials used on the adjoining sites. As a result, it is considered that the proposal is acceptable in terms of its overall design, appearance and impact on the surrounding area.

### Impact on Neighbour Amenities

- 17.9 The proposed development would be located amongst existing residential development. Consideration needs to be given as to how the proposal would affect the occupants of nearby residential properties in terms of loss of light, privacy and overbearing impacts.
- 17.10 The proposed development would be positioned adjacent to, and slightly forward of, the neighbouring building to the south west (Nos. 1, 3 and 5 Woodcock Close). This would ensure that the proposal would not cause any unacceptable impacts in terms of loss of light or overbearing impacts on neighbouring occupiers. It is noted that, being located behind the rear wall of Nos. 2, 6 and 10 Scarfe Way, the development would introduce a relatively tall brick wall in close proximity to the rear garden of these flats, however, the rear elevation of these neighbouring properties as well as the gardens are south facing with the proposed development being located to the south west of these. Furthermore, the land gently slopes from north to south, resulting in the proposed development being located on slightly lower grounds than its neighbours to the north east. This would therefore minimise any harm the proposed development may cause in terms of loss of light and appearing overbearing on the outlook of neighbours. In terms of overlooking, all the windows in the flank wall would serve bathrooms and would therefore be conditioned to be obscure glazed and top hung to avoid any impact on the privacy of neighbouring occupiers.
- 17.11 On the basis of the above, it is concluded that the proposed development does not cause any material harm on the amenities of neighbouring occupiers.

### Parking and Highway Safety

- 17.12 The adopted standard for new residential development with two or more bedrooms is a minimum of two car parking spaces per unit and a minimum of one secure covered cycle space (unless a secure area can be provided within the curtilage of the unit). Visitor car parking is also required at 0.25 spaces per unit (rounded up to the nearest whole number). The proposal would therefore require a total of 14 no. parking spaces to be fully policy compliant. The Proposed Layout Plan indicates that only eight parking spaces would be provided. Consequently, there is an under provision of six parking spaces.
- 17.13 The application site lies within the defined settlement limits for Colchester and in a sustainable area where existing residents and future occupiers of the proposed development can access sustainable transport modes within a short walk from the site. A bus stop is located directly outside the entrance of Scarfe Way which provides frequent services to the town centre, North Station and Essex University. The adopted Vehicle Parking Standards and allied adopted development policy allow for reductions of the vehicle standards to be made if the development is within an urban area that has good links to sustainable transport. This is considered to be the case in this instance and the site lies within an area known to be characterised by low levels of car ownership.



- 17.14 In addition to the above, the Design and Access Statement makes reference to a recent survey that was conducted by CBH in the vicinity in order to establish current parking arrangements and vehicle ownership. According to their figures, this study established that:
- Only 14 out of 55 respondents currently rent garages;
  - Only 27 out of 55 respondents currently use parking areas; and
  - The vehicle ownership is 34 amongst the 55 respondents.
- 17.15 The proposal has not resulted in any objections in terms of the lack of policy compliant parking provision. Given the sustainable location of the site, the indication that car ownership within the immediate surroundings of the site are below the required standards and the lack of public objections to the proposed parking arrangements, it is considered that, in this instance, the under provision of parking facilities does not warrant a reason for refusal as it would be adequate to satisfy the needs of the development. Policy DP19 confirms that “a lower standard may be acceptable where it can be clearly demonstrated that there is a high level of access to services.” In this respect the proposal may be considered in conformity with the relevant adopted policy.

#### Private Amenity Space

- 17.16 Development Policy DP16 requires that all new residential development shall provide private amenity space to a high standard, with secure usable space that is also appropriate to the surrounding context. Garden size standards for flat developments require a minimum of 25m<sup>2</sup> per flat provided communally (resulting in a total of 150m<sup>2</sup> being required). The Proposed Layout Plan indicates that this requirement will be met as it shows a total of 197m<sup>2</sup> of private amenity space plus additional outdoor space for each flat by means of a private balcony. It is also acknowledged that the garden area is reflective of other gardens within the locality and therefore appropriate in its context. The submitted layout plan clearly shows that the development provides not only policy compliant private garden space but that the proposed spaces and arrangement are reflective of the gardens associated with other properties in the surrounding area. The proposed arrangement is therefore appropriate in its context.
- 17.17 Policy DP16 also states that “all new residential development will pay a commuted sum towards open space provision and maintenance. No exception is made in relation to developments of affordable housing. Indeed, Supplementary Planning Document “Provision of Open Space, Sport and Recreational Facilities” specifies that “The standards, outlined above, are to be applied to all additional new residential Units. (...) New development includes most specialised types of housing including agricultural dwellings, affordable housing and also staff accommodation since all will create additional demands for open space.”

- 17.18 No Unilateral Undertaking or Monitoring Fee has been submitted with regard to addressing this policy. Consequently, the proposal presents a minor conflict with adopted policy. However, in similar previous cases at Council owned garage sites given permission in the past, the Council waived the commuted sum in order to make the provision of 100% affordable housing schemes viable. This is based on the pressing need for the delivery of affordable housing being a greater priority. It does not set a precedent for private market housing as this does not provide 100% affordable housing.
- 17.19 In addition, CBC is the provider and maintainer of public open spaces and is also the landowner. In this capacity, it has the power to provide and maintain the land for public benefit for the foreseeable future anyway. As maintenance of public open space is undertaken from the Council's overall budget, there would be no net gain to the community by requiring payment of open space contributions as it would simply take money from one part of the budget and move it to another.
- 17.20 In conclusion, the scheme provides acceptable private amenity space and open space provisions.

#### Trees and Landscaping Matters

- 17.21 Development Plan Policy DP1 requires development proposals to demonstrate that they respect and enhance the character of the site, context and surroundings including its landscape setting.
- 17.22 An Arboricultural Impact Assessment (AIA) was carried out in support of the application. The report finds that there are some trees of modest amenity value on and immediately adjacent to the site, most of which are 'B' and 'C' category standard trees. The dominant individual tree species on this site is Hornbeam and Maple.
- 17.23 The proposed development requires the removal of two category 'B' trees, however, this will be mitigated by replacement planting, the details of which will be secured via condition. As such, the proposal is considered to be acceptable in terms of its impact on trees and its general landscape setting.

#### Other Matters

- 17.24 Secure refuse and recycling storage facilities will be provided opposite the entrance of the application site. This will therefore not have any adverse impact on the visual amenity of the surrounding area.
- 17.25 The application site is located within Flood Zone 1 and consequently, the site is unlikely to be susceptible to flooding and the development would not contribute to surface water flooding.
- 17.26 The site has been used for garaging for some years and therefore a Ground Contamination Report was submitted with this application. The Contaminated Land Officer is satisfied with this report and concludes that

no further action is required, save a watching brief for any unexpected contamination, including checks for asbestos containing materials. There are therefore no objections to the proposal on the basis of contamination.

- 17.27 A payment of £122.30 per dwelling will be made in contribution towards the measures in Recreational disturbance Avoidance and Mitigation Strategy (RAMS) for the Essex Coast to avoid and mitigate adverse effects from increased recreational disturbance to ensure that Habitat Sites are not adversely affected, and the proposal complies with the Habitat Regulations.

## **18.0 Conclusion**

- 18.1 To summarise, whilst the proposal accords with most of the relevant policies in the Development Plan, it does not fully comply with policies DP1 and UR2 in so far as the design of the proposed development is slightly at variance with the detailed architectural treatment of development within the immediate surroundings of the site. The proposal is considered to justify a slight relaxation of parking provision in conformity with DP19 due to local circumstances of low car ownership and site accessibility. Having balanced the weight to be given to these matters, and having had regard to all other material planning considerations, your Officers are of the opinion that the benefits of the proposal, which include a 100% affordable scheme and the introduction of more modern features and materials, which would visually enhance the amenity of the site, would outweigh the slight harm the scheme could cause as a result of its contemporary design while the sustainable location of the site warrants an under provision of parking facilities. It is therefore concluded that the proposed development is acceptable in this instance.

## **19.0 Recommendation to the Committee**

- 19.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following condition:

### **1. ZAA - 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. ZAM - \*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 CBH/384548 0011, 0015, 0027, 0028, 0029, 0030, COR/384548 0031, 0032 and the Arboricultural Impact Assessment (ref. EAS-014).

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

## **3. ZBB - Materials As Stated in Application**

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings, unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that materials are of an acceptable quality appropriate to the area

## **4. Z00 - \*Full Landscape Proposals TBA\***

No works shall take place above ground floor slab level until a scheme of hard and soft landscape works for the site has been submitted to and agreed, in writing, by the Local Planning Authority. This scheme shall include any proposed changes in ground levels, proposed planting, 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. The approved landscape scheme shall be carried out in full prior to the end of the first planting and seeding season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any 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.

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

## **5. Z00 – Construction Management Plan**

No development shall take place, including any ground works or works of demolition, until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and under body washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur in the interests of highway safety

## **6. ZPA – 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 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.

#### **7. Z00 - Reporting of Unexpected Contamination**

In the event that historic land contamination is found at any time when carrying out works in relation to the development, it must be reported in writing immediately to the Local Planning Authority and all development shall cease immediately. Development shall not re-commence until such times as an investigation and risk assessment has been submitted to and approved in writing by the Local Planning Authority, and where remediation is necessary, a remediation scheme has been submitted to and approved in writing by the Local Planning Authority. Development shall only re-commence thereafter following completion of measures identified in the approved remediation scheme, and the submission to and approval in writing of a verification report. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason: The site lies on or in the vicinity of former residential garages, where there is the possibility of contamination.

The Local Planning Authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination. The applicant is responsible for the safe development and safe occupancy of the site.

#### **8. Z00 – Car Parking and Turning Areas**

The development shall not be occupied until such time as the car parking and turning area has been provided in accord with the details shown in Drawing Number COR/384548/0031. The car parking area shall be retained in this form at all times and shall not be used for any other purpose other than the parking of vehicles related to the use of the development thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur in the interest of highway safety.

## 9. Z00 – Cycle Storage TBA

Prior to the occupation of the proposed development, storage for bicycles sufficient for all occupants of that development shall have been provided within the site in accordance with details that shall have previously been submitted to and agreed, in writing, by the Local Planning Authority. The agreed cycle storage provisions shall thereafter be maintained and made available for this use at all times.

Reason: To promote the use of sustainable means of transport.

## 10. ZPD - Limits to Hours of Work

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

Weekdays: 08:00 – 18:00

Saturdays: 08:00 – 13:00

Sundays and Bank Holidays: No working

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

## 11. ZDG - \*Removal of PD - Obscure Glazing But Opening\*

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the first floor windows in the side elevations shall be glazed in obscure glass to a minimum of level 4 obscurity and top-hung before the development hereby permitted is first occupied and shall thereafter be permanently retained in this approved form.

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

## 20.0 Informatives

20.1 The following informatives are also recommended:

### 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.

### 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 and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via [www.colchester.gov.uk/planning](http://www.colchester.gov.uk/planning) or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

**ZTM - Informative on Works affecting Highway Land**

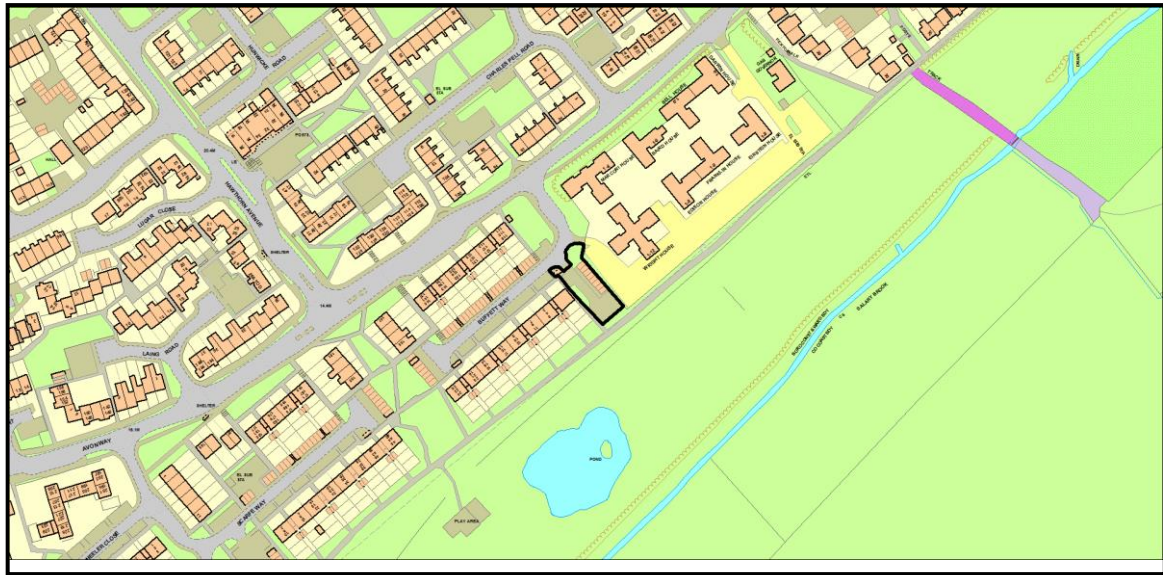
PLEASE NOTE: No works affecting the highway should be carried out without prior arrangement with, and to the requirements and satisfaction of, the Highways Authority. The applicant is advised to contact Essex County Council on 08456037631, or via email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to Essex Highways, Colchester Highways Depot, 653 The Crescent, Colchester, CO4 9YQ with regard to the necessary application and requirements.

**INS - EV Charging points**

Residential development should provide EV charging point infrastructure to encourage the use of ultra-low emission vehicles at the rate of 1 charging point per unit (for a dwelling with dedicated off road parking) and/or 1 charging point per 10 spaces (where off road parking is unallocated)







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**Item No:** 7.2

**Application:** 192777

**Applicant:** Amphora Homes

**Agent:** Mr Lee Spalding, CBC

**Proposal:** Redevelopment of garage site to create 6no. 2 bedroom flats to provide additional affordable housing.

**Location:** Garage site, Buffett Way, Colchester

**Ward:** Greenstead

**Officer:** Nadine Calder

**Recommendation:** Approval

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

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

## **2.0 Synopsis**

- 2.1 The key issues for consideration are the principle of the proposal, the design, scale and form, its impact on neighbouring amenity in terms of outlook, light and privacy and provision of parking. These matters have been considered alongside planning policy requirements and other material matters, leading to the application being subsequently recommended for approval.

## **3.0 Site Description and Context**

- 3.1 The application site lies within the defined settlement limits for Colchester. It currently accommodates a flat-roofed block of eight garages which are offered for rent (managed by Colchester Borough Homes). The garages are staggered due to the land falling from north to south. The garages appear to be in a reasonable state of repair. The remainder of the site is used as unallocated open parking spaces.

## **4.0 Description of the Proposal**

- 4.1 The proposal includes the demolition of the garages and construction of 2no. three-storey blocks of flats that are linked by a central communal entrance. Both blocks would provide 3no. 2-bed flats each, resulting in a total of 6no. 2-bedroom flats with associated landscaping, parking and private amenity provision. The proposal is to be 100% affordable and would be owned by Colchester Borough Council and managed by Colchester Borough Homes.

## **5.0 Land Use Allocation**

- 5.1 The site lies within the defined settlement limits for Colchester but has no other allocation.

## **6.0 Relevant Planning History**

- 6.1 There is no planning history that is particularly relevant to this proposal. The proposal was however the subject of preliminary discussions over the summer of 2019 which helped informing the final scheme.

## **7.0 Principal Policies**

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

7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains 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

H4 - Affordable Housing

UR2 - Built Design and Character

7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

DP1 Design and Amenity

DP12 Dwelling Standards

DP16 Private Amenity Space and Open Space Provision for New Residential Development

DP17 Accessibility and Access

DP19 Parking Standards

7.4 The site does not lie in a Neighbourhood Plan area.

7.5 Submission Colchester Borough Local Plan 2017-2033:  
The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

1. The stage of preparation of the emerging plan;
2. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
3. The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo a full and final examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

- 7.6 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

The Essex Design Guide  
External Materials in New Developments  
EPOA Vehicle Parking Standards  
Backland and Infill  
Affordable Housing  
Open Space, Sport and Recreation  
Sustainable Construction

## **8.0 Consultations**

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.
- 8.2 The Arboricultural Officer is in agreement with the proposal and the supporting tree report provided subject to conditions.
- 8.3 The Contaminated Land Officer does not object to the proposal subject to a conditions.
- 8.4 Environmental Protection raise no objection to the proposal subject to a condition requesting a Construction Method Statement prior to commencement of the works.
- 8.5 The Landscape Officer has asked for a number of points to be taken into consideration when finalising the landscape scheme. These include a native hedge to the southeast rear boundary of the site atop the existing low brick wall to help filter views of the development from public viewpoints within the Salary Brook landscape to the east of the site and a privacy screen to the southeast rear boundary to offset any potentially detrimental views of the private rear gardens on public viewpoints whilst the hedge matures.
- 8.6 The Highway Authority states that the proposal would not have an adverse impact from a highway and transportation perspective subject to conditions.

## **9.0 Parish Council Response**

- 9.1 This area is non-parished.

## **10.0 Representations from Notified Parties**

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.

10.2 One letter of representation was received supporting the principle of utilising underused land for the provision of affordable housing. The author however criticised the design ambition of the scheme and listed a number of ways how the scheme could be more energy efficient, such as installation of solar panels, providing only showers within the flats, installing electric vehicle charging points and rainwater harvesting for WC's.

10.3 In addition to the above, four letters of objection were received. The main reasons for objecting can be summarised as follows:

- Extension of Avon Way House has caused noise and access problems as well as antisocial behaviour due to break ins at the building sites;
- Parking is a constant issue with students and contractors parking in resident spaces;
- Access to garages and bin storage gets blocked;
- On-street parking causing issues as a result of Buffett Way becoming one way road;
- Removal of garages will leave those using the garages with no parking;
- Adding six new flats will reduce the number of open space for parking and creating an even bigger issue with parking;
- Under provision of parking on the site;
- Site is currently used for parking; and
- Site is not big enough or suitable for new housing.

## **11.0 Parking Provision**

11.1 The Vehicle Parking Standards SPD, to which Development Policy DP19 refers, provides the parking standards for residential development. The adopted standard for dwellings of two or more bedrooms is a minimum of two car parking spaces per dwelling; and a minimum of one secure covered cycle space per dwelling (unless a secure area can be provided within the curtilage of the dwelling). Visitor car parking is also required: 0.25 spaces per dwelling (rounded up to the nearest whole number). The adopted policy confirms that "a lower standard may be acceptable or required where it can be clearly demonstrated that there is a high level of access to services, such as a town centre location".

11.2 The proposal provides one parking space per dwelling and does not include visitor parking. The scheme also affects tenanted garages. This aspect will be further assessed in the main body of the report (paragraphs 17.14 – 17.20).

## **12.0 Accessibility**

- 12.1 With regards to the Equalities Act and compliance with policies DP12 and DP17 that detail requirements in terms of accessibility standards the proposal includes level access to the primary entrance with the dwellings following the general principles of Lifetime Homes. As the development will be owned and managed by Colchester Borough Homes there is the scope and budget to manage the units in accordance with the needs of the occupants.

## **13.0 Open Space Provisions**

- 13.1 The proposed dwellings have adequate amenity space overall.

## **14.0 Environmental and Sustainability Implications**

- 14.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030.
- 14.2 The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives.
- 14.3 The consideration of this application has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that on balance the application represents sustainable development.

## **15.0 Air Quality**

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

## **16.0 Planning Obligations**

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

## 17.0 Report

### Principle of Development

- 17.1 The application site lies within the built-up urban area for Colchester and a predominantly residential area where development such as that proposed is considered to be acceptable in policy terms subject to the development satisfying all other aspects of the Development Plan. These are assessed in detail in the following paragraphs.

### Affordable Housing Need

- 17.2 Providing more affordable homes is a key corporate strategic priority of the Council, because of the unmet demand that exists. To this extent, the Council has set up a Housing Company, Colchester Amphora Homes Limited (CAHL), to develop mixed-tenure housing schemes with 30% affordable homes alongside private sale property. CAHL have also been appointed to deliver 100% affordable housing on a number of sites, including the development of garage sites.
- 17.3 This application is one of several submitted concurrently by CAHL for affordable housing on under-used Council owned, Colchester Borough Homes (CBH) managed garage sites. These applications are the result of ongoing work by the Council to find innovative ways of enabling more affordable housing to be built, in line with stated Council priority objectives.

### Design, Layout and Impact on Surrounding Area

- 17.4 At the heart of the National Planning Policy Framework (NPPF), there is a presumption in favour of sustainable development. Good design is a key aspect of sustainable development and the NPPF indicates that new development should respond to local character and should reflect the identity of its surroundings. This is reflected in Development Policy DP1 and Core Strategy Policy UR2. These policies state that all proposals should be well designed, having regard to local building traditions, and should be based on a proper assessment of the character of the application site and the surrounding built and natural environment.
- 17.5 The proposed development would be slightly set back from the established building line created by development along Buffet Way to the south west of the site and the development at Avon Way House directly to the north east of the site which would leave a generous amount of private amenity area to the rear and provide parking to the front of the site. Development within Buffett Way together with the original Avon Way House development is of very traditional appearance, comprising brick built, three storey blocks of flats with very shallow pitched roofs and gables to the sides. Whilst the proposed development is of brick build, a more modern design approach has been adopted, by incorporating horizontal cladding for the link element and grey powder coated aluminium windows. This would somewhat interrupt the otherwise consistent design approach of development immediately surrounding the site. However, a more contemporary approach to development within the area was accepted for the

additional student accommodation at Avon Way House which is under construction (substantially completed) and now forms an integral part of the street scene. Block D will be read in context with the proposed development on the application site. Given its close proximity to the site, this introduces a flat roofed building of a more modern appearance. It is also considered that the design of the neighbouring buildings are now somewhat dated and the introduction of modern features and materials on the proposed development would create added visual interest. The visual amenity of the surrounding area would therefore be enhanced, and this would clearly outweigh the slight harm that would be caused by the proposal not repeating existing established design principles and materials used on the adjoining sites. The design of the proposed development therefore complies with paragraph 131 of the NPPF which makes it clear that great weight should be given to proposals that help raise the standard of design in an area, so long as they fit in with the overall form and layout of their surroundings. As a result, it is considered that the proposal is acceptable in terms of its overall design, appearance and visual impact on the surrounding area.

#### Impact on Neighbour Amenities

- 17.6 The proposed development would be located amongst existing residential development. Consideration needs to be given as to how the proposal would affect the occupants of nearby residential properties in terms of any loss of light, privacy and overbearing impacts.
- 17.7 The proposed building is deeper in plan than the existing buildings in Buffett Way. Being positioned slightly behind the front of Buffett Way means that the building would project beyond the rear wall of the neighbouring property, which includes Nos. 1, 3 and 5 Buffett Way. The design of the proposed development has evolved significantly compared to the initial design and this is having been secured to address the impacts the development would have caused on the amenities of the neighbours at 1, 3 and 5 Buffett Way. The building is now positioned in a way that does not cause significant overbearing impacts on the outlook of neighbouring occupiers. The Council policy sets out that a 45-degree angle of outlook from the mid-point of the nearest neighbouring windows should be preserved and this proposal satisfies this requirement. There are also no concerns regarding loss of light. The combined plan and elevation tests are not breached, and the proposal therefore satisfies the Council's standards for assessing this issue as set out in the Essex Design Guide. The proposal does include three windows in the flank wall facing the neighbouring site, however, these windows would serve bathrooms and would be obscure glazed and top hung to avoid affecting the privacy of neighbouring occupiers. It should also be noted that there is an existing mature tree along the boundary of the site, which is in very close proximity to the corner of the neighbouring building. This tree will currently cause some impact on the neighbouring occupiers albeit on a small scale. This tree is proposed to be removed and the outlook of neighbouring occupiers, and to some degree the amount of light their back rooms receive, should therefore be slightly improved. On this basis, it is concluded that the proposal would not cause any material harm to the amenities of neighbouring occupiers in Buffett Way.



- 17.8 Turning to the neighbours to the east, students in Block D, it is noted that the first part of this development does not benefit from any windows in the flank wall facing the application site and this would therefore ensure that the proposed development would not cause any harm in terms of loss of light or appearing overbearing on the outlook of neighbouring occupiers. Due to the position of the proposed development, there would be some impact on the element to the rear of Block D, which is positioned on lower ground and further away from the boundary than the main element. The neighbouring development, as well as the current proposal, is of three storeys and each floor comprises two windows in the elevation facing the application site that would be impacted by the proposal. The windows affected are a communal kitchen window and a bedroom window on each floor and another three bedroom windows in the rear elevation of the main element of Block D, adjacent to the stepped in rear projecting element. There are limited concerns in terms of the impact on the kitchen, as this is not classed as a habitable room, however, with the other windows being the only windows into the student's bedrooms, there are some concerns in terms of overbearing impacts and loss of light. This is due to the fact that the 45 degree angle of outlook, as set out above, is not fully respected and the proposed development would therefore reduce the outlook of the student accommodation to some degree. There may also be limited loss of light to this accommodation. There are a number of mitigating factors that will have to be taken into consideration and these include that a development cannot expect to unconditionally borrow light from a site that is outside of their control and which would effectively preclude development happening on this site. It is also considered that the orientation of the window helps as it is south/south-west facing, thus ensuring that the window benefits from an adequate exposure to daylight. On balance, it is therefore considered that the limited harm the development could cause to the three student accommodation units within Block D would not be sufficient enough to justify a refusal.
- 17.9 It should be noted that there would also be some impact on the privacy of future occupiers of the proposed scheme, as the side windows referenced above in Block D would provide views into the communal garden area. It may be possible to provide mitigation measures in the form of boundary treatment as part of a formal landscaping scheme to mitigate some of this impact. Notwithstanding this, it would be unreasonable to refuse permission as a result of the development causing limited harm to the amenities of future occupiers of the proposed scheme as this is a known issue and as such, it is the Council's responsibility to address this matter when allocating the dwellings to new tenants.

- 17.10 On the basis of the above, it is concluded that the proposed development does not cause any such material harm to the amenities of neighbouring occupiers of sufficient magnitude that would warrant a refusal.

#### Parking and Highway Safety

- 17.11 The adopted standard for new residential development with two or more bedrooms is a minimum of two car parking spaces per unit and a minimum of one secure covered cycle space (unless a secure area can be provided within the curtilage of the unit). Visitor car parking is also required at 0.25 spaces per unit (rounded up to the nearest whole number). The proposal would therefore require a total of 14no. parking spaces. The Proposed Layout Plan indicates that six parking spaces would be provided. Consequently, there is an under provision of eight parking spaces from the adopted standard.
- 17.12 The application site lies within the defined settlement limits for Colchester and in a sustainable area where existing residents and future occupiers of the proposed development are able to access sustainable transport modes within a short walk from the site. There are a number of bus stops along Avon Way which provide frequent services to the town centre, North Station and Essex University. The adopted Vehicle Parking Standards allow for reductions of the vehicle standards to be made if the development is within an urban area that has good links to sustainable transport. This is considered to be the case in this instance.
- 17.13 In addition to the above, the Design and Access Statement makes reference to a recent survey that was conducted by CBH in order to establish current parking arrangements and vehicle ownership. According to their figures, this study established that:
- Only 14 out of 55 respondents currently rent garages;
  - Only 27 out of 55 respondents currently use parking areas; and
  - The vehicle ownership is 34 amongst the 55 respondents.
- 17.14 Furthermore, the proposed scheme affects tenanted garages. The proposal results in the loss of eight garages. The garages are unallocated to local residents. They are managed by CBH and are rented out. The remainder of the site is used by local residents for unallocated open parking. Information submitted by CBH, as the managers of the garages, states that seven out of the eight garages are rented out. However, it is not known whether these garages are used for the purposes of parking or storage. The worst case scenario would be that a total of seven cars could be displaced, however, based on survey evidence it is more likely that this number would be less.
- 17.15 It is noted that the application has attracted objections from local residents on parking grounds. Some of the comments raised relate to construction traffic vehicles and students parking within the site and the residential area. The site is currently used as open parking but these spaces are unallocated. It would not formally result in the loss of parking, as the area is not officially allocated for parking purposes. Construction vehicles should not be parking

in this area and neither should students as they have their own spaces allocated. These are matters that will have to be taken up with the development adjacent to the application site. Construction is an inevitable part of any development and whilst not ideal, with the development at Avon Way House coming to an end, residents should experience a reduction in cars parked in Buffett Way. This will relieve some of the existing parking stress. Additionally, whilst students have allocated parking spaces within the Avon Way House site, the absence of parking restrictions (such as residents permits or double yellow lines) does not make the parking of cars for those not resident in Buffett Way unlawful. Notwithstanding this, it is anticipated that when the development on the neighbouring site is completed (which should be soon), this should free up spaces within the site and students should no longer (have to) park within Buffett Way.

- 17.16 For these reasons, it is considered that there is sufficient space within Buffett Way for the maximum of seven cars that will have to be displaced as a result of the proposed development.
- 17.17 Having regard to the above, it is concluded that, on balance, the sustainable location of the site in this instance justifies and mitigates a lower level of parking provision and the development is not considered to worsen such significant parking stress to the area such that would warrant a refusal on this ground.

#### Private Amenity Space

- 17.18 Development Policy DP16 requires that all new residential development shall provide private amenity space to a high standard, with secure usable space that is also appropriate to the surrounding context. Garden size standards for flat developments require a minimum of 25m<sup>2</sup> per flat provided communally (resulting in a total of 150m<sup>2</sup> being required). The Proposed Layout Plan indicates that this requirement will be met as it shows a total of 208m<sup>2</sup> of private amenity space plus additional outdoor space for each flat by means of a private balcony. It is also acknowledged that the garden area is reflective of other gardens within the locality and therefore appropriate in its context. The submitted layout plan clearly shows that the development provides not only policy compliant private garden space but that the proposed spaces and arrangement are reflective of the gardens associated with other properties in the surrounding area. The proposed arrangement is therefore appropriate in its context.
- 17.19 Policy DP16 also states that “all new residential development will pay a commuted sum towards open space provision and maintenance. No exception is made in relation to developments of affordable housing. Indeed, Supplementary Planning Document “Provision of Open Space, Sport and Recreational Facilities” specifies that “The standards, outlined above, are to be applied to all additional new residential Units. (...) New development includes most specialised types of housing including agricultural dwellings, affordable housing and also staff accommodation since all will create additional demands for open space.”

- 17.20 No Unilateral Undertaking or Monitoring Fee has been submitted with regard to addressing this policy. Consequently, the proposal presents a minor departure from this adopted policy. However, in similar previous cases at Council owned garage sites given permission in the past, the Council waived the commuted sum in order to make the provision of 100% affordable housing schemes viable. This is based on the pressing need for the delivery of affordable housing being a greater priority. It does not set a precedent for private market housing as this does not provide 100% affordable housing.
- 17.21 In addition, CBC is the provider and maintainer of public open spaces and is also the landowner. In this capacity, it has the power to provide and maintain the land for public benefit for the foreseeable future anyway. As maintenance of public open space is undertaken from the Council's overall budget, there would be no net gain to the community by requiring payment of open space contributions as it would simply take money from one part of the budget and move it to another.
- 17.22 In conclusion, the scheme provides acceptable private amenity space and open space provisions.

#### Trees and Landscaping Matters

- 17.23 Development Plan Policy DP1 requires development proposals to demonstrate that they respect and enhance the character of the site, context and surroundings including its landscape setting.
- 17.24 An Arboricultural Impact Assessment (AIA) was carried out in support of the application. The report finds that there are two trees of modest amenity value on site, both of which are 'B' and 'C' category standard trees. The dominant individual tree species on this site is Fastigate Hornbeam. None of these trees are protected by Tree Preservation Orders.
- 17.25 The proposed development requires the removal of two category 'B' trees of seemingly high amenity value due to their size and location, however they are in fact in a poor relative condition. As a consequence, the removal of these trees is considered acceptable subject to replacement planting being provided within the site, the details of which will be secured via condition. As such, the proposal is considered to be acceptable in terms of its impact on trees and its general landscape setting.

#### Other Matters

- 17.26 Secure refuse and recycling storage facilities will be provided opposite the application site. This will not have any adverse impact on the visual amenity of the surrounding area.
- 17.27 The application site is located within Flood Zone 1 and consequently, the site is unlikely to be susceptible to flooding and the development would not contribute to surface water flooding.

17.28 The site has been used for garaging for some years and therefore a Ground Contamination Report was submitted with this application. The Contaminated Land Officer is satisfied with this report and concludes that no further action is required other than vigilance during site clearance and groundworks.

17.29 A payment of £122.30 per dwelling will be made in contribution towards the measures in Recreational disturbance Avoidance and Mitigation Strategy (RAMS) for the Essex Coast to avoid and mitigate adverse effects from increased recreational disturbance to ensure that Habitat Sites are not adversely affected, and the proposal complies with the Habitat Regulations.

## **18.0 Conclusion**

18.1 To summarise, whilst the proposal accords with most of the relevant policies in the Development Plan, it does not fully comply with policies DP1 and DP19 in so far as the development would cause limited harm on the amenities of neighbouring occupiers and conflict with current parking standards if the justification for a lower standard were not accepted. Having balanced the weight to be given to this conflict, and having had regard to all other material planning considerations, your Officers are of the opinion that the benefits of the proposal, which include a 100% affordable scheme would outweigh the slight harm the development could cause to neighbouring amenities while the sustainable location of the site warrants a lower level of parking provision. It is therefore concluded that the proposed development is acceptable in this instance.

## **19.0 Recommendation to the Committee**

19.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following condition:

### **1. ZAA - 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. ZAM - \*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 CBH/384548 0009, 0013, 0021, 0023, 0024, 0026, COR/384548 0025 and 0026 and the Arboricultural Impact Assessment (ref. EAS-014.4).

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

### **3. ZBB - Materials As Stated in Application**

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings, unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that materials are of an acceptable quality appropriate to the area

### **4. Z00 - \*Full Landscape Proposals TBA\***

No works shall take place above ground floor slab level until a scheme of hard and soft landscape works for the site has been submitted to and agreed, in writing, by the Local Planning Authority. This scheme shall include any proposed changes in ground levels, proposed planting, 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. The approved landscape scheme shall be carried out in full prior to the end of the first planting and seeding season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any 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.

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

### **5. Z00 – Construction Management Plan**

No development shall take place, including any ground works or works of demolition, until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and under body washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur in the interests of highway safety

### **6. ZPA – 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 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.

## **7. ZGX - Contaminated Land Part 1 of 4 (Site Characterisation)**

No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

(i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;

(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

## **8. ZGY - Contaminated Land Part 2 of 4 (Submission of Remediation Scheme)**

No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and then submitted to and agreed, in writing, by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

### **9. ZGZ - Contaminated Land Part 3 of 4 (Implementation of Approved Remediation Scheme)**

No works shall take place other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

### **10.ZG0 - Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 7, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 8, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 9.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

### **11.ZG3 - \*Validation Certificate\***

Prior to the first OCCUPATION/USE of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 10.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

### **12.Z00 – Car Parking and Turning Areas**

The development shall not be occupied until such time as the car parking and turning area has been provided in accord with the details shown in Drawing Number COR/384548/0009. The car parking area shall be retained in this form at all times and shall not be used for any other purpose other than the parking of vehicles related to the use of the development thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur in the interest of highway safety.



### **13.Z00 – Cycle Storage TBA**

Prior to the occupation of the proposed development, storage for bicycles sufficient for all occupants of that development shall have been provided within the site in accordance with details that shall have previously been submitted to and agreed, in writing, by the Local Planning Authority. The agreed cycle storage provisions shall thereafter be maintained and made available for this use at all times.

Reason: To promote the use of sustainable means of transport.

### **14.ZPD - Limits to Hours of Work**

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

Weekdays: 08:00 – 18:00

Saturdays: 08:00 – 13:00

Sundays and Bank Holidays: No working

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

### **15.ZIF - No Unbound Surface Materials**

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.

### **16.ZDG - \*Removal of PD - Obscure Glazing But Opening\***

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the first floor windows in the side elevations shall be glazed in obscure glass to a minimum of level 4 obscurity and top-hung before the development hereby permitted is first occupied and shall thereafter be permanently retained in this approved form.

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

## 20.0 Informatives

20.1 The following informatives are also recommended:

### 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.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 and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via [www.colchester.gov.uk/planning](http://www.colchester.gov.uk/planning) or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

### 3. ZTM - Informative on Works affecting Highway Land

PLEASE NOTE: No works affecting the highway should be carried out without prior arrangement with, and to the requirements and satisfaction of, the Highways Authority. The applicant is advised to contact Essex County Council on 08456037631, or via email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to Essex Highways, Colchester Highways Depot, 653 The Crescent, Colchester, CO4 9YQ with regard to the necessary application and requirements.

### 5. Non Standard Informative – Asbestos

The applicant's attention is drawn to the *Delta Simons, 'Geo-Environmental Report – Geotechnical Category 1', Buffett Way, Issue 1, Final, Ref. 19-0677.01, dated 05/08/19* recommendations with respect to asbestos and drinking water supply pipework.

### 6. Non Standard Informative - EV Charging points

Residential development should provide EV charging point infrastructure to encourage the use of ultra-low emission vehicles at the rate of 1 charging point per unit (for a dwelling with dedicated off road parking) and/or 1 charging point per 10 spaces (where off road parking is unallocated)

## **7. Non Standard Informative – Cadent Gas**

Cadent have identified operational gas apparatus within the application site boundary. This may include a legal interest (easements or wayleaves) in the land which restricts activity in proximity to Cadent assets in private land. The Applicant must ensure that proposed works do not infringe on Cadent's legal rights and any details of such restrictions should be obtained from the landowner in the first instance.

If buildings or structures are proposed directly above the gas apparatus then development should only take place following a diversion of this apparatus. The Applicant should contact Cadent's Plant Protection team at the earliest opportunity to discuss proposed diversions of apparatus to avoid any unnecessary delays.

If any construction traffic is likely to cross a Cadent pipeline then the Applicant must contact Cadent's Plant Protection team to see if any protection measures are required.

All developers are required to contact Cadent's Plant Protection team for approval before carrying out any works on site and ensuring requirements are adhered to.

Email: [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) Tel: 0800 688 588



9 January 2020

<b>Report of</b>	<b>Monitoring Officer</b>	<b>Author</b>	<b>Andrew Weavers</b>
<b>Title</b>	<b>Amendment to Scheme of Delegation to Officers</b>		<b>☎ 282213</b>
<b>Wards affected</b>	Not applicable		

## 1. Executive Summary

- 1.1 This report requests the Committee to agree to amend the Scheme of Delegation to Officers from the Planning Committee following a change of responsibility within the Senior Management team.

## 2. Decision Required

- 2.1 To approve the amended Scheme of Delegation to Officers from the Planning Committee to the Assistant Director – Place and Client Services attached at Appendix 1 of this report and for it to come into effect from 6 January 2020.

## 3. Reasons for Decision(s)

- 3.1 The Scheme of Delegation to Officers from the Committee requires amending to reflect a change in management for the planning service following a change of responsibility within the Senior Management team.

## 4. Alternative Options

- 4.1 No alternative options are presented.

## 5. Proposals

- 5.1 The Committee approved the present Scheme of Delegation to Officers a while ago. It is proposed that following a re-organisation within the Senior Management Team the current delegation from this Committee to the Assistant Director – Policy and Corporate be amended to the Assistant Director Place and Client Services, who will be responsible for the management of the planning service.
- 5.2 It is proposed that the change to the Scheme of Delegation take effect from 6 January 2020.

## 6. Strategic Plan References

- 6.1 The manner in which Council governs its business is an underpinning mechanism in the Council's Strategic Plan aims to lead our communities in delivering high quality accessible services.

**7. Financial Considerations, Equality, Diversity and Human Rights Implications, Consultation Implications, Community Safety Implications, Health and Safety Implications, Risk Management Implications and Environmental and Sustainability Implications**

7.1 None

**8. Publicity Considerations**

8.1 The changes will be publicised by way of an amendment to the Constitution which is published on the Council's web site.

## **SCHEME OF DELEGATION TO OFFICERS BY THE PLANNING COMMITTEE**

### **Delegated to Assistant Director for Place and Client Services**

1. The determination of all planning applications irrespective of scale and size (including changes of use and all applications for Listed Building Consent, Certificates of Lawfulness, applications for the determination as to whether prior approval is required, consent to display advertisements and other notifications) except any application:
  - (a) significantly contrary to adopted policies or a departure from the development plan, and which is recommended for approval;
  - (b) which any Ward Councillor requests in writing to the Assistant Director for Place and Client Services within 25 days of notification, should be subject of consideration by the Committee;
  - (c) which constitutes a major application on which a material planning objection(s) has been received in the stipulated time span and the officer recommendation is to approve;
  - (d) which constitutes a major application, that is recommended for approval and where a section 106 Agreement is required (excluding unilateral undertakings);
  - (e) submitted by or on behalf of a Colchester Borough Council Councillor, Honorary Aldermen (or their spouse/partner) or by any Council officer (or their spouse/partner); or
  - (f) submitted by or on behalf of Colchester Borough Council (for clarity, this does not include applications made by other parties on land owned by the Council where the development is not by or on behalf of the Council).
2. The determination of any application for a determination as to whether the prior approval of the authority will be required under The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (as amended, or any Order replacing, re-enacting or modifying that Order).
3. The determination of applications for the approval of reserved matters or minor material amendments, unless the Planning Committee at the granting of the outline / original planning permission indicates that it requires to determine the aforementioned matter itself.
4. The determination of details required by a condition on a planning permission and applications for a non-material amendment, unless the Planning Committee at the granting of the outline / original planning permission indicates that it requires to determine the aforementioned matter itself.

<b>Delegated to Assistant Director for Place and Client Services (continued)</b>
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5. Authority to refuse planning applications where a proposed section 106 Agreement remains uncompleted for six months from the decision regarding its provision.
6. Authority to make observations on applications to be determined by another planning authority.
7. Authority to appoint consultants where the Council's case may be enhanced or when specialist information needs to be provided.
8. That, subject to written confirmation from the Chief Finance Officer and the Monitoring Officer, the Assistant Director for Place and Client Services be authorised to agree the release of funds secured by means of a legal agreement under the Planning Acts for expenditure, for purposes solely in accordance within the specified legal agreement. Such delegated powers would only operate where such expenditure is entirely in accordance with the legal agreement attached to the development.
9. Where an appeal has been lodged against a refusal of planning permission, the Assistant Director for Place and Client Services has authority to conclude a legal agreement which complies with the Council's current policies where we would expect to see the provision of such requirements a may include affordable housing, open space contribution, education contribution in circumstances where time does not permit a referral to the Planning Committee.
10. Where an application has already been considered by the Planning Committee who have given authorisation to enter into a legal agreement delegated authority is given to the Assistant Director for Place and Client Services to agree alterations whereby: -
  - (a) The mechanism for delivering the required outcomes for the agreement have changed, but the outcome remains the same (including changes to triggers, phasing and timing);
  - (b) There is a need to issue a delegated refusal where a legal agreement is not completed within the statutory time limit and it is considered by the Assistant Director for Place and Client Services reasonable to do so;
  - (c) There is a need to remove a legal agreement from a local land charge where all clauses have been compiled with;
  - (d) To enter into a new planning obligation relating to gain previously secured that needs to link back to a previous planning permission via a Deed of Variation.



<b>Delegated to Assistant Director for Place and Client Services (continued)</b>
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11. Authority to institute proceedings in respect of any offence against the advertisement regulations, including prosecution where it is considered appropriate. In the cases where repeated prosecution fails, this includes the authority to seek an injunction under Section 222 of the Local Government Act 1972.
12. Authority to institute proceedings in respect of any enforcement actions where a valid notice exists, no appeal decision thereon is pending, the prescribed time for compliance with the notice has expired, and where the breach of planning control continues to exist.
13. Authority to sign and serve "Planning Contravention Notices" under the Town and Country Planning Act 1990, Sections 171(C) and 171(D), and to arrange for the institution of proceedings where the requirements of such Notices are not complied with within statutory time limits.
14. Authority to sign and serve enforcement notices, stop notices, temporary stop notices, section 215 notices, section 224 discontinuance notices or breach of condition notices under the Town and Country Planning Act 1990 (Parts VII & VIII) and Listed Building Enforcement Notices under Town and Country Planning (Listed Building and Conservation Areas) Act 1990 (Part IV).
15. Power to serve a notice under Section 330 of the Town and Country Planning Act 1990 (to require information as to interests in land).
16. Authority to give a screening opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended) as to whether an Environmental Impact Assessment is required and to determine the scope of the environmental issues to be covered in any such assessment.
17. Authority to defend the Council's decision in respect of any appeal proceedings, provided that where any additional or revised information is submitted which may overturn the Council's initial decision; the case shall be referred back to Planning Committee to determine the Council's case only in circumstances where the Committee itself made the initial decision. In the event that timescales do not allow the matter to be referred back to Planning Committee, then the Assistant Director for Place and Client Services shall consult the Planning Committee Chairman, and Group Spokespersons, before determining the Council's case. In the unlikely event that none of the foregoing is possible, then as an emergency procedure, a Strategic Director or the Chief Operating Officer can determine the action required, which will be reported to the Planning Committee as soon as is practical thereafter.

<b>Delegated to Assistant Director for Place and Client Services (continued)</b>
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18. Authority to institute legal proceedings (including the serving of injunctions and enforcement notices) under the Town and Country Planning Act 1990 (Part VII and Part VIII) and the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 (Part IV) where it is considered the most appropriate remedy in relation to the circumstances of the case, and expedient to do so.
19. Authority to prosecute for the failure to comply with the statutory time limit imposed by any notices served in respect of Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 and Sections 171C, 171D and 330 of the Town and Country Planning Act 1990, or for providing false/misleading information.
20. Power to make orders for the creation, diversion or extinguishment of public rights of way.
21. Authority to administer the Hedgerow Regulations 1997 and to issue notices in accordance with the Council's policy.
22. Determination of enforcement cases where:
  - (a) investigations conclude that no breach of planning has occurred and therefore no further action is required; or
  - (b) a breach of control has occurred, but it is not expedient in the public interest to take action; or
  - (c) investigations conclude that a breach has occurred in excess of four years or ten years (as appropriate) and is therefore, immune from further action.
23. Power to make and confirm tree preservation orders where there are no unresolved objections thereto and to determine applications to carry out works to preserved trees and trees in Conservation Areas.

## 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 scrapyards or the breaking of motor vehicles, hostels, retail warehouse clubs (where goods are sold, or displayed for sale, only to persons who are members of that club), night-clubs, or casinos.

***Interpretation of Class C3***

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

***Interpretation of Class C4***

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

## **Supreme Court Decision 16 October 2017**

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

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

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

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

## Deferral and Recommendation Overturn Procedure (DROP) Flowchart

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

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

