

Planning Committee Meeting

**Moot Hall, Town Hall, High Street,
Colchester, CO1 1PJ**

Thursday, 17 December 2015 at 18:00

The Planning Committee deals with planning applications, planning enforcement, public rights of way and certain highway matters.

If you wish to come to the meeting please arrive in good time. Attendance between 5.30pm and 5.45pm will greatly assist in noting the names of persons intending to speak to enable the meeting to start promptly.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published five working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services. Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Have Your Say!

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

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Access

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

Facilities

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

Evacuation Procedures

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www.colchester.gov.uk

Material Planning Considerations

The National Planning Policy Framework highlights that the planning system is plan-led and reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require (in law) that planning applications “must be determined in accordance with the development plan, unless material considerations indicate otherwise”.

Where our Development Plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable development unless otherwise specified.

The following approach should be taken in all planning decisions:

- Identify the provisions of the Development Plan which are relevant to the decision and interpret them carefully, looking at their aims and objectives
- Identify and consider relevant material considerations for and against the proposal
- Consider whether or not the proposal accords with the Development Plan and, if not, whether material considerations warrant a departure from the Development Plan.

A material planning consideration is one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission). The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.

When applying material considerations the Committee should execute their decision making function accounting for all material matters fairly, reasonably and without bias. In court decisions (such as *R v Westminster CC ex-parte Monahan* 1989) it has been confirmed that material considerations must relate to the development and use of land, be considered against public interest, and be fairly and reasonably related to the application concerned.

Some common material planning considerations which the Planning Committee can (and must) take into consideration in reaching a decision include:-

- Planning policies, including the NPPF and our own Development Plan
- Government guidance, case law, appeal decisions, planning history
- Design, scale, bulk, mass, visual appearance and layout
- Protection of residential amenities (light, privacy, outlook, noise or fumes)
- Highway safety and traffic issues, including parking provisions
- Heritage considerations; archaeology, listed buildings and conservation areas
- Environmental issues; impacts on biodiversity, trees and landscape, flooding
- Economic issues such as regeneration, job creation, tourism and viability
- Social issues; affordable housing, accessibility, inclusion, education, recreation

The above list is not exhaustive

The following are among the most common issues that are **not** relevant planning issues and cannot be taken into account in reaching a decision:-

- land ownership issues; private property rights, boundary disputes and covenants
- effects on property values
- loss of a private view
- identity of the applicant, their character, previous history, or possible motives
- moral objections to a development, such as may include gambling or drinking etc
- competition between commercial uses

- matters specifically controlled through other legislation

Strong opposition to large developments is a common feature of the planning process but whether or not a development is popular or unpopular will not matter in the absence of substantial evidence of harm (or support from the policies within the Development Plan). It is the quality of content, not the volume that should be considered.

The law also makes a clear distinction between the question of whether something is a material consideration, and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case but provided it has given regard to all material considerations, it is for the Council to decide what weight is to be given to these matters. Subject to the test of “reasonableness”, the courts (or the Local Government Office) will not get involved in the question of weight. Weight may be tested at appeal.

Planning Obligations

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are:

1. necessary to make the development acceptable in planning terms
2. directly related to the development, and
3. fairly and reasonably related in scale and kind.

These legal tests are set out as statutory tests in the Community Infrastructure Levy Regulations and as policy tests in the National Planning Policy Framework.

Human Rights, Community Safety and Equality and Diversity Implications

All applications are considered against the background and implications of the:

- Human Rights Act 1998
- Crime and Disorder Act 1998 (and in particular Section 17)
- Equality Act 2010
- Colchester Borough Council Equality Impact Assessment (EIA) Framework

In order that we provide a flexible service that recognises people's diverse needs and provides for them in a reasonable and proportional way without discrimination.

Using Planning Conditions or Refusing Planning Applications

The Planning System is designed to manage development, facilitating (not obstructing) sustainable development of a satisfactory standard. The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (PPG) reinforce this, stating that “Planning should operate to encourage and not act as an impediment to sustainable growth”. Therefore, development should be considered with a positive approach. Where a condition could be used to avoid refusing permission this should be the approach taken.

The PPG sets out advice from the Government regarding the appropriate use of conditions, and when decision makers may make themselves vulnerable to costs being awarded against them at appeal due to “unreasonable” behaviour. Interpretation of court judgments over the years is also an important material consideration. Reasons why a Planning Authority may be found to have acted unreasonably at appeal include lack of co-operation with applicants, introducing fresh evidence at a later stage, introducing a new reason for refusal, withdrawal of any reason for refusal or providing information that is shown to be manifestly inaccurate or untrue.

In terms of the Planning Committee, Members are not bound to accept the recommendations of their officers. However, if officers’ professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority.

Whenever appropriate, the Council will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed. Therefore, before refusing any application the Planning Committee should consider whether it is possible to resolve any concerns by use of conditions before refusing permission. Failure to do so on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead.

Any planning condition imposed on a development must pass 6 legal tests to be:

- | | |
|--|-------------------------|
| 1. Necessary | 2. Relevant to planning |
| 3. Relevant to the development permitted | 4. Reasonable |
| 5. Precise | 6. Enforceable |

Unless conditions fulfil these criteria they are challengeable at appeal as ultra vires (i.e. their imposition is beyond the powers of local authorities).

If no suitable condition exists that can satisfy these tests a refusal of planning permission may then be warranted. In considering the reasons for that refusal, the Council must rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason. In all matters relating to an application it is critically important for decision makers to be aware that the courts will extend the common law principle of natural justice to any decision upon which they are called to adjudicate. The general effect of this is to seek to ensure that the Council acts fairly and reasonably in executing our decision making functions, and that it is evident to all that we have done so.



Colchester Borough Council Development Management

Highway Safety Issues

When considering planning applications, Colchester Borough Council consults Essex County Council Highways Authority on all highway safety issues. They are a statutory consultee, and a recognised expert body. This means that they must be consulted on planning applications, by law, where the proposed development will involve a new access to the highway network, create “material” changes in traffic movement, or where new roads are to be laid out. Where developments affect the trunk road network Highways England become a statutory consultee.

When the Highway Authority is consulted they are under a duty to provide advice on the proposal in question as the experts in highway matters. Their opinion carries significant weight upon which the Local Planning Authority usually relies. Whilst this Council could form an opinion different to the Highway Authority, it would need to provide counter-evidence to justify an argument that the expert body was incorrect. That evidence would need to withstand challenge in appeal or through the courts. Failure to do so would result in a costs award against the Council for acting unreasonably (see other notes pages within this Agenda). Similarly, if the Highway Authority were unable to support their own conclusions they may face costs being awarded against them as the statutory consultee.

Officers of Essex County Council Highway Authority conduct their own site visits to each site in order to take account of all highway safety matters. They also consult their own records and databases, traffic flow information and any other relevant material that may be available, including any submitted documents within planning applications.

Parking Standards

Although the Highway Authority has some remit over parking in so far as it relates to highways safety issues, parking itself is a matter for the Local Planning Authority to determine against national policy and our own adopted standards. Like the other Essex Authorities, Colchester Borough Council has adopted the Essex Planning Officer's Association Parking Standards. These standards set out that:

- A parking space should measure 2.9 metres by 5.5 metres. A smaller size of 2.5 metres by 5 metres is acceptable in special circumstances.

For residential schemes:

- The residential parking standard for two bedroom flats and houses is two spaces per unit.
- The residential parking standard for one bedroom units is one space per unit.
- A garage should have an internal space of 7 metres by 3 metres. Smaller garages do not count towards the parking allocation.
- One visitor space must be provided for every four units.

Residential parking standards can be relaxed in areas suitable for higher density development and where there is good walkable access to shops, service and public transport, such as town centres.



Colchester Borough Council Environmental Control

Advisory Notes for the Control of Pollution during Construction and Demolition Works

The following information is intended as guidance for applicants/developers and construction firms. In order to minimise potential nuisance to nearby existing residents caused by construction and demolition works, Environmental Control recommends that the following guidelines are followed. Adherence to this advisory note will significantly reduce the likelihood of public complaint and potential enforcement action by Environmental Control.

Best Practice for Construction Sites

Although the following notes are set out in the style of planning conditions, they are designed to represent the best practice techniques for the site. Therefore, failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974)

Noise Control

1. No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holiday days.
2. The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:1984.
3. Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
4. Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

Emission Control

1. All waste arising from the ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
2. No fires to be lit on site at any time.
3. On large scale construction sites, a wheel-wash facility shall be provided for the duration of the works to ensure levels of soil on roadways near the site are minimised.
4. All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Best Practice for Demolition Sites

Prior to the commencement of any demolition works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Planning & Protection Department. In addition to the guidance on working hours, plant specification, and emission controls given above, the following additional notes should be considered when drafting this document: -

Noise Control

If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Planning & Protection prior to the commencement of works.

The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.

Emission Control

All waste arising from the demolition process to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.

The Town and Country Planning (Use Classes) Order 1987 (as amended)

Class A1. Shops

Use for all or any of the following purposes—

- (a) for the retail sale of goods other than hot food,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other cold food for consumption off the premises,
- (e) for hairdressing,
- (f) for the direction of funerals,
- (g) for the display of goods for sale,
- (h) for the hiring out of domestic or personal goods or articles,
- (i) for the washing or cleaning of clothes or fabrics on the premises,
- (j) for the reception of goods to be washed, cleaned or repaired,
- (k) as an internet café; where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet where the sale, display or service is to visiting members of the public.

Class A2. Financial and professional services

Use for the provision of —

- (a) financial services, or
 - (b) professional services (other than health or medical services), or
 - (c) any other services (including use as a betting office)
- which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

Class A3. Restaurants and cafes

Use for the sale of food and drink for consumption on the premises.

Class A4. Drinking establishments

Use as a public house, wine-bar or other drinking establishment

Class A5. Hot food takeaways

Use for the sale of hot food for consumption off the premises.

Class B1. Business

Use for all or any of the following purposes—

- (a) as an office other than a use within class A2 (financial and professional services),
 - (b) for research and development of products or processes, or
 - (c) for any industrial process,
- being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2. General industrial

Use for the carrying on of an industrial process other than one falling within class B1 above

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.

Class C2. Residential institutions

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.

Class C3. Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by—

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.

Class D1. Non-residential institutions

Any use not including a residential use —

- (a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,
- (b) as a crèche, day nursery or day centre,
- (c) for the provision of education,
- (d) for the display of works of art (otherwise than for sale or hire),
- (e) as a museum,
- (f) as a public library or public reading room,
- (g) as a public hall or exhibition hall,
- (h) for, or in connection with, public worship or religious instruction, (i) as a law court.

Class D2. Assembly and leisure

Use as —

- (a) a cinema,
- (b) a concert hall, (c) a bingo hall or casino,
- (d) a dance hall,
- (e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

Sui Generis Uses

Examples of sui generis uses include (but are not exclusive to):

theatres, amusement arcades or centres, funfairs, launderettes sale of fuel for motor vehicles, sale or display for sale of motor vehicles, taxi businesses or a business for the hire of motor vehicles, a scrapyard or the breaking of motor vehicles, hostels, retail warehouse clubs (where goods are sold, or displayed for sale, only to persons who are members of that club), night-clubs, or casinos.

Interpretation of Class C3

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

Interpretation of Class C4

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

Deferral and Recommendation Overturn Procedure (DROP) Flowchart

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

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



COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 17 December 2015 at 18:00

Member:

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

Chairman
Deputy Chairman

Substitutes:

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

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

AGENDA - Part A

(open to the public including the press)

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

An Amendment Sheet is available on the Council's website by 4:30pm on the day before the meeting (see Planning and Building, Planning Committee, Planning Committee Latest News). Members of the public should check that there are no amendments which affect the application in which they are interested. Members of the public please note that any further information which they wish the Committee to consider must be received by 5pm two days before the meeting in order for it to be included on the Amendment Sheet. With the exception of a petition, no written or photographic material can be presented to the Committee during the meeting.

1 Welcome and Announcements

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

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

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

2 Have Your Say! (Planning)

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

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

3 Substitutions

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

4 Urgent Items

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

5 Declarations of Interest

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

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

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

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

6.1 **Minutes of 22 October 2015** 17 - 28

To confirm as a correct record the minutes of the meeting held on 22 October 2015.

6.2 **Minutes of 5 November 2015** 29 - 34

To confirm as a correct record the minutes of the meeting held on 5 November 2015.

7 **Planning Applications**

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

Have Your Say arrangements - Tollgate Village application 35 - 36

7.1 **150239 Land to north/south of Tollgate West, Stanway** 37 - 132

Outline application for mixed used development of leisure uses (use class D2) including cinema and retail (use classes A1, A2, A3, A4 and A5) with associated parking including multi-storey car park, public realm improvements, access, highways, landscaping and associated works

7.2 **150972 Wormingford Airfield, Fordham Road, Wormingford** 133 - 156

Application for the additional use of one Touring Motor Glider (TMG). All other existing uses to remain the same.

7.3 **150213 Land west of 58 Queens Road Wivenhoe** 157 - 186

Erection of a detached dwelling with associated parking facilities –

- 7.4 **152344 Old Heath Recreation Pavilion, Recreation Road, Colchester** 187 - 194

Redevelopment of the Old Heath Tennis Pavilion into a community cafe

8 **Exclusion of the Public (not Scrutiny or Executive)**

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

Part B

(not open to the public including the press)

Planning Committee

Thursday, 22 October 2015

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

Substitutes: Councillor Cyril Liddy (for Councillor Michael Lilley)

217 Site Visits

Councillors Chuah, Harrington, Hayes, Hazell, Jarvis, Manning, Moore, Scott-Boutell and Sykes attended the site visit undertaken on 1 October 2015 to Chapel Lane, West Bergholt.

218 Minutes of 17 September 2015

The minutes of the meeting held on 17 September 2015 were confirmed as a correct record.

219 150177 Chapman's Farm, Nayland Road, Colchester

Councillor Jarvis (in respect of his close acquaintance with the applicants) declared a pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5) and left the meeting during its consideration and determination.

The Committee considered an application for the demolition of all existing buildings and construction of a maximum of 27 houses on the existing site currently occupied by Cants of Colchester at Chapman's Farm, Nayland Road, Colchester. The application had been referred to the Committee because objections had been received and a Section 106 legal agreement was required. The Committee had before it a report in which all the information was set out.

Alistair Day, Principal Planning Officer, presented the report and, assisted the Committee in its deliberations. He explained that condition 19 needed to be amended to refer to Chestnut Close not Walnut Drive.

Jean Dickinson, on behalf of Myland Community Council addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. She explained that the Community Council had no objection to the principle of development but were of the view that the application should be refused on the grounds of a lack of research, overdevelopment and poor design. She was concerned that the plans were not to scale and seemed to be generally of poor quality and was of the view that a fixed number of dwellings needed to be illustrated on the plans to enable the application to be determined adequately. She regretted that consultation with the community had not been undertaken and there appeared to be no regard to the Community Design Statement. She further considered the site to be an important one for the community which needed a sensitive low density development.

Councillor Goss attended and, with the consent of the Chairman, addressed the Committee. He acknowledged that the site would be the subject of development in the future but considered this particular application to be overdevelopment. He was concerned about the design of the dwellings proposed, albeit an outline application, and requested further consideration be given to the density proposed. He was also of the view that there were sufficient outstanding issues in relation to highways and ecology for the proposal to be deferred for further negotiation.

Members of the Committee welcomed the affordable housing element within the proposals but expressed concern about the inaccuracies contained in the drawings, the impact of the planned changes to the road network on the proposed layout and the apparent lack of consultation with local residents and Myland Community Council. Members were also of the view that the forthcoming Neighbourhood Plan would need to be taken into consideration. Of particular concern was the ability of the site to accommodate up to 27 units once the redesigned access had been taken into account.

The Principal Planning Officer confirmed that the density, being 27 units on a 0.9 hectare site was not dissimilar to the neighbouring site which had approval for 33 units per hectare. Concern regarding the quality of the drawings was noted, however, as the application was for outline approval, the plans had illustrated an indicative layout on the basis of a mixture of 2, 3 and 4 bedroom units, with an affordable element up to 27 in total. He further explained that the drawings were indicative only in order to illustrate how 27 units could be accommodated within the site. He was confident that the shortcomings in the layout could be designed not to infringe guidelines regarding size of gardens, car parking and the impact on neighbouring dwellings. He was further of the view that consultation with the community would be undertaken when the detailed application was submitted in due course. He explained that the highway access had been designed to create a safe access in the present road network context. At a later date, the layout of Nayland Road would be truncated as a result of a diversion of the A134 which was currently under construction with completion due in March 2016. In terms of ecology and, in particular the impact on skylarks and bats, it was considered that the site was unlikely to be of great significance to these species and, in any event, conditions had been proposed to provide adequate mitigation. He explained that government guidance

only required the provision of an Environmental Impact Assessment where significant adverse impact was demonstrated and, as such would not be considered reasonable for this application. He reminded the Committee members that matters relating to design, layout, landscape and overlooking would be addressed at the Reserved Matters stage which could be submitted to the Committee for determination. He confirmed that the Council's Tree Officer had agreed that the loss of one of the trees was acceptable.

RESOLVED (NINE voted FOR and THREE voted AGAINST) that –

- (i) The planning application be approved subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within six months from the date of the Committee meeting
- (ii) In the event that the legal agreement is not signed within six months to delegate authority to the head of Commercial Services to refuse the application or otherwise to be authorised to complete the agreement to provide:

Affordable Housing (20%)

Open Space, Recreation and Sports Contribution £171,130

Community Facilities Contributions £41,000

- (iii) On completion of the legal agreement, the Head of Commercial Services be authorised to grant planning permission subject to the conditions set out in the report, with Condition 19 being amended to refer to Chestnut Close and not Walnut Drive, as well as an informative to encourage the applicant to consult with ward councillors and Myland Community Council on the design and layout of the detailed scheme prior to the submission of the reserved matters planning application

- (iv) The reserved matters planning application to be referred back to the Committee for determination.

220 151660 Old Police Station, 37 Queen Street, Colchester

The Committee considered an application for the removal of conditions 3 and 4 of planning permission 122272 at 37 Queen Street, Colchester. The application had been referred to the Committee because the Council was the applicant. The Committee had before it a report in which all the information was set out.

Alistair Day, Principal Planning Officer, presented the report and, assisted the Committee in its deliberations. He explained that Conditions 3 and 4 related to a requirement for the securing of a BREEAM sustainability accreditation which had been a requirement of European Union funding which had subsequently been withdrawn. The requirement to register the scheme for BREEAM accreditation and the additional works needed to achieve a 'very good' rating had resulted in a negative impact on viability, especially given the withdrawal of the original funding stream, and the removal of these

elements would generate a financial saving which would greatly assist in bringing the scheme to fruition.

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

221 151978 Valentinus Crescent, Colchester

The Committee considered an application for the variation of condition 2 of planning permission 142439 at Valentinus Crescent, Colchester. The application had been referred to the Committee because the Council was the applicant. The Committee had before it a report in which all the information was set out.

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

222 150383 Coopers Beach Holiday Park, Church Lane, East Mersea

The Committee considered an application for the proposed change of use of land to site 60 holiday lodges, access roads, parking and landscape at Coopers Beach Holiday Park, Church Lane, East Mersea, Colchester. The application had been referred to the Committee because it was a Major application and objections had been received. The Committee had before it a report and an amendment sheet in which all the information was set out.

Sue Jackson, Principal Planning Officer, presented the report and, assisted the Committee in its deliberations. She explained that the wording of condition 2 needed to be amended to refer to 'holiday lodge' style caravan pitches.

David Sunnocks, on behalf of East Mersea Parish Council, the Parochial Church Council and the Village Hall Committee addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He was concerned about the scale of the development as it would mean a 15% increase in the number of units on the site. Access to the site was by means of a single track which often became congested. There was a very limited bus service and, as such, travel movements predominantly by car were inevitable. He referred to the high density design, that the economic benefit to the community was highly unlikely and the proposals had ignored the Village Plan. He considered that there was strong local evidence to suggest that people were travelling to work from the site and that the residential use was permanent throughout the year. East Mersea Parish Council was not opposed to development in principle, in fact it had been active in promoting an affordable housing scheme for the village.

Andrew Dowell addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He referred to the popularity

of the Coopers Beach development and the economic benefit it had brought to the community. He considered that the principle of development on the site had already been agreed as well as the contributions being made to highway and access improvements. There would be no detrimental effect on the nearby church, an Environmental Impact Assessment had been undertaken in relation to the surrounding area and a code of conduct had been agreed with Natural England. He referred to concerns relating to traffic congestion which had not been supported by the Highway Authority, he further explained that it was not within the interests of the applicants to have full-time residential occupancy and occupants were required to enter into an agreement confirming that this would not be the case. The design of the units had sought to meet modern customer expectations and the proposed layout was in order to address the natural slope of the site.

Councillor Sheane attended and, with the consent of the Chairman, addressed the Committee. He supported the Parish Council's concerns on the application which he also considered to be valid for the Committee to consider. The Parish Council and residents had stated their concern regarding the potential for residences to become permanent. There was local evidence confirming this situation in relation to caravan occupants and he understood that the Council had identified people who were found to be living on the caravan site without a break. This being the case, he was of the view that this tendency would be increased in respect of the proposed holiday lodges. He welcomed the conditions attached to the officer's recommendation for approval and requested a proactive approach to the enforcement of these requirements.

The Principal Planning Officer explained that the layout of the site was not a matter controlled by the Planning Authority rather it was governed by the site license. She acknowledged that there had been a series of applications from sites on Mersea Island for 12 month occupancy but she confirmed that objections and concerns had routinely been dismissed at appeal on the basis that this could be addressed by means of site owners requiring evidence of an alternative permanent address. Accordingly, a condition had been proposed to provide for the holding of this evidence by the site operator. The application site was unusual in that the current use had been allowed on appeal in the 1960s and the inspector had not imposed a condition restricting occupancy. Investigations had been undertaken by the Licensing Team but they had found no evidence of any one living at the site. She also confirmed that the Planning policies applicable to Tourism uses were different to Policies relating to residential uses. She confirmed that the site did not include any Flood Zone 3 land and she could not recommend the phasing in of the proposal as the application was for the provision of 60 un-phased units.

Members of the Committee sympathised with the views expressed by the Parish Council, expressed their concern regarding the incremental holiday related development on Mersea Island and speculated as to whether this was now having a detrimental effect on the amenity of local residents. They also confirmed the need for complaints to be referred to the Council's Licensing Team for action as it was in the interests of the

applicant to ensure that the site license remained in force in order to continue to operate the business. Doubts were expressed regarding the benefits of the proposal for the local economy.

RESOLVED (SIX voted FOR, FIVE voted AGAINST and ONE ABSTAINED) that the planning application be approved subject to the conditions set out in the report and the amendment sheet and the concerns of the Committee in relation to the detrimental effect on the amenity of local residents of the incremental increase in holiday home development in East Mersea be referred to Local Plan Committee for further consideration.

223 151593 International Farm Camp, Hall Road, Tiptree

The Committee considered an application to vary condition 9 of planning permission 100684 at International Farm Camp, Hall Road, Colchester. The application had been referred to the Committee because it was a Major application and objections had been received. The Committee had before it a report and an amendment sheet in which all the information was set out.

Nadine Calder, Planning Officer, presented the report and, assisted the Committee in its deliberations.

Steve Bays addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He explained that he was objecting to the application of the grounds of highway safety in relation to access and egress onto Hall Road, Tiptree. He considered it was possible to consider an improvement to road safety which was an issue as it was not possible to enter Hall Road if a vehicle was exiting. He was of the view that the Highway Authority was not aware of this current situation which, in his view, would get worse due to the likely increase in car ownership by the site occupants.

The Planning Officer explained that the Highway Authority had not raised any objection to the proposal which was to provide for the occupation of up to ten of the 55 caravans on the site from 30 November to 1 February each year. It was not considered that this would generate significant additional traffic.

Members of the Committee sympathised with the views expressed by the objector but did not consider there were grounds for refusal given the Highway Authority's acceptance of the proposal. The reasons prompting the submission of the application were acknowledged and it was suggested that the highway issues may be better considered at a meeting of the Local Highway Panel.

RESOLVED (ELEVEN voted FOR and ONE ABSTAINED) that the planning application be approved subject to the conditions set out in the report.

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

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

The Committee considered an application for a replacement dwelling at 35 Yorick Road, West Mersea, Colchester. The application had been referred to the Committee because the applicant's son was a Borough Councillor. The Committee had before it a report and an amendment sheet in which all the information was set out.

Chris Harden, Planning Officer, presented the report and, assisted the Committee in its deliberations. He explained that condition 3 would be amended to agree materials rather than matching materials.

Mary Neville addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. She explained that she had objected to the application and she was attending the Committee meeting on behalf of other neighbours who objected to the proposal. Their objections were based on the principle of demolition of the existing building, its replacement with a much larger building and the need for the replacement dwelling to be constructed with matching materials to the existing building. She also sought the Committee's consideration of an additional condition to ensure any future enlargement or improvement was not undertaken without the need to seek prior approval.

Jamie Kelly addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He explained that the proposal was virtually identical to a previous application to extend the existing dwelling which had been approved and that a replacement dwelling was now being sought due to the amount of demolition involved with the previous application. The proposal included an improved access, whilst the building ridge height would be very slightly increased. He considered that the objections from neighbouring residents had been adequately addressed by means of amendments to accommodate their concerns.

The Planning Officer confirmed that there were no grounds to object to an application for demolition of an otherwise sound building and, although a previously approved application had a condition providing for materials matching the existing building, this was not considered reasonable in relation to a replacement building. He also confirmed that a condition had been proposed to remove permitted development rights in respect of further improvements or alterations.

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

225 150702 Homecroft, Chapel Lane, West Bergholt

Councillor Chuah (in respect of her acquaintance with the owners of a property to the rear of the application site) declared a non-pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5).

The Committee considered an application for the proposed formation of a private drive, erection of two detached bungalows, erection of a two storey house, extensions and alterations to an existing bungalow to form a two storey dwelling, erection of garages and provision of associated parking facilities at Homecroft, Chapel Lane, West Bergholt, Colchester. The application had been referred to the Committee because it had been called in by Councillor Willetts. The Committee had before it a report and an amendment sheet in which all the information was set out. The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

Carl Allen, Planning Officer, presented the report and, assisted the Committee in its deliberations. He explained that a plan had been provided by the Highway Authority illustrating the extent of publicly maintainable highway at the location, confirming that the verge immediately outside the application site was privately owned.

Bob Tyrrell, on behalf of West Bergholt Parish Council addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He explained that the Parish Council was not opposed to the principle of the development of the site but were concerned about the poor design quality of the proposals. He considered that the site had been cleared unsympathetically and it was unfortunate that the indigenous hedges had not been preserved. He was of the view that the proposal would be improved if it were on a smaller scale with improved gardens and replacement hedges. He was concerned that the application drawings did not accurately reflect the slope of the site, that no ecology assessment had been made. He requested that the Committee consider refusing the application on the grounds of poor design, out of keeping with the street scene and inadequate parking provision.

Steve Norman addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He explained that the application had been submitted following 15 months of discussions, negotiations and meetings on site. The Highways Authority had not objected to the proposals and the proposals had been prepared in accordance with the aspirations contained in the Parish Plan. Additional fine tuning had also been undertaken to address concerns regarding surface water and drainage. He explained that some of the plots exceeded the minimum parking standards whilst the visibility splay was in excess of the requirements of the Highway Authority. He confirmed that the highway verge would be retained and was of

the view that the development would make a positive contribution to the village.

Councillor Harrington attended and, with the consent of the Chairman, addressed the Committee. He considered that the proposal was an overdevelopment of an infill site in a sensitive area with substandard site layout and design. He had outstanding concerns regarding the junction of Valley View with Chapel Lane. His main concern was the prominence of the building proposed for plot 1 and he considered that the contents of the West Bergholt Village Design Statement, which had been adopted by Colchester Borough Council, had been ignored in many ways. In particular trees and copses which should have been safeguarded, had already been removed from the site. On the basis that infill development needing to reflect the surrounding area, he considered that the proposed garden sizes needed to be substantially larger. He was of the firm view that the proposals would spoil the character of the Chapel Lane area and he referred to the unpopularity of the proposals with local residents and members of the Parish Council.

The Planning Officer confirmed that the loss of hedgerows was unfortunate but, as the site was not in a Conservation Area, their retention could not be enforced. The design of the dwellings had received the support of the Council's Urban Designer whilst parking provision and plot size exceeded the relevant guidelines.

Members of the Committee referred to the appealing character of the area and voiced concerns regarding overdevelopment of the site, loss of natural hedgerows and inappropriate design of dwellings and boundary treatment. Reference was also made to the principles contained in the West Bergholt Village Design Statement and whether sufficient regard had been paid to it in the formulation of the proposals. There was also concern regarding the prominence of the dwelling proposed for plot 1 and the negative impact of this upon the existing village scene whilst the proposed design of the bungalows was considered to be lacking in character.

RESOLVED (ELEVEN voted FOR and ONE voted AGAINST) that the planning application be deferred for further negotiations to be conducted with a view to securing improvements in relation to the prominence of the proposed dwelling at plot 1 and the design of the bungalows, bearing in mind the particular context of village scene and the reinstatement of hedges to the highway boundary.

226 151731 84 The Commons, Colchester

The Committee considered an application for a single storey rear extension for disabled adaptation to create bedroom and en suite ground floor at 84 The Commons, Colchester. The application had been referred to the Committee because the applicant was Colchester Borough Homes. The Committee had before it a report in which all the information was set out.

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

227 151921 2 Carlisle Close, Colchester

The Committee considered an application for the proposed two storey side extension to add two bedrooms, sitting room and kitchen family room at 2 Carlisle Close, Colchester. The application had been referred to the Committee because it had been called in by Councillor Laws. The Committee had before it a report in which all the information was set out.

Carl Allen, Planning Officer, presented the report and, assisted the Committee in its deliberations.

Ben Chowdhury addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He explained that he had lived at the property with his family for 28 years, it was now overcrowded and they wished to extend the building. He was of the view that there was plenty of room to provide an extension which would be in keeping with the existing street scene and the site would still retain its open character. He referred to numerous other properties nearby which had received permission to extend, some of which were also for two storey extensions and he questioned why this proposal had not been supported by the Planning Officers. He also explained that a number of residents had submitted their support for the proposal

The Planning Officer explained that the application site was considered to be very different in character to other examples referred to by the applicant, in that it looked more like a terrace than a semi-detached house. He acknowledged that other extensions elsewhere had been allowed but that the prominence of this application site was considered to be of merit and should be protected from development.

Some members of the Committee considered that the character of the estate, being open plan with an abundance of trees and shrubs, had a distinctive style and a unique feel which needed to be retained. Reference was also made to the appeal decision in 2012 which had supported this opinion in relation to the openness of the site and the particular merits of the street scene.

Other members of the Committee were of the view that the current proposal for the site was different in size to the previously refused application, would include the retention of the existing trees and shrubs and, as such, would enhance the existing house design.

As the discussion suggested that the Committee may be minded to approve the application contrary to the officer's recommendation in the report, in accordance with the Committee's procedures in these circumstances, the Chairman invited the Committee to consider invoking the Deferral and Recommendation Overturn Procedure (DROP), bearing in mind the implications of such decisions as set out in the reports and further explained by Planning Officers.

The Committee agreed not to invoke the DROP and, accordingly, the Chairman then

invited the Committee to determine the applications without deferral.

RESOLVED (SIX voted FOR, FOUR voted AGAINST and TWO ABSTAINED) that the planning application be approved in accordance with the drawings submitted with standard conditions relating to materials and landscaping.

228 151798 Aqua Springs, Cowdray Avenue, Colchester

The Committee considered an application for one illuminated fascia sign at Aqua Springs, Cowdray Avenue, Colchester. The application had been referred to the Committee because the applicant was the Council. The Committee had before it a report in which all the information was set out.

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

229 152019 Axial Way, Colchester

The Committee considered an application for a proposed 100 metre hoarding around the edge of the Axial Way development site promoting Colchester Borough Council's 'Northern Gateway' as a destination for sports, leisure and entertainment at Axial Way, Colchester. The application had been referred to the Committee because the applicant was the Council. The Committee had before it a report and an amendment sheet in which all the information was set out.

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

Planning Committee

Thursday, 05 November 2015

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

Substitutes: Councillor Ray Gamble (for Councillor Helen Chuah)

230 Site Visits

Councillors Chillingworth, Hayes, Hazell, Jarvis, Maclean, Manning Moore, Scott, Scott-Boutell and Sykes attended the site visit.

231 Minutes of 1 October 2015

The minutes of the meeting held on 1 October 2015 were confirmed as a correct record.

232 151825 Car park at Sheepen Place, Colchester

The Committee considered an application for the proposed phased development of two new office buildings and associated outbuildings, parking and landscaping at the car park at Sheepen Place, Colchester. The application had been referred to the Committee because the applicant was Colchester Borough Council. The Committee had before it a report and an amendment sheet in which all the information was set out.

Sue Jackson, Principal Planning Officer, presented the report and, assisted the Committee in its deliberations. She confirmed that Anglian water had no comment to make on the application.

David Neville addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He considered that the town was overloaded with office space and the traffic problems in the town centre had a detrimental on residents. He refuted the assertion that the development would have no significant impact on traffic volumes and he was also concerned about the loss of the Sheepen Road car park which was considered an asset for local residents. He also explained that only a small proportion of residents had been notified about the

application

Roger Gilles addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He considered the development to be a bold move on behalf of the Council, in terms of the encouragement of good quality office design which would also provide a continuing revenue stream for the Borough. The intention was to provide a well serviced work space for which a long lease had already been negotiated with Birkett Long who had specified particular requirements although the development was sufficiently flexible to accommodate other options. The Highway Authority had confirmed that it was supportive of the loss of a number of car parking spaces in order to accommodate the development. The design was intended to achieve a high BREEAM score which was an added benefit for the town.

The Principal Planning Officer explained that a tenant had been identified for the first building but the tenancy of the second building had yet to be finalised. The traffic movements generated by the development were considered to be fewer than the existing car park use and, as such, the congestion problem would not be made any worse. In addition the travel plan for the development encouraged the use of alternative travel modes. She confirmed that there had been a delay in notifying all residents about the application but this had been rectified within a few days in addition to the usual public notices in a local newspaper and on site. She also confirmed that the proposed cycle parking facilities were positioned closest to the most convenient access point to the site and that the future parking strategy was seeking a reduction in the long stay parking facilities in order to encourage park and ride take up.

One member of the Committee was concerned about the cycling facilities and considered these did not meet Essex Guideline Standards and accordingly sought the addition of a condition to provide for the cycling provision to be subject to the approval of the Planning Authority.

Generally members of the Committee acknowledged that the proposal would not cause existing traffic problems to be exacerbated, whilst the loss of car parking for residents was considered to be unfortunate. Members of the Committee were also reassured that the parking facilities for coaches and lorries to the north of the site would be unaffected by the development and the provision for disabled vehicle parking on the site accorded with necessary standards.

RESOLVED (UNANIMOUSLY) that the planning application be approved subject to the conditions set out in the report with an additional condition providing for the cycling provision to be subject to the approval of the Planning Authority.

233 151826 Car park at Sheepen Place, Colchester

The Committee considered an application for one totem sign board to the front of the

building at the car park at Sheepen Place, Colchester. The application had been referred to the Committee because the applicant was the Council. The Committee had before it a report and in which all the information was set out.

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

234 152042 Land adjacent to 39 Harvey Crescent, Stanway

Councillor Sykes (in respect of her acquaintance with the applicant) declared a non-pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5).

The Committee considered an application for the erection of a detached three bedroom dwelling and parking at land adjacent to 39 Harvey Crescent, Stanway, Colchester. The application had been referred to the Committee because it had been called in by Councillor Sykes and she had stated that she had not formed an opinion on the application. The Committee had before it a report in which all the information was set out. The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

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

Robert Pomery addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He considered that the application fully complied with standards in relation to parking, gardens and amenity and, as such, was not clear as to why it had not been supported by Planning Officers. He referred to the character of the area and the general plot sizes as well as height, width and materials which were generally similar in the locality. Some houses had been extended successfully and there was evidence of different boundary treatments in the area. As such, he was unsure as to why the proposal was considered to be so harmful to the area. He was aware that a number of residents supported the proposal as well as the Parish Council. He acknowledged the application may not be perfect but it did not conflict with planning policies and was therefore a matter for the Committee to consider, balancing various issues. He was of the view that the application was not sufficiently harmful to outweigh its merits.

The Planning Officer confirmed that, in the opinion of the Council's planning team, the site was not capable of this development. The benefit to be gained through a tidying up of the site could also be achieved through enforcement measures if that were deemed necessary. She confirmed that the site had been sold by the Council to the applicant with covenants effectively providing for the site to be retained as a garden with the provision and maintenance of a boundary fence.

One member of the Committee was concerned about the apparent inconsistency in

approach with the application and was of the view that indications had been provided which suggested the site may be able to be developed successfully. Reference was also made to the mixed appearance of dwellings in the area, some of two storey, some of three, the addition of porches and other examples of rendered finish.

Other members of the Committee acknowledged the poor quality of the proposed design of the dwelling but supported the need to improve the appearance of the area to benefit the appearance of the general street scene. Reference was also made to the potential loss of greenery, that the site had not been maintained adequately, the potential for enforcement measures to be sought to improve the site's appearance as well as the attractive development which had been provided in the opposite corner of the cul de sac.

The Planning Manager confirmed that a section 215 'untidy site' notice could be served on the owners of the land to improve the appearance if it was considered necessary. He also acknowledged that meetings had taken place with one of the ward councillors and time had been spent in order to find a suitable solution for the site. Notwithstanding, he was clear that the view expressed by planning officers was that the site was not suitable for development and a scheme had not yet been submitted which met all the requirements necessary for officers to recommend approval. There was a clear audit trail to this effect which had been communicated to the applicant and the agent and therefore he could not agree with the comments made by one of the committee members regarding indications of suitability for development.

After considerable deliberation, a number of Committee members were of the view that, although they couldn't support the current proposal, there would be merit in allowing further time for the applicant, in consultation with planning officers, to formulate an amended proposal which could be a suitable solution for development.

RESOLVED (EIGHT voted FOR and FOUR voted AGAINST) that the planning application be deferred for further negotiation to provide for the redesign of the proposals to make them more acceptable with Council's policies, bearing in mind the problems of the street scene, the roof line of the new dwelling and the need for the new dwelling to be set back in order to accommodate parking to the front.

235 151831 48a William Harris Way, Colchester

Councillor Scott-Boutell (in respect of her acquaintance with the objector making representations to the meeting) declared a non-pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5).

The Committee considered an application for the use of premises as restaurant and takeaway (A3/A5), installation of associated kitchen extract system and external ducting with brick effect cladding on the rear elevation of the building at 48a William Harris Way, Colchester. The application had been referred to the Committee because it had been called in by Councillor Harris. The Committee had before it a report in which all the

information was set out.

Eleanor Moss, presented the report and, together with Andrew Tyrrell, Planning Manager, assisted the Committee in its deliberations.

Edwina Taylor addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. She explained that, after being vacant for ten years, she was not opposed to the building being occupied. However she had considerable concerns about the flue which was proposed to be positioned directly above the entry door to her property and parallel to her kitchen and bathroom windows. She considered the proposed appearance to be unsightly. She did not object to A3/A5 use in principle but she did not wish to see the introduction of a catering business which required such a high degree of extraction. She was aware of interest in the premises from an alternative source for use as a coffee shop and she welcomed the opportunity for this type of use to be tested.

Councillor Harris attended and, with the consent of the Chairman, addressed the Committee. He thanked the Planning Officers for their work in compiling the report but he was making representations in order to support the local residents. He explained that the provision of the flue as proposed would significantly impact on what was effectively the front aspect of the residents' premises. He was concerned about the very close proximity of the flue to the windows of the dwellings in the building and he did not consider this to be acceptable in any form. He explained that the residents were not opposed to the introduction of businesses to the building but he was not supportive of this style of take away, particularly if it involved the provision of an extraction flue.

The Planning Officer explained that the recent appeal decision had established that A3/A5 use was permissible. The Committee needed to consider whether the flue could blend in harmoniously with the building, particularly given it was much less stark in appearance than that previously proposed. She was of the view that adequate maintenance would ensure that odours would be kept within controllable limits. The Planning Officer also confirmed that a commercial bin for waste disposal would be provided to the rear of the building's parking area which was the same as that proposed in the previous application.

Members of the Committee referred to the recent appeal decision whereby the inspector had determined that the principle of this type of take away use was acceptable. Nevertheless, concern was expressed regarding the siting of the flue so close to the residents' windows, the likelihood of odours being discharged in such close proximity to dwellings, the inadequate height of the top of the flue in relation to the roof line and the design faults associated with the horizontal section above the entrance to the dwellings and the general appearance of the proposed cladding. There was also considerable concern regarding the inadequate waste disposal and storage and recycling proposals, given this type of take away establishment would require the use of oil drums for the collection of grease.

As the discussion suggested that the Committee may be minded to refuse the application contrary to the officer's recommendation in the report, in accordance with the Committee's procedures in these circumstances, the Chairman invited the Committee to consider invoking the Deferral and Recommendation Overturn Procedure (DROP), bearing in mind the implications of such decisions as set out in the reports and further explained by Planning Officers.

The Planning Manager confirmed that there was no significant risk should the Committee determine that the application be refused on the grounds of the poor design of the flue.

The Committee agreed not to invoke the DROP and, accordingly, the Chairman then invited the Committee to determine the application.

RESOLVED (UNANIMOUSLY) that the planning application be refused on grounds of the poor design of the flue, particularly in relation to its appearance, height, the horizontal element and the close proximity to residential dwellings.

236 152062 42 Anthony Close, Colchester

The Committee considered an application for the infill front extension and rear extension at 42 Anthony Close, Colchester. The application had been referred to the Committee because the agent worked for the Council on a consultancy basis. The Committee had before it a report in which all the information was set out.

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

PLANNING COMMITTEE MEETING 17 DECEMBER 2015

The venue for the Planning Committee meeting on 17 December 2015 has been changed. The meeting will be held in the **Moot Hall, Town Hall, Colchester**. This is because it is likely that there will be a larger than usual number of people who will wish to attend the meeting.

One of the applications to be considered at the meeting, that in relation to **Tollgate Village**, has generated a significant amount of public interest and, accordingly, the Chairman has agreed to vary the arrangements for the public to make representations (called Have Your Say!) The changed arrangements for speaking **on this application only** are:

- up to **three speakers** will be permitted to address the Committee for up to a maximum of **three minutes** each **in opposition** to the application and
- up to **three speakers** will be permitted to address the Committee for up to a maximum **three minutes** each **in support** of the application.

As is usual, speakers will be timed and a bell will be rung when there is one minute remaining and again at the end of the three minutes.

In respect to speakers who wish to address the Committee in opposition to the application, if necessary, the Chairman may need to consider giving priority to speakers who represent organisations or those who represent a significant body of the population, for example Parish Councils and organised groups and societies.

Names of speakers will be **recorded prior to the meeting**. If you wish to register to speak to the Committee please **tell a member of staff when you arrive at the Moot Hall**. They will be located just inside the Hall, and they will give you instructions on how to register to speak.

The meeting will **commence at 6pm** but members of the public are encouraged to arrive in good time and it is likely that **access** to the Hall will be available **from 5.00pm**.

For general advice on the content of your speech, please read the guidance on the Council and Meetings pages of the website on the link entitled Have Your Say [here](#). Please be aware that you will not be able to engage in a dialogue with the committee, but any questions you pose in your speech may be noted by the planning officers and they will be able to answer such questions in their response to speakers.



Committee Report

Agenda item

7

To the meeting of **Planning Committee**
on: **17th December 2015**
Report of: **Head of Professional/Commercial Services**
Title: **Planning Applications**

7.1 Case Officer: Vincent Pearce

MAJOR

Site: Land to north/south of, Tollgate West, Stanway, Essex

Application No: 150239

Date Received: 5 February 2015

Agent: Mr Paul Newton

Applicant: Tollgate Partnership Limited

Development: Outline application for mixed used development of leisure uses (use class D2) including cinema and retail (use classes A1, A2, A3, A4 and A5) with associated parking including multi-storey car park, public realm improvements, access, highways, landscaping and associated works.

Ward: Stanway

Summary of Recommendation: Refusal

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because:-

- The proposal is a significant Departure from the Adopted Development Plan.
- It is considered appropriate in terms of transparency of decision-taking for this application to be determined in public if for no other reason than the fact that the Council owns a number of sites where certain components to those being proposed here are potentially being (or will be) pursued through the planning process. In this context it is important for the Council as local planning authority to act independently of the Council as a land owner and for the applicants and the public at large to see and hear the evidence of that to ensure that the consideration of the merits of the proposal are restricted only to those which constitute material planning considerations. The Council as local planning authority will not, must not and has not had any regard to the financial interests of the Council as land owner.

- It has attracted a significant level of public interest.
- It had been called in by former Councillor Lesley Scott-Boutell when she served on the Council. Call-in was on the basis that “ local residents have voiced concerns regarding the potential for significant impact on highway capacity”.
- It raises the issue of ‘prematurity’ in the context of the current Local Plan process being undertaken by the Council
- The proposal falls within a category of development that could in certain circumstances require referral to the Secretary of State under the Town & Country Planning (Consultation) (England) Direction 2009.

2.0 Synopsis

2.1 **This report, having considered all material planning considerations recommends that the proposed development be refused.** It does so on the basis of:

- the significant increase in town centre use floorspace proposed which would fundamentally challenge the existing spatial hierarchy which puts the Town Centre at the top of the hierarchy;
- the resultant significant loss of high quality strategically important employment land at Stanway contrary to Council policy safeguarding high quality employment land in Strategic Employment Zones
- the consequential undermining of the Council's adopted local plan and employment strategy which are designed to widen the economic base of the Town and protect the viability and vitality of the town centre thereby undermining sustainable development principles;
- it is considered that this speculative proposal is premature and seeks to re-determine the established hierarchy via the development process instead of the appropriate and established local plan process resulting in harm through the elevation of Tollgate in the hierarchy without the consideration of that consequence through the development plan on other centres and in particular, the town centre;
- Finally, the benefits arising from the proposal in the form of an expansion in jobs and the widening of local consumer choice along with, the boost to the local economy in Stanway and limited public realm improvements do not outweigh the harm that will arise as a result of the undermining of Colchester's retail hierarchy and the consequent retail growth stagnation and harm to investment confidence in the Town Centre.

2.2 Abbreviations used in this report

ELNA: Employment Land Needs Assessment
 NPPF: National Planning Policy Framework
 NLP: Nathaniel Lichfield & Partners (CBC's retail consultants)
 NPPG: National Planning Policy Guidance
 SEZ: Strategic Employment Zone
 SGA: Stanway Growth Area
 UDC: Urban District Centre

Glossary of terminology

2.3 What is the sequential test?

2.3.1 The sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of town centre locations, with preference for accessible sites which are well connected to the town centre. It supports the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking. (National Planning Policy Guidance [NPPG]; Ensuring the vitality of town centres paragraph 008 – rev date 06.03.2014)

2.4 What is the impact test?

2.4.1 The purpose of the test is to ensure that the impact over time (up to five years (ten for major schemes)) of certain out of centre and edge of centre proposals on existing town centres is not significantly adverse. The test relates to retail, office and leisure development (not all main town centre uses) which are not in accordance with an up to date Local Plan and outside of existing town centres. It is important that the impact is assessed in relation to all town centres that may be affected, which are not necessarily just those closest to the proposal and may be in neighbouring authority areas. (National Planning Policy Guidance [NPPG]; Ensuring the vitality of town centres paragraph 013 – rev date 06.03.2014)

2.4.2 Main town centre uses: Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres, and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities). (National Planning Policy Guidance [NPPG]; Annex 2:Glossary).

3.0 Site Description and Context

3.1 This site sits within the area known as Tollgate within the Parish of Stanway.

3.2 It extends to some 11.75ha of land and sits in two parcels – one north of Tollgate West and the other south of Tollgate West. The northern portion is bounded on two sides in their entirety by highway. The eastern edge is defined by Tollgate Road with the southern edge defined by Tollgate West and in part bounded on its northern edge by London Road. The remaining side runs diagonally south-west to north-east approximately from the Stanway Western by-Pass / Tollgate West roundabout along the backs of properties in London Road where it joins the northern edge that runs along London Road.

3.3 The site topography reflects its former quarrying history as it lies considerably below the level of London Road and Tollgate Road which inclines northwards.

3.4 This parcel contains the cleared former Sainsbury's site (eastern end of site) and the current retail units (western end).

3.5 The site of the original Sainsbury's superstore site is vacant as the building was demolished and the site cleared following the relocation of the store to a new site and a new building just to the north (also in the ownership of the applicants but outside of the current proposal site).

- 3.6 The southern portion is bounded by the residential development site Lakelands to the south, the Tollgate Centre (not part of this proposal and owned by British Land) to the east, Tollgate West to the north and the Stanway Western By-Pass to the west.
- 3.7 The site is cleared and has not been used since the site was quarried for sand and gravel. There is a difference in levels across the site as part of the southern half is modestly terraced below that to the north.
- 3.8 Following quarrying, in the latter quarter of the twentieth century the area was redeveloped in part for retail superstore purposes (Sainsbury's) and retail warehouse purposes. Tollgate East (which is not part of this proposal) was also part of the earlier development and included a DIY store and various warehouses.
- 3.9 The applicant has divided the site into three parts for the purpose of description.

These are

- Zone 1: Former Sainsbury's site (allocated for employment uses)
- Zone 2: Existing Urban District Centre allocation
- Zone 3: Employment allocation but undeveloped

These are identified thus:-

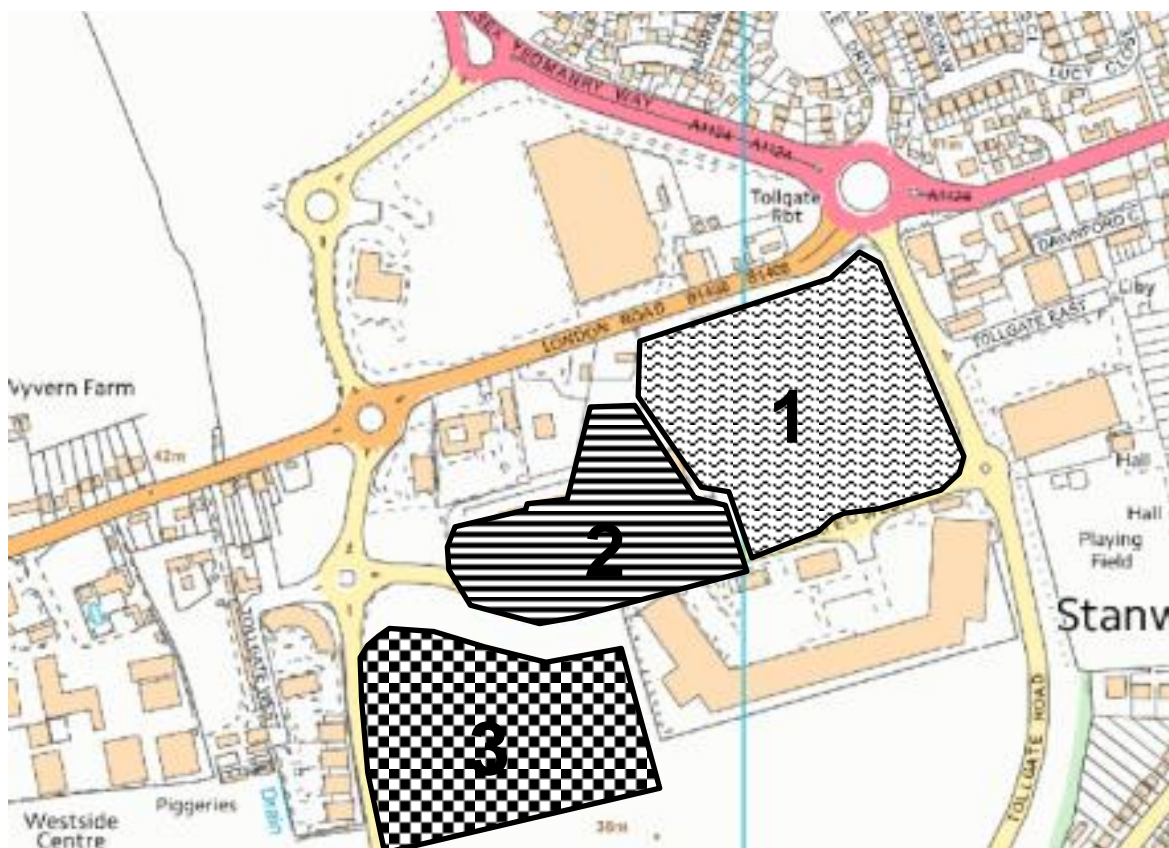


Figure 1 The 3 development zones identified by the applicant

4.0 Description of the Proposal

4.1 The applicant describes the proposal as :-

“A major mixed–use development providing additional retail and leisure floorspace for this part of Colchester and substantial public realm improvements to link the disparate parts of the existing Tollgate Urban District Centre.

The proposal includes leisure uses (D2) including a cinema (D2), retail uses including shops (A1), Financial and professional services (A2), restaurants (A3), drinking establishments (A4) and takeaways (A5) with associated parking including a multi-storey car park, public realm improvements, access highways, landscaping and associated works”

4.2 The application describes the proposal as comprising the following mix of uses (by gross internal floor area). totalling 30,812 sq.m of commercial floorspace:

- Class A1 comparison goods up to 16,304sq.m. gross
- Class A1 convenience goods of 1858sq.m. gross
- Flexible Class A1-A5 of 5010sq.m. gross
- Flexible A3-A5 of 950sq.m. gross
- D2 of 6690sq.m. gross

4.3 Existing retail floorspace (gross internal) is cited as 4669sq.m.

4.4 The jobs uplift derived from the proposal is cited as being from 135 to 1000.

4.5 The application as submitted proposed 1523 car parking spaces and the applicants described the current number as 293.

4.6 The proposal involves the following mixture of new build and remodelling of existing buildings, comprising:

Zone 1: new build

Zone 2: remodelling , extension, new build

Zone 3: new build

4.7 Heights of proposed retail and leisure buildings vary from commercial single storey 6m) and two storey through to 3 floors. Proposed heights are as follows:-

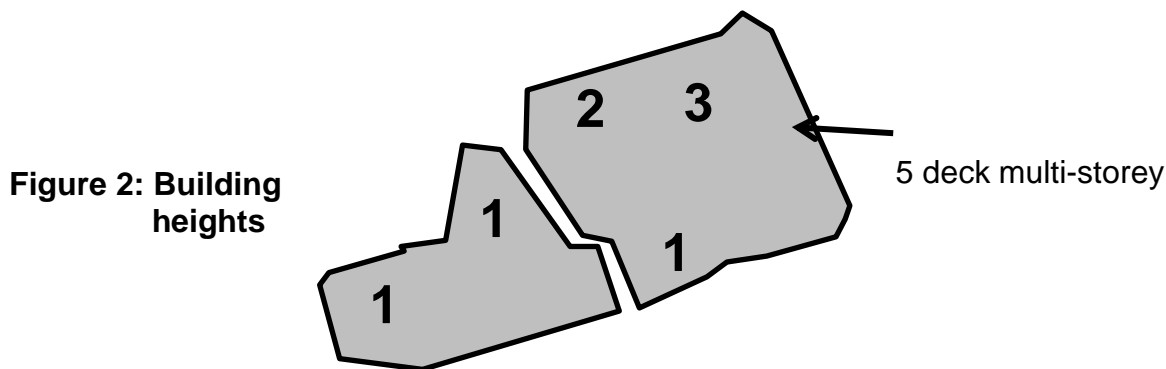
Zone 1: 6-24m

Zone 2: 6-12m

Zone 3: 6-16m

4.8 Layouts for zones 1 and 2 are more advanced than for zone 3 where the applicant requires greater flexibility at this stage to respond to the market when marketing (if the application is successful).

4.9 However with zones 1 and 2 the scale is broadly as shown below in indicative form



4.10 The applicants have submitted the extensive package of supporting documents described below:-

- Retail and leisure assessment
- Employment land study
- Transport assessment
- Ecological appraisal
- Health impact assessment
- Landscape and visual appraisal
- Planning statement
- Travel plan framework
- Tank validation report (re historic removal of petrol tanks from former Sainsbury's filling station - Tollgate West)
- Desk top contamination study
- Reptile survey report
- Design principles statement
- Parameter plans
- Design and access statement
- Flood risk assessment
- Associated plans

4.11 The proposal was the subject of a Screening Opinion and the Council determined that an Environmental Impact Assessment (EIA) was not required. However the supporting documents listed above were considered necessary.

4.12 The application includes the following summary justification:-

"The scheme represents an important opportunity to deliver new retail and leisure floorspace to service the wider Stanway area and Colchester as a whole, to improve the existing offer of the defined Urban District Centre and provide a greater choice for residents and competition to existing facilities. Whilst a full explanation of the application proposal and its justification is set out in the remainder of this document, it should be noted from the outset and read in the context that the proposals are considered acceptable for the following reasons:-

Economic factors

- The site forms part of the Stanway Growth Area, a key focus for new development in the Borough
- It will create over 1,000 new job opportunities (during construction and operation)
- It will create a direct GVA [*Gross Value Added*] of up to £16.6m in Colchester
- It will claw back expenditure currently being spent outside of the Borough, to the benefit of Colchester.
- The loss of some B class employment land is acceptable based on current evidence and will still leave a substantial oversupply in the Borough
- The proposal will not have a significant adverse impact on defined centres including Colchester town Centre.
- It will result in a range of spin-off benefits for existing operators at Tollgate.
- The provision of a range of unit sizes for national, regional and local scaled facilities

Environmental factors

- It involves the re-use of a mainly vacant site
- It is the most sequentially preferable location for new facilities
- It will deliver substantial public realm, landscape and access enhancements, ensuring improved physical and visual links and connectivity between the disparate parts of Tollgate District Centre.
- It is in a highly accessible location, well served by public transport and easily accessible on foot to nearby residential areas.
- It will deliver improvements to the existing highway network and improve pedestrian and cycle accessibility to the Site

Social factors

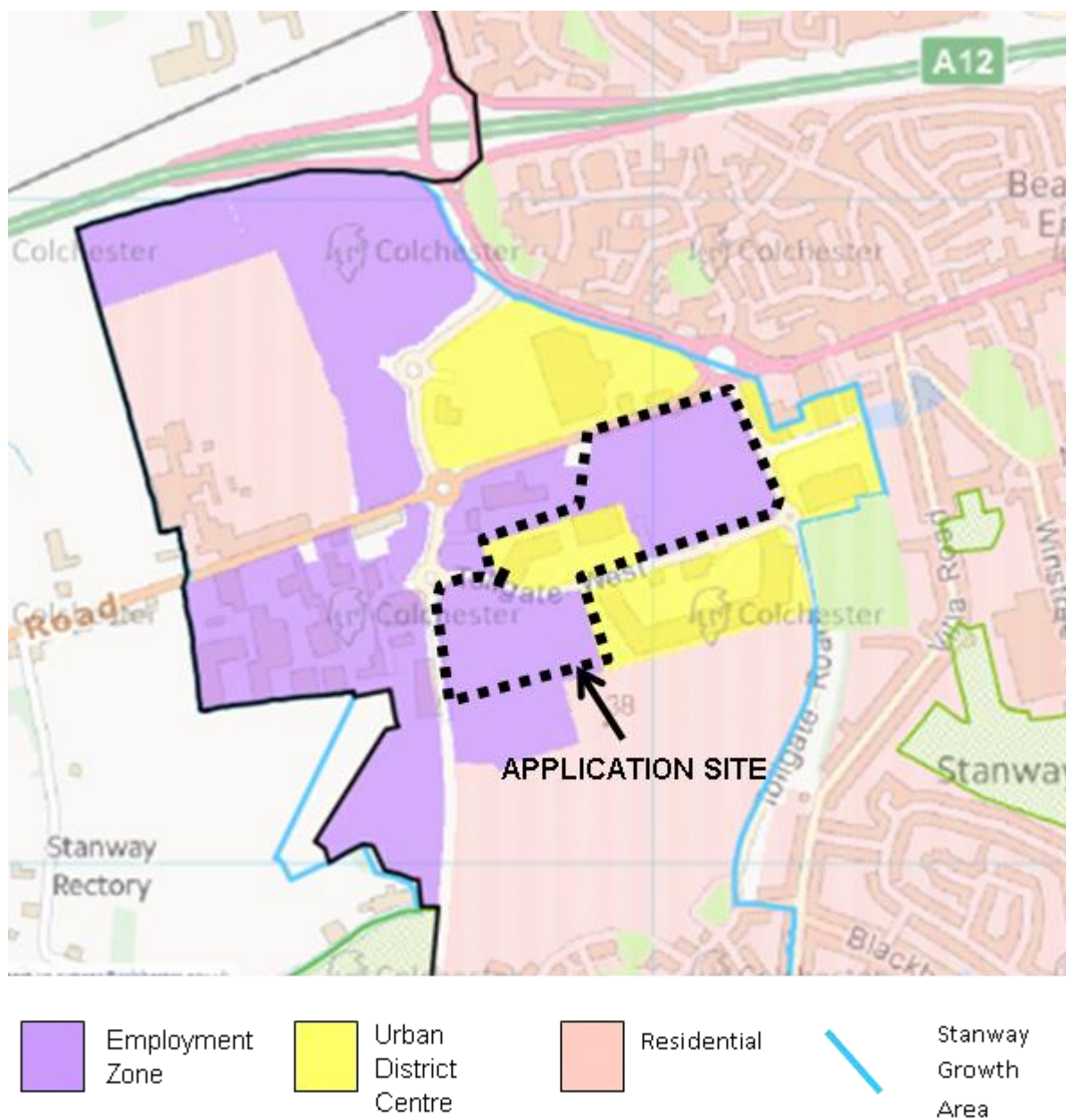
- The provision of new high quality retail and leisure facilities within and adjoining the defined District Centre, attracting new operators and services.
- It will provide additional choice and competition to existing retail and leisure provision within the Borough.
- Smaller local scale units will be provided in order to attract a range of operators, including independents, and ensure enhanced access to a range of facilities and services for local residents.
- It will create a sense of place and heart for the Stanway Growth Area.
- There is a significant local and stakeholder support for the proposal.”

5.0 Land Use Allocation

- part Urban District Centre (UDC)
- part Strategic Employment Zone (SEZ)
- Stanway Growth Area (SGA)

5.1 Constraints:

- Conservation area - no
- TPO (Tree Preservation Order) - none
- Listed Buildings - none within the site
- PROW (Public Rights of Way) – none within site FP5 to south



6.0 Relevant Planning History

6.1 The submission of this application was preceded by pre-application discussion with the Major Development Service within the framework of a fee paying Planning Performance Agreement (PPA). The stated aims of the signed PPA were as follows:-

- (I) To provide managed support for the creation of a masterplan for the comprehensive redevelopment of land at Tollgate
- (II) To provide guidance and advice on land use allocation issues including collaboration on navigating the Local Plan (Core Strategy and Allocations DPD) review process
- (III) To provide project managed pre-application support to provide for the timely preparation, consideration and determination of a subsequent associated planning application or planning application that result from this process within the lifetime of this agreement.

6.2 That Agreement was entered into on 27 August 2013.

Section 7 of that Agreement carried the following proviso:-

“7.0 PLANNING POLICY

7.1 CBC’s vision for the site is established by reference to the adopted Development Plan and any changes that arise during the Local Plan review process. The NPPF is a material consideration as is any wider master planning work that may be prepared and adopted during this PPA period.

7.2 Where the landowner’s aspirations depart from the adopted development plan policy these will need to be robustly justified. CBC reserves the right to refuse subsequent planning applications if they believe the justification is not sufficiently robust.”

Signatures to the Agreement are preceded by the following text:-

“This document represents a strong expression of intent to work collaboratively but does not constitute a legally binding document and does not convey any guarantee or promise that any submission made as part of the Core Strategy review or as an application for planning permission or both will be approved”.

6.3 The application has been advertised as a ‘Departure’ from the Adopted Local Plan by the Council.

6.4 The Tollgate area is the subject of an extensive and complex planning history and a summary history will be provided prior to the Committee meeting.

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. (Further to section 38(6) of the Planning & Compulsory Purchase Act 2004 and 70(2) of the Town & Country Planning Act 1990.) The National Planning Policy Framework (NPPF) must also be taken into account in planning decisions as a material consideration. The NPPF sets out how the Government's planning policies are to be applied. It makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental. The NPPF succinctly identifies these as follows:-

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

7.2 Much of the NPPF is relevant to the proper consideration of the merits of this proposal. Particular (but not exclusive) attention is drawn to the relevance of the following sections:-

7.3 Presumption in favour of sustainable development (paragraphs 11-16).

7.4 Particular attention is drawn to paragraph 14 therein:-

Paragraph 14:

“14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

*For **plan-making** this means that:*

- *local planning authorities should positively seek opportunities to meet the development needs of their area;*
- *Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*

– specific policies in this Framework indicate development should be restricted.

For **decision-taking** this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: – any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or – specific policies in this Framework indicate development should be restricted.

- 7.5 In the context of this the Council is currently advancing its new Local Plan and will be in a position to consult publicly on its preferred options in 2016. As part of that emerging direction the Council is now developing its planning strategy for growth in employment, the supply of strategic employment land and the optimum location for such sites as well as setting out its future retail hierarchy and the extent to which new retail floorspace is required .
- 7.6 In terms of the Council's planning policies, the Adopted Development Plan is not silent on retail policy and employment policy. The Council believes that its Review Local Plan Core Strategy revised July 2014 and the Development Policies revised July 2014 are up to date and disagrees with the view of the applicant's planning consultants, Barton Willmore that it is not as stated in its submission of 3 December 2015. The validity of the status of the Council's Local Plan has been established through a number of appeal decisions subsequent to NPPF publication, including for example the decision on the Horkesley Park proposal where the Inspector found that: "The development plan should therefore not be considered absent, silent or relevant policies to be out-of-date and the appeal should be determined against the development plan unless other material considerations indicate otherwise." (APP/A1530/A13/2195924, February 2014).
- 7.7 Implicit in the March 2014 appeal decision rejecting the use of two units within the Tollgate West Business Park for retail purposes was the principle that the Council's planning policies were up-to-date. (APP/A1530/A/14/2212689). The Council is revising its employment hierarchy and policies as part of developing a new Local Plan and will have regard to changes in both national policy and local circumstances. Current adopted policies are however, considered to remain appropriate and up-to-date in their overall direction on town centre spatial hierarchy and employment land issues. Specifically, Paragraph 23 of the NPPF provides that local authorities should, inter alia, 'define a network and hierarchy of centres that is resilient to anticipated future economic changes'. This is reflected in the Council's Centres and Employment classification and hierarchy set out in Table CE1a which puts the Town Centre at the top of the hierarchy, with Urban District Centres below them. The NPPF's definition of town centre uses which provides that all forms of centres are suitable for town centre uses allows town centre uses to be introduced into Urban District Centres, but the Council considers that its policies limiting the scale of their development outside the Town Centre remain a valid check which is compliant with the intent of the NPPF to ensure the vitality of town centres. This view reflects the outcome of the Focussed Review consultation. The Council originally sought to vary its Centres and Employment policies to ensure their conformity with the NPPF, including the definition of 'centres', but did not pursue this approach due to the fact that limited alterations would have had the unintended consequence of affecting other policies not included in the Focused Review. The Inspector accepted this approach and the retention of the Centres and Employment

policies in their first form, given that the NPPF (para 153) gives the Council the discretion to decide the extent of review. The Inspector directed that the Council should: 'Delete from the Focused Review all the changes relating to retail and employment policies to avoid introducing piecemeal changes to such policies which have implications for the overall strategy of the development plan and existing allocation policies. All these policies would thus remain as currently set out in the development plan.' This would leave the Council the task of updating all the employment and retail policies in one comprehensive and coordinated manner as part of the full review of the local plan and avoid the conflicts and potential unintended consequences of making piecemeal changes now.

- 7.8 It is accepted that the Council will need to carry out further work to ensure its Centres and Employment policies are compliant with national policy, but this can be achieved through the full review of the Local Plan and does not compromise the overall soundness of the Council's hierarchy which is considered compliant with the NPPF. Paragraph 21 of the NPPF provides that local authorities should set out a clear economic vision and strategy for their area which is accompanied by criteria or strategic sites to match the criteria. Paragraph 22 provides that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used. The Council's employment policies are compliant with this in that they provide a hierarchy of Strategic Employment Zones and Local Employment Zones providing a range of sites in policies CE1, CE3 and DP5, with Table CE1b and DP5 providing more detailed guidance on the range of employment to be expected in these zones. Policy DP5 addresses the concerns about overly rigid protection of employment zones by providing criteria to permit release of employment land for other purposes.

7.9 Delivering sustainable development

Building a strong, competitive economy (paragraphs 18-22)

- 7.10 Specific attention is drawn to paragraph 18 that states:

"18. The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future."

- 7.11 In considering the current proposal this report will look objectively at what the proposal offers in terms of direct and indirect job creation opportunities
- 7.12 Members may be aware that Colchester as a town performs below many other Essex towns in terms of average wage levels and has been seeking to attract or encourage higher paid jobs to the town to widen the town's economic base and allow residents to work locally rather than commute out (usually towards south Essex /London) which is not particularly sustainable. Higher paid jobs within Colchester secured by Colchester residents allow more wealth to be captured and retained within the town thereby enhancing local prosperity and boosting the local economy.

- 7.13 Paragraph 20 NPPF states:

"20. To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century."

7.14 Within this context members will be asked to take into account the needs and prospects of existing Colchester retail businesses; especially those located in the Town Centre, the commercial needs of the applicants who are an established local development company and the potential needs of retailers looking to locate or develop an additional presence in the town.

7.15 Paragraph 22: states:

“22.Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.”

7.16 This is an important consideration as parts of the application site fall within a designated strategically important employment zone. Members will be helped in examining this issue by reference to the Council’s Employment Land Needs Assessment published January 2015 (as undertaken on behalf of the Council by Nathaniel Lichfield & Partners (NLP).

7.17 Any consideration of the economic performance of allocated employment sites must also have regard to the wider impact of the 2008 world banking crisis and the economic turbulence that has followed and continues to leave its footprints on the national economy.

7.18 **Building Sustainable Development 2: Ensuring the vitality of town centres**
(NPPF paragraphs 23-27)

7.19 All of the paragraphs in this section are relevant as they provide a comprehensive framework for supporting the continued vitality and viability of town centres. This involves in the first instance developing a spatial policy framework that clarifies local links and functions and seeks to ensure new development is directed to locations that will support and strengthen the pivotal role of main town centres. The sequential test is provided as the technical means for assessing the relative appropriateness of alternative sites for development. Proposals also need to satisfy an impact test to demonstrate they would not have a significant adverse effect on town centres. Finally the Government’s position expressed within paragraph 27 is pivotal:-

“Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused”.

7.20 Members need to carefully consider the content of these paragraphs as they are critical to the consideration of the proposals. For this reason, they are set out in full below:

“2. Ensuring the vitality of town centres

23. Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should:

- recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;
- define a network and hierarchy of centres that is resilient to anticipated future economic changes;
- define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations;
- promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres;
- retain and enhance existing markets and, where appropriate, re-introduce or create new ones, ensuring that markets remain attractive and competitive;
- allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres. It is important that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability. Local planning authorities should therefore undertake an assessment of the need to expand town centres to ensure a sufficient supply of suitable sites;
- allocate appropriate edge of centre sites for main town centre uses that are well connected to the town centre where suitable and viable town centre sites are not available. If sufficient edge of centre sites cannot be identified, set policies for meeting the identified needs in other accessible locations that are well connected to the town centre;
- set policies for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres;
- recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites; and
- where town centres are in decline, local planning authorities should plan positively for their future to encourage economic activity.

24. Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

25. This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development.

26. When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). This should include assessment of:

- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.

27. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.”

7.21 The applicants have produced a reasoned supporting retail impact analysis as part of their submission which in their view strongly indicates that the proposed development will not have a significant adverse impact in the context of issues identified in paragraphs 23-27 (inclusive) above and will not be contrary to the sequential test. This report will explore the extent to which these conclusions are accepted by the Council.

7.22 Local authorities are required to have regard, when assessing impact assessments, to:- (paragraph 26 of the NPPF)

- The impact of the proposal on **existing, committed** and **planned** public and private investment in a centre or centres in the catchment of the proposal
- The impact of the proposal on town centre **vitality and viability**, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years the impact should also be assessed up to ten years from the time the application is made

7.23 **4. Promoting sustainable transport** (paragraphs 29-41)

7.24 Particular regard needs to be given to the following paragraphs:-

Paragraph 32

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

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
- safe and suitable access to the site can be achieved for all people; and
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

7.25 The application is supported by extensive highway/traffic impact analysis work and the application has been the subject of in depth negotiation with both Highways England (strategic network impacts – A12 and local junctions) and Essex County Council (local network impacts)

- 7.26 Members who are familiar with Stanway/ Tollgate will be aware that the local highway network suffers regular congestion and this has been a long-standing concern with residents. This report will carefully consider highway impacts and the likely impact of proposed mitigation measures.
- 7.27 Paragraph 34. Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas.
- 7.28 Paragraph 38. For larger scale residential developments in particular, planning policies should promote a mix of uses in order to provide opportunities to undertake day-to-day activities including work on site. Where practical, particularly within large-scale developments, key facilities such as primary schools and local shops should be located within walking distance of most properties.
- 7.29 Stanway has seen a rapid and expansive growth in the number of new homes from the 1980's and that pattern is set to continue. Until relatively recently a village, Stanway has now become the outer edge of urban Colchester. In the context of paragraph 38 it is certainly appropriate to consider how this burgeoning new community is currently supported by local facilities and whether the Tollgate Village proposal will provide local people with opportunities to undertake day-to-day activities without harming other 'interests of material importance'.
- 7.30 Paragraph 40. Local authorities should seek to improve the quality of parking in town centres so that it is convenient, safe and secure, including appropriate provision for motorcycles. They should set appropriate parking charges that do not undermine the vitality of town centres. Parking enforcement should be proportionate.
- 7.31 The Tollgate Village proposal includes the provision of 1523 parking spaces which are expected to be free to use. The availability of free parking must be assessed against the promotion of modal shift towards sustainable modes of travel. The impact of this free parking in terms of the ability of the town centre to compete and maintain vitality will be explored in the report. Consideration of the impact of Tollgate Village on the Council's town centre parking income is not a material planning consideration and is not a matter to be taken into consideration.
- 7.32 This report will, where appropriate, also refer to other specific sections and paragraphs of the NPPF as needs be.
- 7.33 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
SD2 - Delivering Facilities and Infrastructure
CE1 - Centres and Employment Classification and Hierarchy
CE2a - Town Centre
CE2c - Local Centres
CE3 - Employment Zones
UR1 - Regeneration Areas
UR2 - Built Design and Character

PR1 - Open Space
 PR2 - People-friendly Streets
 TA1 - Accessibility and Changing Travel Behaviour
 TA2 - Walking and Cycling
 TA3 - Public Transport
 TA4 - Roads and Traffic
 TA5 - Parking
 ER1 - Energy, Resources, Waste, Water and Recycling

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

DP1 Design and Amenity
 DP2 Health Assessments
 DP3 Planning Obligations and the Community Infrastructure Levy
 DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
 DP6 Colchester Town Centre Uses
 DP7 Local Centres and Individual Shops
 DP10 Tourism, Leisure and Culture
 DP14 Historic Environment Assets
 DP17 Accessibility and Access
 DP18 Transport Infrastructure Proposals
 DP19 Parking Standards
 DP20 Flood Risk and Management of Surface Water Drainage
 DP21 Nature Conservation and Protected Lanes

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

Paragraph 3.13 Strategic Employment Zones (Stanway 34.43ha)
 SA TC1 Appropriate Uses within the Town Centre and North Station Regeneration Area
 SA STA1 Appropriate Uses within the Stanway Growth Area
 SA STA3 Employment and Retail Uses in Stanway Growth Area
 SA STA4 Transportation in Stanway Growth Area

- 7.36 The following non-statutory guidance document is also relevant: The future of Tollgate: A Framework Vision (July 2013) and the Stanway Parish Plan & Design Statement (March 2011)

In the context of the Parish Plan, particular attention is drawn to:-

- P30: Recreation & Leisure

“With shopping coming top of the list for adults’ leisure activities it wasn’t a surprise that wider shopping choice was the clear leader in the choice of new facilities with 40% in favour. British land’s proposed changes to the Tollgate Centre, if accepted, may go some way to meeting this need. A swimming pool (27.5%), sports complex (25.5%), bigger library (16.5%) and more allotments (14%) also attracted significant minority support with cinema, ten pin bowling and ice rink, all at just under 10%.....”

- P43: Community facilities (Recommendations from the Stanway Parish Plan: recommendations for planning...)

Paragraph 31

“Improve and expand shopping choice at the Tollgate Centre that does not conflict with Town Centre uses and introduce environmental improvements to enhance the overall shopping experience.”

- P44: Commercial (Recommendations from the Stanway Parish Plan: recommendations for planning...)

Paragraph 32

“ensure that future development proposals provide a range of commercial premises (size and type), including incubation units, that sustain existing businesses and create opportunities for business to expand in Stanway.”

7.37 Other material statutory documents:

Vehicle Parking Standards (2009)
Sustainable Construction (2012)
Cycling Delivery Strategy (2012)

- 7.38. It is noted that Stanway Parish Council now has an agreed Neighbourhood Plan Area but little else at this stage and so there is no neighbourhood plan weight that can be given to the consideration of the Tollgate Village application at this time.

8.0 Consultations

8.1 The Planning Policy Service recommends refusal of the proposal on the following grounds :-

- Harm to the development plan retail strategy;**
- Harm to the emerging development plan and in particular, the proposal is premature;**
- Harm to planned investment in the town centre;**
- Harm to the provision of employment land;**
- The proposal does not accord with paragraph 14 of the NPPF because the proposal is not considered to have benefits that outweigh the adverse impacts due to the four impacts identified above.”**

This recommendation is based on the conclusion that:-

“While the proposal would deliver benefits in employment creation and provision of new facilities and services, the proposal would also conflict with numerous policies as set out above. The Council does not consider that the normal presumption in favour of sustainable development described in the National Planning Policy Framework (paragraph 14) can be properly applied to the proposal given that the adverse impacts of doing so are considered to significantly and demonstrably outweigh the benefits.”

8.2 The consultation response is reproduced in full below:-

“Current policy designation

1. The application site is located within areas designated for the following uses within the adopted Local Plan and identified on the associated Proposals Map:

a. One third of the site, described by the applicants as (Development Zone 2 lies within the Tollgate Urban District Centre (UDC), Urban District Centres are covered by policies CE1 (Centres and Employment Classification and Hierarchy) and CE2b (District Centres) Site Allocations policy STA3 (Employment and Retail Uses in Stanway Growth Area) provides specific policy guidance on the Tollgate UDC. Policy CE1 positions District Centres in a spatial hierarchy below Town Centre and Edge of Centre locations, and Policies CE2b and STA3 provides further guidance on the role and function of the Tollgate District Centre, as explained further below in Para 20.

b. Two thirds of the site (Development Zones 1 and 3) lie within the Tollgate Strategic Employment Zone (SEZ). The position of Strategic Employment Zones in the spatial hierarchy is outlined in Policy CE1, and appropriate uses within them is covered by Policy CE3 (Employment Zones) and Development Policy DP5 (Appropriate Employment Uses and Protection of Employment Land and Existing Businesses), as explained further below at Para 21.

Proposed uses

2. The proposal involves a total of 30,812 sq.m of commercial floorspace, split as follows:

- a. Class A1 comparison goods – up to 16,304 sq.m gross
- b. Class A2 convenience goods – 1,858 sq.m gross
- c. Flexible Class A1 to A5 – 5,010 sq.m gross
- d. Flexible Class A3 to A5 – 950 sq.m gross

The above figures include 4,699 sq.m of existing Class A1 retail floorspace in Development Zone 2.

3. Development of town centre floorspace in Development Zones 1 and 3 would involve the loss of land designated for B employment uses. The total loss of employment land in the two parcels is 9.07ha which would reduce the employment land supply at Stanway from 26.8ha to 17.7ha, a reduction of 34%. In Borough wide terms the loss of these two sites would result in a 12% loss in total supply, or a 15% reduction in Strategic Employment Zone land.

4. The Supplementary Information document submitted by Barton Willmore in June 2015 suggested that the applicant would be willing to accept conditions restricting floorspace levels and the ability to move from one use class to another to address concerns about the proposal's impact on the town centre.

Policy context

5. The following section outlines the national and local policies guiding consideration of the planning application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states: “If regard is to be had to the development

plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.” Para 12 of the NPPF also reinforces this point and makes clear that where development is in accordance with the development plan, it should be approved without delay (paragraph 14).

6. Colchester’s Local Plan is considered to be up to date for the purposes of decision making on planning applications. This is substantiated by the conclusions of the Inspector for an appeal at Tollgate, Stanway (May 2014, ref. APP/A1530/A/14/2212689), who assessed the proposed development against the Local Plan centres and employment policies, and did not highlight any inconsistencies with the NPPF.

Achieving sustainable development

7. The presumption in favour of sustainable development lies at the heart of the National Planning Policy Framework (NPPF) and is the overarching principle governing consideration of this application paragraph 6 of the NPPF states that “the purpose of the planning system is to contribute to the achievement of sustainable development” which includes interlinked economic, social and environmental objectives. Determination of this application accordingly needs to have regard to the balance between these contributing elements of sustainable development. This includes weighing the job creation and consumer choice benefits of the scheme against its longer term effect on the Borough’s commercial hierarchy and quality of place.

8. The principle of sustainable development contained in the NPPF is reflected in Colchester’s Core Strategy Policy SD1 of the Local Plan (as amended 2014) which states that “Throughout the borough, growth will be located at the most accessible and sustainable locations in accordance with the Settlement Hierarchy... Development proposals will be expected to make efficient use of land and take a sequential approach that gives priority to accessible locations and previously developed land (PDL).” The Local Plan approach to sustainable growth in Colchester accordingly considers all proposals for growth in relation to the Borough’s spatial hierarchy.

Pursuing a plan-led approach to significant development

9. The NPPF provides that planning should be ‘genuinely plan-led’. (Para 17) Para 23 goes on to outline how plans should set out policies ‘for the management and growth of centres over the plan period’. This includes defining ‘a network and hierarchy of centres that is resilient to anticipated future economic changes.’ This means that decisions on large-scale significant planning applications should be compatible with a plan-led approach to development and be consistent with the adopted spatial hierarchy.

10. The Town Centre is at the top of the Borough’s spatial hierarchy and is given pre-eminent status throughout the plan, beginning with the Vision which states: ‘The historic Town Centre will be the cultural and economic heart of the borough, surrounded by thriving suburbs, villages and countryside. New cultural, retail, office and mixed use developments will be delivered through regeneration of the Town Centre and its fringe.’ This broad principle is supported by policies SD1 (Sustainable

Development), CE1 (Centres and Employment Classification and Hierarchy) and CE2a (Town Centre). Adopted Local Plan Policy CE1 provides that the Town Centre sits at the top of the centres hierarchy, followed by edge of centre locations and then District Centres.

11. Colchester has a good track record in adopting and maintaining an up-to-date planning policy framework, and this has contributed to a positive atmosphere for development in the Borough and associated high levels of housing delivery. Colchester Borough Council adopted a Focused Review of its Local Plan in July 2014 which brought selected policies into compliance with the National Planning Policy Framework.

12. The intent to pursue a co-ordinated approach to development in the Tollgate area was reinforced in July 2013 with the adoption as guidance of 'The Future of Tollgate: A Framework Vision. The document was prepared by local landowners in consultation with the Council and the local community. The purpose of the Vision was to 'encourage high quality proposals that will enhance the quality of the public realm and townscape, seek to create an interconnected environment and contribute towards a vibrant and successful 'humanised' environment'.

13. The Council is currently in the process of drafting Preferred Options for a new Local Plan. An Issues and Options consultation was carried out in January-February 2015, including an identification of the need for the new plan to ensure the delivery of well-located sites to support employment with particular regard to growing sectors of the economy; and to review the retail hierarchy to ensure it would safeguard the pre-eminence of the Town Centre while supporting appropriate levels of growth in other areas. Officers are now pulling together evidence base work, site assessment appraisals, consultation feedback and policy analysis to inform Preferred Options document. This document is programmed for consultation in 2016, with adoption expected in 2017. The adjacent authorities of Braintree and Tendring have similar time frames for their Local Plan process. Overall planning for the area is accordingly proceeding in a co-ordinated manner, in line with Government 'duty to cooperate' requirements.

14. The applicants' agent Barton Willmore responded to the Issues and Options consultation, stating that there is no justification in the evidence base to retain the existing B Class employment allocation at the Tollgate Village site. They considered that Tollgate Village should be allocated for mixed use retail and leisure floorspace, which would assist in meeting the requirement for substantial additional retail floorspace in Colchester in a sequentially preferable location in or adjacent to a designated centre. The applicants have also submitted the Tollgate Village site for consideration for allocation through the Call for Sites process.

15. Planning Practice Guidance explains that a substantial proposal such as Tollgate must meet the following criteria if its determination were to be considered to undermine the plan-making process:

a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.

Ensuring the vitality of town centres

16. The NPPF recognises that town centres lie at the heart of their communities (Para 23), and that local authorities should 'define a network and hierarchy of centres that is resilient to anticipated future economic changes'.

17. The NPPF provides for two key tests to assess the potential effect of new town centre proposals – the sequential test and the impact assessment;

- a. Sequential test - Para 24 sets out a sequential approach to site selection to ensure that town centre sites are given priority.
- b. Impact test - Para 26 addresses the potential impact of new town centre proposals on the vitality of existing town centres and states that planning applications for town centre uses should be assessed against:
 - the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal;
 - the impact of the proposal on the town centre vitality and viability, including local consumer choice and trade in the town centre and wider area.

The NPPF provides that where there is no locally set floorspace threshold, then impact assessments will be required for retail and leisure developments of 2,500 sq.m gross or more. The proposal for over 3,000 sqm gross floorspace clearly exceeds this threshold, so the determination of the proposal's impact on the town centre is a key consideration. The NPPF states that planning applications for town centre uses should be assessed against the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal, as well as the impact of the proposal on the town centre vitality and viability, including local consumer choice and trade in the town centre and wider area. Para 27 of the NPPF states that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on, it should be refused.

18. The section on 'Ensuring Town Centre Vitality' in Planning Practice Guidance provides further detail on the sequential test and impact assessments. In particular, it explains how the impact assessment should address the issue of impact on investment:

Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:

- the policy status of the investment (i.e. whether it is outlined in the Development Plan)
- the progress made towards securing the investment (for example if contracts are established)
- the extent to which an application is likely to undermine planned developments or investments based on the effects on current/ forecast turnovers, operator demand and investor confidence.

19. Policy CE2b on District Centres states that ‘new retail proposals (including change of use to retail) will not be supported, unless they meet identified local needs and do not compete with the Town Centre. Expansion of the Urban District Centres will not be supported, but intensification within the Centre will be supported where the quality of the public realm and the built character is improved.’ This view is specifically applied to the Tollgate area in Site Allocations Policy SA STA3 (Employment and Retail Uses in Stanway Growth Area, which does not support additional Town Centre uses within the Stanway Growth Area. STA3 allows for small scale retail facilities if they meet local needs and do not compete with the Town Centre. The policy also notes the relocation of Sainsbury’s to a new site and the swap of land uses resulting in the new Sainsbury’s being included in the Urban District Centre, while the old site is allocated to employment use.

Safeguarding Employment Land

20. Paragraph 22 of the NPPF states: “planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits...”

21. Policies CE1 and CE3 of the Local Plan set out the Borough’s Employment Hierarchy which covers the one third of the site lying within a Strategic a Strategic Employment Zone at the top of the Employment Hierarchy. . The spatial hierarchy reflects the important role given to the three Strategic Employment Zones in the Borough in the East, North and West of the Colchester urban area. This acknowledges their strategic locational advantages and existing and potential stock of high quality employment floorspace. Policy SA STA3 of the Local Plan allocates the proposed development site within the Strategic Employment Zone for employment use and sets out the uses considered to be appropriate on that land, including B1 a-c, B2, B8 and selected sui generis uses.. Policy DP5 also sets out appropriate uses in line with those in STA3 and aims to safeguard employment land for these purposes.

Additional policy considerations

22. The following additional adopted local planning policies are relevant to the application and will need to be the subject of detailed development management consideration.

Core Strategy Policies

Policy SD3 – Community Facilities

Policy UR2 – Built Design and Character

Policy PR1 – Open Space

Policy TA1 – Accessibility and Changing travel Behaviour

Policy TA2 – Walking and Cycling

Policy TA5 – Parking

Policy ENV1 – Environment

Policy ER1 – Energy, Resources, Waste Water and Recycling

Development Policies

DP1 – Design and Amenity

DP2 – Health Assessments

DP17 – Accessibility and Access

DP19 – Parking Standards

DP20 – Flood Risk and Management of Surface Water Drainage

DP21 – Nature Conservation and Protected Lanes

Site Allocations

SA STA1 – Appropriate Uses within the Stanway Growth Area

SA STA4 – Transportation in Stanway Growth Area

SA STA5 – Open Space in Stanway Growth Area

Evidence Base for consideration of the application

The following documents provide key evidence which has been relied upon to guide consideration of the application. In particular, the NLP critique (para 29) relates specifically to this proposal and accordingly should be referred to for further detail on the potential impacts of its retail and employment aspects.

Retail Study on Colchester's Town Centre (October 2011), King Sturge

23. The study carried out a health check on Colchester's retail and leisure offer and included an assessment of the possible impact of changes in futures supply both internal to Colchester and in competing centres, along with a strategy for long-term retail health and vitality. It found that there were no tangible threats to Colchester on the immediate time horizon, but they did highlight a number of intervention-based priorities to ensure the Town Centre remained competitive. Future investment in Vineyard Gate was supported in harness with other initiatives to help kick-start wider improvement in the wider retail offer and avoid failure to capitalise on the town's full trading potential.

24. The study updated the findings of 2006 and 2009 work and assessed the future need and capacity for retail floorspace up to 2026. The quantitative assessment of the potential capacity for new retail floorspace suggested that there was scope for new retail development over and above commitments. For comparison goods retail development (the primary element of the Tollgate proposal) the study recommended the following phasing:

- Up to 2016: implementation of commitments/town centre proposals and the reoccupation of vacant units
- 2016 to 2021: implementation of up to 13,000 sq m gross
- 2021 to 2026: implementation of up to a further 19,000 sq m gross.

25. The report states that retail development should not be permitted outside the Town Centre Core unless it can clearly be demonstrated that the proposed development cannot be accommodated in the Town Centre Core, and the proposals will not harm the vitality and viability of designated centres and planned investment. It considered that the defined urban and rural district centres should continue to complement the town centre by providing for bulk convenience food shopping and a more limited range of comparison shopping facilities and other services.

Employment Land Needs Assessment (January 2015) Nathaniel Lichfield & Partners

26. The Council appointed Nathaniel Lichfield & Partners to carry out an employment land needs assessment in conformity with national requirements as set forth in the NPPF and Planning Practice Guidance. It provided the Council with an understanding of its Functional Economic Market Area and its current and potential requirements for employment land. This was based on considering a range of scenarios for how the Colchester economy could change in the future.

27. The study concluded that based on available employment space, Colchester has sufficient employment floorspace in quantitative terms to meet future needs up to 2032 (Para 7.36). The study however, refines this point by noting that 'to ensure a flexible and responsive policy framework, it will be necessary not just to focus on meeting forecast quantitative requirements (which will fluctuate over time), but to think about the opportunities and risks that flow from particular policy approaches' (Para 8.16.)

28. The report provides scored assessments of employment sites within Colchester, including the employment allocations within the proposal site. The study recommends that the Council adopts 'a selective approach to safeguarding these undeveloped allocations for future development, by retaining those sites with the best intrinsic qualities and the greatest prospects of coming forward for employment development' (Para 8.48.) The site's score placed it slightly below the highest ranking Stanway site, Stane Park, which is earmarked as warranting protection, (Para 8.49) but decisions on the level of sites to be retained or de-allocated are left to the next stage of plan-making, particularly given that only a small margin separates the scores of Stanway sites (3 points out of a 30 point scale). The report recommends that the Council should evidence how its portfolio of allocations and other development opportunities will support delivery of new space over the short, medium and long-term. (Para 8.57)

Additional Retail and Employment work

29. In light of the large size and potential impact of the Tollgate West proposed development, the Council commissioned Nathaniel Lichfield & Partners to evaluate its potential retail and employment implications to aid determination of the application. Their independent evaluation of the scheme accords with national and local planning policy, in particular Planning Policy Guidance on the evaluation of major town centre and employment schemes and accordingly underpins Council views on the application. The Council, NLP, applicants and their planning consultants worked together to agree methodological approaches to assessment of the scheme, and the resulting statements submitted by the applicant on retail and employment matters reflected discussions between all parties on the best approach in the light of the particular circumstances of the proposal. While modifications and further information was submitted on some points, the following areas remain as unresolved points of difference between the parties:

- i). Status and timing of Vineyard Gate application and the extent to which it should be factored in to impact calculations
- ii). Implications of the speculative nature of the proposal and the lack of certainty on the following areas given that they could vary significantly based on different types of occupier:
- iii). Use class and categorisation of different types of tenant – i.e. bulky goods, fashion retail, A1 uses vs. other A and D uses
- iv). Floorspace requirements -Net to gross ratio
- v). Sales densities and turnover
- vi). No analysis of trade diversion/impact was provided by the applicant for the non-Class A1 uses and proposed cinema

Assessment of planning policy implications

Key Issues

The above summary of relevant policy guidance highlights the key policy considerations for this application:

- a. overall sustainability;
- b. pursuing a plan-led approach to development;
- c. town centre impact;
- d. safeguarding employment land.
- e. sustainability
- f. The following sections explore these key issues, with sustainability considered at the end due to its overarching impact on the evaluation of the proposal.

Spatial hierarchy and plan-led approach to development- Policy assessment

31. The existing spatial hierarchy in Colchester reflects the ongoing pre-eminence of the historic Town Centre as well as the development in the 70s-90s of out-of-centre shopping centres anchored by supermarkets and/or bulky goods retailers. As noted in the NLP critique, the 2013 Retail Study found that none of the five Urban District Centres (UDCs) in Colchester, including Tollgate, provide all of the characteristic typically found within District Centres, as set out in Government guidance, which usually comprise a group of shops containing at least one supermarket, a range of non-retail services, and local public facilities. All of the five UDCs are currently anchored by large food superstores but the range of non-retail

uses is limited in all centres. (para 8.7) The NLP work goes on to detail the types of retail development in each of the centre, noting that they provide a reasonable distribution of large food stores and bulky goods retail warehousing within Colchester's urban area, with gaps in coverage in the north east and south.

32. Adopted policy seeks to limit the expansion of town centre uses outside the town centre by restricting further new retail development unless it meets identified local needs and does not compete with the Town Centre. (Core Strategy Policy CE2b). NLP conclude that the Tollgate Village proposals are at odds with this policy, because the development effectively expands town centre uses beyond the UDC boundary. (para 8.18)

33. The scale and extent of the Tollgate proposals are considered to be significant enough to alter the balance and functionality of centres within Colchester. The development proposals, in combination with existing uses, would provide a concentration of over 50,000 sq.m gross of Class A uses and a new leisure destination. A centre of this size would be more than two and a half times bigger than the next largest UDC (Turner Rise) and, particularly given the focus of the other four UDCs on convenience rather than comparison shopping, would provide a clear challenge to the predominance of the Town Centre as the pre-eminent destination in the Borough for comparison shopping.

34. NLP concludes that: If permitted and developed before 2019 (the design year) this development will pre-determine future decisions relating to the future scale and distribution of retail and leisure development within Colchester. The appropriate strategy for the shopping hierarchy should ideally be considered within the new Local Plan. The approval of the expansion proposed at Tollgate Village will have significant implications for the review of the hierarchy and the emerging development strategy for these centres in Colchester Borough and will predetermine the new Local Plan in this respect. (Para 8.27 and 8.28)

35. The changes in the Tollgate Urban District Centre have, to date, been incremental and difficult for the Council to resist given their lack of individual impact on the town centre. Demand has reduced for the original type of bulky goods floorspace found in the UDCs, reflecting the increase in on-line purchase of these items. These uses have been replaced by a wider range of retail uses, including some that also have a town centre presence (i.e. Argos, Boots, Next, Iceland). The Council has appreciated the societal trends driving the pressure on the Urban District Centres and has adopted a flexible, pragmatic approach to accepting a wider range of uses. It has, however, approached variation of condition applications by widening the range of permitted uses rather than by jettisoning scrutiny of uses within centres. The Council still wishes to scrutinise proposals to widen uses to ensure they avoid cumulative impact on the town centre and achieve compatibility with policy aims to diversify Urban District Centres and improve their public realm. Acceptance of a limited degree of change to more town centre uses should not, accordingly, be considered to constitute acceptance of a large proposal which would challenge the role of the town centre.

36. The Council's approach to centres and their hierarchy reflected national policy in PPS6 which was current at the time of developing the Core Strategy in 2008. The policy approach regarding the definition of the hierarchy of centres and the application of the sequential approach is considered to remain largely unchanged with the NPPF, notwithstanding the glossary definition which states that references to town centre apply to all forms of centres. Appeal decisions within Colchester have established that its Local Plan, as modified by the Focused Review in 2014, is up-to-date and a valid basis for the determination of planning applications. On that basis, the proposal is considered not to comply with adopted Council policies on appropriate developments for its centre hierarchy due to the scale of development proposed.

37. Furthermore, approval of the scheme in advance of publication of the Council's Preferred Options for a new Local Plan would prematurely close off decisions that should be made through the Local Plan process rather than by an isolated development management decision. Granting planning permission now for a large scale development outside the scope of adopted policy is considered to harm the robustness of strategic long-term planning for the area.

38. The applicants have put forward their site through the Local Plan Call for Sites process, and this is considered the most appropriate mechanism to address a large scale proposal with the potential for significant impact on the Borough's spatial hierarchy.

Sequential test –Policy assessment

39. The proposal includes land both within and adjacent to an Urban District Centre (UDC), so policy for both types of area needs to be considered. In terms of the land within the UDC, the proposal needs to be considered under Policy CE2b, which states that new retail in UDCs is not supported unless it meets identified local needs and does not compete with the Town Centre. This issue is covered below in the section on impact. In terms of the two thirds lying outside the UDC, the proposal needs to be evaluated in terms of the sequential test as required in the NPPF for proposals which 'are not in an existing centre and are not in accordance with an up-to-date Local Plan.

40. To address the requirements of a sequential test, the applicants submitted information to address potential sites in the Town Centre and in the Tollgate Urban District Centre, which has been reviewed by the Council's consultants NLP. The applicant's view is accepted that because the site is partly within and partly adjoining Tollgate Urban District Centre, only potential Town Centre sites required assessment given that other UDC-adjacent sites would be equal in rank rather than sequentially preferable to the Tollgate UDC. As NLP note, the application of the sequential approach needs to be considered within the context of the Rushden and Dundee decisions. The application of the approach outlined in these decisions suggests emerging developments within the town centre cannot accommodate the Tollgate Village development in its entirety and probably not within the same timeframe. The applicants' consultants, Barton Willmore, identified in pre-application discussion with officers two potential sequentially preferable sites – the Cowdray Centre and Vineyard Gate.

Cowdray Centre: NLP consider that emerging development proposals suggest not all of the Cowdray Centre will be available and they also have reservations about the suitability of the Cowdray Centre for the size of development proposed at Tollgate Village.

Vineyard Gate: NLP consider that it is unlikely that Vineyard Gate can be brought forward to deliver development before 2019, and therefore is not available to deliver development within the same timetable as Tollgate Village.

41. Objectors to the scheme (GL Hearn on behalf of M&GRE) have argued that the development is separated into three physical zones and three phases and therefore can easily be disaggregated. This argument, however, is considered to have limited weight given that it is accepted that there is a synergy between the retail and leisure elements of the Tollgate proposal and furthermore, it has not been established that there are suitable and available sites for all the disaggregated elements of the proposal. NLP accordingly conclude that the proposal is not considered to be contrary to the NPPF, Policy SD1, Policy CE1 (Table CE1a) and Policy CE2a in relation to the sequential approach.

42. It is, however, important to note that out-of-centre development that prevents the proposed uses being developed within the town centre (i.e. impact on planned investment) could be considered contrary to the objectives of the sequential approach. In this respect, the sequential approach is interrelated with impact on planned town centre investment.

43. This is an important point to make, given that the Borough is concerned that the Tollgate scheme would have a deadening effect on all future town centre expansion and investment plans, and could affect a range of businesses from small independents to existing large retailers and new retailers seeking a presence somewhere in the Colchester area. This has been confirmed by a recent inquiry from a national agent on behalf of an operator wanting to locate in the town centre. They will not pursue this further until the Tollgate Village application has been determined.

44. The recent Secretary of State decision on an application for a new out-of-centre Sainsbury's store in Braintree reinforces the limited role of the sequential test. It was found that the application met the sequential approach test as defined, but if the impacts of the appeal proposal and the commitments were added to the retail landscape, the impact on the centre was considered to be significantly adverse. It was agreed that the Braintree proposal would secure the redevelopment of a largely vacant industrial site, however, paragraphs 26-27 of the NPPF were clear that where an application is likely to have a significant adverse impact on a town centre, it should be refused. (Ref. APP/Z1510/A/14/2219101, para 548 of Inspector's decision and paras 18-21 of SoS letter of 25 June 2015). Thus, while the Council does not contest the acceptability of the scheme on sequential test grounds the impact test is similarly key in this case to the assessment of the overall merits of the Tollgate proposal.

Impact – Policy assessment

45. NLP have assessed the applicant's work on the potential impact of the proposed development at Tollgate on both comparison and convenience shopping in the Colchester catchment area as well as the impact of the proposal on town centre vitality and viability.

Convenience Shopping

46. For convenience shopping, NLP consider that the proportional impact on food stores in Colchester ranges from -2.6 to -11.2%, with an impact of -7.4% in the town centre. Convenience shopping forms a relatively small part of the proposal which is expected to be provided within a single standalone store or as part of an anchor retail tenant. NLP note that Barton Willmore's convenience goods impact analysis includes two proposed Tesco stores that are not now expected to be implemented, which results in an over-estimate of cumulative impact, but NLP conclude that it is in any case appropriate to assume a higher level of impact. (para 2.70 point 2)

47. The applicants proposed a suggested condition, if felt necessary, to limit the net convenience goods retail sales area of the development to 1,394 square metres (BW Supplementary Retail and Leisure Assessment, June 2015, para 2.7). NLP note that 'without a named food store operator there is a risk a food store occupier will not be found and there may be pressure for this space to be occupied by other types of retail uses. A condition would be necessary to ensure the food store is not converted back to comparison good sales' (NLP critique, para 2.36.) Such a condition, however, would not be in keeping with the current relaxation by the Government of restrictions on uses to stimulate growth and provide flexible floorspace, and an application to vary such a condition could prove difficult to resist if foodstore operators weren't interested in the space.

48. NLP conclude that no significant adverse impact is envisaged on the convenience goods sector that would warrant refusal of the convenience good element proposed within the scheme. (para 3.55) This in part reflects that the convenience part of the scheme and the convenience market overall is smaller than the comparison part of the scheme and the overall market. The projected convenience turnover is £16.44 million, with the Colchester convenience market in 2019 estimated at £395 million, while the projected comparison turnover of the scheme is estimated at between £74.6 million (applicant) to £104.44 million (NLP fashion-led scheme) with the Colchester comparison market estimated at between £923.8 million (applicant) to £959.26 million (NLP) in 2019).

Comparison Shopping

49. The key issue accordingly is the impact of the comparison aspects of the Tollgate proposal on the Town Centre. The exact nature of the comparison impact is complicated by the lack of known end users and by the potential for other uses such as convenience (noted in the above paragraph) and leisure use to swap to comparison use in future. A further element of variability arising from the uncertainty over end users is the difficulty of accurately predicting the net to gross ratio. The applicants have adopted a net to gross ratio of 70%, but NLP suggest that a figure of 80% is more realistic for modern, regular shaped, larger units (para 2.40.)

50. The applicants adopted an average comparison good turnover density of £5000 per sq.m net. NLP, however, did not unconditionally accept that this figure was appropriate for the proposed development, particularly given that the 2013 Retail Study adopted an average sales density of £7000 psm at 2012 for all new comparison goods floorspace in Colchester, which was projected to increase thereafter taking into account growth in turnover efficiency (para 2.46 and 2.47)

51. In response to the Council and NLP's request for further information on the tenant mix, the applicant submitted supplementary information on a potential tenant target list. The information, however, did not provide a clear view on the likely end users of the scheme, given the wide range of potential bulky goods, non-bulky comparison goods, and discount retailer occupiers. The applicants have not suggested any conditions that are considered to be able to effectively control the nature of town centre users within the site. This means the scheme needs to be evaluated on its maximum impact, including assumptions of higher sales density.

52. NLP believes much higher figures should be tested because of the following factors:

- e. The lack of certainty regarding the likely trade/tenant mix and the flexible planning conditions proposed;
- f. The existing high comparison turnover density of Tollgate Retail Park; and
- g. The scale of development and likely sub-regional attraction of existing and proposed facilities at Stanway. (para 2.56)

53. NLP accordingly adopted two potential scenarios assessing combined convenience and comparison impact to address these concerns. The first was a mixed scheme with a balance of bulky goods, fashion and other comparison goods retailers as suggested by a target list of potential occupiers submitted by the applicants. This scenario was considered to generate an average sales density of around £5,500 psm net in 2019, with a turnover of £82.06 million, compared with the applicant's estimate of £74.6 million. (para 2.57)

54. The second scenario tested included primarily fashion retailers and retailers who usually trade from town centres. This generated a higher turnover of £7,000 psm at 2019, which would provide a comparison turnover of £104.44 million (para 2.50.) If a fashion-led scheme at Tollgate was implemented along with commitments, then the comparison goods turnover of existing floorspace within Colchester town centre is estimated to decrease from £709.87 million to £612.36 million in 2019, which is a cumulative impact of -13.7% (Para 3.38.) Cumulative trade diversion will not be offset by projected population and expenditure growth between 2015 and 2019. As with the mixed scenario, the predicted level of trade diversion for the fashion-led scenario is not expected to lead to a significant number of shop closures, but the shop vacancy rate would be expected to remain around 10% and the centre would stagnate, with increased concerns over the impact on longer term planned investment in the town centre.

55. NLP conclude that under either scenario, the Tollgate development is expected to include good quality comparison goods retailers who will compete directly with Colchester town centre for higher order comparison shopping trips. The development will create a sub-regional comparison shopping and leisure destination that will inevitably compete directly with Colchester Town Centre (4.29). This means that the proposal would have an unacceptable impact on the Town Centre and fail to accord with the Council's adopted Centres and Employment policies protecting the Town Centre.

Other Town Centre uses

56. NLP flag up that the impact assessment submitted by the applicant does not include the impact of food and beverage floorspace (para 2.64.) The proposed scheme provides for a high degree of flexibility for A3-A5 uses, ranging from a minimum of 950 sqm to 5,960 sqm if less A1 floorspace is occupied. NLP states that they 'cannot conclude a development with anything approaching 5,960 of Class A3 to A5 will have an acceptable impact on Colchester town centre'. (Para 2.68) This reflects the concern that a higher ratio of food/drink establishments would further Tollgate's move toward a centre replicating and competing with the Town Centre mix.

57. Additionally, the applicant's impact assessment does not include analysis of a potential cinema at Tollgate. This lack of analysis on A3-5 uses and leisure uses is an important concern in view of the ever-growing importance of food and drink and leisure activities in sustaining and supporting town centres. The Council is seeking to strengthen the leisure offer in the Town Centre through a variety of new activities and venues, including a new Curzon cinema within the St. Botolph's quarter. The Council is also seeking to develop the sport and leisure offer in the Northern Gateway, including a cinema, in line with an extant planning permission which included the Community Stadium. Determination of the Tollgate application at this stage would pre-empt decisions on overall growth of leisure uses that will be developed through the Local Plan process.

Trade Diversion

58. NLP concluded that while the expenditure deficit which could be created by the Tollgate Village development as projected in 2019 and 2021 would not be expected to lead to a significant number of shop closures within the town centre, it would nevertheless have the following effects:

- h. Existing comparison goods facilities will not achieve a 2.5% per annum growth in turnover efficiency between 2015 and 2019 or 2015 and 2021. A growth rate of less than 0.8% could be achieved to 2019 and 1.8% in 2021.
- i. The £23.1 million of surplus expenditure over and above commitments expected for Colchester in 2019 (£47.94 in 2021) would be absorbed by Tollgate Village, leaving limited expenditure growth to support the re-occupation of vacant shop units in the town centre or further development investment by 2019/21. (Para 4.16 and 4.19)

59. NLP figures indicate that the Tollgate Village development would absorb projected surplus comparison goods expenditure up to 2023/2024, with an even greater impact if a fashion-led scheme is pursued. NLP accordingly concludes that 'these comparison goods expenditure projections indicate there is a significant risk that the Town Centre will stagnate for the next decade.' (Para 4.28)

Effects on Planned Investment

60. The applicant originally factored in Vineyard Gate as planned investment, but later work submitted in June 2015 states that Vineyard Gate cannot be classed as a viable scheme which could accordingly be affected by competition elsewhere (Supplementary Information para 3.26). While NLP do not consider that Vineyard Gate is an immediate competitor with the Tollgate proposal as it is unlikely to be completed before 2019/20, they do consider that it is critical to consider the potential impact of Tollgate on planned investment at Vineyard Gate.

61. This view reflects guidance in the NPPF, which refers to impact on 'existing, committed and planned public and private sector investment' in para 26. Planning Practice Guidance provides more detail on this, stating that

Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:

- the policy status of the investment (ie whether it is outlined in the Development Plan);
- the progress made towards securing the investment (for example if contracts are established);
- the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence.

62. The Vineyard Gate development has been an important longstanding Council commitment, and is allocated for development in the adopted Local Plan (Core Strategy policy UR1 – Regeneration Areas, and Site Allocation policy TC1 – Appropriate Uses within the Town Centre and North Station Regeneration Area). Its delivery has been delayed by a number of factors reflecting the fragility of the retail sector and the evolving role of town centres nationally over the past decade.

63. In March 2014, the Council approved revised Heads of Terms for the development with its preferred development partner Caddicks. The revised Heads of Terms, whilst largely similar to those agreed at Cabinet in January 2012, included revised financial terms including the need for direct investment of £6 million by the Council which reflected the economic pressures on the scheme. The draft Heads of Terms will form the basis of the Development Agreement which will be the legal contract between the Council and Vineyard Gate Developments Ltd. to build the scheme.

64. The proposed development at Tollgate, however, is considered to be of a sufficiently large scale to pose a threat to investor confidence in Vineyard Gate, particularly given the speculative nature of the Tollgate scheme and potential competition for the same tenants. Caddicks have submitted a representation making this point, noting that 'the similarities between this out of centre proposal and our own are striking and if allowed will damage retailer interest in Colchester and send a confused message as to the future of the planned town centre investment'.

65. The Vineyard Gate development, accordingly, is seen to be at a point of maximum vulnerability to a similar nearby scheme. It is clearly highlighted as a Council commitment in the adopted Local Plan and has the benefit of a selected development partner and financial backing from the Council. Its delivery, however, could be fundamentally compromised by a rival scheme which did not need to fund the additional investment required on a historically significant brownfield site.

66. In the Braintree case referenced above the Inspector and SoS agreed that there was a significant impact even though there was no specific planned or committed town centre investment directly at risk. This emphasises the importance of considering the impact on potential future investment and suggests that the issue is not when Vineyard Gate will be delivered but whether its delivery would be stopped in its tracks by competition from Tollgate.

67. Given the speculative nature of the scheme, it is difficult to accurately quantify the impact of the Tollgate scheme on the town centre, but if the fashion-led scheme is taken to be a worst-case scenario, then a 13.6% trade diversion could be expected to have a significant effect on town centre confidence. Importantly, the impact on planned investment in the Town Centre is not confined to the Vineyard Gate scheme. The consideration of impact also needs to include existing and planned investment. CBRE, under instruction from Fenwicks (owners of Williams & Griffin Department Store) and Sovereign Land (owners of Lion Walk), along with GL Hearn, under instruction from M&G Real Estate (owners of Culver Square) submitted representations on the application noting concerns about the effect of Tollgate on their existing and planned investment. All three major retailer interests have completed or are underway with improvements to their facilities. CBRE note that 'Fenwick's, Sovereign and M&G are particularly concerned at the assertion that the proposals will provide space for new retailers and those seeking additional premises. In truth, this could herald a departure from the town centre which will affect footfall, consumer confidence and will impact on future investment decision making, both in the assets held by key stakeholders and those wishing to invest in schemes such as Vineyard Gate.'

68. The applicants have proposed various conditions to restrict floorspace and limit trades between use classes, but conditions would be unlikely to be sustainable over time if market forces dictated a switch to alternative uses. Conditioning of the proposal is accordingly not considered to be an effective way of limiting the potential impact on the town centre. NLP suggests there could be potential to limit town centre impact by imposition of a condition restricting the maximum amount of built Class A1 to A5 to not more than 24,122 sqm gross, of which the overall comparison goods sales floorspace should not exceed 14,920 sqm net, but note that these types of conditions can be difficult to monitor and enforce, particularly across a large development within a number of separate units (para 2.38-2.41).

69. In addition to assessing the potential impact on the Town Centre, NLP have also carried out work on the potential impact of the proposal on the other Urban District Centres in Colchester – Highwoods, Peartree, Turner Rise and Greenstead. They did not find that the Tollgate Village development would undermine the vitality and viability of these centres, so the objection to the impact on centres is confined to the Town Centre.

Safeguarding Employment Land – policy assessment

70. The Council's Employment Land Needs Assessment (ELNA) indicates that Colchester has a sufficient supply of employment land in quantitative terms to meet demand based on current trends to 2032. The study does however, go on to advise the Council to consider its employment land supply by reviewing its portfolio through the Local Plan process to develop a portfolio of sites that would support a pro-active strategy for attracting inward investment to the Borough by retaining a portfolio of good quality development opportunities that are most likely to prove attractive to prospective firms.

71. This view is restated in NLP's critique of the Tollgate employment and retail work, which notes that the acceptability of the reduction of 34% of Stanway employment land, or 12% overall in the Borough is a decision for the Local Planning Authority to make at the time of the local plan review, when the likely land demands for all uses could be assessed within the context of an overall spatial strategy (para 7.20.)

72. The NLP work clearly highlights that any portfolio should include the Stane Park site, (also in Stanway) but it might be just as appropriate for a portfolio to include the Tollgate employment land in view of its locational advantages and status as a higher ranking site within the overall rating of Colchester sites. Sites within the Strategic Employment Zones of North Colchester, Stanway/Tollgate and the Knowledge Gateway in East Colchester received rankings between 19 and 26, while employment sites elsewhere in the Borough were scored at between 9 and 21. Tollgate's score of 20 accordingly places it joint 10th out of 43 of sites within the Borough.

73. The ELNA recommends that within the Stanway Strategic Employment Zone, the Council should adopt 'a selective approach to safeguarding these undeveloped allocations for future development, by retaining those sites with the best intrinsic qualities and greatest prospect of coming forward for employment development in future' (para 8.48). Stane Park is considered to be the most likely candidate for attracting inward investment, but Tollgate also benefits from locational advantages of good access to the A12 at Junction 26. Stane Park is given 5 out of 5 for its access to the strategic road network, while Tollgate is only given a score of 3, along with other Stanway/Tollgate sites, as well as sites much farther away from the strategic road network such as the Whitehall Industrial Estate and smaller sites within East Colchester and the Town Centre. This highlights the point that a review of the Council's employment land portfolio will need to place the relatively blunt instrument of the ELNA scores within the context of additional specific information as well as policy objectives.

74. As part of this process of expanding the understanding of additional current factors underpinning employment floorspace supply and demand in Tollgate, the Council's Senior Enterprise Officer has prepared the attached analysis of the current market for B use premises in Colchester and surrounding areas, which is attached as Appendix 1. To summarise the main points, the analysis observes that following the recession which slowed new development, there is now a shortage of good quality commercial stock across all use classes. 'As a result there is an upward pressure on values with an increase in sale prices and rents as occupiers, investors and developers seek out scarce opportunities.' Data on total volumes of office and industrial property since 2005 demonstrates an early recovery for industrial space from the recession, followed by the office market at a 12-18 months lag and at a lower level.

75. More specifically, the office market in Colchester is underperforming, particularly compared against Chelmsford. The Borough is not well-endowed with office space, as a significant proportion of floorspace is old and underspecified compared with other Essex locations in Chelmsford and Southend. There is a shortage of Grade A office space in Chelmsford relative to demand for that location which may encourage spill-over demand from London and Chelmsford to take advantage of lower rental values in Colchester.

76. The potential for Tollgate to address this demand for high quality office floorspace has recently been demonstrated by new developments by the Tollgate Partnership in the Tollgate area. These include a twelve unit B use speculative development at Tollgate West, which is now almost fully occupied following a slow start. Additionally, a new incubator unit has also been opened at Tollgate, adding to the critical mass of B class business occupiers, and thereby addressing the ELNA's concern that the area did not have a strong profile as a key Colchester business location. Despite only just opening the incubator unit is already half full.

77. The Council's analysis concludes that 'there are opportunities for developers to deliver B use space within the Borough as the market is at or close to pre-recession levels, there is an acknowledge shortage of Grade A office space across the Greater Southeast and within Chelmsford, Colchester's nearer-London rival, and rapid population growth which is maintaining an increasing economically-active population seeking, predominantly, local employment'.

78. The new business use developments in Tollgate address the concerns raised in the ELNA that the area did not have a strong profile as a key Colchester business location and establish that scope remains for further business use development.

79. Ruling out the Tollgate employment land at this stage is accordingly considered to ignore the latest developments in the area and to pre-empt the process of considering the wider spatial and phasing issues in a Borough-wide context. The recent upturn in the take-up of employment premises in Tollgate highlights the rapid nature of change in the commercial property market and the need to retain flexibility and additional capacity. The Borough needs to ensure that the longer term employment options for the area are not limited by the premature removal of a site well placed to meet the need for B employment uses. Applying the test in NPPF Para 22, it is considered that there is a reasonable prospect of the land being used for employment purposes, and it is therefore justifiable to continue to safeguard the land within the Strategic Employment Zone for B uses.

80. It is appreciated that the uses proposed for Tollgate Village would also create employment, just not in the B use classes. NLP have noted, however, that it is difficult to quantify the exact amount of employment the scheme would create given the range of potential end users. The Planning Assessment states that around 1,000 jobs would be created, but as NLP observe, the applicant's Employment Assessment states that only 550 Full Time Equivalent posts in direct employment will be created. NLP breakdown the 550 figure further by type of use and conclude that 550 is a reasonable figure based on the scale of floorspace proposed (para 7.24). This figure, however, does not include an adjustment for displacement. NLP note that 'if the development results in an adverse impact on planned investment within the town centre then this would also displace jobs' (para 7.25).

81. If the Class B employment uses were implemented on the site area contained within the Strategic Employment Zone, this could generate in excess of 1,800 FTEs, based on a development density of 60% and 30 sqm per FTE (NLP critique para 7.28).

82. Given the levels of uncertainty surrounding the precise number of either town centre or B use jobs created by development of the site, the question is whether the potential longer term benefits of retaining the site for B use employment outweigh the short term benefits of creating employment more immediately, albeit at a lower level. The evidence contained in the ELNA and the supplementary information contained in Appendix 1 provide support for the view that the need for high quality, well-located B use floorspace will increase in Stanway, so land should not be unallocated prior to and outside of the Local Plan process. Decisions on the allocation of different types of commercial floorspace cannot be taken in isolation of the wider and related issues of whether provision of town centre jobs will displace jobs in the town centre, reducing its viability and vitality, longer term requirements for high quality employment floorspace of all types, and whether the land within the Strategic Employment Zone can be readily replaced elsewhere.

Sustainability- policy assessment

83. National and local policy guides new development to the most accessible and sustainable locations. This reflects the greater sustainability of town centre locations which can be accessed by a range of transport modes. Colchester's Town Centre provides a high concentration of town centre uses within a compact area that is walkable and easily accessible by public transport. With its 14,000 jobs and high density surrounding residential areas, the Town Centre has a critical mass of residents and workers who can take advantage of its facilities. While Tollgate is accessible by bus from the Town Centre, the availability of free parking, the lower surrounding residential densities and the lack of accessibility to all parts of Colchester mean that journeys to and from Tollgate are dominated by the private car. The proposals for Tollgate Village would reinforce this dominance by increasing the amount of large scale retail and leisure development, particularly if the development functions as a sub-regional attractor.

84. NLP conclude that the proposal is of a sub-regional scale that would inevitably compete with the Town Centre. The proposal would enlarge the existing District Centre to a disproportionate extent and would not be consistent with the spatial hierarchy set out within the adopted development plan in policies CE1 and CE2. This hierarchy directs town centre uses to the Town Centre and seeks to maintain the Town Centre's pre-eminence by strictly controlling further growth of Urban District Centres. Development of such a scale and significance as the Tollgate proposal would pre-empt decisions best made through the Local Plan on the scale, function and distribution of commercial activity in the Borough. Approval of a large development of town centre uses outside the approved spatial hierarchy would be contrary to Core Strategy Policy SD1 (Sustainable Development) which provides that growth will be located at the most accessible and sustainable locations in accordance with the Settlement Hierarchy.

85. In considering the three dimensions of sustainability, economic, social and environmental, the key concerns in this case are weighing up the advantages of employment creation and provision of more consumer choice over the disbenefits of harm to the vitality of the Town Centre; conflict with the existing spatial hierarchy; the pre-empting of decisions on changes to the spatial hierarchy; the reinforcement of existing car-dominated travel patterns; and the loss of land safeguarded through the Local Plan for alternative B use employment uses.

86. Additionally, the overall appraisal of the scheme involves determination of the contribution the proposal would make to the overall quality of place in Colchester by virtue of its design, layout and functions. The design merits of the scheme would need to be considerable, given that a new large-format development cannot replicate the fine grain detail and mixture of historical periods and styles found in the town centre that give it its unique character and attractiveness.

Conclusion

87. While the proposal would deliver benefits in employment creation and provision of new facilities and services, the proposal would also conflict with numerous policies as set out above. It is accordingly concluded that the proposal should be refused on the following five policy grounds:

a. Harm to the development plan retail strategy

The NLP work clearly establishes that the proposal would involve the creation of a sub-regional scale development that would not accord with adopted sustainable development and centres and employment policies (Core Strategy Policies SD1, CE1 and CE2).

b. Harm to the emerging development plan and in particular, the proposal is premature

The proposal is considered to pre-empt significant decisions on the Borough's spatial hierarchy which should instead be reached through the Local Plan process.

c. Harm to planned investment in the town centre

This reflects the potential for the proposal to have a significant negative effect on the town centre due to the impact on planned investment.

d. Harm to the provision of employment land

The applicants are not considered to have demonstrated that there is no reasonable prospect of B-class employment uses coming forward for the Strategic Employment Zone portion of the site contrary to Core Strategy Policy CE3, Site Allocations Policy SA STA3 and Development Policy DP5.

e. The proposal does not accord with paragraph 14 of the NPPF because the proposal is not considered to have benefits that outweigh the adverse impacts due to the four impacts identified above.

While the proposal would deliver benefits in employment creation and provision of new facilities and services, the proposal would also conflict with numerous policies as set out above. The Council does not consider that the normal presumption in favour of sustainable development described in the National Planning Policy Framework (paragraph 14) can be properly applied to the proposal given that the adverse impacts of doing so are considered to significantly and demonstrably outweigh the benefits.

8.3 The Council's **Landscape Planning Officer**, having analysed the submitted landscape impact documentation, confirms that there is no landscape impact objection to the proposal. Landscape conditions are suggested to allow full landscape details to be properly considered in the event that permission is granted.

8.4 The Council's **Contaminated Land Officer**, having considered the submitted supporting documentation (including a desk top study requested after submission) confirms that :-

'Based on the information supplied, it would appear that the site could be made suitable for use, with the remaining matters *[discussed in detail in her response]* dealt with by way of condition. Consequently should permission be granted for this application, Environmental protection would recommend the inclusion of the following conditions'.*[these are then set out]*

8.5 The Council's **Environmental Protection Service** raises no objection but suggests conditions in the event that planning permission is granted.

8.6 **Highways England** does not object to the proposed development and recommends that the following conditions should be attached to any planning permission that may be granted.

1. Before any development on planning application 150239 commences the developer shall have submitted to and had approved in writing by the Local Planning Authority, in consultation with Highways England and Essex County Council, the following design details relating to the required improvements to the A12 Eight Ash Green (Junction 26). The scheme shall generally conform to the arrangement shown in outline (including the signals to be provided by others) on

Drawing IT698/SK/09 Improvements at A12 Eight Ash Green interchange dated June 2015.

Scheme details shall include drawings and documents showing :

- (i) How the improvement interfaces with the existing highway alignment and carriageway markings including lane destinations,
 - (ii) Full construction details relating to the highway improvement. This should include any modification to existing structures or proposed structures, with supporting analysis,
 - (iii) Full signing and lighting details where applicable,
 - (iv) Confirmation of full compliance with Departmental Standards (DMRB) and Policies (or approved relaxation/departures from standards).
2. The above scheme approved by the Local Planning Authority shall be implemented and completed to the satisfaction of the Local Planning Authority, in consultation with the Highway Authority for the Strategic Road Network. No beneficial occupation, unless otherwise agreed in writing, shall take place unless and until the junction improvements in full (i.e. including the signalisation of both the Ipswich bound and London-bound off slips of the A12) have been delivered and are fully operational.
3. No part of the development hereby approved shall be brought into use until an (Interim) Travel Plan has been approved in writing by the Local Planning Authority who shall consult with the Highways England, on behalf of the Secretary of State for Transport :

The Travel Plan shall be in line with prevailing policy and best practice and shall include as a minimum :

- The identification of targets for trip reduction and modal shift ;
- The methods to be employed to meet these targets;
- The mechanisms for monitoring and review ;
- The mechanisms for reporting ;
- The penalties to be applied in the event that targets are not met ;
- The mechanisms for mitigation ;
- Implementation of the travel plan to an agreed timescale or timetable and its operation thereafter ;
- Mechanisms to secure variations to the Travel Plan following monitoring and reviews.

Reason : To ensure that the A12/A1124 Eight Ash Green junction (A12 Junction 26) will continue to fulfil its purpose as part of the Strategic Road Network in accordance with the Highways Act 1980, Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development' the National Planning Policy Framework and Planning Practice Guidance .

The Highways England 'Informative' re S278 agreements dated July 2015 in respect of planning application relating to development known as 'Tollgate West' is attached and should be appended to any subsequent planning permission.

- 8.7 **Essex County Council as local highway authority** raises no objection subject to a programme of highway improvements and related matters.
- 8.8 **Essex County Council as education authority** requested £427,379.20 towards the provision of early years education and childcare but this was rejected by Colchester's development team as being unreasonable and failing the CIL tests.
- 8.9 **Essex County Council as SuDS and flood authority** supports the application from a flood risk perspective subject to conditions and has issued standing advice in respect of SuDS matters and watercourse matters.
- 8.10 **Anglian Water** has not objected but has indicated that 2 conditions (requiring a foul water strategy and a surface water strategy to be prepared) need to be added to ensure that drainage impacts from the proposed development and suitable mitigation is agreed prior to commencement
- 8.11 **Natural England** has confirmed that it has no comment to make
- 8.12 The Council's **Development Team**, having rejected Essex County Council's request for £427,379.20 on the grounds that it failed the CIL tests, then considered other potential mitigation and concluded that none could be reasonably sought beyond that as may be required by the highway authorities once all the traffic information had been analysed. In the event that the proposal was acceptable the Council would seek to encourage the applicant to develop a training initiative whereby locally unemployed people could be given a chance to develop skills in the retail sector that may then make them eligible for interview for jobs within the new development.

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

9.0 Parish Council Response

9.1 Stanway Parish Council

"Stanway Parish Council raises NO OBJECTIONS in principle and broadly supports the proposed vision subject to infrastructure improvements before completion and safeguards regarding 24 hour operation"

9.2 Eight Ash Green Parish Council raises a number of concerns stating:-

The Parish Council would like to make the Borough Council aware of their concerns relating to the number of eateries now proposed at Tollgate and how these will have an impact on local facilities within the neighbouring rural villages. As you will be aware, traditional village public houses are very much at the heart of these communities and there is a real risk that this over-proliferation of new national chain facilities in such an accessible and visible location will significantly impact on the type of passing trade that is relied upon to ensure ongoing viability of these establishments.

The Parish Council feels very strongly that local facilities in rural villages like Eight Ash Green should be protected and that the level of development of this type currently proposed should be resisted and scaled back proposals encouraged with a better mix of land uses.

- 9.3 This commentary was provided by EAGPC in respect of both the Tollgate Village proposal and the Stane Park proposal. (the latter having been refused by Planning Committee on 17 September 2015).

10.0 Representations

- 10.1 As of 26 November 2015 the responses from the public who hadn't declared they were retailers in the town, were acting for existing retailers or employed by existing retailers/businesses was numbered **196**.
- 10.2 The breakdown of these between support and object:-

RESIDENTS' COMMENTS

Support 149
Object 38

Neutral 9

This a ratio of approximately 4 to 1 in favour (supporting the proposal) amongst those contacting the Council without expressing the fact they operated a business, worked within a business or represented a business.

In terms of the views expressed within this group of responses the breakdown is as follows. (the figure in brackets represents the frequency with which that type of view was mentioned). Whilst there is some overlap between the types of comment this analysis is designed to give Members a broad indication of what has driven support or objection. Clearly most respondents mentioned more than one factor when expressing support or objection hence the number of views exceeds the number of responses received

10.2.1 RESIDENTS' COMMENTS

10.2.2 SUPPORT

- great proposal/welcome to Stanway (27)
- significant increase in jobs welcome (25)
- better to keep retail in Colchester rather than lose to other competing towns (Braintree, Ipswich and Braintree variously mentioned) (25)
- cinema welcome at Stanway
- good to see vacant sites/eyesore (old Sainsbury's) developed (16)
- provide better balance / choice on west side of Colchester (17)
- welcome enhanced shopping experience (15)
- development supports rapid and significant housing growth (15)
- Town Centre is run down / not attractive /safe / inconvenient (15)
- Colchester is growing and needs a convenient out of Town Centre that will not harm Town centre (some examples quoted - like Exeter, Chester, Chesterfield)
- Town Centre has other attractions /retail which means it will not be harmed (11)
- If Town centre traders don't like it they should improve their offer and/or Council should reduce Town Centre parking charges (11)
- Leisure needed and welcome (10)
- There is room for both locations [Town Centre and Tollgate] to flourish (8)

- Complements what already exists at Tollgate (4)
- New restaurants welcome / improve local choice and cater for families (6)
- Local people should decide it's what they want (3)
- Means local people will not have to leave Stanway for facilities (3)
- Town Centre too congested (2)
- Town Centre is anti-motorist (2)
- Town Centre lacks quality retailers found in other nearby towns (2)
- Town Centre not good for disabled parking /access Tollgate is (2)
- Town Centre full of charity shops (1)
- Proposal will boost local economy (1)
- Large Town centre retailer is bullying people to object (1)
- Tollgate is a sustainable location (1)
- Tollgate Village cannot disturb nearby residents as there aren't any (1)
- Just get on with it (1)

10.2.3 OBJECT

- Add unacceptably to traffic problems in the area (24)
- Unacceptable harm to Town Centre (21)
- Unsustainable travel patterns (3)
- Cinema not needed (3)
- Contrary to National Planning Policy (3)
- Ugly multi-storey car park (2)
- Local people will be unable to get out of their own properties (traffic/parking) (2)
- In sufficient detail in plans (1)
- Smell nuisance from eateries (1)
- Loss of community to commerciality (1)
- Increase in parking across Tollgate add to congestion (1)
- Additional shops not needed (1)
- Leisure centre and swimming pool would be more useful (1)
- Potential contamination problems across site (1)
- Loss of employment land (1)
- Development at Tollgate will result I decline of Town Centre and deterioration of heritage fabric through neglect and under-investment (1)
- Character of Town centre will be harmed by decline (1)
- Will kill prospects of Vineyard Gate delivering new facilities to enhance Town Centre (1)
- Out of Town should remain bulky goods only (1)

10.2.4 Where conditionality has been expressed in support the following issues have been mentioned:-

- Subject to traffic issues being satisfactorily resolved (12)
- Subject to a range of non-chain restaurants being delivered (2)
- Subject to parking within multi-storey being free (2)
- Subject to adequate parking being provided (1)

10.2.5 In amongst both expressions of support and objection a number of neutral statements and/or questions were raised:-

- Will additional traffic cause problems ? (3)
- Will parking spread onto residential estates where it is not welcome? (2)
- Will enhanced bus services be provided across local area? (2)
- Will all this development be accompanied by new schools? (2)
- Can Town Centre parking charges be reduced? (2)
- Can a local gym / pool be provided? (2)
- Unable to navigate way through all the Council's relevant planning web pages (2)
- Could a free bus link be provided between Tollgate and Town centre? (1)
- Can a 30mph speed limit be introduced on Warren Lane? (1)
- Can Park & Ride be provided at Stanway? (1)
- Can a large big name department store be located at Tollgate? (1)
- Will there be adequate parking? (1)
- Will noise and pollution be an issue? (1)
- Might a large car park undermine town's Park & Ride facility? (1)
- Will design be good? (1)
- Will litter be controlled? (1)
- Will adequate cycle parking be provided? (1)
- Will multi-storey car park access interfere with traffic flow? (1)
- Can facilities to make crossing Tollgate West safer for disabled shoppers be provided? (1)
- No point objecting because Council doesn't listen money talks (1)

10.3 BUSINESS COMMUNITYS' COMMENTS

10.3.1 The above analysis does not include representations received from those who had given clear indication that they were traders themselves in the town, who stated they were employed by traders in the town or who stated they acted for traders in the town. These have been analysed separately on the basis that they represented the local business community and business views rather than being submitted as residents.

10.3.2 As of 26 November 2015 the responses from those identifying themselves as operating a business in the town numbered **34**

10.3.4 The breakdown of these between support and object:-

BUSINESS COMMUNITYS' COMMENTS

Support 3
Object 31

Neutral 0

10.3.5 In terms of the views expressed within this group of responses the breakdown is as follows. (the figure in brackets represents the frequency with which that type of view was mentioned). Whilst there is some overlap between the types of comment this analysis is designed to give Members a broad indication of what has driven support or objection. Clearly most respondents mentioned more than one factor when expressing support or objection hence the number of views exceeds the number of responses received.

10.3.6 **BUSINESS COMMUNITYS' COMMENTS**

10.3.7 **SUPPORT**

- Moved business deliberately to Tollgate because it is expanding, vibrant & accessible (2)
- Run business in Town Centre but feels the market is large enough to support Tollgate Village and the Town Centre (1)

10.3.8 **Named businesses:-**

iSiteTV unit 8 Tollgate Business park
Henley's Estate Agents, unit 6 Tollgate Business Park

10.3.9 **OBJECT**

- Undermine viability & vitality of the Town Centre/loss of footfall (16)
- Undermine current and future investment in the town centre (11)
- Character of Town centre will decline as businesses close (9)
- Cheaper rents and free parking at Tollgate undermines viability in town centre (6)
- Will destroy independent sector/closures (8)
- Proposal will worsen traffic problems at Tollgate (5)
- Contrary to NPPF Town centre policy (5)
- When will the Council support small business in the Town Centre? (3)
- Undermine attempts to get Vineyard Gate developed (3)
- Contrary to Local Plan (2)
- Lack of detail in application (2)
- Town centre is only just recovering from years of recession and market is fragile (2)
- Undermine investment in park & Ride to support Town centre (1)
- Town centre already has a cinema (1)
- Undermines Better Town Centre initiative

10.3.10 Named businesses:-

AG Cards
Animal (now closed)
Boot's
The Craft Spot
The Dance Shop
Franklin's
Frippery
Gunton's
Horbury's (now closed)
Humphrey's
Inprint
i Store
Jacqueline's Tea Room
Just Essentials
Markham's
Merrills Electrical
The Original Art Shop
Simpkins Jewellers
Turners
Tymperley's
White Shine Jewellery

10.4 **ADDITIONAL PUBLIC COMMENT**

- 10.4.1 A further three responses were received from people stating that they worked for businesses in Colchester. Of these:
- 10.4.2 One person supported the Tollgate Village proposal as they currently work for a Tollgate business and welcome enhancements to the quality of the area and support further expansion of opportunity.
- 10.4.3 Two people objected both employed by businesses in the Town centre on the basis of adverse impact on the viability of town centre business from Tollgate Village (2), added traffic problems at Stanway (1), lack of detail (1) and undermine Town centre investment (1).

10.5. **REPRESENTATIONS ON BEHALF OF LARGER RETAILERS/CENTRE OWNERS DEVELOPERS**

- 10.5.1 In addition to individual comments the Council has received a number of representations from specialist consultants acting for a number of major retailer/centre owners/developer interests in Colchester

10.5.2 In SUPPORT

10.5.3 **BRITISH LAND** owners of the Tollgate Centre (south side of Tollgate West) support the Tollgate Village proposal.

"I am very supportive of the regeneration of Tollgate Partnership Limited's land adjacent to the Tollgate centre. I consider that enhancing the area's retail and leisure offer with a development of appropriate scale and delivered in conjunction with ancillary benefits to the local area will contribute to the further growth of the Stanway area and cement Tollgate as the District centre at the heart of this area. I am pleased that Tollgate Partnership Limited's proposals consider improvements to the local road network along Tollgate Road and Tollgate west and the additional pedestrian and cycle connectivity between the Tollgate Centre and the proposed development.

As you will be aware, over recent years British Land has invested very considerably in the Tollgate Centre Retail Park and delivered new retailers to the area including Argos, Next, Sports Direct, Costa, Boots and so on. We are about to invest a further £6.00m in a significant upgrade to the public realm to further enhance the shopping experience for visitors.

In the event that planning permission is granted British Land would welcome a detailed discussion with Tollgate partnership Limited regarding the potential to integrate both the existing and proposed schemes with a view to maximising pedestrian connectivity and linked trips for the benefit of all visitors to Tollgate. British land's ongoing refurbishment will deliver improved public realm "dwell areas" at either end of the terrace which offer the potential for safe and convenient links between the existing and proposed schemes."

10.5.4 That letter was dated 12 May 2015.

10.5.5 **OBJECTIONS**

These are as follows:-

10.5.6 G.L Hearn on behalf of M&G Real estate owners and managers of the **CULVER SQUARE SHOPPING CENTRE**

Their representation concludes:-

"We conclude that the proposal does not accord with local or national planning policy and should be refused.

The application does not accord with adopted planning policy and fails to satisfy the requirements of the NPPF in terms of its approach to assessing sequentially preferable sites or the impact of the proposal upon the town and other district centres.

The applicants fail to adequately demonstrate why the Vineyard Gate site could not accommodate the TRP proposal and employs a conservative approach to estimating the likely turnover of the proposal, thereby underestimating the proposals impact upon the health of Colchester Town Centre. With proposals for Vineyard Gate gaining momentum the proposal could call into question the future viability of this allocated town centre opportunity and impact upon planned investment.

Adopted planning policy recognises that Colchester town centre should be the focus for retail development and new proposals in the urban district centres will not be supported unless they meet an identified local need and will not impact upon the town centre. The importance of protecting the retail focus in the town centre and balancing priorities between land uses is well established in the development plan, with retail uses identified as the core use underpinning the Town Centre's viability and vitality. Furthermore Strategic Employment Zones, within which Tollgate sits should be the focus for business development and allocated employment sites safeguarded.

Notwithstanding M&G RE's objection to the proposals, should the LPA be minded to approve the application, we would request that careful consideration is given to use of conditions and that the various type and range of uses to be permitted, are clearly identified and controlled in order to minimise impact on the town centre and other centres."

10.5.7 The representation was dated 14 May 2015

10.5.8 CBRE on behalf of **FENWICK'S** and **SOVEREIGN LAND** (owners and managers of Red Lion Square)

Their representation concludes:-

"Fenwick's, M&G and Sovereign Land represent key stakeholders with significant interests in Colchester Town centre. We consider that the planning application should be refused in this present form as a consequence of the deficiencies within the supporting documents such:-

- The application fails to demonstrate the adequate discharge of the sequential assessment, in accordance with development plan policy and para's 24 and 27 of the NPPF
- The application fails to adequately consider retail, leisure and other town centre uses within the submitted retail and leisure impact assessment
- The application is on strategic employment land which restricts non-employment uses and specifically excluded town centre uses from the allocation at Stanway

10.5.9 A separate objection is being drafted on highway matters."

- 10.5.10 A transport assessment review (of the submitted Tollgate Village transport assessment) has been undertaken by traffic consultants 'Motion' on behalf of **SOVEREIGN LAND**.

That review concludes:-

"Having reviewed the Traffic Assessment (TA) undertaken by Intermodal Transportation Ltd (ITL) we have concerns in relation to the proposed access arrangements and the potential impact on the surrounding road network. We are therefore of the opinion that the level of detail contained within the planning submission is not sufficient to favourably determine the application. The review then itemises 14 areas where the submitted TA is in their view in need of further analysis.

10.5.11 **VINEYARD GATE DEVELOPMENTS Ltd**

VGD Ltd is owned by Caddick Developments in a partnership with New River Retail (UK) Ltd and they are prospective developers of Council owned land at Vineyard Gate.

The representations made concludes that:-

"Tollgate's proposal would be in direct competition with Vineyard Gate and has clearly been designed to attract similar retailers/operators (e.g. the sizes and configurations of the proposed units). Far from clawing back expenditure to the town centre it will divert very significant trade away and exacerbate this leakage. Our investment in the town centre is considerable, and would be significantly and adversely affected by the proposals at Tollgate and call into question the financial viability of future proposals.

In conclusion Colchester town centre should be the focus for comparison goods retail and leisure development. Vineyard Gate is a suitable alternative for the proposal and negotiations are at an advanced stage with the Council and other key stakeholders and consultees in order to ensure submission of a planning application by the end of 2015.

The impacts of the Tollgate proposal have been underestimated and no assessment has been made of the impact of the cinema and leisure uses on the town centre or our own proposals. Of greatest concern is the impact of the Tollgate proposal upon our planned investment for the town centre which after an initial delay is now on track for a Cabinet resolution in June"

- 10.5.12 That representation was dated 13 May 2015. A planning application is not expected by the end of 2015 and it is understood that discussions between VGD Ltd and the Council as land owner are ongoing. No formal contract has been concluded between VGD Ltd and the Council at the time of writing this report.

10.5.13 **COLCHESTER RETAIL BUSINESS ASSOCIATION (CORBA)**

CORBA objects. They highlight how fragile the market is for small businesses in the Town Centre by citing the harmful impact that the trial closures to traffic in the High Street had on footfall and subsequent trade loss. (reduced takings). CORBA argues that trade has started to recover in terms of footfall and business performance but 'there are still businesses living on the brink and their survival is finely balanced and any small change is likely to be the breaking point.'

10.5.14 They predict that trade diversion of just 6% will have a knock on impact on the recovery of small business in the town centre.

10.5.15 That representation was dated July 2015.

10.5.16 **FEDERATION OF SMALL BUSINESSES**

10.5.17 The FSB objects to the proposal on the grounds of the economic damage and impact on employment that the proposal could cause to the Town Centre. They claim that out of town retail venues are damaging to town centres as a result of drawing custom away resulting in reduced footfall and spend in the town centre. Faltering viability in their view will result in closures and consequent job losses in the town centre. They are that the proposal will not deliver the opportunities for upskilling and career path progression envisaged in the local plan. They look for support in the NPPF and from national planning policy.

10.5.18 **M.P. COMMENT**

The Right Honourable Priti Patel MP (Witham) within whose constituency this site sits has contacted the Council on a number of occasions in respect of this application on behalf of constituents who have expressed concern that the Council may refuse the Tollgate Village proposal when in their view it should be approved. Ms Patel has also been following the progress of this application and its handling by the Council and a series of updates has been provided over the months.

Ms Patel who is Minister of State for Employment in the Government has expressed support for the proposal on her web site.

10.5.19 **CHELMSFORD CITY COUNCIL**

CCC asks that the Council does not determine the application on the basis that they consider the City Centre in Chelmsford to fall in the catchment of the Tollgate Village proposal and the submitted retail impact assessment does not consider the impact the proposal will have on planned investment in Chelmsford City Centre. They also take the view that the proposal is deficient in that impact on the viability and vitality of the City Centre and potential trade diversion are not considered.

That representation was dated March 2015.

10.5.20 COLCHESTER CYCLING CAMPAIGN

CCC objects on the grounds of traffic generation and increased car dependence that will be encouraged as well as air pollution. They also object on the grounds that the proposal will adversely harm the viability of the town centre. They suggest that the Council should consider the impact of all developments containing more than 10 parking spaces on global warming. In the event that permission is granted CCC suggests that S106 funding for Colchester Cycling Strategy Plan initiatives should be secured.

10.6 The summaries above are designed to capture the key points of representations and afford Members with an overview of the nature of those representations. Readers of this report who wish to analyse the original responses in detail are asked to view the full text of all the representations received on the Council's website.

11.0 ANALYSIS: Planning merits of the proposal.

11.1 This section of the report uses a different format to that usually employed as standard. This is to allow Members to focus immediately on the 'crux' land use policy issues, with other issues to follow.

11.2 The report will therefore focus on:-

- Retail impacts; and,
- Employment and employment land impacts

and then it will consider highway impacts followed by other relevant considerations.

11.3 Retail impacts

11.3.1 Colchester Shopping Hierarchy:

11.3.2 Approximately one third of the site lies within an Urban District Centre and is currently in retail use. The remainder of the application site sits outside of the designated UDC and is within land allocated as Strategic Employment Zone.

11.3.3 Three questions arise from the nature of the proposal in the context of the designated UDC. These are:-

- a) What is the significance of a UDC and what role is it expected to play within the established retail hierarchy of the town?
- b) What is the nature of existing retail uses at Tollgate and how do they conform?
- c) To what extent is the proposed development consistent with the role and function of a UDC?

11.3.4 These are now considered below:-

- a) Function, role and place in Colchester's Adopted retail hierarchy of Tollgate as an Urban District Centre (i.e. Tollgate)

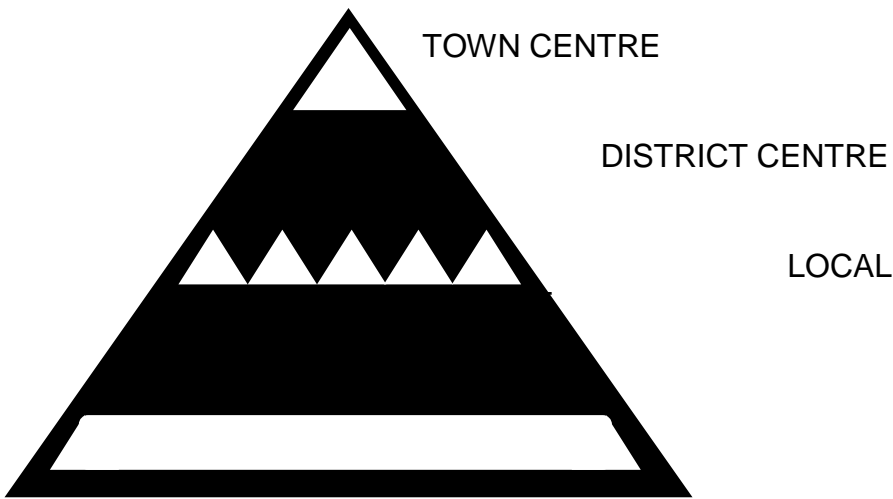


Figure 3: Diagrammatic representation of Colchester's Adopted retail hierarchy

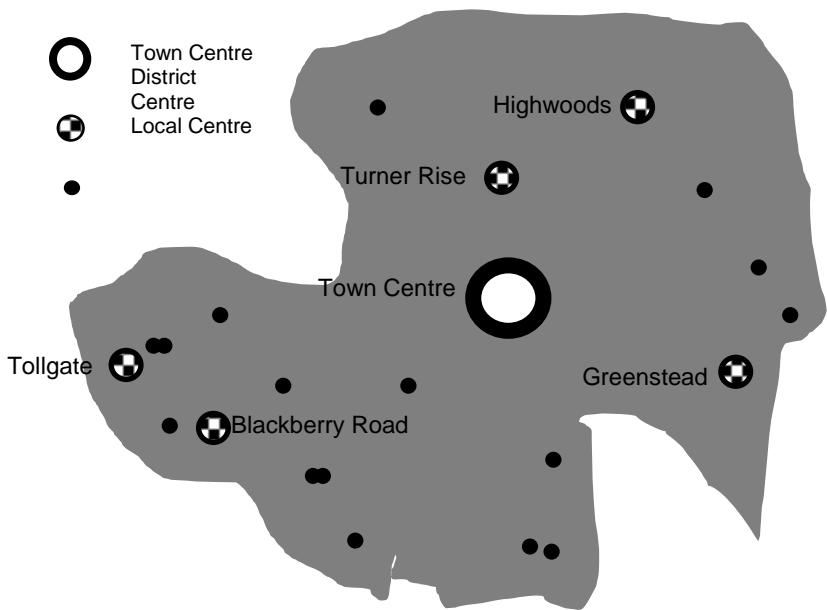


Figure 4: Spatial depiction of Adopted retail hierarchy

11.3.5 When development at Tollgate was originally permitted in the 1980's it comprised a large Sainsbury's supermarket and an out of town retail warehouse park with permissions restricted to bulky goods as was the norm. In previous Local Plans from the end of the last century the area was allocated as Retail Warehouse Park and reflected the then national trend to locate large bulky goods retail warehousing in 'out of town' locations in large purpose built sheds where the entire range of stock could be displayed and ordered and occasionally driven away by customers. In this context Tollgate had a life involving forms of retail before the designation as a UDC. This wasn't the case in respect of all UDC's.

11.3.6 Paragraph 31 of the Planning Policy Services consultation response highlights the fact that all five of the borough UDC's are currently anchored by a large food superstore with varying degrees of other retail and non-retail uses.

- Highwoods: Tesco superstore and small shops
- Turner Rise: Asda superstore and large retail warehouse type units
- Blackberry Road: Fiveways supermarket and larger shops (much in the form of historic warehouse retailing)
- Hythe: Tesco superstore
- Tollgate Sainsbury's superstore (outside the designated UDC as a result of a site swap) and larger shops, (much in the form of historic warehouse retailing), A3 & A5 and non-retail

11.3.7 As stated it is clear that the Tollgate UDC designation has developed from what was an out of town retail warehouse development as with those at Turner Rise and Blackberry Road (incl. DIY). In explaining the emergence of UDC's the Core Strategy (revised 2014) states:-

"There are a number of large format retail centres around the Town Centre and Colchester Town, including Tollgate and Turner Rise. These centres comprise large supermarkets, bulky goods retail, and large surface parking areas that could provide space for intensification. Expanding the retail components significantly could undermine the viability of the Town centre, however it is important to increase the mix of uses and improve the provision of community facilities, office floorspace or housing, as well as enhancing the quality of the public realm and the townscape"

11.3.8 Policy CE2b UDC's makes the explicit statement that:-

"..New retail proposals (including change of use to retail) will not be supported unless they meet identified local needs and do not compete with the Town Centre"

11.3.9 To help understand how uses such as Next and Argos within the Tollgate Centre were justified in the context of the above we need to examine the Planning Policy Services comments on those proposals to see what parallels, if any, exist between those cases and what is now being proposed.

11.3.10 Whilst CE2b 'District Centres' does not define what is meant by 'identified local needs' This could mean an objectively assessed need (i.e. evidence based arising from capacity and demand); it could be interpreted as that which fits within the appropriate category for a particular tier within the adopted hierarchy to meet local needs. In Colchester's case reference to what is appropriate in a UDC can be gauged by looking at what is appropriate within the tier immediately above and below a UDC:-

- CE2c Local Centres (below UDCs in the hierarchy)
Small scale local shops
- CE2 a – Town Centre (above UDCs in the hierarchy)
Sub-regional scale retailing

11.3.11 This tends to suggest that UDCs are not confined to small shops (as this would make them a local centre) and can include larger stores where these are catering for local demand but it also indicates that scale and size becomes important in that the types of retail activity appropriate within a UDC should not be those that you would expect to serve a wider than local catchment as these are only appropriate within the Town Centre, with its wider than local catchment and functionality.

11.3.12 It is interesting to note that in their summary justification the applicants describe one of the benefits of the proposal as:-

“ The provision of a range of unit sizes for national, regional and local scaled facilities”

11.3.13 It is important to consider the appropriateness of the scale of development within its context in the retail hierarchy. The benefit is cited as “It will allow representation within the UDC of national, regional and local operators” rather it tellingly refers to scale in that the unit sizes will be such as to allow not local scale facilities but regional and national scale. Within the adopted retail hierarchy in Colchester it is considered that the appropriate location for such a development is at the apex and that is the Town Centre with sub-regional importance. The reference made in support of the application that the intention is to create a high order retail destination within/adjacent to an UDC as opposed to the town centre at the apex of the retail hierarchy.

11.3.14 Any assessment based against the desires of local people would fail to reflect the relevant statutory duties and at a basic level planning operates on the basis of a wider common good rather than parochial interests. (Otherwise there would no doubt be local demand for all kinds of facilities in hundreds or possibly even thousands of unsustainable locations). Members of the Committee will want to have regard to local opinions. Members invariably have to grapple with this within the context of a national planning system that remains 'plan-led' and constrained by reference to national planning policy and local policies in Adopted Development Plans.

11.3.15 Members will have noted that of the 196 residents who commented on the application 76% expressed support and 19% objected . The level of response indicates a significant level of interest amongst local people. Stanway has a total population 8,509 (2011) and the Council formally wrote to 4,909 households informing of the receipt of the application (as well as posting site notices and public notices in the local press).

11.3.16 The responses recorded above and summarised in the consultation analysis section of this report provided earlier are consistent with the evidence gathering that informed the production of the Stanway Parish Plan in that shopping was identified as the most popular leisure pursuit amongst adults in Stanway and that an increase in the choice of shops was desirable. Indeed the Stanway Parish Plan refers to this in its recommendations but it is careful to put such demands in the context of not harming the Town Centre when it states:-

“Improve and expand shopping choice at the Tollgate Centre that does not conflict with Town Centre uses and introduce environmental improvements to enhance the overall shopping experience.”

11.3.17 b) Retail representation at Tollgate

Currently the following retailers operate from Tollgate

North of Tollgate West

B&M

Costa (north-west)

Curry's/PC World

Hughes Electrical

Staples

South of Tollgate West (Tollgate Centre)

AHF Furniture

Argos

Boots

Carpetright

Carpets 4 less

Costa

Dreams

Harveys

Iceland

McDonalds

Next

Next Home

ScS

Smyths Toys

Sports Direct

Wren Kitchens

Tollgate East
Seapets
Homebase
Magnet Kitchens

- 11.3.18 These traders represent remnants of occupiers from the former out of town bulky goods/white goods days of the former retail warehouse park with some newer arrivals who do have high street representation in the town but are of a size that appears to be catering for local demand.
- 11.3.19 c) To what extent is the retail component of the Tollgate Village proposal in conformity with the current UDC status?
- 11.3.20 In evaluating the type and scale of retail development proposed we are obliged to consider the extent to which the proposal can be said to be 'expanding' the UDC as policy CE2b states:-
- 11.3.21 “..Expansion of the UDC's will not be supported but intensification within the centre will be supported where the quality of the public realm and built character is improved”
- 11.3.22 It is clear from this that the reference to 'expansion' means the increasing the physical extent because intensification within the UDC is conditionally supported.
- 11.3.23 The defined UDC within the Adopted Proposals Map (see Figure 5 below) shows the extent of the Tollgate UDC in yellow.

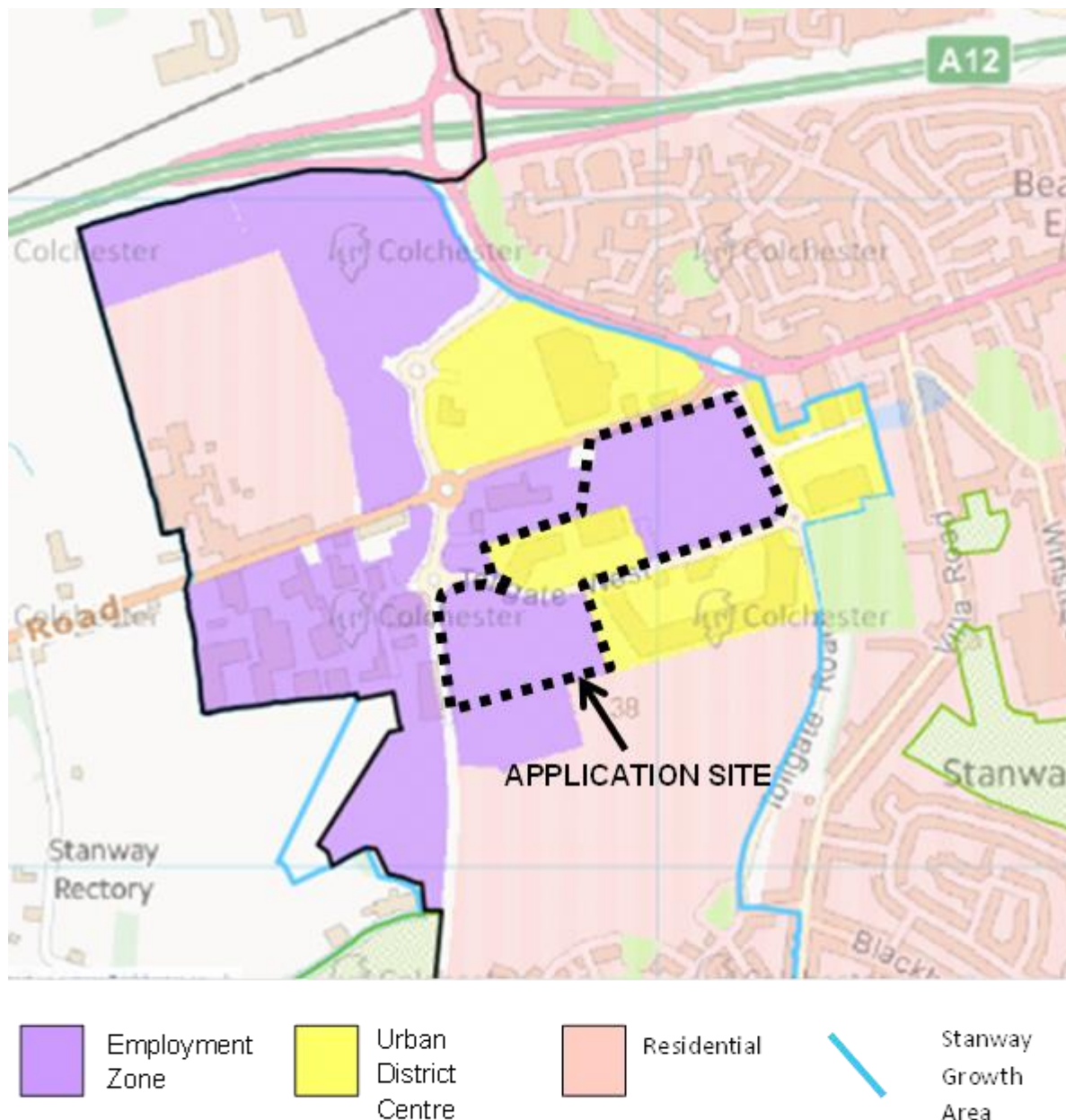


Figure 5: Proposals Map Extract: reflecting policy SA STA3 Site Allocations

- 11.3.24 The UDC designation does not extend to include the current Sainsbury's superstore north of London Road since the site swap that resulted in the old Sainsbury's site becoming employment zone.
- 11.3.25 As can be seen from Figure 5 above the proposal does involve the de facto expansion of the UDC. On this basis it is contrary to CE2b which states that "Expansion of UDC's will not be supported" Members will be aware that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. (s.38(6) PI & Compulsory Purchase Act 2006).

- 11.3.26 The proposed expansion extends to an additional 3.62ha which represents a 27.5% increase on the footprint of the Adopted Tollgate UDC. This is material and in conflict with the provisions of the local plan.
- 11.3.27 Whilst expansion within the current UDC is 'conditionally' supported by adopted policy CE2b the significant increase in site footprint (scale) is not. Members may query the difference between permitting intensification within the current UDC boundary but not allowing expansion beyond, if - development within the existing boundary was very intensive (high density of floorspace) compared to a scenario whereby expansion within and outside was low density?
- 11.3.28 The important element is 'intensification' If expansion beyond established UDC boundaries was permitted then intensification would then be conditionally supported in the context of UDC policy. This would then potentially create an overall level of floorspace and subsequent attraction that would mean the area no longer functioned as a UDC but was effectively functioning higher up the established hierarchy. (even with the safeguard in CE2b that new retail development will not be supported unless they meet identified local needs and do not compete with the Town Centre – because as Members have seen once a building exists it can over time be difficult to ensure controls over use remain enforceable, either as a result of slow imperceptible changes in behaviour or through changes in secondary planning legislation).
- 11.3.29 It is the Council's contention that the significant expansion of the UDC beyond its established designated boundaries would result in Tollgate detrimentally and harmfully competing with the Town Centre contrary to adopted planning policy.
- 11.3.30 This is the basis of the Planning Policy Service's advice in paragraphs 33 – 36 of their formal consultation response. In paragraph 35 they acknowledge that it has been difficult for the Council to resist incremental changes within the Tollgate UDC due to their lack of individual impact on the Town Centre and demand for bulk goods floorspace receding due to changed shopping behaviour (e.g. on-line purchases).
- 11.3.31 The Planning Policy Service advises:-

"These uses have been replaced by a wider range of retail uses, including some that also have a town centre presence (i.e. Argos, Boots, Next, Iceland). The Council has appreciated the societal trends driving the pressure on the Urban District Centres and has adopted a flexible, pragmatic approach to accepting a wider range of uses. It has, however, approached variation of condition applications by widening the range of permitted uses rather than by jettisoning scrutiny of uses within centres. The Council still wishes to scrutinise proposals to widen uses to ensure they avoid cumulative impact on the town centre and achieve compatibility with policy aims to diversify Urban District Centres and improve their public realm. Acceptance of a limited degree of change to more town centre uses should not, accordingly, be considered to constitute acceptance of a large proposal which would challenge the role of the town centre."

- 11.3.32 It is important to note that if the proposal before Members is permitted then Tollgate would be 250% bigger than the next largest UDC (Turner Rise). Given the clear emphasis on comparison (clothing, furniture, fashion, electricals) retailing within the Tollgate Village proposal rather than convenience (groceries) as found in the majority of other UDC's there would be "...a clear challenge to the predominance of the Town Centre as the pre-eminent destination in the Borough for comparison shopping." (paragraph 35 of the Planning Policy Service's comments)

11.4 Sequential test:

- 11.4.1 **The Council's Planning Policy Service has stated that it does not contest the acceptability of the scheme on sequential test grounds per se having accepted the advice of its retail consultant NLP. (paragraph 44 of the Planning Policy Service's comments). Objections have been received on this point from town centre retail interests who believe that there is a conflict as alternative sites in sequentially preferable location (e.g Vineyard Gate) are 'available' in their opinion.**
- 11.4.2 The reasons for this acceptance are set out in paragraphs 40 – 44 of the Policy response. It is therefore not proposed to expand on this aspect further here.
- 11.4.3 **It should however be noted that the Place Service in accepting the sequential test is 'passed' does not accept that the development will therefore have no harmful cumulative impacts on the economic well-being of the Town Centre. The sequential test merely establishes that there are insufficient suitable sites available within the Town Centre to accommodate the extent of development being proposed within the Tollgate Village scheme, not that the impact is considered acceptable. Paragraph's 26-27 of the NPPF are clear that where an application is likely to have a significant adverse impact on a town centre it should be refused on this basis. In the opinion of officers, there is clear evidence that material harm would result in this instance.**

Impact on the Town Centre

- 11.4.4 This report now considers the adverse impacts identified. In doing so the report must also address the question - "What is significant?"
- 11.4.5 Whilst currently there is no definition of 'significant' or 'significantly adverse' in either the NPPF or the NPPG logically it is reached as a cumulative conclusion drawn from a combination of tested criteria. These tests have been considered by the Council's retail consultants, NLP, in the context of the Tollgate Village proposal and in the context of Barton Willmore's own assessments. NLP conclude that "in our view, the proposed development fails the test set out in NPPF paragraph 26 and 27, because the scheme will have a **significant adverse impact** on planned investment in Colchester Town Centre". (para.9.10) leading to stagnation.

11.5 Convenience shopping

- 11.5.1 **The Planning Policy Service having regard to advice from Nathaniel Lichfield & Partners accept that the convenience shopping element of Tollgate Village proposal will not have significantly adverse impact on the convenience market in Colchester and as such this component of the project does not justify a refusal.**
- 11.5.2 It is noted that the convenience component within the proposal is considerably smaller than the comparison component and that the overall convenience market in Colchester is considerably smaller than the overall comparison market.
- 11.5.3 The projected convenience turnover of the proposal is £16.44m which represents 4.16% of the overall convenience sector in Colchester (£395m) estimated at 2019.

11.6 Comparison shopping

- 11.6.1 It is this component of the Tollgate Village proposal that needs to be carefully analysed because its impact on Colchester's comparison market is larger than that arising from the convenience component.
- 11.6.2 NLP has advised the Council that the Tollgate Village comparison component is likely to represent between 8.1% and 10.89% of the overall Colchester comparison market in 2019. (between £74.6m [applicant] and £104.44m [NLP with fashion led scheme] of a total market of £923.8m [applicant] or £959.26m [NLP] in 2019).
- 11.6.3 NLP concludes that whichever scenario above is used the Tollgate Village proposal is expected to include good quality comparison goods retailers who will compete directly and effectively with Colchester Town Centre for higher order comparison shopping trips.
- 11.6.4 **Furthermore they conclude that the proposal will create a sub-regional comparison shopping and leisure destination that will inevitably compete directly with Colchester's own centre. The Planning Policy Service concludes therefore that the proposal would have an unacceptable impact on the Town Centre and fail to accord with the Council's adopted Centres and Employment Policies protecting the Town Centre.**

11.7 Other Town Centre uses

- 11.7.1 As the applicants have not undertaken an impact test in respect of the leisure component of their proposal it has been difficult for the Council's retail consultants to advise on whether these elements would have a harmful impact on the town centre.

- 11.7.2 However in terms of the flexibility suggested by the applicants (depending on A1 shop demand/take-up) the between 950sq.m. and 5960sq.m. of new A3/A4/A5 (restaurant, drinking establishment or takeaway respectively) floorspace may have a harmful impact particularly when existing floorspace across Tollgate is aggregated. Given the speculative nature of the proposal there is a potentially powerful effect on consumer choice and the increased likelihood that the increased Tollgate offer would be in direct competition to the town centre and lead to a long term decline in the town Centre's relative competitiveness.
- 11.7.3 Members will of course recall that as recently as 18 September 2015 they rejected proposals at Stane Park (a site nearby to the north-west) for 5 restaurants/drive-throughs/takeaways and a pub on the grounds that:-

1.Conflict with site allocation as a Strategic Employment Zone

The application site is allocated in the Adopted Local Plan as a Strategic Employment Zone (policies CE1, CE3, SA STA3 and DP5). The proposed restaurant uses are not in conformity with the provisions of the local plan and the loss of this Adopted strategically important employment zone site is considered prejudicial to the Council's overall employment strategy to the detriment of the medium to long- term economic benefit of the town. Notwithstanding that the proposed development will generate new jobs in the hospitality sector the proposal would erode the integrity and future attractiveness of Stane Park for business park development that requires excellent access to the Nation's strategic trunk road system. This concern is further compounded by the fact that Stanway is expanding rapidly in terms of housing delivery and the Strategic Employment Site offers potentially sustainable employment opportunities for residents who are otherwise forced to travel in search of job opportunities.

This site and its wider hinterland is allocated in the Council's Adopted Core Strategy - Policy SD1 as the Stanway Growth Area (SGA) where development is expected to be focused and where proposals that accord with other policies in the Local Plan will be approved without delay. In defining the Stanway Strategic Employment Zone, within which the application site lies, the Council identified the type of development that would be appropriate to achieve its medium to long- term economic objectives within Table CE1b (as supports employment classification and hierarchy policy CE1 and the strategic designation provided by table CE1a). These appropriate uses are defined as B1b research and development, studios, laboratories, hi-tech; B1c light industry; B2 general industry; and B8 storage and distribution. Secondary land uses are described as B1a offices; C1 hotels, D2 assembly and leisure and sui generis. The proposed land uses comprising A3 or A4 uses do not comply with that policy.

The proposed development on this strategically important Employment Zone would seriously undermine the Council's ability to plan for the medium to long term expansion of the Town's economy to create sustainable high value jobs in locations that complement areas experiencing rapid and significant housing growth and with excellent access to the strategic highway network. (in this case the A12).

The Council's carefully planned employment strategy is reinforced within its Adopted Site Allocations (2010) in so far as Policy SA STA1 and SA STA 3 that make provision for employment use (which exclude those proposed here) and reject the need for town centre uses such as those proposed here respectively.

2.Urban District Centre and Town Centre retail policy

The Council is of the opinion that the growth and concentration of the proposed A3 uses and A4 use in this out of centre "destination" are harmful to the vitality and viability of the Town Centre on the grounds that the location is in a sustainable location promoting trips and car borne traffic with more sequentially preferable locations for such growth in town centre uses being available. The Council's Adopted Local Plan Policy CE2a defines that the Town centre will be promoted as the sequentially preferable location for growth as a prestigious regional centre where a mix of uses will be encouraged. This Core strategy objective is further expanded by Development Policy DP6.

Adopted Local Plan policies CE1 & CE2 define that such uses as those proposed are appropriate in Mixed Use Centres. Policy DP5 defines the range of uses that are acceptable within designated employment zones and the proposals do not fall within these uses. The designated Stanway Growth Area is not a mixed use area and the application is not within the designated Urban District Centre. The proposal therefore seeks to effectively expand the Stanway Urban District Centre into an area designated for strategic employment purposes. Policy CE2 b clearly states that the expansion of Urban Districts Centres will not be supported and the proposals are in direct conflict with the strategic aims of the adopted local plan which seek to promote sustainable employment growth and promote growth in sequentially preferable and accessible locations whilst protecting the vitality of the town centre.

11.8 Trade Diversion

11.8.1 It is important to note that the Council's own retail consultants have advised that the expenditure deficit which could be created by the Tollgate Village development as projected 2015-2019 or 2015-2021 would not be expected to lead to a significant number of shops closures within the Town Centre in the short term but the town centre offer would not be expected to grow having had most of its potential expenditure growth removed (para.3.61), it would consequently have the following effects:-

- The growth rate in Town Centre comparison goods would be limited to only 0.8% to 2019 and 1.8% in 2021
- The £23.1m of surplus expenditure over and above commitments expected for Colchester in 2019 (£47.94 in 2021) would be absorbed by Tollgate Village leaving limited expenditure growth to support the re-occupation of vacant shop units in the town centre or further development investment by 2021

- 11.8.2 NLP conclude from this analysis that:-
- 11.8.3 “These comparison goods expenditure projections indicate there is a significant risk that the town centre will stagnate for the next decade”
- 11.8.4 It is preferable that headroom growth in expenditure available in the catchment in the next 5-10 years is captured by Colchester town centre in order to maintain the primacy and range/choice available rather than diverting to other centres within or outside the Borough.
- 11.8.5 For this reason the report must consider, as guided by Government in such situations, the implications of the Tollgate Village proposal on planned investment in the Town Centre.

Impact on investment in the Town Centre.

- 11.8.6 In considering this issue it is necessary to consider:
- Existing public and private investment
 - Committed public and private investment
 - Planned public and private investment
- 11.8.7 Members will not need any reminding that in late 2008 a recession impacted on Britain and the development industry, in particular, with the country only officially emerging from this investment crisis in mid-2014. percolated down from the financial sector to all regions and sectors of the UK economy to varying extent, in including retail. The national recovery is still in its early phase, appears delicate, and recent downturns in China and India may result in a new cycle of economic downturn. This is mentioned because the Borough and Town Centre has managed to pull through the years of austerity relatively intact and in the last three years some retailers / retail development owners have shown sufficient confidence in the town to make multi-million pound investments in upgrading and expanding facilities. Examples here are Sovereign and their major re-vamp of Lion Walk /Red Lion Yard and more recently Fenwick's with their current £30m+ expansion of their High Street department store (Williams and Griffin) where work is underway. St Nicholas House has been and is being refurbished and the ground floor is back in use for retail purposes after sitting empty for some time. Angel Court has been completely refurbished and converted. Ongoing discussions continue in respect of bringing regeneration sites such as Vineyard Gate and St Botolph's to the market. The public sector and Lottery has funded a multi-million refurbishment of Colchester Castle building and museum which was re-opened in 2014 and Essex County Council recently opened its £5.5m Park and Ride site in North Colchester to serve the Town Centre. Just recently, the Council's redevelopment of St Botolph's has re-ignited with the former Police Station's conversion into a Council-owned Creative and Digital Media Business Centre starting on site and it has also just signed (December 2015) with Curzon Cinemas for their redevelopment of the former Keddies department store in Queen Street into a 3-screen cinema with associated bar and restaurants.

- 11.8.8 From just these few examples it can be seen that the list includes considerable existing, committed and planned investment within the Town Centre designed to ensure that the Town Centre continues to function as a major attractor supporting amongst other things a significant Regional (top five locations) and sub-regional (Haven Gateway) retail and leisure destination.
- 11.8.9 The Council has received representations on behalf of town centre retailers opposing the planned Tollgate Village development. The concern generally being expressed is that the proposal will divert sufficient trade away from the Town Centre to result in a harmful reduction in total footfall and therefore spend and this will in turn adversely impact viability and vitality and will threaten to drive some businesses out of business (particularly the concern amongst small specialist independent traders). The Council's own retail consultants appear not to accept this as the likely outcome.
- 11.8.10 Members will recall that in the Corporate planning training for those councillors wishing to sit or "sub" on the Planning Committee that 'individual competition' is not a material planning objection to a proposed development. The Council cannot protect through the planning system one trader from another wishing to sell similar products on the grounds that this would expose the first trader to competition. Within this general constraint of the planning system, the market will decide if two traders selling similar products can viably survive. That said, the Council as Local Planning Authority can legitimately look to protect its retail hierarchy because this is what provides retail and development investors with certainty, stability and ensures that confidence is maintained. This is in the wider public interest – it is a "public good" - in order to maintain the vitality and attractiveness of the town centre for residents, visitors and investors.
- 11.8.11 The importance of confidence should not be underestimated or dismissed lightly. The Tollgate Partnership is a successful Colchester business, which is seeking to speculatively invest the not inconsiderable sum of £60m whilst the other town centre operators such as Fenwick's are investing some £30m on one store on the basis that the Council has a strict and established retail hierarchy that puts the Town Centre first.
- 11.8.12 Public comment on social media and in the press in recent months has been concerned with this Council's ownership of land also being promoted for commercial development purposes within the Town Centre and at the Northern Gateway. Members are required to concern themselves only with the application before them and it is clear that the Council's alleged financial interests must be excluded from any part of the consideration of this application.
- 11.8.13 It is important to address this issue directly because, as a responsible and accountable public authority, any issue or matter that undermines the integrity of the planning system will bring the Council into disrepute and will erode the public's confidence in the transparency and fairness of the decision-taking process.

11.9 Vineyard Gate

- 11.9.1 In their response to the current application, the Council's Planning Policy Service establishes the chronology around Vineyard Gate which is that it has been a longstanding Council commitment and is allocated for development in the Adopted Local Plan (Core Strategy policy UR1 – Regeneration Areas) and Site Allocation policy TC1 – Appropriate Uses within the Town Centre and North Station Regeneration Area.) Its delivery has been delayed by a number of factors reflecting the fragility of the retail sector and the evolving role of town centres nationally over the past decade
- 11.9.2 The Planning Policy Service notes that the applicant originally factored Vineyard Gate into its impact assessment as planned investment but later took this out of its June 2015 material stating that it cannot be considered a viable scheme which could accordingly be affected by competition elsewhere.
- 11.9.3 NLP's advice to the Council in respect of this particular point needs to be carefully considered and the nuances understood.
- 11.9.4 Whilst it is NLPs view that Vineyard Gate is unlikely to come forward before 2019/2020 they also point out that it remains critical to consider the potential impact on 'planned investment' at Vineyard Gate of the Tollgate Village proposal..
- 11.9.5 Planning Policy's detailed response between paragraphs 60 and 69 explores this point in considerable detail.
- 11.9.6 They conclude that the Vineyard Gate development is at a point of maximum vulnerability from a nearby scheme with similar components. It is important to note that nearby schemes could include those in the north of Colchester were they to include retail development. (the extant outline planning permissions do not permit A1 [shops] uses) Vineyard Gate is an allocated brown field regeneration site where retail/leisure development is actively directed within the Adopted Local Plan being located within the sub-regionally important Town Centre. Furthermore, this Town Centre site has the benefit of a selected development partner and financial backing from the Council.
- 11.9.7 The Council as local planning authority contends that to allow the Tollgate Village proposal as a Departure from the Local Plan at this critical point in time for Vineyard Gate is likely to seriously prejudice the site coming forward because Tollgate does not have the same constraints and costs associated with it in terms of knitting new development into an established and sensitive historic setting.
- 11.9.8 Indeed the submission of the Tollgate Village application in February 2015 may have impacted investment confidence as the prospective developer awaits the outcome of the Tollgate Village application before resuming discussions with the Major Development Service. Representations from them and other major Town Centre players all indicate that the Tollgate Village proposal is a real cause for concern and is a cause for concern for Fenwick's as they are in the middle of their massive £30m investment in an enhanced Department Store.

- 11.9.9 In a scenario where trade was being diverted to Tollgate (were Tollgate Village to be approved) to the extent of 13.7% (cumulative) by 2019 without a compensatory offset by projected population and expenditure growth (between 2015-2019) it is difficult to see how Vineyard Gate could come forward with possible investors looking at locations such as Tollgate (possibly utilising the S73 route over time to incrementally vary floorspace limit constraints to relax use by floorspace conditions were these to have been employed on the basis that they gave comfort to the Council in the event that permission was granted for Tollgate Village).
- 11.9.10 Members' attention is drawn to a recent appeal decision in Braintree in which the Inspector and the Secretary of State dismissed an appeal in respect of a proposal involving significant retail floorspace out of the town centre having accepted that the proposal would have a significant impact even though there was no specific planned or committed town centre investment at risk. In the words of the Planning Policy Service, "this suggests that the issue for Colchester is not when Vineyard Gate will be delivered but whether its delivery will be stopped in its tracks by competition from Tollgate".
- 11.9.11 Retail consultants are in agreement that Tollgate Village if approved is unlikely to trigger initial substantial shop closures in the Town Centre but with shop vacancy rates expected to remain at around 10% there is a real risk that trade diversion will herald stagnation within the Town Centre if existing and prospective town centre businesses/operators uncertain about the future competitiveness of Colchester Town Centre decide not to invest.
- 11.9.12 On the basis that NLP has concluded that Tollgate Village will compete directly with the Town Centre for higher order comparison shopping trips and that this will have an unacceptable impact on the Town Centre these risks appear real and plausible. Certainly it would appear to add credence to the expressions of concern raised by not just Fenwick's but also Sovereign Land who own the recently refurbished Red Lion Walk/Square Shopping Centre where a planned Phase 3 expansion is currently in abeyance and M&G Estates who own the other major shopping centre in Colchester (that being Culver Square)
- 11.9.13 Consideration of impact on investment must not be restricted to major players in the Town Centre or Tollgate that are making big investment decisions. Small businesses are also making hard and difficult economic decisions. Not involving multi-million pound sums but decisions that will impact their individual financial wellbeing and that of their families. Does the trader renew her or his lease when it comes up for renewal with the concern about loss of footfall and reduced spend being actively discussed and shared around the town, in the local press and in reports such as this. Do they invest in expensive new stock with what many see as the sword of Damocles hanging over them (even if NLP believe the closures may be limited they do not identify whether this reference relates to overall floorspace or units. Representations suggest the small independent sector is intensely worried that it could mean a number of their cohort goes out of business (which means the overall floorspace involved may be small but the predicted 10% vacancy rate could imply a significant sector of the small business community.)

- 11.9.14 CORBA's view is that significant trade diversion will seriously impact the viability of their businesses in the Town Centre because reduced footfall and reduced spend will hit them hard where the margins between being 'in business' and 'no longer being able to trade' are very fine. They argue that to some extent national chains are able to support less profitable locations with their high earning locations just to maintain national coverage and representation. (but even that has been shown not always to be the case after the 2008 recession). There is a genuine fear amongst small Town Centre traders that a 13.7% trade diversion could for them translate into wipe out. This is at a time when the Council is promoting Colchester as a sub-regional shopping destination highlighting its individuality compared to regional competitor destinations arising from its small specialist shop sectors in and around Eld Lane and Short Wyre Street. The Councils 'Shops on the Wall' initiative is an example of this.

11.10 Northern Gateway

- 11.10.1 This strategic regeneration site owned by the Council benefits from a series of outline planning permissions for mixed development granted as a Departure in 2006. These remain valid but require the submission of reserved matters for those parts not already the subject of reserved matters approval (or already developed) developed by 20 March 2016. Parts of the wider Gateway area have already been developed in accordance with these permissions. This includes employment zone compliant uses such as Easter Park (Axial Way) and the new Lancaster Toyota and Lindvale VW dealerships. The permissions provided for a range of uses including business, leisure, community stadium, hotel and A3 uses and major infrastructure works including the new junction 28, Via Urbis Romanae and the associated busway.
- 11.10.2 The delivery of this infrastructure was the key to unspringing all the Local Plan land allocations in North Colchester and securing the delivery of the centrepiece of the Gateway sport and leisure hub that is the community stadium was enabled by the development that was approved. The Council continues to work towards delivering the overall vision contained in the Northern Gateway Framework and it is the development permitted by the 2006 permissions that will help to fund the wider public benefits associated with community based leisure and sport .
- 11.10.3 The planning permissions of 2006 were all subject to a referral to the Secretary of State who determined that the Council could proceed with approving development without the need for him to call in the application to decide for himself. The suite of permissions dating from 2006 that relate to the Northern Gateway **make no provision for retail development** within Class A1 (shops). At the time of pre-application negotiation back in 2001 the local planning authority required the removal of a significant proposed retail element within an early iteration of the proposal in order to protect the status of the town centre.
- 11.10.4 It is true to say that the permissions include a significant element of restaurant / pub uses as these were intended to support the operation of the community stadium, budget hotel and business/leisure uses. The overall level of floorspace allowed by condition in the relevant planning permission of 2006 far exceeds that currently proposed in the Tollgate Village proposal.

11.10.5 That said it would be reasonable to draw a parallel between the Council's attitude to allowing a number of A3/A5 uses at Tollgate (McDonalds, Chiquitos, Frankie & Benny's and Costa x 2) to support other activities and what is envisaged at the Northern Gateway and exercising control to prevent the wider Tollgate area becoming an A3/4/5 destination in its own right.

11.10.6 NLP also undertook an assessment on behalf of the Council on the likely impact of the Tollgate Village proposal on other Urban District Centres and they concluded that it would not undermine the viability and vitality of these.

11.11 Conclusions regarding impact on retailing and planned investment

11.1.1 Based on the discussions above it is concluded that the Tollgate Village proposal will have an adverse impact of the Town Centre in terms of the comparison goods sector such as to pose a direct threat to the Town Centre' role as a sub-regional shopping centre at the apex of the town's Adopted Retail hierarchy and that the proposed Tollgate Village proposal were it to go ahead would adversely impact existing , committed and planned investment damage such as to cause stagnation in the Town Centre for at least 10 years during which time the Town Centre would lose ground to competing sub-regional centres to thereby compounding its ability to compete as these other centres continue to attract investment throughout the same period.

11.11.2 This is a significant planning consideration but there are others that must be explored in reaching a recommendation and ultimately taking a decision.

11.12 EMPLOYMENT ISSUES

11.12.1 The importance of job creation is a significant consideration as the proposal represents an opportunity to create a large number of jobs, perhaps not of a type that Council policy is seeking to encourage but nonetheless real jobs. In considering this component of the proposal this report does not seek to underestimate what this can mean to individuals seeking employment but must put this issue in the round with all other material planning considerations.

11.12.2 Employment land

11.12.3 The applicant states that there is more than enough employment land in the borough to cater for its likely needs to 2032 that is quantitatively true. The Council's own Employment Land Needs Assessment (2015) confirms this. However there are issues of the varying attractiveness of such land to investors and a hierarchy has been identified as part of the 2015 NLP study.

11.12.4 Members are however advised that the quantitative position is just one of two critical considerations. The other is the qualitative condition of all the land identified. In assessing quality it is important to consider availability, accessibility, site constraints inter alia.

- 11.12.5 Having undertaken the Assessment NLP has advised the Council to consider its employment land supply by reviewing its portfolio through the Local Plan process. In this way the Council can develop a portfolio of sites that would support a pro-active strategy for attracting inward investment to the Borough by retaining a portfolio of good quality development opportunities that are most likely to prove attractive to prospective firms.
- 11.12.6 The applicants will argue that they have been providing opportunities for B1 employment when few others have as they speculatively built out Tollgate Business Centre when the market was flat. After a slow start that development is proving successful and is attracting occupiers. They state they are ready to invest in the Tollgate Village project now and consequently do not want to wait for the outcome of the Local Plan process, especially as they began discussion with the Council as long ago as 2013.
- 11.12.7 The Council's Planning Policy Service however highlights the point made by NLP that the Tollgate Village proposal represents a 34% reduction in employment land in Stanway which is 12% of the Borough's total. These are significant proportions and could have strategic implications in view of the high quality of this land for employment use.
- 11.12.8 The Planning Policy Service draws attention to the significance of this land when it states:-
- “..it might be just as appropriate [compared to facilitating the Tollgate Village proposal] for a portfolio to include the Tollgate employment land in view of its locational advantages and status as a higher ranking site within the overall rating of Colchester sites. Sites within the Strategic Employment Zones of North Colchester, Stanway/Tollgate and the Knowledge Gateway in East Colchester received rankings between 19 and 26 while employment sites elsewhere in the Borough were scored between 9 and 21. Tollgate's score of 20 accordingly places it joint 10th out of 43 sites in the Borough.”
- 11.12.9 Of the sites within the Stanway SEZ, Stane Park is considered to be the most likely candidate for attracting inward investment but Tollgate also benefits from locational advantages of good access to the strategic road network at junction 26. Stane Park is given 5 out of 5 for access while Tollgate is given 3 out of 5, which is the same as Whitehall in East Colchester. The point being accentuated by the Planning Policy Service is that the scoring system used in the ELNA is relatively crude and blunt and that the Local Plan process affords the appropriate opportunity to undertake a far more sophisticated analysis to ensure that the right land is retained for the best strategic outcome.
- 11.12.10 In terms of the current Local Plan process the Council expects to publish its preferred options/sites consultation as soon as summer 2016 with final submission/adoption in 2017. It is considered premature to re-allocate this strategically important employment site to accommodate speculative major applications. Orthodox process would involve the Council's Local Plan Committee carefully considering the appropriate strategic direction based on evidence through the local plan in a plan-led system only after extensive consultation on and consideration of all the available possible strategic options. To that extent the

consideration of the merits of the Tollgate Village application by the Planning Committee (as it must do, the application having been placed before the Council) must occur within the context of the current adopted local plan otherwise the wider Local Plan process of considering all options will be subverted by one site which may seem premature before other possible strategic options have been considered. The current position is that the local plan is up to date and is not silent in this regard and the proposals are contrary to the adopted policy framework. Statute is clear, the proposal should be determined in accordance with the local plan unless material considerations indicate otherwise.

- 11.12.11 If we set aside this 'prematurity' argument for a moment, the question must be: is the Applicant right to suggest that the market for B use development in Colchester is poor and that a B use- based scheme is unlikely to go ahead at Tollgate because of a lack of market interest? This being the same argument as put forward by the developer at Stane Park. This matter is addressed at para. 22 of the NPPF and is considered further at 11.12.16 below and the reasonable prospect that the land may be brought forward for employment uses.
- 11.12.12 Clearly, land that benefits from an employment allocation has an enhanced development value over land with no development allocation but any land owner is likely to want to secure the even higher values that a retail allocation/planning permission bring. This is a commercial aspiration rather than a material consideration.
- 11.12.13 The Council's Senior Enterprise Officer has analysed the current market in Colchester for B uses (reproduced in the Appendix) and he concludes that:-
- The recession (with its slowed delivery of new premises) has resulted in there being a shortage of good quality commercial stock
 - As a result there is upward pressure on values with an increase in sale prices and rents
 - Figures demonstrate that there has been an early recovery for industrial space with a lag of 12-18 months for the office sector
 - The office sector in Colchester is currently underperforming against Chelmsford but Chelmsford has a shortage of Grade A offices against demand. It is reasonable to expect that Colchester could respond to this and Tollgate is well placed to do so (as is Stane Park)
- 11.12.14 Specifically the Senior Enterprise Officer states:-
- “ these [new developments at Tollgate by the applicants] include a twelve unit B use speculative development at Tollgate West, which is now almost fully occupied following a slow start. Additionally a new incubator unit has also been opened at Tollgate [Pappus House] adding to the critical mass of B class business occupiers, and therefore addressing the ELNA's concern that the area did not have a strong profile as a key Colchester business location. Despite only just opening, the incubator unit is already half full.”

11.12.15 Members will also have noted on their daily travels around the Borough that the relatively recent changes to permitted development rights introduced by the Government in respect of the ability to convert office premises to residential use without the need for a change of use permission has had a transformative effect. A significant amount of old poor quality office floorspace, particularly in the Town Centre, has now been weeded out through conversion to flats. This up-cycling of accommodation must mean that the stock of difficult to let office accommodation in the town has dwindled and this may help to fuel new investment in replacement stock in locations with strategic advantages now that the economy is picking up and demand is rising.

11.12.16 In the light of on-going economic recovery the Planning Policy Service comments:-

“Ruling out the Tollgate employment land at this stage is accordingly considered to ignore the latest developments in the area and to pre-empt the process of considering the wider spatial and phasing issues in a Borough-wide context. The recent upturn in the take-up of employment premises in Tollgate highlights the rapid nature of change in the commercial property market and the need to retain flexibility and additional capacity. The Borough needs to ensure that the longer term employment options for the area are not limited by the premature removal of a site well placed to meet the need for B employment uses. Applying the test in the NPPF at paragraph 22, it is considered that there is a reasonable prospect of the land being used for employment purposes, and it is therefore justifiable to continue to safeguard the land within the Strategic Employment Zone for B uses.”

11.12.17 Members, in considering the loss of employment land issue, should have regard to an Appeal decision from May 2014 (Unit 10 Tollgate West Business Park) in which the Inspector in dismissing the Appeal concluded:-

“I recognise the benefits of the proposal in filling 2 vacant premises, creating new jobs and supporting the local economy through the use of local manufacturers. Nevertheless, these benefits do not outweigh the significant harm that the proposal would cause through the loss of employment land in the circumstances described above.”

11.12.18 Whilst there is clearly a difference in scale between that case and the Tollgate Village proposal as the Inspector had cited the main issue as being “..is the effect of the proposal on the supply of premises for employment use” there is a strong direct relevance.

11.13 Employment generation estimated from the Proposal

11.13.1 The Applicant has obtained an employment forecast for the Proposal which – from their own interpretation - predicts that the Development will generate some ,000 jobs, of which 450 will be in the construction phase and 550 from the final occupiers, the latter being estimated Full-Time equivalents in direct employment. According to the Council’s Senior Enterprise Officer, this “headline” assertion of 1,000 extra jobs for the Borough requires to be better understood if proper consideration of the Proposal’s jobs impact is to be arrived at.

- 11.13.2 The Planning Application states that there will be an additional 1,000 full-time equivalent jobs over the current 135 FTE on the proposal total area. This is incorrect when held against the below analysis and compared with the Tollgate Village Employment Land Study (January 2015) commissioned from Regeneris by the Applicant. The accompanying Planning Statement by Barton Willmore does not provide any detail on the assumptions behind the above job creation figures. To obtain more detail on these, the Regeneris study supplies headline figures for intermediate (construction) and final jobs but only the methodology for estimating construction job –years is given.
- 11.13.3 The Regeneris assessment of the economic opportunity provided by the proposal can be summarised as:
- An estimated total of 550 FTE permanent jobs created from the build out of 30,812 m2 of new retail and leisure floorspace;
 - Generating a multiplier of 55 FTE jobs in the wider Colchester Borough economy plus 220 FTE in the rest of the East of England;
 - So a sub-total of direct and indirect FTE jobs of 825 from the impact of the final development; plus,
 - 950 person years of construction employment over two years of site development – 475 construction jobs per year..(Construction jobs are not usually taken into significant consideration in terms of elaborating spin-off and multiplier effects).
- 11.13.4 For construction jobs the methodology applied is as recommended by Offpat in a previous technical guidance note (2008) which moves from construction spend to average turnover per FTE construction employee to arrive at the total of construction job-years. The Regeneris study estimates FTE construction jobs at 950 person years, using a turnover per FTE construction job figure of around £57,000 per annum for commercial schemes in 2009 prices (inflated to current) against an estimated cost of £65 million and a two year development period. The figure of 950 person years of employment appears correct. However, technical practice in converting construction job-years to Full-Time Equivalent jobs is to divide by 10 to arrive at 1 additional construction job. Applying this ratio, the total of construction jobs from the Proposal will total 95, not 950.

11.13.5 Turning to the direct and final jobs estimate from the development of 550 FTE, these have been re-appraised below to test the Applicant's estimate.

Re-appraisal of employment density estimates

Use Class	End use	Gross m2	Net m2	Emp density	FTE
A1	comparison	16,304	11,413 (as per PS)	1 FTE per 90m2 NIA	127
A1	convenience	1,858	1,394	1 FTE per 17 m2 NIA	82
Flexible class A3-A5		950	792	1 FTE per 17m2 NIA	47
D2	Total area 6,690 Cinema (1,300 seat) +	3,440	n/a	Cinema based on % of proxy Odeon 30 jobs /1,421 seats	30 cinema
	Indoor adventure centre	3,250		1 FTE per 100 m2 GIA (on a range of 40-100 m2	27
Flexible class A1-A5		5,010	4,175	1 FTE per 90m2 NIA	246
Multi-storey car park	1,523 spaces	Not stated		Proxied from NCP car parks	5
Total		30,812			564

Source: Offpat/HCA, Employment Densities Guide, 2010

Notes: GIA to NIA – reduced by 20%.

Cinema estimated by proportion of staff to seats. Using the Colchester Odeon as a comparison, that has 1,421 seats with eight screens and employs 56 staff – 9 f/t and 47 p/t – so 30 FTE) Taking 1 FTE per 110m2 GIA (on a range of 90-120m2), the cinema would generate 31 FTE. Indoor adventure centre FTE density taken at the upper end, 100m2.

Car park. NCP employ 7 f/t staff across two car parks (Osborne Street and Nunns Road) providing a total of 1,243 spaces. Some of these staff are multi-site so 5 FTE are assumed to adjust and include the larger development proposed.

11.13.6 The conclusion from the above is that the Applicant has slightly underestimated the **gross** FTE jobs impact of the direct final job total from the Proposal which is estimated here to be lightly higher at 564 jobs, but well within a margin of 5% variability for employment density calculations. Together with the construction FTE jobs total of 95, the development will generate an overall total of 659 FTE jobs – not 1,000 jobs .

- 11.13.7 As noted above, the total of 659 FTE jobs refers to **gross** and not **net** jobs. In other words, the impact of creating these jobs does not factor in their final impact in terms of the overall jobs total of the Borough. Gross jobs are typically reduced by the effects of two processes: **leakage** – a proportion of jobs will be taken by residents from outside the Borough; and, **displacement** – businesses occupying the development will take some market share from other Borough businesses, reducing the employment count of the latter. The Applicant does not provide an estimate of the jobs going elsewhere or lost through competition as a direct consequence of the impact of the Proposal. In highlighting this counter reaction NLP have not indicated a likely figure
- 11.13.8 Retail (as with leisure) job *leakage* is likely to be at the low end as, given the relatively low skill levels required and low salaries associated with the sector, it is less likely that there would be significant interest in available positions from outside the local area. We would apply a “ready reckoner” of 10% leakage, reducing the final jobs from 659 to 593 from this effect. (See, *English Partnerships, Additionality Guide, 3rd ed., 2008 for indicators*). *Displacement* will inevitably occur to some degree but, in the absence of identification by the Applicant of the occupier fascias (business names) for the Development, it is difficult to assess the extent to which these occupiers will go “head to head” with Town Centre retail and leisure businesses. It seems appropriate to apply a ready reckoner (as per the Additionality Guide, above) of between 25% (*‘There are expected to be some displacement effects, but only to a limited extent’*) and 50% (*‘About half of the activity would be displaced’*) In the absence of consultant findings and Applicant evidence, we may apply a reasonable average of 37.5% displacement. Overall, therefore, the Proposal will generate Final jobs on a range between 297- 445, with the average of these being a final total of 371 jobs.
- 11.13.9 The Council’s Senior Enterprise Officer calculates that were the area of the proposal within the SEZ to be developed for B uses this could generate in excess of 1800 FTE’s, based on a development density of 60% and an average of 30sq.m area per FTE. By the same token, if much of this area were to be used for warehousing/distribution purposes, then the number of jobs would be significantly less. In recently determining (refusal) the Stane Park proposal Members considered exactly the same issue and the principles underpinning the Council’s designation of SEZ’s and concluded that the offer of jobs today in a sector that is considered inappropriate within an SEZ did not outweigh the need to retain land for the future delivery of jobs in those sectors that its Adopted Strategic Employment Policies is targeting, particularly where this would also have the added disbenefit of undermining the viability and vitality of the Town Centre.
- 11.13.10 In this context it is not perverse to have an employment zone in which certain categories of development are inappropriate and unacceptable even where they are delivering jobs because a SEZ does not look to encourage any type of job. These are better directed to locations where retail jobs are being encouraged by planning policy. This is the essence of spatial planning that seeks to direct specific uses to the optimal location.

11.13.11 Conclusion regarding employment issues

- 11.13.12 There is sufficient evidence available to support the Council's view that the demand for high quality, well-located B employment use floorspace is already there and will increase in Stanway and that land such as the current sites with clear strategic advantages should not be unallocated prior to and outwith the Local Plan process. The loss of this strategically important employment land is considered unacceptable in that it will be prejudicial to the overall Employment Strategy of the Council in that it will remove a significant quantity of high quality employment land from the overall stock currently available in Stanway. The Tollgate Area lies within an allocated Growth Area as well as partly within a Strategic Employment Zone and an Urban District Centre. Within the SGA and SEZ 'B class' uses are encouraged and the expansion of appropriate retail jobs within the UDC are similarly encouraged. To allow the effective widening of the area dedicated to retail and leisure at the expense of retaining B use employment land is considered unacceptable as it will shrink the range and type of employment opportunities available within the Stanway area contrary to the Council Strategic Employment Policies.
- 11.13.13 Colchester underperforms against most other Essex local authorities, the County and the East of England in terms of average resident wage levels. The Council's Employment Land strategy is designed to encourage businesses offering well-paid, full-time employment opportunities to grow and locate in Colchester rather than facilitating sectors that are associated with higher levels of part-time working and lower pay. As with the Report considered by Members in respect of Stane Park, this is not to say that lower value, lower paid jobs are decried by the Council - they certainly fit in with and around many people's life styles, skills sets and other commitments and contribute to well-being. There does however need to be balance and variety if the Town is to prosper and drive a resilient local economy that can spin out new opportunities from developing businesses. B use class development, especially of Offices, creates higher average wages and a greater multiplier effect for the local economy and higher value jobs are badly needed to absorb the skills of school and college leavers in the Borough who would otherwise mainly become out-commuters or re-locate elsewhere in the Greater Southeast.

11.14 Sustainable development

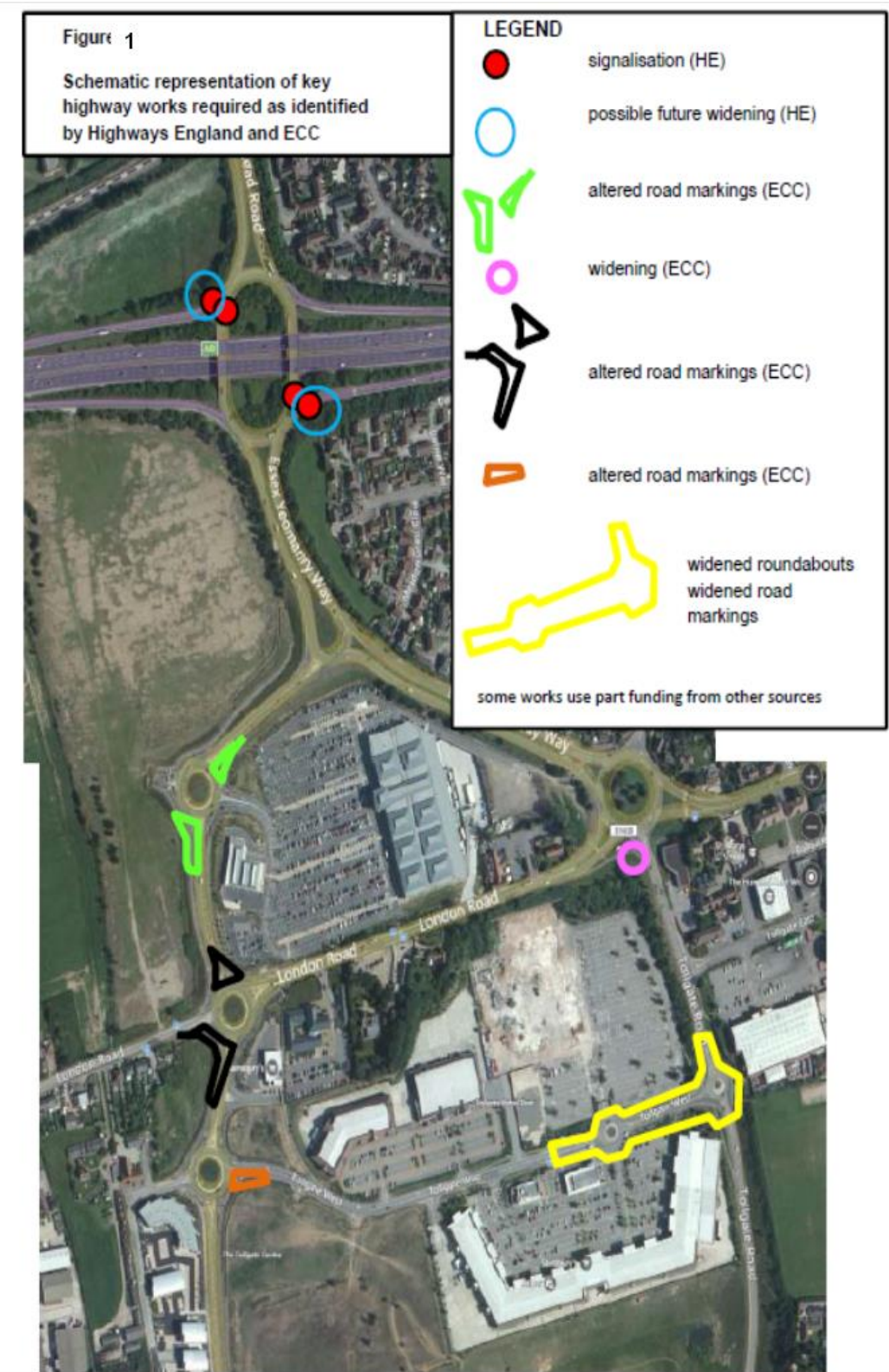
- 11.14.1 Colchester's Town Centre provides a high concentration of town centre uses within a compact area this is walkable and easily accessible by public transport (bus, coach, rail & taxi). With its 14,000 jobs and high density surrounding residential areas, the Town Centre has a critical mass of residents and workers who can take advantage of its facilities. While Tollgate is accessible by bus from the Town Centre the availability of free parking, the lower surrounding residential densities and the lack of accessibility to all parts of Colchester mean that journeys to and from Tollgate are dominated by the private car, Proposals for Tollgate Village would reinforce this dominance by increasing the amount of large scale retail and leisure development, particularly if the development functions as sub-regional attractor.

- 11.14.2 The residential population of Stanway has been expanding and will continue to do so with significant planned growth (e.g. Lakelands under construction 800 homes + Wyvern Farm under construction 358 homes and Five Ways Fruit Farm to follow) the majority of strategic housing growth continues to be focused close to the town centre. (e.g. NGAUE/Chesterwell 1600 homes; Severalls Hospital 1000 homes; Garrison 2600 homes). As the population of central Colchester burgeons it is not desirable to locate a sub-regional attractor away from the town centre where access is easy using sustainable transport modes and well established and where genuine linked trips are possible.
- 11.14.3 NLP concludes that the proposal is of a sub-regional scale that would inevitably compete with the Town Centre. The proposal would enlarge the existing District Centre to a disproportionate extent and would not be consistent with the spatial hierarchy set out within the Adopted development Plan in Policies CE1 and CE2. This hierarchy directs town centre uses to the Town Centre and seeks to maintain the Town Centre's pre-eminence by strictly controlling further growth of Urban District Centres. Development of such a scale and significance as the Tollgate Village proposal would pre-empt decisions best made through the Local Plan on the scale, function and distribution of commercial activity in the Borough. Approval of a large development of town centre uses outside the approved spatial hierarchy would be contrary to Core Strategy Policy SD1 (sustainable development) which provides that growth will be located at the most accessible and sustainable locations in accordance with the settlement hierarchy.
- 11.14.4 As the Planning Policy Service highlights in considering the three dimensions of sustainability, namely economic, social and environmental, the key concerns in this case [as explored so far in this report] are weighing up the advantages of employment creation and provision of more consumer choice over the disbenefits of harm to the vitality of the town centre; conflict with the existing spatial hierarchy; the reinforcement of existing car-dominated travel patterns; and the loss of land safeguarded through the local plan for alternative B use employment uses".

11.15 Highway issues

- 11.15.1 The outstanding issue common both to residents objecting to the proposal and conditionally supporting is a common concern that that the proposed development will significantly exacerbate well known congestion problems in the area. Extensive and protracted discussion/negotiation has been undertaken between the applicants, their highway consultants, Highways England and Essex County Council, as the local highway authority.
- 11.15.2 Members will have seen that Highways England does not oppose the development on the basis that if planning permission is granted suitable mitigation measures/works have been identified to avoid any adverse impact on the efficiency and safety of the A12 trunk road and local junctions directly serving it.
- 11.15.3 Essex County Council as local highway authority has stated that it finds the proposal acceptable subject to the conditions requiring highway works across a number of local junctions and roads. (figure 11 shows these in diagrammatic form)

11.15.4 On this basis and subject to the appropriate mitigation being secured as appropriate there can be no supportable highway objection to the proposal. However members will want to carefully consider the implications for layout and sense of place that now arise from the works being proposed at the eastern end of Tollgate West. (please read Design section of this report)



11.15.5 Essex County Council has also raised no objection to the proposed parking arrangements as the proposals comply with current Adopted parking standards in that the proposed number of spaces planned to be provided do not exceed the relevant maxima. Members will recall that unlike the Adopted residential parking standards which are applied as a minimum parking for non-residential developments are applied as a maximum. The level of parking being proposed is 68% of the maximum and Essex County Council has accepted this figure as appropriate and reasonable in the associated modelling and in subsequently assessing the wider highway impact of the development.

11.15.6 In these circumstances it is concluded that no sustainable objection can be raised on parking grounds

11.16 Applicant's rebuttal

11.16.1 Barton Willmore, agents for the Tollgate Partnership, has submitted (25 November 2015) a seven page rebuttal to the views expressed by NLP and the Planning Policy Service. This is reproduced in full at the appendix.

11.16.2 Their summary and conclusions state:-

“ 52. NLP conclude that the scheme complies with the sequential test and does not identify a significant adverse impact in terms of Town centre vitality and viability. NLP does however raise concerns over potential impact on in-centre investment in terms of Vineyard gate. For the reasons set out above [see appendix] we disagree with NLP and maintain our position that the scheme complies with the NPPF sequential and impact tests (paragraphs 24 & 26) and in turn paragraph 27.

53. Further, no new evidence has been presented on employment land matters which would justify the retention of the application site

54. Against this background we maintain our position that the application proposals comply with the development Plan and National Guidance. In the absence of harm and considering numerous tangible benefits arising from the proposal, it represents 'sustainable development' and should therefore be granted planning permission.'

11.17 Design issues

11.17.1 Owners and operators of out of town centres have realised that shopper habits, behaviours and expectations have changed dramatically since inception in the 1980's but they have inherited old layouts which are not highly adaptable. British Land with their Tollgate Centre and now the Tollgate Partnership are trying to create a new 'place' with a completely different ambiance that makes the shopping trip more pleasurable and encourages people to stay.

- 11.17.2 However, Tollgate and many other out of town venues struggle to reproduce the fine grain, charm, intimacy, human scale and the character that has evolved in town centres over centuries with a rich patina etched into every surface from the passing of time, the impact of human activity and the slow actions of change.
- 11.17.3 The Tollgate Partnership has responded to the need to create a sense of place in some of their more recent developments. Parking is now more visually subservient 'round the back' and no longer a dominant feature in the street scene. In working up preliminary concept sketch layouts with the Major Development Service, the Tollgate Partnership and their architects looked to develop the various components of the Tollgate Village proposal in a pedestrian friendly way whilst also lining the British Land development in a newly modified sector of Tollgate West. Buildings are of an appropriate scale in this location and the scheme takes advantage of the significant difference in levels between the old Sainsbury's site and the adjacent road levels. The illustrative drawings indicate that customers would be able to enter the main anchor unit directly from London Road at current pavement level or from an entrance 3 storeys lower on the Tollgate West side of the building. Customers would be able to navigate through the building to enter or leave at different levels.

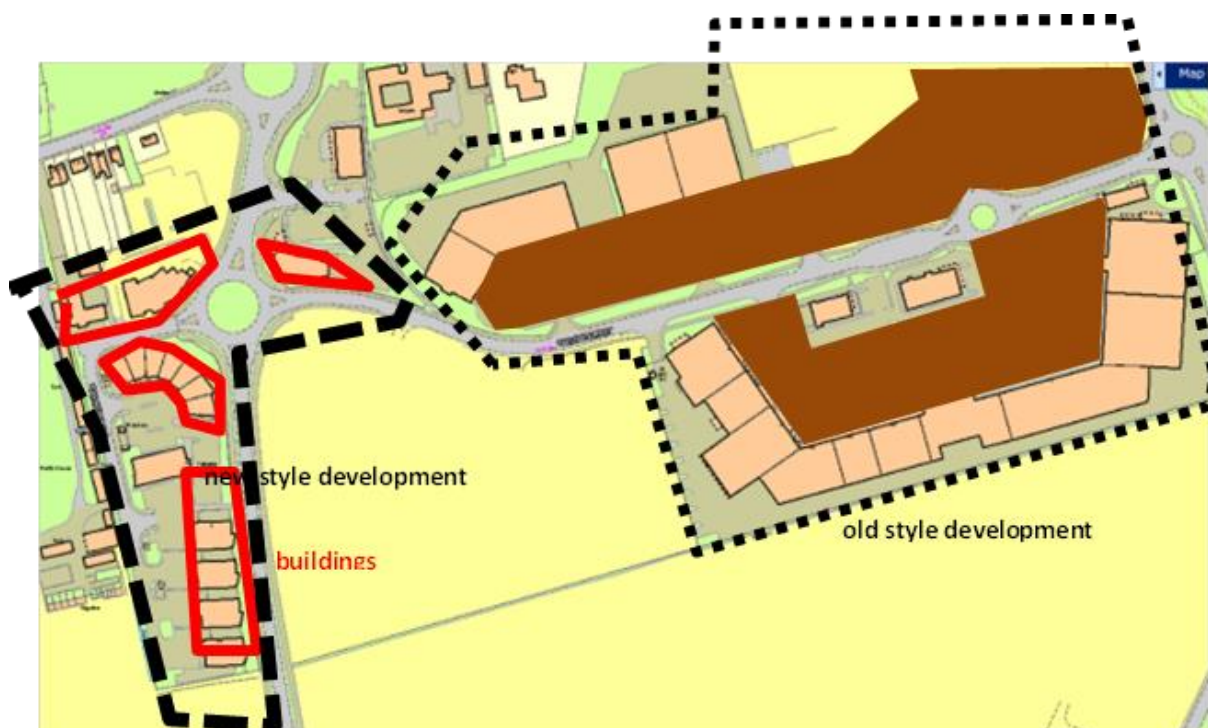


Figure 12: The recent change in design philosophy where parking has become more subservient to built form

- 11.17.4 Undoubtedly the proposal improves some limited parts of the public realm in the form of new plaza's and open spaces and would provide landscape interest on a site that is currently largely devoid of such interest except on its periphery.



Figure 13: Example of new public realm; north side of Tollgate West



Figure 14: example of new public realm that would be created; south side of Tollgate West

11.17.5 The buildings depicted in the supporting material are all contemporary in appearance. The multi storey car park exploits changes in level.

11.17.6 Car parking would continue to make its presence felt visually in the landscape being created but would be less the dominant feature than currently.

- 11.17.7 Unfortunately Essex County Council as local highway authority in attempting to resolve highway issues has required the applicants at a late stage without consultation with the Major Development Service at Colchester to amend the road layout on Tollgate West to an extent that is incompatible with an Urban District Centre and contrary to the Stanway Vision Statement. Far from enhancing the sense of place and building a new pedestrian friendly ambiance it has made the barrier to movement formed by Tollgate West between the Tollgate Centre and the UDC on the north-side of Tollgate West and more of a physical and visual hurdle.
- 11.17.8 The extract below highlights just how dominant the road would be in the event of Planning permission being granted.
- 11.17.9 Whilst the Council may not have objected to the general illustrative layout of the proposed development the latest highway amendments in respect of Tollgate West completely undermine the pedestrian friendly character developed in those illustrative drawings. Whereas the Council had sought to enhance the pedestrian public realm in Tollgate West the latest highway proposals now introduce additional lanes (doubling them at the eastern end of the site) and create an in slip within that part of the site that was to form part of a shared pedestrian realm.
- 11.17.10 Members are reminded of the design principles espoused in the Stanway Vision Statement 2013 when it states:-
- Enhancing the sense of place for the local community in Stanway as well as for Colchester and the surrounding area.
 - Prioritising the linkage of development plots to encourage pedestrian and cycle movement
 - Provision of shared access for pedestrians and cyclists to surrounding residential neighbourhoods » Provision of routes following pedestrian desire lines to encourage easy movement between destinations
 - Ensuring appropriate levels of access and parking for cyclists.
 - Provision of high quality design, way marking and landscaping to promote usage of non-vehicular link
 - Ensure easy access to the existing public transport network
 - Creation of a bus hub for Stanway
 - Easy pedestrian access to public transport from other residential and commercial areas

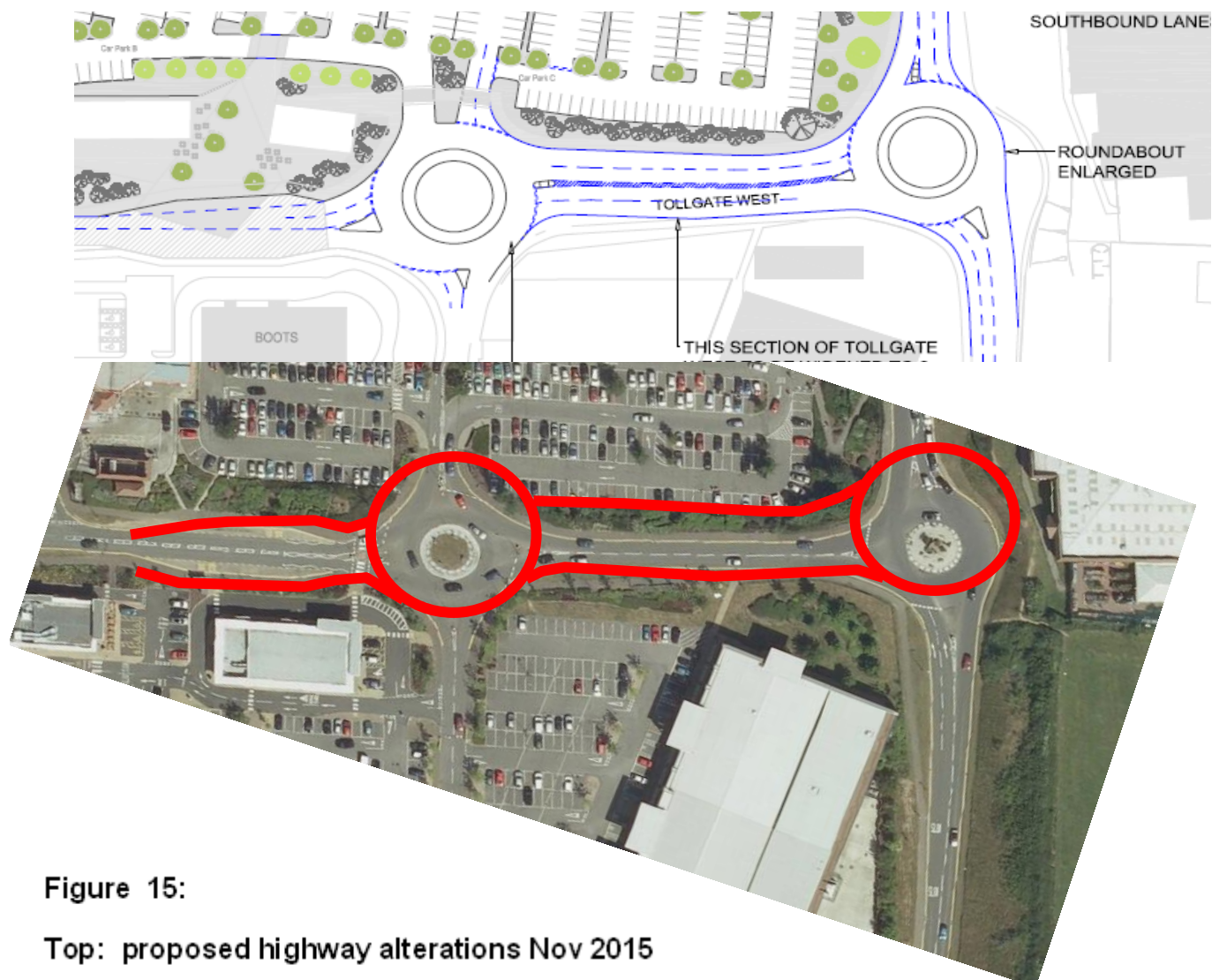


Figure 15:

Top: proposed highway alterations Nov 2015

Bottom: aerial view of existing highway arrangement with proposed highway works as a crude overlay

Other Issues

11.18 Drainage

From responses received from the relevant drainage bodies it would appear that the proposed development is not expected to have adverse impacts that cannot be appropriately and properly mitigated via reserved matters submissions. No ground/s for refusal in this regard

11.19 Archaeology

The Council's Archaeological Officer is satisfied that the proposed development can proceed without harm to archaeological assets. No grounds for refusal in this regard.

11.20 Landscape

The Council's Landscape Officer is satisfied that the proposed development will not harm any landscape of significance and that the scheme can be adequately enhanced through the submission of landscape details in the event that planning permission is granted. No ground/s for refusal in this regard.

11.21 Contamination

The proposed development is not expected to pose impacts that cannot be adequately mitigated. No ground/s for refusal in this regard.

11.22 Ecology

The proposed development is not likely to adversely harm local ecology. No ground/s for refusal in this regard.

11.23 Heritage

Section 66(1) of the PI (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker to pay special regard to the desirability of preserving the setting of listed buildings. In this case, the site is remote from the listed cottage 'Foakes' on London Road which is itself now bounded on its eastern and southern sides by new development and so the proposal is unlikely to have any material or harmful impact on the character and setting of that building. It is therefore considered that this statutory test is satisfied. The historic setting of this building has already been dramatically changed from its former rural context and the proposal would not exacerbate the existing position in your officers opinion.

- 11.23.1 Cherry Tree farmhouse a grade II listed building (now a restaurant and associated accommodation) on the north side of London Road is close to the northern edge of the Tollgate Village site. In developing the area to the south care will need to be taken especially with the proposed street level access to the anchor unit not to dominate the modest farmhouse with oversized new build. Cross sections suggest that with the significant level difference between the front and back of the development site it should be possible to present modest height building form to London Road thereby protecting the setting of Cherry Tree farmhouse.

11.24 Amenity

The Council's environmental control service is satisfied that any likely harm to amenity (noise, lighting, odours can be controlled and mitigated through the application of suitable conditions and so there is no ground/s for refusal in this regard.

11.25 Air quality

The proposal is not expected to adversely impact designated Air Quality Management Areas (AQMA's) and so there is no ground/s for refusal in this regard.

12.0 Overall Conclusion

Whilst the outline proposal offers a number of benefits including:-

- the creation of a significant number of new jobs,
- widening consumer choice at Tollgate,
- enhancing the public realm in part at Tollgate; and,
- injecting significant investment into the Stanway local economy
- contributing to highway improvements in an area noted for regular traffic congestion

and in the context of NPPF paragraph 14 these benefits are considered not to outweigh :-

The harm to:-

- **development plan retail strategy**

The NLP work clearly establishes that the proposal would involve the creation of a sub-regional scale development that would not accord with adopted sustainable development and centres and employment policies (Core Strategy Policies SD1, CE1 and CE2).

- **the emerging development plan and in particular the proposal is *'premature'***

The proposal is considered to pre-empt significant decisions on the Borough's spatial hierarchy which should instead be reached through the Local Plan process.

- ***'planned investment'* in the Town Centre**

This reflects the potential for the proposal to have a significant negative effect on the town centre due to the impact on planned investment.

- **The provision of employment land**

The applicants are not considered to have demonstrated that there is no reasonable prospect of B-class employment uses coming forward for the Strategic Employment Zone portion of the site contrary to Core Strategy Policy CE3, Site Allocations Policy SA STA3 and Development Policy DP5.

13.0 Recommendation

13.1 REFUSE planning permission for the reasons set out below.

1. Conflict with site allocation as a Strategic Employment Zone

A significant part of the application site is allocated in the Adopted Local Plan as a Strategic Employment Zone (policies CE1, CE3, SA STA3 and DP5). The proposed uses are not in conformity with the provisions of the local plan and the loss of this important high quality Adopted Strategic Employment Zone (SEZ) land is considered prejudicial to the Council's overall employment strategy to the detriment of the medium to long- term economic benefit of the town. It is important to maintain a range of different quality sites available to the market

Notwithstanding that the proposed development will generate new jobs in the service and hospitality sectors the proposal would erode the integrity and future attractiveness of The Tollgate SEZ for business park development that requires excellent access to the Nation's strategic trunk road system. This concern is further compounded by the fact that Stanway is expanding rapidly through planned housing delivery and the Strategic Employment Site offers potentially sustainable employment opportunities for residents who are otherwise forced to travel in search of job opportunities.

This site and its wider hinterland is allocated in the Council's Adopted Core Strategy - Policy SD1 as the Stanway Growth Area (SGA) where development is expected to be focused and where proposals that accord with other policies in the Local Plan will be approved without delay. In defining the Stanway Strategic Employment Zone, within which the application site lies, the Council identified the type of development that would be appropriate to achieve its medium to long- term economic objectives within Table CE1b (as supports employment classification and hierarchy policy CE1 and the strategic designation provided by table CE1a). These appropriate uses are defined as B1b research and development, studios, laboratories, hi-tech; B1c light industry; B2 general industry; and B8 storage and distribution. Secondary land uses are described as B1a offices; C1 hotels, D2 assembly and leisure and sui generis. The proposed land uses comprising A3 or A4 uses do not comply with that policy. The proposed development on this strategically important Employment Zone would seriously undermine the Council's ability to plan for the medium to long term expansion of the Town's economy to create sustainable high value jobs in locations that complement areas experiencing rapid and significant housing growth and with excellent access to the strategic highway network..

The Council's carefully planned employment strategy is reinforced within its Adopted Site Allocations (2010) in so far as Policy SA STA1 and SA STA 3 that make provision for employment use (which exclude those proposed here) and reject the need for town centre uses as proposed.

2. Conflict with retail hierarchy policy and Urban District Centre (UDC) policy

A large part of the application falls outside of the designated Urban District Centre and proposes a significant expansion of retail and town centre use floorspace outside of the defined UDC contrary to Policy CE2b of the Adopted Core Strategy (revised July 2014). It is the Council's opinion that the scale and type of retailing and town centre uses proposed is of an order of scale that would effectively make Tollgate a sub-regional retail/leisure attractor that will inevitably harm Colchester's Town Centre at the apex of the Adopted retail hierarchy as the pre-eminent sustainable destination for such activity within the Borough and sub-region.

Adopted Core Strategy Policy CE1 directs that the Town Centre shall be protected as the sub-regional shopping centre within the Town's retail hierarchy and the Council believes that as a consequence planned investment in the Town centre will be seriously prejudiced and future investor confidence in the Town centre harmed to the extent that growth in the Town centre will stagnate for at least 10 years whilst Tollgate diverts footfall and trade away from the Town Centre. As a result, key regeneration sites within the Town Centre may not come forward as planned and that in the intervening period Colchester's town centre will fall behind its regional competitors as they continue to invest in their town centres.

Having considered the proposal in the context of the National Planning Policy Framework (especially paragraphs 23-27) and associated National Planning Practice Guidance the Council considers that the harm to retailing in the Town Centre arising from the proposal is not outweighed by the benefits that are likely to arise from the proposal in the form of additional new jobs, widened consumer choice at Tollgate and associated public realm improvements.

3. Prematurity

In the opinion of the Council, the Tollgate Village proposal is premature within the context of the Council's ongoing Local Plan process and the programmed publication of Preferred Options and Site Allocations in summer 2016 with the anticipated submission of the final Draft Local Plan in 2017. Key elements of the emerging Local Plan are a review of the future strategic employment land and retail requirements of the Borough. This will involve both a quantitative assessment and a qualitative assessment together with a spatial analysis of the optimal distribution and location of significant growth in town centre and employment uses. This analysis will take account of wider sustainability issues and the Council opines that determination of the Tollgate Village proposal ahead of the next stage of the Local Plan (which will include comprehensive public consultation) will prejudice the ability of the Council to make strategic decisions based on a thorough evidence and analysis of all possible options rather than one that has an advantage of timing through the submission of a speculative planning application. A grant of consent for a proposal of this magnitude would effectively dictate issues of hierarchy prior to any consideration of such issues in the development plan.

4. Sustainable Development

The expansion of town centre uses of the magnitude proposed in this location with heavy reliance on trip generation by the private car with the resultant adverse impact identified upon the town centre together with the potential loss of planned employment growth within this strategic employment site and the resultant harm to the planned economic growth significantly outweighs the benefits identified to be delivered by the proposals. Consequently, in the opinion of the Council the development is inherently unsustainable contrary to paragraphs 6-14 of the Framework and the Government's explicit intention that the purpose of the planning system is to contribute to the achievement of sustainable development. The proposal is thus contrary to the strategic aims of the adopted local plan. The car-dominated nature of the proposal is further evidenced by the associated highway improvements required by the Highway Authority that would result in the creation of a poor pedestrian environment contrary to adopted policy CE2b and Design Principles set out in the Stanway Vision Statement (2013) that require new development to deliver improvements to the public realm and create a pedestrian-friendly environment. The proposals are therefore also contrary to paragraph 64 of the NPPF and the Government's intention to contribute positively to making places better for people.

14.0 Positivity Statement

- 14.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

Rebuttal from Barton Willmore on behalf of applicants

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25th November 2015

**TOLLGATE VILLAGE (PLANNING APPLICATION REF: 150239)
RESPONSE TO NLP RETAIL & EMPLOYMENT CRITIQUE**

1. This note sets out our response to the Retail and Employment Land Critique (prepared by NLP, October 2015) in respect of the mixed use planning application known as Tollgate Village (LPA Ref: 150239).
2. It focusses on NLP's comments on the Retail Assessment (February 2015) & Supplementary Information (June 2015) prepared by Barton Willmore, the Employment Land Study (January 2015) prepared by Regeneris Consulting and sets out our views on the acceptability of the scheme against the following planning policy tests:
 - Sequential approach;
 - Impact on Town Centre vitality and vitality;
 - Impact on Town Centre investment;
 - Loss of employment land; and
 - Other matters.
3. We then set out potential conditions / S106 obligations which we wish to discuss with Officers along with our conclusions on the acceptability of the scheme in retail and employment terms.

Sequential Test

4. NLP provide an assessment of the proposed development against the sequential test. Part of the application site sits within the defined Urban District Centre with the remainder in an edge-of-centre location. The application proposals would therefore represent a logical enhancement and extension to the existing District Centre and the retail and leisure offer in the Stanway growth area. The applicant has promoted the site through the August 2014 Call for Sites exercise and the Local Plan Issues and Options consultation in February 2015.
5. Whilst NLP refer to the Core Strategy hierarchy of centres, they surprisingly fail to recognise that the Inspectors Report into the Local Plan Focussed Review (May 2014) found the Council's retail hierarchy to be at odds with the NPPF (paragraph 17 of the Inspector's Report). We therefore believe that the NPPF provides the appropriate basis against which to assess the scheme.
6. Against this background, NLP's assessment of potential alternative sites can be summarised as follows:
 - *Vineyard Gate*: NLP conclude the site is not available and not suitable for the proposed development.
 - *Cowdray Centre*: notwithstanding that in our view the site does not benefit from a preference under the NPPF sequential test, NLP find that the site is too small to accommodate the proposed development (i.e. it is not suitable).
7. NLP has not identified any further sites which require assessment. On this basis, the proposed development **complies with the sequential test** under NPPF paragraph 24 and in turn the relevant part of NPPF paragraph 27.

Impact Assessment – Base Data and Assumptions

8. Before assessing whether the scheme is considered to comply with the impact test, we comment below on the key inputs to the quantitative impact assessment:

- *Base & Design Years:* NLP agrees with the base year of 2015 and design year of 2019 set out in the Retail & Leisure Assessment.
- *Population Data:* Whilst at pre-application stage we requested from CBC / NLP the population data it considered appropriate, this was not forthcoming and has resulted in NLP using different data to us in its assessment. However, as noted by NLP (paragraph 2.70), this is unlikely to be significant in terms of the resultant analysis/assessment.
- *Expenditure Data:* NLP agrees with the expenditure data used to inform the assessment. Whilst there are some differences in available expenditure NLP note that these are relatively small and do not affect the overall impact conclusions (paragraphs 2.12 and 2.13).
- *Scheme Turnover:* NLP agrees with the potential convenience goods turnover of the scheme. NLP however suggests that the comparison goods sales density will be greater than set out in the Retail & Leisure Assessment and therefore assesses two potential scenarios based on i) a mixed scheme (bulky and non-bulky comparison goods) and ii) a fashion led scheme. The scheme has always been promoted as a mixed scheme across comparison goods sectors, as set out in the Assessment and reflected in our own turnover assumptions. We comment on NLP's scenarios in more detail below.

In respect of the net comparison goods floorspace, NLP suggest this would be greater than set out in the Retail & Leisure Assessment. Given the split level nature of the floorspace and requirement for greater servicing / circulation areas as a result, in our view the net to gross ratio of 70% is appropriate. In any event the net sales floorspace can be conditioned (as we have previously suggested) and it is therefore inappropriate for NLP to consider a higher sales floorspace.

- *Shopping Patterns:* NLP accept the existing market shares used to inform the assessment.
- *Commitments:* NLP is critical of the inclusion of Vineyard Gate as a 'commitment'. It should be noted here (and as we have expressed on a number of occasions), this was included explicitly at NLP's request during pre-application discussions. Our view has been consistently stated that it is not a commitment. NLP's assessment therefore excludes this 'scheme'. NLP also excludes some convenience goods commitments which will now not come forward.
- *Trade Draw:* NLP consider our trade draw approach to be appropriate.

Impact on Town Centre Vitality and Viability

9. It is important to note at the outset that the NPPF impact test sets out that applications should only be refused where there is likely to be 'a significant adverse impact' on Town Centre trade, turnover and vitality and viability (NPPF paragraph 26, 2nd bullet).

10. Before considering the potential for Town Centre impact, it is important to consider the health, or vitality and viability, of Colchester Town Centre. Our Retail & Leisure Assessment included a detailed assessment of the Town Centre and concluded that it is vital and viable. Whilst NLP has not undertaken its own health check assessment, they agree that it is healthy, and there are no particular vitality and viability concerns (paragraphs 3.60 and 9.6).

11. Against the background of a healthy Town Centre, we set out the key findings of NLP's assessment and the scheme's compliance with the NPPF impact tests.

Class A1 Floorspace

12. NLP does not raise any concerns over the potential convenience goods component of the scheme, concluding that *"the impact on this food and grocery sector is **not expected to be significant**"* (paragraph 9.2).
13. In respect of comparison goods, NLP assesses two scenarios, based on:
- i) a 'mixed scheme'; and
 - ii) a fashion led scheme.
14. Under the 'mixed scheme' scenario, NLP concludes that *"Comparison goods trade diversion from the town centre is **not expected to have a significant adverse impact on the vitality and viability** of existing facilities within the town centre..."* (paragraph 3.62). NLP does however suggest that future investment would be discouraged which is a separate part of the impact test and is considered below.
15. Under the 'fashion-led' scenario, NLP again conclude that *"Comparison goods diversion from the town centre is **not expected to undermine the vitality and viability** of existing facilities within the town centre..."* (paragraph 3.65). NLP suggest that choice may not be improved, but this is not a requirement or test under the NPPF.
16. NLP then present combined convenience and comparison goods impact figures which show a 9.8% impact on the Town Centre under the 'mixed scheme' scenario and a 13.2% impact under the 'fashion led' scenario.
17. It is clear that, as recognised by NLP under either scenario, the scheme would not result in a significant adverse impact on the vitality and viability of Colchester Town Centre. Whilst NLP believe that the Town Centre could 'stagnate' and that choice may not be improved, these are not identified as significant adverse impacts and there is no requirement for proposals to improve in-centre choice.
18. Notwithstanding that the proposed development is considered acceptable by NLP under either scenario, conditions have been proposed to control the overall sales area of the scheme and the range of goods to be sold. These are discussed further in paragraphs 49-50 of this note.
19. On this basis, the Class A1 component of the scheme complies with this part of the impact test under NPPF paragraph 26 (2nd bullet) and the relevant part of paragraph 27.

Class A3-A5 Floorspace

20. NLP raise concerns over the potential effect of the Class A3-A5 floorspace on the Town Centre. It should however be recognised that if all of the proposed Class A3-A5 floorspace was implemented, this would be at the expense of the equivalent Class A1 comparison goods floorspace (which NLP concludes would not result in a significant adverse impact on the Town Centre). Under such a scenario, the potential impact effects on the Town Centre as a whole would be offset.
21. Notwithstanding this, NLP suggests restricting the overall quantum of Class A3-A5 floorspace to a maximum of 2,100 sq m gross, as the potential growth in leisure expenditure would offset the potential impact effects of this quantum of floorspace. The Applicant is willing to accept such a condition which in our view reinforces the acceptability of the scheme in impact terms. This is reaffirmed at paragraph 49 of this note.

22. On this basis, the A3-A5 component of the scheme (as controlled by condition), would not result in a significant adverse impact on Town Centre vitality and viability.

Class D2 Floorspace

23. NLP incorrectly suggests that this component of the scheme has not been assessed. The assessment is clearly set out at paragraph 6.83 and 6.100 of the Retail & Leisure Assessment. NLP does not however suggest that the leisure component of the scheme would result in a significant adverse impact on Town Centre vitality and viability.
24. Further, we are surprised that NLP suggests that i) impact on leisure development at Northern Gateway has not been assessed and that ii) that 'scheme' should be taken into account in a cumulative assessment (paragraphs 2.69 and 9.15).
25. The Northern Gateway 'scheme' is on land owned by CBC and has been publicised recently by them. It is understood that a developer has been selected to promote a scheme that is to include a circa 4,400 sq m cinema as well as other leisure floorspace of 7,440 sq m along with a range of restaurants.
26. NLP incorrectly suggest that the proposed leisure floorspace at North Gateway is 'permitted', by virtue of an outline planning permission reference: O/COL/01/1622. This permission was granted in 2006 and will expire in April 2016. NLP fail to recognise that the permitted D2 leisure floorspace at Northern Gateway relates only to a 'health and fitness centre' and no other use within the D2 class. Part of the permitted health and fitness centre floorspace will be taken up by David Lloyd following reserved matters approval in September 2015 (CBC ref: 151216).
27. As a result, the outline permission offers no support for a cinema or alternative leisure uses on the site. Should CBC and their selected developer wish to promote such a scheme it will need to be through a new planning application. If a new planning application is forthcoming it will need to be assessed against the relevant planning policy tests. In this regard it is worth noting that the site is out-of-centre in policy terms and is allocated for employment use. Indeed, NLP consider it to be the highest rated employment site in Colchester.
28. The Northern Gateway site does not benefit from any protection in planning policy terms from competing development and is sequentially inferior to the Tollgate Village site. There are no live planning applications relating to the site and there is no requirement to include it in a cumulative assessment. There is certainly no need to assess potential impact on it.
29. It is however worth noting in relation to the potential cinema and leisure uses proposed at Northern Gateway, the Minutes of the Council's Revolving Investment Fund Committee Meeting on 16th September 2015. These included comments from CBC's Strategic Director - Commercial and Place and its Economic Growth Manager, who explained to Members that *"...the development would complement the town centre. Many of the uses proposed would not be appropriate for a town centre location. The development would draw more people to Colchester, some of whom would also visit the town centre or other attractions such as Colchester Zoo..."*.
30. Clearly, these comments could equally be applied to the cinema at Tollgate Village which incidentally is located in a sequentially preferable location. The only reasonable conclusion that can be drawn is that the leisure component of the Tollgate Village scheme would not result in a significant adverse impact on Town Centre vitality and viability.

Other Centres

31. NLP conclude that the scheme does not raise concerns in relation to the vitality and viability of District Centres. We are however surprised that NLP does not consider the potential positive effects on Tollgate District Centre. These are detailed in Planning Application and

which should be fully taken into account in considering the merits of the scheme particularly given the sites in/edge of centre location (see paragraph 4).

Impact on Town Centre Investment

32. NLP refer to two potential 'schemes' against NPPF paragraph 26 (1st bullet) that it considers could potentially be significantly adversely impacted upon. These comprise Vineyard Gate and the Curzon Cinema as set out below detail below.

Vineyard Gate

33. The background potential for impact on this scheme has been set out in detail in both the Retail & Leisure Assessment and Supplementary Information. We note that since this time the 'scheme' has still not progressed and that Heads of Terms are still yet to be agreed, or even presented to Cabinet / Full Council for discussion.
34. NLP has provided no new evidence on the progress of the scheme as part of its assessment and we therefore maintain our position as set out in the above documents. The fact that NLP (who are acting for CBC) themselves are unclear on the potential uses within the proposed 'scheme' (paragraphs 2.26 and 2.69), demonstrates and reinforces our view that there is no scheme to actually assess.
35. Further, and somewhat confusingly, NLP provide a capacity 'assessment' in its critique to assess whether the Tollgate Village application will impact on town centre investment. The demonstration of need / capacity is not a requirement under the NPPF in a development management scenario (such as this). It therefore has no relevance to the appropriate planning policy tests. Even if this were the case, very limited weight can be attributed to the NLP assessment because:
- NLP adopt a new base year of 2015 and assume that stores are trading at equilibrium at this point.
 - The approach to a new base year assumes the capacity identified in its 2013 Study (i.e. from 2012-2015) will simply fall away. By constantly changing the base year and applying the equilibrium approach, there will always be limited capacity in such circumstances. For the assessment to be accurate, NLP should apply a consistent assessment based on its 2013 study in order to accurately reflect the capacity for additional floorspace in Colchester in line with CBC's evidence base.
 - The market share assumptions and potential increase for retention in Colchester are not explained.

36. It is also unclear, how this assessment relates to the findings of their own Retail and Town Centre Uses Study Update prepared on behalf of CBC and published in March 2013, which identified significant comparison good capacity at 2016 (13,119 sq m), 2021 (25,283 sq m) and 2026 (47,749 sq m). [Source: Table 10c of CBC Retail and Town Centre Study Update 2013 excluding Vineyard Gate assumption].
37. Given that no new evidence has been provided by either NLP or CBC in relation to Vineyard Gate, we remain very firmly of the view that the Tollgate Village application will not result in a significant impact on Town Centre investment.

Curzon Cinema

38. As set out above, and contrary to NLP's assertion, the potential impact on the Curzon Cinema scheme is detailed at paragraph 6.83 of the Retail and Leisure Assessment. There has been no change in circumstance since that time and a planning application is still yet to be submitted. Our position therefore remains unchanged.
39. Whilst NLP do not suggest that there would be a significant adverse impact on this 'investment', we are surprised that NLP raise the potential for concern. As set out above,

CBC is likely to promote a cinema at Northern Gateway which will require the submission of a planning application. As an allocated employment site and out-of-centre location that scheme will also need to demonstrate that it is acceptable in impact terms.

40. The Council has made its position clear on the potential impact of an out-of-centre cinema (and the potential benefits) via the comments of CBC's Strategic Director on 16th September 2015 (set out in paragraph 29). Such comments are equally applicable to the Tollgate Village proposals.
41. For the reasons set out above in respect of vitality and viability of the leisure component, the only reasonable conclusion that can be drawn is that the proposed cinema would not result in a significant adverse impact on in-centre investment against NPPF paragraph 26 (1st bullet) and in turn the relevant part of paragraph 29.

Employment Land

42. NLP provide an overview of the employment land position in Colchester, drawing on their own Employment Land Needs Assessment ("ELNA"), published in January 2015.
43. This is discussed further in both the Planning Statement and Employment Land Study submitted with the Planning Application. Based on the two most robust scenarios, the NLP Assessment identifies an oversupply of between 47.1ha to 54.9ha of employment land. As set out by NLP, the reduction of 9.1ha of employment land would still leave between 38ha and 45.8ha of surplus employment land in Colchester.
44. The Application Site comprises two of the joint 10th best ranked sites in the Borough as set out in the ELNA. NLP state (paragraph 8.48 of the ELNA) that *"it would be difficult to justify retaining the full extent of undeveloped employment allocations at Stanway from both a quantitative and qualitative market perspective. In this respect, it is recommended that the Council adopts a selective approach to safeguard these undeveloped allocations for future development, by retaining those sites with the best intrinsic qualities and greatest prospect of coming forward for employment development in the future."*
45. Higher ranked sites in Colchester would more than meet the employment land requirements set out by NLP and still result in an oversupply in the Borough. This would include the higher ranked sites in Stanway as identified by NLP and which would account for 23.6ha of employment land. The release of the Tollgate Village sites, comprising 2 of the 3 lowest ranked sites at Stanway, must be considered acceptable.
46. No new evidence has been presented on employment matters and we therefore maintain our position as set out in the Planning Application submission, that there is no justification to retain the Site in B Class employment use.

Other Matters

47. NLP (paragraph 8.27 to 8.29) suggest that the scheme could be premature and pre-determine future decisions on retail and leisure floorspace in Colchester. Whilst we are surprised that NLP has been asked to comment on prematurity, as this is a matter for CBC as decision maker, we wish to point out that the PPG states:

"Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination..." (PPG Paragraph: 014 Reference ID: 21b-014-20140306).

48. Given the emerging Local Plan has not progressed beyond Issues and Options stage, it is not considered that the proposed development raises prematurity issues that would justify refusal of the application.

Potential Conditions / Obligations

49. Arising from NLPs findings, our client is willing to accept the following restrictions which in our view reinforces the acceptability of the scheme in impact terms:

- Restricting the quantum of Class A3, A4 and A5 floorspace to a maximum of 2,100 sq m gross.
- Restricting the net sales area of the convenience goods floorspace to a maximum of 1,394 sq m.
- Preventing the convenience goods floorspace being used for any other purpose within Use Class A1.
- Restricting the net sales area of the comparison goods floorspace to a maximum of 14,920 sq m. For the avoidance of doubt this includes comparison goods floorspace within the flexible Class A1-A5 component of the scheme.
- Restricting the maximum net sales area for unrestricted Class A1 comparison goods to 65% of the net sales floorspace (i.e. 9,698 sq m net). The remaining comparison goods floorspace shall not be permitted to sell fashion clothing or footwear.

50. We also maintain our offer of a 'no poaching clause' within the S106 agreement which would prevent certain retailers from occupying floorspace within the development. This was set out in full in our Retail & Leisure Assessment Supplementary Information document dated June 2015.

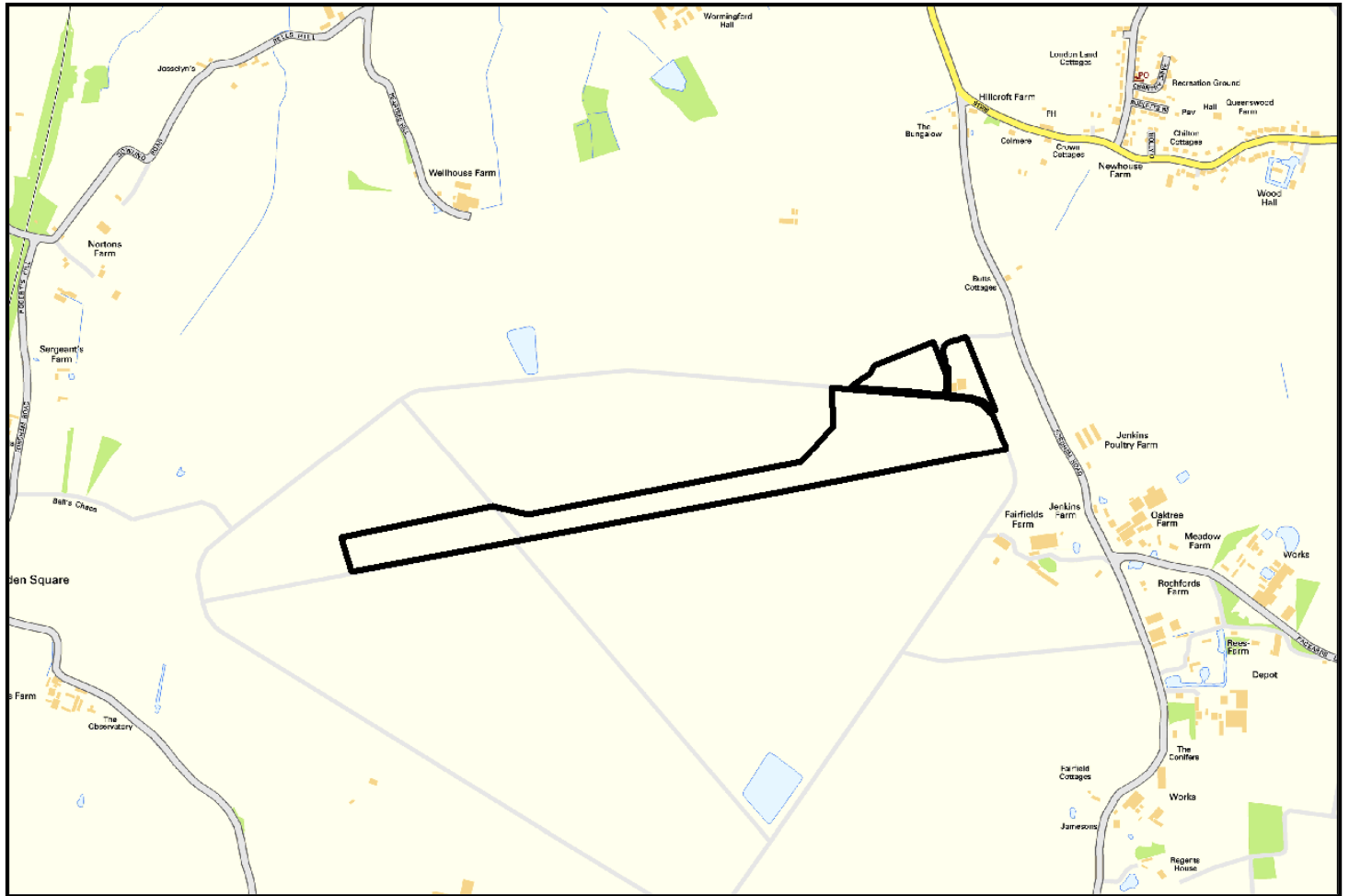
51. We would again reiterate our willingness to discuss these potential restrictions and the detailed wording of conditions / obligations in more detail with Officers.

Summary and Conclusions

52. NLP conclude that the scheme complies with the sequential test and does not identify a significant adverse impact in terms of Town Centre vitality and viability. NLP does however raise concerns over potential impact on in-centre investment in terms of Vineyard Gate. For the reasons set out above, we disagree with NLP and maintain our position that the scheme complies with the NPPF sequential and impact tests (paragraphs 24 and 26) and in turn paragraph 27.

53. Further, no new evidence has been presented on employment land matters which would justify the retention of the application site.

54. Against this background, we maintain our position that the application proposals comply with the Development Plan and National Guidance. In the absence of harm and considering the numerous tangible benefits arising from the proposal, it represents 'sustainable development' and should therefore be granted planning permission.



Application No: 150972

Location: Essex & Suffolk Gliding Club, Wormingford Airfield, Fordham Road, Wormingford, Colchester

Scale (approx): NOT TO SCALE

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7.2 Case Officer: Jane Seeley**MINOR**

Site: Wormingford Airfield, Fordham Road, Wormingford, Colchester

Application No: 150972

Date Received: 15 May 2015

Agent: Mr Raymond Stemp Associates

Applicant: Essex And Suffolk Gliding Club

Development: Application for the additional use of one Touring Motor Glider(TMG). All other existing uses to remain the same.

Ward: Fordham & Stour

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it was called in by Cllr Chapman. The reason for the call in is because the current use of the site for gliding is the result of Planning Inspectorate Appeal decisions and any change to this should be discussed in public. There are considerable concerns regarding the impact on the tranquility of the area if the application is approved.

2.0 Synopsis

- 2.1 This report gives consideration to the use of a Touring Motor Glider (TMG) in addition to the existing approved Gliding Club use at the application site. The proposal is assessed in light of policy, consultation responses and representations. It is concluded that, subject to a number of conditions, the use is acceptable.

3.0 Site Description and Context

- 3.1 The application site is on Wormingford Airfield. It is a predominantly grassed area with a range of buildings, including a hanger and club house facilities and parking for cars, glider storage and associated caravans. The site is screened from the road by hedging. There are views from public footpaths around the perimeter of the airfield. The site is surrounded by agricultural land. Approximately half a mile to the north is the Dedham Vale AONB and the Wormingford Built Up Area Boundary. There is sporadic housing around the edges of the airfield

4.0 Description of the Proposal

- 4.1 This application proposes the use of a motorised glider, known as a TMG, from the site 365 days per year. Currently, due to planning conditions motorised aircraft of any kind can only take off and land on four days a year (see 6.1 below).

5.0 Land Use Allocation

5.1 Unallocated

6.0 Relevant Planning History

- 6.1 There is considerable history (including enforcement action) relating to this site both before and since the Essex Gliding Club's use of the airfield. The history which is pertinent to the use of the site and the current proposal is:

COL/191/338 Use of land for gliding club and ancillary purposes. This application was refused and Enforcement Notices were issued. The use was allowed on Appeal subject to conditions including the following which relate to the use of the site:

1. This permission relates solely to the use of the site for the purposes of a gliding club and ancillary purposes, and excludes use for general aviation and other aero sports including parachuting and microlight aircraft or model aircraft flying.
2. Save in an emergency no powered aircraft of any kind (including tug aircraft and motorised gliders) shall land or take-off from the site except on four specified days per year, the dates of which shall have been notified to the Council at least two months in advance.
3. Except on the four days referred to in Condition 2 no glider shall take off from the site except between the hours of 9.00 am and 6.30 p.m.
4. Except on the four days referred to in Condition 2 above, no glider shall be launched from the site except on Saturdays, Sundays and one specified day of the week which shall have been previously agreed with the local authority in writing, and all such launches shall be by means of a winch.
5. There shall be no launches of any kind from the north-south runway or from within 50 metres of a public footpath.

COL/96/1085 Application to remove Conditions 3 and 4 of COL/91/0338, refused. Allowed at Appeal.

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
ENV1 - Environment
ENV2 - Rural Communities

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

DP1 Design and Amenity
DP10 Tourism, Leisure and Culture
DP22 Dedham Vale Area of Outstanding Natural Beauty

8.0 Consultations

8.1 Planning Policy

“The two key issues arising from the above proposal are potential impacts on the Dedham Vale AONB & Stour Valley landscape which includes tranquillity and potential residential impacts on communities living in the vicinity of the airfield. Tranquillity is an important element of the landscape character of the Dedham Vale AONB and Stour Valley as recognised in section 1.12.3.4 of the current Dedham Vale AONB and Stour Valley Management Plan 2010-2015. The document highlights the potential threats that new development can have on the tranquillity of the AONB. This includes noise impacts from small aircraft using airstrips in and around the Dedham Vale AONB and Stour Valley.

According to The Campaign for the Protection of Rural England’s tranquillity maps, the Stour Valley, is a relatively tranquil area and the management plan seeks to continue to protect this tranquillity. The protection of tranquillity is also an objective in the new emerging Dedham Vale AONB and Stour Valley Management Plan 2015- 2020.

New development must make a positive contribution to the special landscape character and qualities of the AONB, must not adversely affect the character of the AONB, threaten public enjoyment of the area and support the wider environmental or social objectives of the AONB to satisfy development policy DP22.

Policy DP1 generally requires all developments to avoid unacceptable impacts on amenity. Criteria iii in particular, requires developments to demonstrate that they will protect existing public and residential amenity including from noise.

The proposal would introduce 1 new motorised glider on the edge of the Dedham Vale AONB and villages surrounding the airstrip. The airfield where the aircraft would take off from is located approximately 850m from the south westerly boundary of the AONB. Originally no information had been submitted with the application about the number of days/year that the plane planned to fly or the number of anticipated flights and hours of operation. This made it difficult to properly consider compliance with Local Plan policies with respect to impacts on the tranquillity of the AONB and/or on the amenity of residents living close to the site. The agent has since submitted additional information clarifying that ‘TMG’s flights will typically be of an hour or more, ranging over varying routes and, on returning, cutting the motor before descent towards the airfield and completing a circuit and landing in glider mode. The agent’s letter also implied that number of times that the TMG would be in use on any one day is likely to be less than double figures and that the TMG would be unlikely to be flown everyday given weather related constraints.

While approval of this application would introduce a new TMG at Wormingford Airfield, the fact that Environmental Health are satisfied that the noise generated by the TMG during take-off and landing is within acceptable levels and that there are likely to be quite a few days when the TMG will not be useable, the proposal is not considered to generate a policy conflict with either policy DP22 regarding impacts on tranquillity within the AONB or policy DP1 iii regarding noise impact on neighbouring communities”

8.2 Highway Authority

No Objection

8.3 Dedham Vale AONB and Stour Vale Project (received June 2015)

- The area potentially affected by the proposal is within the setting of the nationally designated Dedham Vale AONB. As such, development
- We would expect that consideration is given to the potential landscape impact of the proposal, i.e. visual, noise and other possible impacts on the special qualities of the AONB, including tranquillity.
- The Supporting Statement does not contain any detail relating to the proposed number of take offs/landings in a given period of time and therefore it is difficult for us to ascertain the level of impact that the proposal could have on the area, and in particular the nationally designated AONB.
- Without the detail of proposed activity from the site, including proposed flight paths that may impact upon the AONB, we are unable to give an informed view of the impact of the development on the character and special qualities of the AONB and Stour Valley.
- We note that the application includes a noise survey that states that “the TMG is significantly quieter than the winch during both ground running and take-off”. If the Local Planning Authority is satisfied that these results are robust, the Project would make no further comment on potential impacts of noise in relation to this development application.

8.4 Landscape Officer

The principal concern relating to this proposed development in landscape terms relate to impacts on tranquillity, particularly in relation to the area and setting of the Dedham Vale Area of Outstanding Natural Beauty, to which the Touring Motor Gliders activity could have a potentially detrimental impact. This concern has been addressed by the Environmental Protection Officer. Consideration might therefore be given to exploring if the use of the Touring Motor Glider’s motor might be limited to the west and south of the Wormingford Airfield in order to help further protect the Dedham Vale AONB.

8.5 Environmental Protection

Extracts from consultation response/noise monitoring report amended 14/10/2015.

“When Environmental Protection were initially consulted in May 2015 a noise assessment report carried out on behalf of the gliding club by PaceConsult carried out on the 1st May 2015 concluded that noise from the use of the Touring Motor Glider (TMG) created less noise than the motor winch currently used to launch gliders from the airfield.

On the 10/06/2015 Environmental Protection made a subjective evaluation of noise from the TMG. Environmental Protection witnessed a full power take-off and landing plus low level powered over flights both into and out of the wind. Based on this and the noise report from PaceConsult and information supplied by the club on how the TMG will be used. The TMG will be used for the training of pilots to comply with new regulations about to come into force and that the TMG will normally take off and fly away and will not repeatedly take-off and land as we have asked for on this occasion. Environmental Protection did not object to the use of one TMG from this site.

Due to concerns from objectors that Environmental Protection had not witnessed the noise from the TMG at their properties it was agreed that Environmental protection would take sound level readings from two properties located at either end of the airfield. This report covers the findings from those two properties”

Conclusion and recommended condition:

Environmental Protection when assessing noise from premises in regard to a planning application must take into consideration not only the volume but the character, whines, clicks etc. the duration of the noise and the time. A noise at 15.00 may not be a problem, but the same noise at 03.00 may well be. The noise must have a significant adverse impact on the peaceful enjoyment of property. From the assessment carried out at these two properties, Environmental Protection does not believe that the use of one touring motor glider would have a significant adverse impact on residents flying at 1000ft or above. However, Environmental Protection recognises that the area is predominantly quiet and that repeated take-off and landings could combine to cause a significant adverse impact to local residents. Therefore Environmental Protection recommends that there should be a space of 90 minutes between each take-off.”

The suggested conditions were given further consideration by Environmental Protection:

“There should be a space of a least sixty minutes between take offs in any one direction. That is to say any take off less than 60 minutes from the last will be in the opposite direction.

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

The above condition may be suspended on one day per calendar year, that day being the Club's open day to allow for trial flights.

The operation of the TMG to be restricted to the hours 08.00hrs to 21.00hrs. Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise

Colchester Borough Council Environmental Protection should be given access to the flight log in order to investigate any complaints arising from the use of the TMG.”

8.6 Natural England

Statutory Nature Conservation Sites – no objection

AONB – do not wish to comment other than to advise that the view of the AONB authority should be sought

Protected Species – no assessment undertaken; draw attention to standing advice.

Local Sites and SSSI – standard comment

8.7 Civil Aviation Authority

Comment that they are not a Statutory Consultee.

8.8 Nayland with Wissington Conservation Society

Contrary to policy DP22, DP10 and Environmental and Rural Communities Policies of the Core Strategy and NPPF.

The Site is near (approximately 800 yards) to the Dedham Vale AONB; it will not make any positive contribution to the AONB or support the AONB Management Plan objectives; rather the noise will adversely affect the peaceful character of the area.

The number of TMG's is irrelevant to this application; the Applicant is in effect applying for permission to fly a TMG 24 hours a day, 365 days a year.

The suggestion by the Applicant that the TMG will not habitually be flown around the locality as it will take off and land at the airfield on each sortie.

If the number of flights is to be as small as suggested by the Applicant why have they not accepted a limitation on the number of flights or flying days?

8.9 Colne Stour Countryside Association

The existing AONB and the area proposed for extension are renowned for their tranquil unpolluted rural settings.

The application does not meet national or local planning policy. This application is not essential to the future of the Club.

The concerns of the large number of local objectors cannot be ignored.

It is likely, if the proposals were allowed, that there would eventually be a substantial increase in powered aircraft using the site throughout the year.

Concerned about submitted noise report.

There is no precise definition on what comprises a TMG.

It cannot be assumed that the engine will only be engaged on take-off as the noise test supposes. TMGs would then be able to fly over the existing and extended.

In social terms, the noise and disturbance that will be experienced by local residents will far outweigh the benefits to a small number of private members; the local community should not suffer at the expense of this proposal. The proposal detrimentally affects the many for the advantage of the few and does nothing to advance the environment of the sites rural location

8.10 Campaign for the Protection of Rural England

The present restrictions on motorised aircraft at Wormingford were imposed so as to safeguard the tranquil countryside of the Dedham Vale AONB and the countryside surrounding it; these restrictions are still fully justified.

National policy and local policies are clear that the tranquility and beauty of the Countryside in general and AONBs in particular are to be protected.

The club's proposal for unrestricted use of motorised gliders will damage the area's tranquility to the detriment of residents and visitors alike.

The noise survey in our opinion is seriously flawed.

The amenities of residents still protection from the adverse effects of motorised gliders.

The noise from these aircraft, in damaging the tranquility of the area, will also potentially harm rural tourism contrary to the applicant's assertion that their proposal will benefit tourism.

8.11 Dedham Vale Society

Noise is not an issue that is confined within a single parish but spreads over a large surrounding area. In the case of Wormingford Airfield is within a few hundred yards of the Dedham Vale Area of Outstanding Natural Beauty and the area of the proposed AONB extension towards Bures and any increased noise levels would impact on the peace and tranquillity of the whole area.

NPPF Section 115 and DP22 are material considerations.

A key element in protecting AONBs is to preserve the peace and tranquillity of the countryside for those living there as well as those visiting for recreation.

No attempt to fully quantify the level of activity of the TMG or to quantify noise level when TMGs leave the airfield and are operating over open countryside and particularly the Dedham Vale AONB.

The noise from a TMG is intrusive and adds to the excessive noise from various forms of aircraft crossing the area.

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

9.0 Parish Council Responses

9.1 Wormingford Parish Council (comment received in June 2015)

After lengthy discussions with residents and the Gliding Club, Wormingford Parish Council resolved at their June meeting to OBJECT to this application in its current form.

Cllrs appreciate the new regulations that are coming into effect in 2018, and understand that the gliding club needs to amend its current operations to conform, however they feel that the current application is still lacking any appropriate information in relation to the proposed number and frequency of flights by TMG aircraft. We would encourage the Planning Department to take the Parish Councils and residents concern into account when making a decision on this application and to reject this application as it presently stands. If a further application were to be submitted it should contain proposals regarding reasonable restrictions of the amount of use of the TMG in order to allow more detailed considerations by interested parties.

9.2 Eight Ash Green Parish Council (comment received following reconsultation in November 2015)

No objections - based on the additional information provided which alleviated previous concerns, subject to the planning authority applying the appropriate conditions to restrict the use of the airfield to that stated in this application.

9.3 Mount Bures Parish Council (comment received in June 2015)

Object:

Concern about general lack of information including number and frequency of flights
Concerns about impact of TMG both now and in the future on the rural environment with many equine businesses.

9.4 West Bergholt Parish Council (comment received July 2015)

Unable to adequately respond to this application due to the lack of information on the timings and the number of flights and how the aircraft's noise would be monitored.

9.5 Nayland with Wissington Parish Council (comment received in June 2015)

Object - due to its unrestricted nature.

9.6 Chappel Parish Council (comment received in June 2015)

Residents are concerned about the airborne noises and would like to see a noise survey to include the airborne noise of the motorised glider.

Concerned about the lack of information on the number of flights that the TMG is likely to make and there should be restriction of number of movements and number of TMG's allowed to be used at any one time.

9.7 Little Horkesley Parish Council (comment received following reconsultation in November 2015)

One TMG being launched at 90 minute intervals would be acceptable – the Parish Council concurs with this assessment.

Given the chronic lack of trust between the Essex & Suffolk Gliding Club and the local community over many years, it is essential that the operation of the TMG is monitored on a daily basis and at the end of the first, and subsequent years, made available to interested local parties. Should the limits be exceeded planning permission should be withdrawn.

9.8 Wakes Colne Parish Council (comment received following reconsultation in November 2015)

Objection - wish to support parishioners' serious concerns about airborne noise from motorised gliders over a large area and the increased number of days that motorised gliders can be used by opposing this proposal.

10.0 Representations

10.1 142 Objectors (including SWAT "Stop Wormingford Air Traffic") to the scheme as originally submitted.

General comments on the submitted application

- The supporting statement is deliberately vague; there is little evidence of involvement with local community groups/schools.
- Lacking in details of use of TMG(s).
- Removes restrictions on 4 aero-tow days per year, could be seven days a week including early morning and late evening in the summer.
- Majority of club members aren't from the local area.
- Is in effect retrospective as TMG already flown.
- No mention is made of the hours for glider activity.

Noise

- There is noise from existing launching method.
- Continual or irregular noise pollution creates anxiety states and disturbs village affecting young and elderly alike.
- Why should the quality of life of local inhabitants in the surrounding area of the airfield should be so disrupted and disregarded for the sake of a small group of people. No benefit for local area.
- Noise disturbance Woodland Trust sites near Fordham and Wormingford Church Yard which has Constable Family graves

- The Gliding Club is a club primarily for providing enjoyment for its members. We sympathise with its desire to offer training but to suggest that the local residents should have to endure the inevitable noise pollution that the TMGs will create just so that the club can generate additional income is totally unacceptable.
- BS 4142: 1997 for noise control in the environment is exceeded.
- British Gliding Association has produced a handbook on TMGs in which it states (Page 7, section 12) that TMGs although quieter than most powered aircraft do have noise issues and can lead to complaints from residents.
- The use of these aircraft will have a significant impact on very large area given the range and speed of modern TMGs.
- Gliders make a noise when airborne.
- The fact the TMG's are quieter than aircraft is irrelevant they are noisier than gliders.
- Motorised gliders could be used for practising near-landings in a wide area beyond the airfield, using powered climbs several times on a single flight. The potential for low-altitude noise on each training flight is considerable and repeated.
- The airspace above Little Horkesley is already used by Stansted airport for circling and holding as well as the air traffic from Nayland Airfield. Any additional noise from aircraft will undoubtedly become a nuisance and detract from what defines this rural area.
- Currently can have 30 plus glides a day over garden – horrendous if these were powered.
- Have experience of motorised gliders flown elsewhere which caused a noise annoyance.
- There are already motorised gliders flying in the area which cause unacceptable noise.
- Application talks of the aircraft spending time away from the airfield environs, but not where this might be, might be over flying residential areas and therefore have more of an impact on residential amenity?
- There are existing issues with road noise, helicopter and Skip Hire lorries - we do not need any further noise.
- Noise levels can be measured objectively; the effect upon individuals is a subjective matter of which there is no measurement

- There is a vast difference between the use of a powered aircraft for 4 days per year, as currently permitted, in comparison to potentially 365 days a year dawn till dusk.

Submitted Noise report

- Serious concerns about appropriateness of noise report the survey has been conducted in order to reach that conclusion rather than examine the noise effect in areas other than in the immediate vicinity of the winch.
- The noise survey provided in support of this application has been sourced from three monitoring stations located only to the South and East of the application site. It should be specifically noted that the wind direction was East South East (into the airfield and away from residential areas). There was no monitoring away from the airfield such as Wakes Colne or Mount Bures where the aircraft spend most of their airborne activities. The report would thus appear inconclusive
- The Noise Survey/Assessment aims to give a comparison.....between the noise from the TMG powered take-offs and noise from the normal winch-launch take-offs. However the assessment only gives a comparison of noise from the airfield, not noise at local communities due to overflying craft
- From the information provided it is not unreasonable to deduce that TMG noise would be expected to give rise to nuisance in the local environment
- The Assessment applies to one TMG only, taking off and landing in a direction away from residents, which will not always be the case as, the application is for TMGs plural and the wind direction changes will alter the take-off direction. More than one TMG and their flying over people's houses will have a considerably different effect on noise and the annoyance factor to residents.
- No study of background noise (or ambient noise) has been shown, only the noise of three locations, on the day and at the time of the flights.
- The Assessment compares the single TMG noise with the existing winch. The winch exists due to the previous appeal ruling. What we are being asked to accept here is a new and very different and probably much more variable type and level of noise. The tonal nature of a two bladed propeller is very different to the winch noise and is a moving noise source too.
- No noise data has been presented to reflect what will be heard when the wind is in a different direction, requiring these aircraft to take off or to land over people's rooftops and gardens. There is no information of the rate of climb of the aircraft, the horsepower of the engines, what constitutes a powered glider in comparison to any other aircraft that is capable of gliding. The application is vague. A height of 300 metres is mentioned but with no idea at what distance from the take-off point this height is achieved.

Privacy/safety

- Issues with pilots performing aerobatics over nearby housing.
- Any increase in glider activity, which appears to be inherent in the proposal for more than one TMG, will impact on us through increased traffic low over our properties.
- Low flying already impinges privacy.

AONB

- Intolerable blight on peace and tranquillity.
- Judicial Review in 2005 prevented excessive routing of commercial aircraft over the AONB specifically due to noise intrusion conflicting with the "tranquil" designation environmental assessment.
- The AONB is of significant regional interest. It is of a rural character worth preserving and enhancing, not for burdening with noise and disturbance from the proposed operations. The proposed development will disrupt the tranquillity of the AONB and severely impact on the enjoyment, character and special landscape interest in the area.

Countryside/wildlife

- Area enjoyed by walkers there are footpaths around and near the airfield; cyclists. Horse riders.
- Adverse impact on animals - Livestock will be startled and disturbed, Wildlife in their natural largely peaceful noise free current environment will be disrupted and made anxious by the sudden aircraft noise which could affect breeding and use of current habitats. There are livery stables close by.
- Adverse impact on Essex Wildlife Trust site at Sergeant's Orchard.
- The current airfield and its traffic is already affecting beauty of this beautiful village. No indication of traffic generation; any increase would be dangerous.
- Threat to the rural nature of the local environment.
- It is a potential risk to the villagers, birds and wildlife. Increasing the traffic is the worst thing that can happen to our lovely village.
- The airborne activities cover a much wider geographical area than the site plan. These aircraft circle at relatively low level and powered flight would potentially be of detriment to these Parishes interfering with the peace and privacy of residents.

General

- TMGs do not actually glide very well and given the above specifications I believe they are use as light aircraft that do not require a CAA pilot's licence.
- Concerns over policing of existing controls.
- Adverse impact on air quality.
- Motorised gliders for training purposes can be met at other local gliding clubs, e.g. Rattlesdon.
- Reference to Great Oakley is irrelevant.
- Numbers should be controlled.
- Powered flight activities available from nearby Earls Colne and Nayland airfields.
- Supporting Statement talks of a "Business Need", is this not a leisure facility rather than a business.
- Would severely impact autistic child who is very sensitive to noise.

Traffic

- The proposal seeks to increase the attraction of the airfield to new members, which will travel to the site. The surrounding roads are narrow country lanes; even a protected lane is located on the North West side of the airfield. The additional traffic along these country lanes with persons travelling to and from the site potentially in large vehicles towing gliders would cause additional disturbance. This is considered to be potentially dangerous to other highway users and completely inappropriate in such a rural context

Potential for expansion

- Only the start could lead to further expansion of this gliding club's activities to include powered flights of all types.
- Attempt to ramp up activity could lead to further expansion – helicopters, microlights etc.

Community/economy

- Will not support local services/facilities.
- Threat to the local community.
- Will adversely impact on the tourism potential of the AONB.

Policy

- Contrary to:
- NPPF, section 3 supporting a Prosperous Rural Economy; proposal does not respect the character of the countryside; neither does it promote the retention and development of local services/community facilities, it is a privately run, members only flying club.
- DP10 Tourism, Leisure
'... In rural areas, locations suitable for tourism, leisure and culture development should help to support existing local community services and facilities.'; the proposal does not relate to a community service.
- ENV2 Rural Communities, which states;
'... Outside village boundaries, the council will favourably consider small-scale rural business, leisure and tourism schemes that are appropriate to local employment needs, minimise negative environmental impacts and harmonise with the local character and surrounding natural environment.'
- The use of motorised glider will cause unacceptable noise and general disturbance and therefore, the proposal does not harmonise with the local character and surrounding natural environment.
- Policy DP22
The use of motorised gliders will cause unacceptable noise and general disturbance, impacting on the pleasure of those seeking to enjoy the AONB.

General comments on the submitted application

- The supporting statement is deliberately vague; there is little evidence of involvement with local community groups/schools.
- Lacking in details of use of TMG(s).
- Removes restrictions on 4 aero-tow days per year could be 7 days a week including early morning and late evening in the summer.
- Majority of club members aren't from the local area.
- Is in effect retrospective as TMG already flown.
- No mention is made of the hours for glider activity.

10.2 36 objections following consultation in June 2015 (including reference You Tube clips) making the following ADDITIONAL comments:

- Proposal is too open-ended.
- Additional information does nothing to allay concerns already expressed.

- 1 TMG would still have an adverse impact on AONB.
- Need confidence that the club are committed to having 1 TMG.
- Whilst agent has indicated that TMG will usually land without an engine main concern is take off and climb to cruising level noise.
- The number of days the TMG will be used is still unclear and should be controlled
- The Applicants should afford residents the opportunity to gauge for themselves the likely impact of a successful application. This could be achieved by staging a live demonstration of powered flight of precisely the nature proposed so that necessary acoustic tests could take place.
- No evidence of necessity of flights is provided. The reasons given in support of the application remain vague, and the new reference to obtaining gliding qualifications is simply wrong. The BGA's own website explains that Bronze may be obtained with or without the use of TMGs.
- Concerned that more flights would be dangerous creating more opportunities for accidents.
- The terminology used to describe the frequency of use is vague and open to interpretation.
- Club suggestion that the demand for TMG use is low contradicts previous comments.
- There is no control over where the TMG would fly – it could be around the local area.
- If approved this would lead to the tug plane being used every day.
- Incompatible with existing conditions.
- Granting of this application is opening the flood gates for other powered craft and abolishing the confidence imposed by the original appeal decision.
- The noise will be audible during take-off and landing even if the TMG is flown away from the site.
- Frequency of use is vague.
- If planning permission is recommended conditions to control use are required.
- Concerns about comments of Council's Environmental Protection and Policy Officers.

10.3 18 objections received following consultation in November 2015 (including reference to You Tube clips and a sound file) making the following ADDITIONAL comments:

- Take-off and landing only small part of flight time.
- Once in air gliders circle to gain height.
- With 1 hour TMG could circle for 55 minutes using engine continuously.
- There is an increase in noise on powered days which would be unreasonable every day.
- Like having a lawn mower over the house.
- Gliders are by their very nature relatively quiet and serene. The addition of a motor does ruin the peaceful enjoyment of the local countryside which includes The Stour Valley AONB.
- If the application is approved, would be allowed to fly 365 days a year opens the floodgates for further applications to increase this powered flight use.
- 8 flights a day could lead to 56 launches a week which is intolerable; a compromise would be of 4 or 6 flying days per annum.
- There is video evidence of now the TMG is usually flown at a low altitude and full power; this I not now it was flown when the Nosie recording was undertaken.
- The gliding club have made it clear that the club have routinely used the TMG for powered soaring flight on days other than the 4 permitted days/year in contempt of their current planning permission. Their excuse for this behaviour is that they got away with it, as residents didn't complain. This ignores the obvious fact that as residents have never been informed when the 4 days of powered flight would take place, we would naturally assume on hearing powered flight it must be within the terms of their planning permission, as we had expected the club to adhere to the permission given them. Clearly they cannot be trusted to police themselves and in future their activities will require much closer monitoring.
- The unrestricted use of the TMG at the Club's open day violates the existing conditions and restrictions applied to the Club in 1992 and 1996. This is 'creeping planning variation'.
- It is neither necessary nor desirable for a TMG to be launched or landing using its engine. Take offs will be the most noisy part of the flight
- 8 flights a day could lead to 56 launches a week - intolerable.
- Use of the engine should be prohibited within several miles radius of the airfield.
- Control over number of TMG's that can be operated.
- Control over hours of operation required; suggest hours 8 – 9 are unreasonable as people will be using their gardens in the summer during these hours.

- How can the number of take offs be policed; this will be difficult and expensive to investigate.
- There is no commitment not to use the TMG as a tug plane. It is almost certain that the club will do so to circumvent existing restrictions on tug plane usage.
- There is no commitment that the TMG will NOT be used to train pilots or support them maintaining their Licence or only for the Clubs own purposes.
- If the Club is to make a meaningful concession to the many residents affected by their proposed TMG activities, they should follow the example of other Clubs and introduce their own regulations on the use of TMG.
- If the TMG was a cable launched, followed by powered flight to an area far from the launch site, and then use its engine to gain height, people might take a more supportive view of the application.
- Peace has been disturbed by pilot of the TMG starting its engine over garden.

10.4 Four representations supporting the application:

- Provides activity for teenagers in the village.
- The use of the TMG will not increase traffic in village.
- More damage to the environment by farming practices.
- Vehicles going through the village are far louder than a TMG particularly when it is 2,000ft above you.
- It is a privilege to have the gliding club so close and I thoroughly enjoy watching the gliders and support the additional use of a touring motor glider.
- The volume of objections is partly due to the well-organised nature of a minority of individuals who have worked to spread misinformation.
- Residents should be aware of the potential aircraft noise from airfields before they decide to purchase a house next to one.
- The noise levels are virtually non-existent compared to other local noise generating activities.
- General Aviation in the UK is under serious threat from these local NIMBY type objections. Landing aircraft will not be under power during their descent, so for residents of Wormingford the noise level of the 'lowest' aircraft will be no worse than the existing glider traffic.
- Encouraging general aviation will encourage business in the area.
- The airfield ought to be an excellent local resource for local children and air-cadets, who might choose a career in aviation.

- Objections regarding pollution are conjecture and unfounded.
- The submitted noise report seems to make it clear that the TMGs are significantly quieter in operation than the winch currently used.
- Number of flights/flying days per annum for TMGs needs to be clarified, however the quietness of the TMGs is in their favour.
- Lawnmowers are louder and carry on for longer than a passing TMG.

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

11.0 Parking Provision

11.1 Not a relevant consideration.

12.0 Open Space Provisions

12.1 Not a relevant consideration.

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

14.1 This application is not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

Current use of the site by the Essex and Suffolk Gliding Club

- 15.1 The Gliding Club has been operating from the application site since 1990. This use is controlled by planning conditions imposed at Appeal in 1992; two of the conditions were removed in 1996.
- 15.2 Records indicate that in the early 1990's there were issues relating to noise from the plane used to tow gliders into the air. Consequently one of the conditions imposed by the Inspector in 1992 was that the club could only launch gliders by tow plane on four days per year (These are known as the aero-tow days). The Club has to notify the Council in advance of the days to be used for this purpose. In recent years the club has also notified a number of interest groups/individuals (including SWAT) of the proposed days.

- 15.3 The proposed use of a TMG will enhance the Club's ability for the training of glider pilots and instructors.

Clarifications

- 15.4 The Gliding Club has clarified a number of points which were unclear from their submission and/or have been raised in the representations:
- 15.5 The TMG cannot tow gliders, it is not powerful enough, it does not have the relevant licensing and does not have the equipment to do so.
- 15.6 Non Club Members are not permitted to fly the TMG.
- 15.7 TMG's from other clubs/individuals will not use the airfield. The application is in respect of the operation of a single TMG owned by the Gliding Club.
- 15.8 The Club has code of conduct including flying orders, governing all its operations, which will as a matter of course, be amended to take into account a number of aspects relating to revised operation of the TMG resulting from the terms of any planning permission.
- 15.9 The TMG in order to have adequate take off power would take off in full throttle, as it reaches a safe height this would be reduced accordingly.
- 15.10 The TMG will always use the maximum length of runway available and therefore commence their flight from the take off point for whichever runway is in use at the time. The height at which it crosses the end of the runway is dependent on wind speed i.e. a higher wind speed enables any aircraft to climb more steeply in relation to its progress over the ground.

Noise

- 15.11 Noise from the proposed use of the TMG both on the nearby AONB and wider and on residential amenity is pivotal to the consideration of this application.
- 15.12 The application was supported by a Noise Survey and, due to the concerns expressed in the representations, noise monitoring has been carried out by Environmental Protection Officers at two properties close to either end of the runway.
- 15.13 National Planning Policies (including paragraph 115 of NPPF) and our Policy DP22 seek to protect the AONB. Tranquillity is an important element of the landscape character. Consideration in consultation with The Dedham Vale and Sour Valley Project and Council Policy Officers has therefore been given to the impact of the TMG. Given the advice of Environmental Protection the conclusion is that the use of a TMG, as proposed, will not have an adverse impact on the tranquillity of the AONB and wider countryside. It is also recognised that, as set out in the Policy explanation for DP22, the AONB is a living landscape which needs to adapt to changes such as recreational pressures from local community and visitors.

- 15.14 The Landscape Officer has suggested that consideration could be given to limiting the use of TMG's to the west and south of the Wormingford Airfield in order to help further protect the Dedham Vale AONB. The views of the Gliding Club on this suggestion have been sought and will be reported on the Amendment Sheet. However given the comments of the other Consultees on the impact on the tranquillity a condition to this affect is not considered reasonable.
- 15.15 DP1 requires that any use should protect residential amenity. The noise monitoring undertaken by Environmental Protection indicates that the impact on noise from the TMG both close to the airstrip and the wider area will not be unduly intrusive or have an adverse impact on the peaceful enjoyment of property. As the area is predominantly quiet it is considered that repeated take-offs and landings could combine to have a significant adverse impact on local residents. Accordingly, conditions have been suggested to limit the hours of use from 8am to 9pm and to require a space of at least sixty minutes between take-offs in any one direction. That is to say, any take-off less than 60 minutes from the last will be in the opposite direction. In discussion with Club a maximum of eight take-offs a day has been agreed.
- 15.16 The Gliding Club is in agreement with these proposed conditions and has indicated that the number of flights by the TMG will usually be lower than the conditions would allow. It has requested that the conditions be relaxed one day a year. This is for the Club's open weekend and will permit it to take visitors for short flights in the TMG. This is considered to be a reasonable request but it is suggested that a condition be imposed requiring the Council/other interested people/groups to be given notice of the date in the same way as they are required to give notice of aero-tow days.

Other Matters

- 15.17 There are numerous representations about the flying of the TMG once it has taken off. This is not something over which the Council can control. The Gliding Club is aware of this issue and has indicated that they seek to ensure that pilots fly appropriately. Any concerns about inappropriate flying activity and safety are matters for the CAA.
- 15.18 Privacy has been mentioned; the Gliding Club can fly traditional gliders without any restrictions and it is not considered that the additional use of a TMG will materially impact on the privacy of householders in the locality.
- 15.19 There have been concerns regarding the impact on livestock, horse and other animals. No evidence has been provided to support this suggestion. Given the assessment that the noise levels will not adversely impact on residential amenity it is suggested that the use of the TMG is unlikely to be an issue to animals.
- 15.20 Natural England has not raised any concerns about the application; its Standing Advice of Protected Species does not suggest an ecology report is necessary.
- 15.21 DP10 and ENV2 support Leisure facilities outside of village boundaries. A requirement of ENV2 is that new Leisure uses have a benefit to the environment/local economy. The Gliding Club does not contribute any obvious benefits to the local area. The use of the TMG will not change this situation. However the Club is well-established and any resistance to the use on this ground is likely to be difficult to sustain.

15.22 The level of use of the TMG is unlikely to have any significant impact on air quality or traffic levels.

15.23 This application must be determined on the information provided. Any future changes, if applied for, will be determined on their merits and in line the policy framework applicable at the time of any such application.

16.0 Conclusion

16.1 The proposed use of the TMG is acceptable subject to conditions to protect residential amenity and the tranquillity of the AONB/wider Countryside.

17.0 Recommendation

17.1 APPROVE subject to the following conditions

18.0 Conditions

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - Non-Standard Condition/Reason

This permission does not in any way vary or remove the conditions 1, 2 or 5 of COL/91/0338 detailed in The Planning Inspectorate decision letter dated 17/8/1992. These conditions remain in force and shall continue to apply.

Reason: To avoid any doubt that this application varies the previous planning permission as referenced, in the interests of proper planning and so that the applicant is clear on the requirements they need to comply with.

3 - Non-Standard Condition/Reason

With the exception of one day per annum (the Essex and Suffolk's Gilding Club's Open Day) there must be a space of a least sixty minutes between take offs in any one direction. That is to say any take off less than 60 minutes from the last will be in the opposite direction.

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

4 - Non-Standard Condition/Reason

The Essex and Suffolk's' Gilding Club's Open Day shall not take place unless the Council is notified of its date at least two months in advance.

Reason: So that the Council and other interested parties are aware of the date that the normal restrictions on the spacing between take offs are suspended.

5 - Non-Standard Condition/Reason

The club must not operate or fly the TMG outside of the hours 08.00hrs to 21.00hrs.

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

6 - Non-Standard Condition/Reason

The club must not make any more than eight take-offs in the TMG per day.

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

19.0 Informatives

Non Standard Informative

Colchester Borough Council Environmental Protection and/or Development Management Team should be given access to the flight log in order to investigate any complaints arising from the use of the TMG.

20.0 Positivity Statement

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



Application No: 150213

Location: Land west, 58 Queens Road, Wivenhoe, Colchester, CO7 9JJ

Scale (approx): 1:1250

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7.3 Case Officer: Sue Jackson

MINOR

Site: Land west, 58 Queens Road, Wivenhoe, Colchester, CO7 9JJ

Application No: 150213

Date Received: 2 February 2015

Agent: Mr Steve Norman

Applicant: Mr A Sherwood & Mr T Sherman

Development: Erection of a detached dwelling with associated parking facilities - resubmission of 112284.

Ward: Wivenhoe Quay

Summary of Recommendation: Conditional Approval subject to signing of Section 106 Agreement

1.0 Reason for Referral to the Planning Committee

- 1.1 This application was deferred at the Planning Committee meeting on 30th July 2015. The minutes of the meeting state:-

RESOLVED (SEVEN voted FOR, FOUR voted AGAINST and ONE ABSTAINED) that:-

- (i) The planning application be deferred for officers to seek a legal opinion regarding any liability arising from a grant of consent, in relation to flooding risk
- (ii) Subject to the legal advice referred to in (i) above confirming no identified risk, and, subject to the signing of a legal agreement under Section 106 of the Town and Country Planning act 1990 within six months from the date of the Committee meeting to secure the submission of a maintenance schedule for the void and trash screens and agreement to the legal responsibility for implementing the maintenance schedule for the life of the property, the Head of Commercial Services be authorised to approve the application subject to the conditions set out in the report.

- 1.2 Since the July meeting legal advice has been received from Homes and Hills solicitors. Officers have also had a meeting with the Environment Agency. Following this meeting it was considered a further report clarifying the sequential test was required.

2.0 Synopsis

- 2.1 The key issues explored in the new report below are the legal advice received, discussion with the Environment Agency and an assessment of the sequential and exception tests. The previous report to members is produced at the end of the new report.

3.0 New Report

3.1 Following the deferral of the application your officers have had a meeting with the Environment Agency and they have clarified their position in respect of this application and indicated that it is for the Council to decide whether the proposal satisfies the sequential and exception tests and they have no involvement in this matter.

3.2 The legal advice from Holmes and Hills states

I understand your Members are concerned that the advice from the Environment Agency (EA) is unequivocal such that ultimate responsibility is passed back to the Council.

Whilst I recognise Members' concerns, nevertheless, I believe the approach taken by the EA is correct. They are merely a statutory consultee and it is the Council who are required, as a matter of law, to determine the application.

It is for the Council, as the Local Planning Authority, in determining the application, to be satisfied that the Sequential and Exception tests are met. The EA merely provide advice or perhaps "ammunition" to assist the Council. On the face of it, the EA are saying that these tests could be met but ultimately it is a matter for the Council, as the body with jurisdiction to determine the application.

It is important that the Council adopt the correct approach for 3 reasons;

- 1. If they fail to adopt the correct approach, then the planning permission might be challenged by way of judicial review by a third party.*
- 2. The Council should generally follow advice within the National Planning Policy Framework (NPPF) and/or the National Planning Policy Guidance or at the very least have justification for not doing so.*
- 3. There is an outside chance that if the Council granted a planning permission without dealing with the matter properly, it could be liable in negligence. Generally speaking, the Courts will not allow any actions for negligence against Local Planning Authorities as a result of a grant of planning permission to someone. However, in Kane v New Forest DC (2002) the Court of Appeal held that the Authority owed a duty of care to a pedestrian injured following the negligent construction of a footpath which emerged onto the highway at a dangerous place.*

I believe that the Council can grant planning permission subject to it going through the analysis that I have set out above.

3.3 This advice is clear in that that provided the correct approach has been adopted the Court will not allow any action for negligence against a Local Planning Authority. The Sequential and Exception tests are important considerations.

3.4 In applying the Sequential Test the overall aim is to steer new development to sites within Flood Zone 1. The site is within Flood Zone 3. There is residential land available in Flood Zone 1 and the site is therefore not a sequentially preferable location. Local Planning Authorities also have to take into account the flood risk vulnerability of land uses. Zone 3 is split into 2 – Zone 3A and Zone 3B. The site falls within Zone 3A, so more vulnerable uses, which includes residential use, should only be permitted if the Exception Test is passed. The site does not fall within Zone 3B where dwellings are not an appropriate use.

3.5 The fact the site is within Flood Zone 3 means the Exception Test has to be applied.

3.6 The Exception Test requires consideration of the following matters:

- A. It must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risks informed by a SFRA where one has been prepared.
- B. A Site Specific Flood Risk Assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and where possible, reduce flood risk overall

3.7 Considering B first this comprises two elements, firstly, B1, the occupants are safe and secondly, B2 that flood risk elsewhere is not increased.

B1 The occupants are safe as the dwelling includes raised floor levels and residents will have safe access and egress.

B2 Site Specific Flood Risk Assessment has been submitted and considered by the Environment Agency their response is set out in the earlier report attached in appendix 1. The site is potentially at risk from flooding from the River Colne, the Town Drain, reduction in flood storage capacity or an increase in impermeable area. The EA has confirmed the site would not be at risk from the River Colne and the development does not increase flood risk elsewhere. The void under the building will compensate for the loss of any flood storage. In addition there will be no increase in impermeable area. A garage in this part of the garden has been demolished and the site as garden to no 58 would benefit from permitted development rights which include rights to erect outbuildings and construct hard surfacing.

3.8 A above, requires consideration of the wider sustainability benefits of the proposal. The sustainability benefits are that the site is within the Wivenhoe development boundary, there is a need to provide new housing and the site is in a sustainable location. The site is close to Wivenhoe centre and within walking distance of the train station and bus services. The site is also close to shops, schools and other local facilities.

3.9 It is concluded that the exception test is met as residents of the dwelling will be safe and flood risk elsewhere will not be increased. The development will provide wider sustainability benefits which it is considered outweigh the flood issues.

3.10 The earlier report to Members is produced in Appendix 1.

4.0 Conclusion & Recommendation

4.1 On the basis that the 'Exception Test' is met and there is no perceived basis for claims under negligence, the original recommendation of approval remains appropriate and the Committee is requested to consider this update report in the light of their previous deliberations and their conditional resolution to grant planning permission. Officers consider that the previous recommendation remains appropriate and Members are requested to affirm their previous resolution to grant; albeit now no longer contingent upon legal advice. The original recommendation to Grant planning permission subject to i) completion of a legal agreement under S.106 of the Act and ii) the conditions listed in the preceding report.

APPENDIX 1

7.3 Case Officer: Sue Jackson

Due Date: 30/03/2015

Site: Land west, 58 Queens Road, Wivenhoe, Colchester, CO7 9JJ

Application No: 150213

Date Received: 2 February 2015

Agent: Mr Steve Norman

Applicant: Mr A Sherwood & Mr T Sherman

Development: Erection of a detached dwelling with associated parking facilities - resubmission of 112284.

Ward: Wivenhoe Quay

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it has been called in by Councillor Scott for the following reasons: flooding risk, suitability of design in or near conservation area, resident's concerns.

2.0 Synopsis

- 2.1 The key issues explored below are the status of the application, impact on the adjacent Conservation Area, the Queens Road vista and Town Drain which are on the Wivenhoe Local List and impact on resident's amenity. Flood and surface water drainage are referred to in the report. Recent planning history, in particular, application 112284 is also explained.

3.0 Site Description and Context

- 3.1 The application site comprises land formerly part of the garden of no 58 Queens Road. No 58 is a corner property and fronts Paget Road. The site is not within the conservation of Wivenhoe but adjacent to it. No.58 Queens Road is a typical modest interwar bungalow.
- 3.2 This section of Queens Road is accessed either via High Street or Park Road. Since the construction of the Cooks shipyard development Queens Road has been closed to through traffic and there is a turning area just to the east of the site. The road slopes down steeply from High Street and the site is at the bottom of the hill.

- 3.3 Queens Road is narrow and as the majority of properties have no provision for on-site parking vehicles park on the road. The south side of Queens Road from High Street to no 56 (the property immediately west of the site) has a distinct character of Victorian terraced and comprises semi-detached houses with small front gardens, this character is reflected on the north side from High Street to Park Road. The character changes at the bottom of the hill where there is a range of modern dwellings and some side gardens face the road. No 58 is a bungalow and other properties in Paget Road are also single storey. The dwellings in Valley Road were erected in the 1960's. Immediately opposite the site is Pump House converted to residential use.
- 3.4 The north side of Queens Road from High Street to Park Road and the south side from High Street to no 56 are within the conservation area. The application site is therefore adjacent to the conservation area.
- 3.5 Queens Road for most of its length, including the application site, is included on the local list of Historic Buildings as a group vista. The Town Drain and the Pump House opposite the site are also on the local list.
- 3.6 The Town Drain (a river) runs along the west boundary of the site. This drain runs under Valley Road down to the former Cooks shipyard site and discharges into the river.

4.0 Description of the Proposal

- 4.1 This full application proposes a 2-bed roomed bungalow. The property would be constructed of red brickwork with a pitched slate roof and timber windows. These are typical facing materials for the area.
- 4.2 Two parking spaces are indicated to the side of the dwelling. A rear garden of approximately 80 square meters in area is indicated which exceeds the Council's standard for a 2-bed dwelling of 50 square meters. The plans incorporate a raised slab level, a void under the building and the installation of trash screens. These features are required by the Environment Agency.

5.0 Land Use Allocation

- 5.1 The site is within an area shown for predominantly residential purposes. The west boundary is adjacent to the conservation area. The site is within the Environment Agency flood zone 2 and 3. The site is within the Wivenhoe Local List as part of a group vista.

6.0 Relevant Planning History

- 6.1 080026 Application for a single dwelling - withdrawn
- 6.2 081086 Application for a single dwelling- withdrawn
- 6.3 112284 Erection of a detached dwelling land adjacent 58 queens road application refused permission and an appeal has been lodged. Details of this application are explained in the report –Paragraph 15.1

6.4 145404 - Entrance canopy and internal alterations approved 58 Queens Road

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

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

SD1 - Sustainable Development Locations

H1 - Housing Delivery

H2 - Housing Density

H3 - Housing Diversity

UR2 - Built Design and Character

PR1 - Open Space

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

DP1 Design and Amenity

DP3 Planning Obligations and the Community Infrastructure Levy

DP12 Dwelling Standards

DP13 Dwelling Alterations, Extensions and Replacement Dwellings

DP14 Historic Environment Assets

DP15 Retention of Open Space and Indoor Sports Facilities

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

DP17 Accessibility and Access

DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

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

Backland and Infill

Community Facilities

Vehicle Parking Standards

Sustainable Construction

Open Space, Sport and Recreation

Extending Your House?

The Essex Design Guide

External Materials in New Developments

Wivenhoe Town Plan and Executive Summary

8.0 Consultations

Highway Authority

- 8.1 This application differs from previous ones on this site in so much as the access is against the boundary line with the adjoining property and therefore visibility splays cannot be provided as the adjacent property is not within the control/ownership of the applicant. It is noted that for previous applications on this site visibility splays of 17m were requested. However, it is recognised that neighbouring properties have vehicle access points which do not provide this level of visibility. Whilst this does not fall within the terms of current policy standards it is also recognised that there is no accident record for Queens Road and therefore the limited visibility does not cause a safety issue. In this regard the Highway Authority does not wish to raise an objection to the above application subject to conditions.

Environment Agency

- 8.2 We have reviewed the information submitted and are able to remove our objection, subject to the conditions below being attached to any permission. You should ensure that you are satisfied the development would be safe for its lifetime, and you should assess the acceptability of the issues within your remit. Please see our detailed comments below.

Fluvial Flood Risk

Our previous letter, referenced AE/2015/118827/01-L01 and dated 13 February 2015, stated that we were consulted on a previous application at this site, your reference 112284, and that all information on flood risk which was submitted in support of the previous planning application should also be submitted in support of the current application.

We have now received the following information in support of the above planning application:

- Flood Risk Assessment (FRA), produced by JPC Environmental Services, referenced CE11/003/HJ issue 1.1, and dated October 2011
- Supporting letter from JPC Environmental Services, referenced CE11/003 and dated 13 May 2013
- Supporting letter from JPC Environmental Services, referenced CE11/003/RME/le and dated 13 February 2014
- Supporting letter from JPC Environmental Services, referenced CE11/003/RMC/al and dated 24 July 2014
- Drawings titled Elevations and Typical Section for Land Adj Queens Road Wivenhoe

The FRA referenced CE11/003/HJ has demonstrated that the users of the proposed development are above the flood level and have safe access/egress from the site. Accordingly, based upon the FRA, the development itself can be regarded as safe during a 1 in 100 year flood event with the addition of climate change. A model of the watercourse conducted by Amazi Consulting Ltd and referenced AMA163 R2 Rev 0 has been used to demonstrate this with flood depths established across the site. The development site lies within the floodplain and could, potentially, reduce the storage capacity of the floodplain during times of high flows. The additional information supplied shows the potential of creating a void under the development thus creating no loss in floodplain until fluvial flows are already overtopping the downstream obstruction.

We have no objection to the planning application, providing that you are satisfied that the development would be safe for its lifetime and you assess the acceptability of the issues within your remit and subject to the conditions below being attached to any permission.

The proposed development will only meet the requirements of the National Planning Policy Framework if the following measure(s) as detailed in the Flood Risk Assessment, supporting letters, and approved drawings submitted with this application are implemented and secured by way of a planning condition on any planning permission.

Condition

The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) and the following mitigation measures detailed within the FRA:

- Finished floor levels are set no lower than 5.50 m above Ordnance Datum (AOD). The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority. Reasons To reduce the risk of flooding to the proposed development and future occupants. To ensure the proposed void can be set at the required level to compensate for the loss of flood storage Technical Explanation Sources of Flooding

The submitted FRA, along with your council's Strategic Flood Risk Assessment (SFRA) demonstrates to our satisfaction that the site would not be at risk from the River Colne during the 1 in 200 year tidal event inclusive of climate change allowance if the Colne Barrier were to breach/fail.

However, whilst the site is not at risk from this tidal source, it remains at risk from the fluvial Wivenhoe Town Drain adjacent to the site, which is classed as a 'Main River'. The FRA has also identified the site to be at risk of pluvial (surface water) flooding and has acknowledged that the proposed development will increase the impermeable area. During heavy rainfall events, there are known existing flooding issues within the Wivenhoe Town Drain network of inadequately sized culverts, drains on Queen's Street and further downstream at the railway bridge and the culvert under Brook Street. This arises from a number of sources including overland flow and surface water flowing down the roads; this is often unable to enter the highway drains on Queens Street, inadequate culverts, inadequate capacity within the open section of the drain and tide locking.

Proposed Void

As discussed previously, the proposal includes a void beneath the building to compensate for any loss of flood storage and to allow water to flow freely beneath the new building as well as raising the finished floor level.

The 'flashy' nature of this catchment means that it is prone to carrying and depositing significant amounts of silt from the watercourse and from overland flow off the roads; therefore there is potential for the void to become silted up. If the void beneath the building became silted up causing a blockage it could result in offsite impacts through the displacement of water around the building.

In our comments on the previous application at this site, we raised concerns that if the proposed void beneath the building is not maintained in perpetuity then the building of the property at this location could exacerbate any existing problem by reducing flood storage capacity.

It is noted that the developer is willing to enter into a legal agreement, as part of a Section 106 and planning condition, to maintain the void. It is the developer's intention to surface the underside of the void (ground level) with concrete, incorporating a series

of shallow drainage channels designed to facilitate the flow of surface water run-off and flood water. It is confirmed that the surface will be readily cleared by pressure washer or hose pipe, to remove any fine silt or minor debris that makes its way through the 'debris' screens.

Whilst improvements to the drainage system and overland flow route have been made in the area, it remains unknown as to whether the mitigation proposed in the form of a void beneath the building will be effective in ensuring flooding is not exacerbated locally.

We have previously raised the issue of inadequate drainage and the history of flooding of the site. The consultant considers that the historic flooding was caused by a number of factors that are no longer in effect or have been substantially improved, however, we must point out that these factors remain an unknown/ un-quantified risk that you must be aware of – for example – if the main river is un-maintained/ blocked, if the highways drains become silted/ blocked and if the void beneath the building becomes blocked. We acknowledge that there is an awareness of the potential for flooding at this location and that Highway Teams may be more likely to maintain the drains, and the Environment Agency have permissive powers to maintain the 'main river' watercourse: this does not however, take away the underlying flood risk which has been seen historically. Please note that whilst we have 'permissive' powers to undertake maintenance to Main Rivers, this is priority based, and may not be a regular maintenance regime. The landowner will have riparian responsibility for the maintenance of the section of river bank abutting their land. We are satisfied that the applicant has further considered providing adequate underground storage which will be sealed to prevent groundwater entering the tank.

Should you have any questions then please do contact either Lucy Hayward (Flood & Coastal Risk Management Officer) on 01473 706 076 or myself on the details below.

Other Mitigation

The property itself will have raised finished floor levels above the 1 in 100 year level, inclusive of climate change allowance, but the depth of flooding due to surface water/pluvial flooding is unknown. The occupants would have refuge within the building and have safe access/egress from the site during a 1 in 100 year fluvial flood level, including allowance for climate change, but the depth and velocity of surface water/pluvial flooding is unknown and the building could become surrounded by water. Summary of Our Position Based upon all the information provided to date we believe that the 'picture' of flood risk has been provided. Although we have no objection to the application we advise your council, through consultation with your emergency planning officer, to carefully consider whether this proposal can be considered an acceptable, sustainable development.

Summary of Flood Risk Responsibilities for your Council

We have not considered the following issues as part of this planning application as they are not within our direct remit; nevertheless these are all very important considerations for managing flood risk for this development, and determining the safety and acceptability of the proposal. Prior to deciding this application you should give due consideration to the issue(s) below. It may be that you need to consult relevant experts outside your planning team.

- ☐ Sequential Test;
- ☐ Exception Test;
- ☐ Safety of people (including the provision and adequacy of an emergency plan, temporary refuge and rescue or evacuation arrangements);
- ☐ Safety of the building;
- ☐ Flood recovery measures (including flood proofing and other building level resistance and resilience measures);

- ☐ Whether insurance can be gained or not;
- ☐ Sustainability of the development.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

To help you with your decision, we have provided further information within a technical appendix on the characteristics of flooding and the mitigation measures proposed to manage this risk, along with more information on the responsibilities for your council.

Informative – Flood Defence Consent

Under the terms of the Water Resources Act 1991, prior written consent of the Environment Agency is required for any proposed works or structures, in, under, over or within 9 metres of the top of the bank/foreshore of the Wivenhoe Town Drain, designated a 'main river'.

The flood defence consent will control works in, over, under or adjacent to main rivers (including any culverting).

Your consent application must demonstrate that:

- ☐ there is no increase in flood risk either upstream or downstream
- ☐ access to the main river network and sea/tidal defences for maintenance and improvement is not prejudiced.
- ☐ works are carried out in such a way as to avoid unnecessary environmental damage.

Mitigation is likely to be required to control:

- ☐ Off site flood risk

We will not be able to issue our consent until this has been demonstrated.

We are pleased to note the proposed dwelling is further from the Wivenhoe Town Drain than the dwelling proposed in application 112284. Our Asset Performance team have advised that they have no objection to the dwelling being within 9m of the main river at this location, however they request that access for operatives to the channel is maintained. This should be taken into account when considering construction of fences or hedges within the 9m boundary of the main river.

Colchester Borough Council Resilience officer

- 8.3 If all the below measures are put in place then I would agree that the risk of surface water flooding to the site was minimized, but not removed. I would also be satisfied that the erection of the additional dwelling would not adversely affect the flood risk on existing dwellings.

- Use of permeable surfaces
- Floor level set to a minimum of 5.5m aOD
- Rain water harvesting
- Introduction of attenuation discharge
- Site Entrance positioned at North East Corner offers the safest for access and egress purposes.

I would advise that a maintenance schedule of the sub floor void be clearly identified and detailed along with legal agreement of responsibility of this maintenance, now and for the life of the property. As if this maintenance was neglected this could have adverse effects on the sustainability of the property, increase the flood risk to the property and surrounding properties. This should be agreed and in place before allowing the development to go forward.

Looking specifically at 'summary of risk responsibilities for your council' in the EA's response it suggests that there should be an Emergency plan produced by the developer to review.

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

9.0 Parish Council Response

- 9.1 The Town Council has stated that
Some of the Town Council's previous comments for 11/2284 are reiterated, viz: The development is inappropriate in that it is sited in an area prone to flooding. The property is adjacent to the local conservation area and will be out of keeping with the neighbourhood. The Town Council feel that this is over development of the site. Given the location of the driveway any vehicles would have to reverse onto the highway causing a hazard in what is already a narrow street.
- 9.2 Further comments are: The Town Council note that they were not informed in line with other consultees of this application and that notices were originally not put up on the site. The Town Council believe the solution to flooding is untested and question whether it will be adequate given the overwhelming local evidence of flooding in the vicinity. Also as it relies on continued maintenance would ask the Borough what legal powers are available to enforce this maintenance in later years? The Highway concerns remain in terms of access to the site and the site plan is inadequate in demonstrating that the application conforms to parking standards. There is concern that pile driving will have a massive effect on the surrounding properties and their structural integrity. It is doubtful whether 3.2 of Policy DP1 development must positively contribute to the public realm, identifying, preserving or enhancing the existing sense of place can be attributed to this application.
Policy DP1 of the LDF Development Policies Document (adopted October 2010) states that all development should be designed to a high standard that respects and enhances the character of the site, its context and surroundings. The proposal as it stands is contrary to the aforementioned policies, inappropriate and out of keeping with the local scene. Additionally even though the proposal is currently a single storey one, there is sufficient height to convert the loft at a later stage and would ask, if permission is granted, that a condition that it remain a single storey dwelling be placed on that approval. The loss of permeable land is also of concern.

10.0 Representations

- 10.1 6 representations from residents raising objection plus objections on behalf of the Wivenhoe Society and Queens Road Residents Association have been received.

Wivenhoe Society

- 10.2 It is unfortunate that a garden which was an attractive feature of Queens Road has been allowed to become a waste site. Viewed as an infill development the Wivenhoe Society wishes to make four comments
1. The proposed 1960 style bungalow will detract from the appearance of the neighbouring conservation area. The fenestration is out of keeping with the adjacent terraced houses and is an inappropriate neighbour both to the terraced houses and the Pump House opposite the property. The claim that it will have a positive impact on the townscape is questionable. It is positive relative to the current dereliction but negative relative to the situation when it was a garden. It is bad policy that developers should be allowed to create an eyesore and then use some improvement to the situation as a reason for granting planning permission.
 2. The very lengthy correspondence with the Environment Agency on the flooding issue suggests that the proposed system of floodwater void with trash screens is of an experimental nature. The developers are offering to enter into a legal agreement to maintain both the trash screens and the void. Such an agreement would require monitoring. A contribution towards the cost of such monitoring should be required as a part of any planning permission.
 3. Much of the site will either be built on or will provide car parking space. The appropriate surfaces of the car parking should either be designed so that they are water permeable or so that there is adequate drainage into the nearby watercourse.
 4. The existing bungalow and the proposed new bungalow are shown with four parking spaces between them but the layout will result in the loss of one on-street residents' parking space because of the need to keep access clear to the private parking spaces. The Victorian terraced houses have no private parking because of the date at which they were built so require provision for on road parking. A loss of a space will be to their detriment.

Queens Road Residents Association (QRRRA)

- 10.3 Our objection is based upon local knowledge and context of the site and our objective is to prevent the construction of a building which among other things would increase the damage to existing properties during flash flood events and disrupt the fragile natural and man-made surface and foul drainage systems at the bottom of Queens Road.

As explained in my letter 1 March 2015, it has not been clear whether this is a new application or merely a resubmission of planning applications 112284, formerly 080026 and 081086 relating to the same site which has been consistently submitted and withdrawn since January 2008.

If the committee were merely to consider the application as a re-submission and focus only on the suitability based upon building size; a substantial body of relevant opposition, documented in other submissions to this application, based upon knowledge of flooding, insight into the unresolved demarcation differences between the highways agency, environment agency and local government will be ignored.

It is important that the incremental planning process, which can over an extended period, develop cumulative errors in both fact and execution, does not override logic and knowledgeable local insight; with this in mind a complete timeline of all relevant

applications, decisions, re-submissions misunderstandings and subsequent modifications about this site since January 2008 is being prepared in parallel with this objection.

I have been asked to state that the proposed building would be detrimental to the neighbourhood in the following respects.

Flood Risk and Drainage

In November 2013 the Environment Agency made it clear that the quantifiable and unquantifiable flood risk associated with building on the site have been made quite clear to Colchester Borough Council who was in a better position than the Agency to make decisions based upon local advice, I trust that that local advice has been sought and used in your decision making process.

I have been asked to report that the flooding, noted by many others commenting on the application, has still not been resolved. The frequency of flash flood events described in other submissions on this application is predicted to increase in the future due to climate change.

Highways Agency, the Environment Agency and local government disagree on their responsibilities for maintenance and corrective action relating to the brook, culvert and sanitation. Would Colchester Borough Council be content to take on the stewardship overseeing and co-ordinating of any required maintenance and corrective action necessary as a result of events due to the construction or presence of the proposed building?

A report in Wivenhoe News Spring 2013 noted there had been engineering works in Valley Road following serious flooding and that the culvert under Valley Road and Queens Road had been cleared of debris.

No residents have witnessed any inspections nor culvert clearing taking place. The last recorded visit being 14th February 2012 Onsite Drainage Engineers of Worcester – working on behalf of the Environment Agency attempted to carry out a survey of the Queens Road culvert but had to abandon the attempt as it was too silted up to insert their cameras.

Conservation area and Visual amenity

The proposed building is immediately adjacent to the conservation area and does nothing to enhance the environment; rather its influence detracts from the well maintained Victorian terrace it adjoins.

The prized Queens Road vista and Wivenhoe Brook which is now recognised as significant through its adoption on the local list would be spoiled.

The proposed development removes the natural break, provided by the site, between the Victorian terrace to the West of the river and the low rise building and second Victorian Terrace to the East of the river.

Parking

Parking in Queens Road is extremely limited. The road is only wide enough to allow parking on one side, meaning that the number of front doors far exceeds the number of available parking spaces. The additional parking requirement of this proposed property for residents and their visitors will add to an existing problem.

Nuisance

Bringing building materials and machinery required for construction through the narrow street with cars parked along one side will inevitably result in more damage to vehicles and to the brick walls of the properties on the other side of the road which abut the road as there is no pavement.

Construction at the site will have detrimental impact on the foundations of the adjoining Victorian properties and the water table.

The culvert and other under road drains (both clean and foul) are fragile and liable to suffer damage through construction traffic passing over them and disruption due to additional flow from the proposed new property.

10.4 Six letters of objection have been received from residents 3 residents of Queens Road and three residents of Paget Road. Many of the objections reflect those made by the Town council, Wivenhoe Society and Queens Road Residents Association.

10.5 Residents raise the following objections.

- The notification letter is ambiguous because it is unclear whether this is a new planning application or a resubmission of planning application 112284 rejected by CBC Planning Committee in September 2014.
- The fence along the side boundary of 21 Paget Road and the rear boundary of the site belongs to no 21 the fence is 165cm in height anything over this height is foliage. The garden of 21 will be overlooked from the rear windows in the proposed property
- The use of piles will undermine the structural integrity of the adjacent dwellings
- Legal position of future owners regarding maintenance of the void
- The drawings do not indicate the true dimensions of the proposed development
- Why is the applicant allowed to let the site become untidy?
- The letter from the Environment Agency states that maintenance access to the stream must be available; the proposed building does not appear to fit into the space left after allowing for this access

10.5.1 Process

- This application and the processes linked to it (also in terms of the previous application) must be properly scrutinized and in an open and transparent manner
- Why is the applicant allowed to resubmit a new planning proposal potentially without a Planning Committee convening?
- Wivenhoe Town Council did not receive a consultee notification nor was a planning notice displayed on the site which is adjacent to the conservation area until Councillor Rosalind Scott brought this to the Planning Departments attention at the end of February 2015. Whatever happened to transparency in local government? This contentious planning application has dragged on in various guises since 2008 and the planning department would appear to have failed to be impartial, always favouring the developer and not fully taking account of residents genuine concerns. Unfortunately there have been many discrepancies in reports. This and the earlier application 112284 should be investigated further on the grounds of due process and non-compliance with the code of conduct for officer's. This application continues to demonstrate the same issues as the previous application did (112284) with regards to flooding risks. The planning officer's involvement in driving this through raises further concerns over impartiality. We hope this activity will be

investigated for compliance with the Code of Conduct for officers. We believe due process has not been followed as the application page states this is a full application. The planning officer's comments appear biased. The applications for Land West of 58 Queens Road have been riddled with issues, in part displayed by how long the earlier application took to resolve. We would like this and the earlier application referred to the Ombudsman on the grounds of due process and non-compliance with the code of conduct of the planning officer.

10.5.2 Risk of Flooding

Flash flooding incidents at the bottom of Queens Road are well documented by residents going back over 40 years. They are not historical as suggested. This is clearly demonstrated by the Queens Road Flooding and Damage Diary of Events AL1, AL2 and AL3 which Pat Marsden emailed to you on 18th March 2015. It should be noted that 14th February 2012 Onsite Drainage Engineers of Worcester working on behalf of the Environment Agency (EA) attempted to carry out a camera survey of the culvert running under Queens Road. This was aborted because the culvert was heavily silted up. Onsite Drainage Engineers advised me they would report back to EA with a view to de-silting the culvert after which they could carry out the survey. To date (March 2015) there is no evidence of this being done. In December 2012 the culvert underneath Valley Road flooded the highway and the pathway at the back of the Pump House (Queens Road) necessitating the involvement of Anglian Water, EA, Wivenhoe Town Council and the Police.

Whilst the Environment Agency withdrew their objection to the development in November 2013 they emphatically stated in their letter to you dated 24th March 2014:- "Whilst improvements to the drainage system and overland flow have been made in the area, it remains unknown as to whether the mitigation proposed in the form of a void beneath the building will be effective in ensuring flooding is not exacerbated locally".

As far as I can ascertain the technology of an under floor void with associated trash screens to collect flood water is untested in domestic dwellings in full time permanent occupancy. The developer has failed to provide an assessment of the effects of groundwater. Are you suggesting the property owners in the lower part of Queens Road act as guinea pigs for this untested technology?

The planning application offers the same untested technology of an under-floor void to mitigate flooding. The only example given to date is from use on a temporary structure. No assessment of the effects on the groundwater has been provided, especially as building works may well affect the lithology of the sub-strata.

10.5.3 Potential Flooding Problems

Residents have written to the Environment Agency expressing concern that the construction of a house in the natural flood basin which has for years allowed flash flood water to disperse with little consequence, poses a risk to the adjacent properties and describing first-hand experience of flash flood incident mitigation provided by the site along with knowledge of the flood history of the location. This application appears to minimize the importance of the adjacent water course referring to it as the "Town Drain", rather than acknowledging its true Environmental Agency classification as a river. The flood mitigation measures described in application 150213 focus on the protection offered to the proposed new building and do little to mitigate against flash

flood incidents where “The water level was high on the terraced properties opposite and reached tops of the wooden doors of the small garage which at the time was situated on part of the site of the proposed house”. It is important to note that despite appearing that the Environment Agency do not raise any objection to development on this site; in November 2013 they made it absolutely clear that this was because they had put CBC clearly in the picture with regard to the unknown and unquantifiable risks of flooding spelled out in their previous objections and stated that they were unable to advise on this local situation and passed the responsibility for approving any development to CBC, along with any resulting liability.

Over burdening of existing sewer system the application contemplates adding additional input to an extremely fragile drainage system. There have been problems with both the surface water and foul sewerage systems at the bottom of Queens Road. There are on-going capacity problems with the system coping with excess surface water which regularly exits from the drains at the bottom of Park Road and flows on the surface of Queens Road to join the river by way of the car parking area of the proposed building. Remedial repair work which had to be carried out appears to have overcome the difficulties with the foul system. Prior to the work, sewage systems of homes at the bottom of Queens Road regularly backed up. A neighbour regularly called the local council who were obliged to unblock the system by way of the manhole cover in the road. To add to an already fragile situation, ongoing demarcation disputes between the Transport Authority and Environment Agency about the responsibility for clearing the culvert under Queens Road adjacent to the site have resulted in numerous occasions where clearance work has been attempted but abandoned when inadequate equipment had been brought to the location.

Should the property be constructed and the addition of an additional input and construction upset the delicate balance of the ancient sewage system and drainage it would result in considerable nuisance to neighbours and potentially become extremely costly for the entity or entities contributing to that nuisance given the amount of current and archival documentation highlighting the risk.

As has been frequently observed the surface water drainage and other systems in the vicinity are antiquated and fragile and due to poor maintenance prone to collapse¹. There was yet another collapse in the rear gardens of terraced houses on Queens Road, a little way up from the Brook only recently and the garden of No 54 was flooded with sewage. However the developer and the planning officer refer to these problems as though they are historical problems unrelated to the development because it is the responsibility of the various agencies involved to establish an adequate maintenance system. This information is incorrect. There is no regular maintenance scheme to maintain either the Brook or surface water drainage system in spite of numerous appeals by affected residents.

Towards the end of 2012 there was flooding to the rear of the Pump House (opposite the proposed development) and extensive remedial work had to be carried out to the rear of houses on Valley Road west in Spring 2013 to clear out blocked culverts to prevent local flooding.

Is anyone going to want to purchase a house which may end up sitting on top of a water filled void? Will they want to take on the maintenance of the proposed rainwater soak-away sites and trash screens from any debris which might collect there in the future? Is the developer going to inform any prospective buyer of their riparian responsibilities because I don't think fencing the Brook off will absolve any future purchaser from maintaining their riparian bank? The failure of riparian owners (of whom the developer is one) to date has exacerbated the problems with the flow of water along the Brook which has frequently become blocked by overhanging foliage.

10.5.4 Damage and Vehicle Access

Problems construction traffic operating in the very narrow and steep road will be dangerous and cause damage to my boundary walls as has happened in the past. The weak culvert running under the road at the bottom of the hill could also suffer by the passing of construction vehicles. Modern house building machinery may try to minimise the traditional problems of noise and vibration associated with building, but such would not prevent disturbance of the water table and sensitive drainage systems which have traditionally plagued the bottom of this steep valley.

The car access to the plot will make it difficult to access the property opposite as the turn is too tight; there being no room to manoeuvre if there are cars adjoining the entry opposite.

10.5.5 Over Development and Impact on Conservation Area

Residents disagree "that: the new dwelling would enhance the character of the area. The proposed development would place an incongruous dwelling immediately alongside the historic row of Victorian houses. Their notable historic and aesthetic vista has been acknowledged in the Wivenhoe Conversation Area document and the recent Wivenhoe Townscape Forum planned for adoption March 2012. I believe that it is customary to leave appropriate spacing between old and new developments in order to preserve such historical aspects; this development removes an existing natural break.

The proposed type of development is completely unsuitable for an area which is immediately adjacent to a historic road of Victorian houses which are included in the Wivenhoe Conservation Area.² However although it is currently listed as adjacent, the bungalow and plot are included in the Wivenhoe Conservation Area Appraisal carried out by Qube at CBCs request in 2007 and published on CBCs web site. It is only waiting adoption, something which has been pursued many times and put forward for approval again in the ongoing Wivenhoe Neighbourhood Plan. Queens Road is also recognised on the Wivenhoe Local List as Vista when the List was formally adopted by CBC in March 2012:³ The Brook itself is also on the list and this must be taken into account as a material consideration in the planning process. If the revisions to the Conservation Area currently waiting to be adopted are approved the site itself will become part of the Conservation Area

The original dwelling house of 58 Queens Road (same proprietor), has constructed a driveway which crosses a parking bay, which is not in compliance with the planning consent. This is evidence that the applicant has already displayed disregard for the planning rules, and it evidences the planning officer's bias conduct towards the planning process.

10.6. Officer Comment

Clarification of procedural issues

This application is a resubmission of application 112284 which was refused planning permission for a single reason due to the development having an overbearing impact and resulting in a loss of amenity to residents. The current application is a resubmission as it seeks to overcome the reason for refusal by redesigning the dwelling and reducing its height from 11/2 storeys to single storey.

The Council's Professional Support Unit (PSU) sent an acknowledgement in respect of the application to the planning agent on the 9th February 2015 and on the same day PSU also notified the town council, residents and consultees. PSU also published the application in the newspaper on the 20th February (due to the lead in time required for publication). Notices were also displayed at the site.

The case officer has visited the site with the Councils Listed Buildings and Areas Officer (LB&AO) and the Major Development and Projects Manager. The LB&AO considers the proposed dwelling will not adversely affect the character of the Conservation Area and will be an improvement; this view is also shared by the Major Development and Projects Manager.

Planning permission is not required to form a dropped kerb onto a non-classified road these works only require the consent of the Highway Authority.

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

11.0 Parking Provision

11.1 Two parking spaces are shown for the new dwelling.

12.0 Open Space Provisions

12.1 A single dwelling is not required to make any provision for open space.

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

14.1 This application is not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990

15.0 Report

Planning History

- 15.1 Application 112284 was considered by the Planning Committee on 19th June 2014. At the meeting Members considered the officer report recommending approval, but were minded to refuse planning permission on grounds of flood risk and other issues, subject to there being no significant implications in doing so. The Delayed Decision Protocol was invoked. A report to the Planning committee meeting on the 11th September 2014 considered the implications of refusing planning permission. The report advised Members that the Environment Agency would not support the Council in defending a refusal on flood issues at appeal and in these circumstances the applicant is likely to be successful in having an award of costs against the Council. The site is not a backland site as it has a frontage to Queens Road. The proposal meets the Councils adopted standards for amenity space and parking and the size of the plot is similar to others close by. In terms of negative impacts on residents it was explained that the new property would be slightly elevated on the plot so the rear ground floor windows will appear higher than normal. The report also stated that a site visit had been carried out, by officers including the Historic Buildings and Areas Officer, Planning Project Manager, and previously by the then Conservation Officer. These officers all agreed that the site does not form an important visual gap and that a dwelling on this site would actually improve the vista not detract from it. The report explained the design has been negotiated by one of the Councils Conservation officers and the building design takes references from a converted Pump House on the opposite side of the road.
- 15.2 The report stated that if Members were minded to refuse permission the refusal reason should relate to the overbearing nature of the development and loss of privacy to residents. Members agreed the recommendation and the application was refused for the following reason:

“Due to the limited depth of the site, the height of the dwelling and its raised floor level it is considered the proposed dwelling would have an overbearing impact on and result in a loss of amenity to neighbouring residents in Paget Road contrary to policy DP1 in the adopted Colchester Borough Development Policies (October 2010).”

Design and Layout

- 15.3 The application involves the erection of a slate hipped roof bungalow of red brick. It includes traditional details including a chimney, exposed rafter feet and a brick plinth. The siting of the building respects the building line along Queens Road with the dwelling set close to the road and tandem parking spaces to the side.
- 15.4 The design represents an acceptable transition between the Victorian dwellings on the west side and the more recent bungalows on the east side.

Scale, Height and Massing

- 15.5 A single storey property is proposed. The street scene drawing shows its height in relation to the adjacent dwellings; it is lower than the houses and a similar height to the adjacent bungalow.

Impact on the Surrounding Area

- 15.6 The site is adjacent to the conservation area and the Queens Road vista including the section of road in front of the application site, is in the Wivenhoe local list. The Town Drain is also on the Local List .
- 15.7 As explained in the report to Members on the previous application the criteria applied by officers to the principle of developing this site are those that would be applied in a conservation area namely whether the site is an important gap and whether or not the development will enhance the area. Residents refer to the site previously forming part of an attractive garden to no 58 Queens Road. Your officers consider the site does not form an important visual gap it provides views to rear gardens in Paget Road and is in a road where the main characteristic is buildings enclosing the street. It is consider a dwelling on this site would actually improve the vista not detract from it.

Impacts on Neighbouring Properties

- 15.8 The dwelling is single storey and will not have an adverse impact on the amenity of residents to the side of the site or those on the opposite side of Queens Road. The site is to the north of the dwellings in Paget Road and will not reduce sunlight. The properties on the opposite side of Queens Road are on higher land. No 56 Queens Road is at a slighter higher level and there is approximately 9 metres separation between the buildings. The rear elevation includes a kitchen window and doors to the main living area. Due to the raised floor level these windows will be slightly higher than normal single storey level. Subject to appropriate fencing and screen planting along the rear boundary it is considered overlooking will be reduced.

Highway Issues

- 15.9 The Highway Authority has raised no objection. The parking provision is acceptable and the development provides on-site parking in an area where the majority of residential vehicles park on the street. A turning facility is not required.

Other Matters

Flood Risk/ Surface Water Drainage

- 15.10 The site is at the bottom of a hill next to the Town Drain in an area known to flood. The flooding is a result of several factors. The existing drainage system is described as antiquated. The Wivenhoe Town Drain (a river) is the responsibility of the Environment Agency but it is alleged maintenance has not taken place. In addition land owners along the banks of the Town Drain have riparian responsibilities. The Highway soakaways are the responsibility of the Highway Authority and again it is alleged there has been a lack of maintenance. However; the responsibilities of these bodies and those of individuals will be unaffected by the erection of a dwelling. The maintenance they carry out will also be unaffected. Planning permission should not be refused because of flooding issues resulting from a lack of maintenance by others.

- 15.11 The Environment Agency has confirmed their main concern is the loss of flood storage and displaced flow in an area which has known flooding issues. The Agency has confirmed the occupants of the dwelling would have refuge within the building and have safe access/egress from the site during a 1 in 100 year fluvial flood level, including allowance for climate change. They then go on to comment “but the depth and velocity of surface water/pluvial flooding is unknown and the building could become surrounded by water” however they do not raise an objection. The void under the dwelling will accommodate surface and flood water and the Environment Agency is satisfied that this area will compensate for the footprint of the dwelling. The dwelling will not therefore reduce the storage capacity in times of flood provided the void and trash screens are properly maintained. A legal agreement is required to secure a maintenance regime and to the responsibility for carrying it out.
- 15.12. The applicants drainage consultant has provide the following information “In terms of frequency / programme of maintenance, and our view of the potential costs involved, we do not foresee this being anything other than a post flood treatment as the principal reason for any build-up of debris beneath the building will be silt / soil carried by flood water passing down the Wivenhoe Town Drain. Other than a visual inspection on an annual basis we would not envisage that this maintenance or ‘post-flood’ treatment would be required for than once in every 10 to 20 years. This assessment is based on the design flood level of 5.2m, the depth and capacity of the ditch, and ground levels across the site”.
- 15.13 In summary any lack of maintenance of the Wivenhoe Town Drain and highway soakaways will not be affected by this proposal as these are works that are carried out by third parties. The proposal will not result in a loss of flood storage or displaced flow as the void under the building will accommodate flood and surface water.
- 15.14 The National Planning Policy Framework states that where individual developments are on sites allocated in development plans through the Sequential Test, applicants need not apply the Sequential Test. The Exception Test comprises two elements sustainability benefits to the community that outweigh flood risk, and that it will be safe for its lifetime, without increasing flood risk elsewhere and where possible reduce flood risk overall. The site is in a sustainable location close to Wivenhoe centre and within walking distance of the train station and bus stops. The site when used as garden to no 58 would have benefitted from permitted development rights which include rights to erect outbuildings and construct hard surfacing.
- 15.15 Resilience is included in the design which includes raised floor levels. Occupants of the dwelling have safe access and egress from the site. The Council’s Resilience officer has been consulted and the response set out above. Conditions are proposed to secure the matters referred to including an Emergency Plan.
- 15.16 Other issues raised by residents are not planning matters for example the impact on the building works on adjacent properties. This is a private matter between the various parties in the same way as any one carrying out work whether or not it required planning permission.

16.0 Conclusion

- 16.1 In determining the previous application for a dwelling Members considered the issues relating to flood risk and surface water flooding and accepted these could not be included as reasons for refusal. Permission was refused solely on the grounds of the overbearing impact and loss of amenity to residents. This application is a resubmission proposing a revised scheme to try to overcome the earlier reasons for refusal. The dwelling has been amended from one and a half storeys to single storey and as a result its height is reduced. The dwelling will have a neutral-positive impact on the conservation area and the Queen Street vista. The proposal also meets the Councils adopted amenity and parking standards.

17.0 Recommendation

- 17.1 APPROVE subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Commercial Services to refuse the application, or otherwise to be authorised to complete the agreement to provide the following:

To secure the submission of; and approval to, details of a maintenance schedule for the void and trash screens and agreement of the legal responsibility for implementing the approved maintenance schedule for the life of the property

- 17.2 On completion of the legal agreement, the Head of Service be authorised to grant planning permission subject to the following conditions:

18.0 Conditions

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the approved plans site layout 1:200, floor layout and elevations, street elevation, typical section.

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

3 - Site Levels Plan

No works shall take place until detailed scale drawings by cross section and elevation that show the development in relation to adjacent property, and illustrating the existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill, have been submitted and agreed, in writing, by the Local Planning Authority. The development shall thereafter be completed in accordance with the agreed scheme before the development is first occupied.

Reason: In order to allow more detailed consideration of any changes in site levels where it is possible that these may be uncertain and open to interpretation at present and where there is scope that any difference in such interpretation could have an adverse impact of the surrounding area.

4 - Non-Standard Condition/Reason

The development hereby permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) and the following mitigation measures detailed within the FRA:

- Finished floor levels shall be set no lower than 5.50 m above Ordnance Datum (AOD)

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To reduce the risk of flooding to the proposed development and future occupants. To ensure the proposed void can be set at the required level to compensate for the loss of flood storage.

5 - Non-Standard Condition/Reason

The development shall be implemented in accordance with the recommendations, mitigation measures and details in the following documents Flood Risk Assessment (FRA), produced by JPC Environmental Services, referenced CE11/003/HJ issue 1.1, and dated October 2011, Supporting letter from JPC Environmental Services, referenced CE11/003 and dated 13 May 2013, Supporting letter from JPC Environmental Services, referenced CE11/003/RME/le and dated 13 February 2014, Supporting letter from JPC Environmental Services, referenced CE11/003/RMC/al and dated 24 July 2014, Drawings titled Elevations and Typical Section for Land Adj Queens Road Wivenhoe. These measures shall thereafter be retained.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

6 - Non-Standard Condition/Reason

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

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8 of the Development Management Policies

as adopted as County Council Supplementary Guidance in February 2011.

7 - Non-Standard Condition/Reason

No works shall commence until a detailed sustainable transport mitigation package has been submitted to and agreed, in writing by, the Local Planning Authority. This package will provide information on how the applicant proposes to mitigate any increase in private vehicular use associated with the development and will include appropriate information on all sustainable transport modes including bus and rail travel, cycling, walking (including the local Public Rights of Way network), taxi travel, car sharing and community transport in the vicinity of the site. The package shall thereafter be implemented as agreed for each individual dwelling and/or premises within 14 days of the first beneficial use or occupation of that unit.

Reason: In the interests of mitigating the impact of the approved development by seeking to reduce the need to travel by private car through the promotion of sustainable transport choices.

8 - Non-Standard Condition/Reason

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

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

9 - Non-Standard Condition/Reason

No works shall take place until a scheme of hard and soft landscaping 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 and also accurately identify positions, spread and species of all existing and proposed trees, shrubs and hedgerows on the site, as well as details of any hard surface finishes and external works, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission. The hard and soft landscape works shall include the front and rear boundaries.

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

10 - Non-Standard Condition/Reason

All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out in full prior to the end of the first planting and seeding season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details.

Reason: In order to ensure that there is a sufficient landscaping scheme for the development where there is insufficient detail within the submitted application.

11 - Non-Standard Condition/Reason

No works shall take place until detailed scale drawings by cross section and elevation that

show the development in relation to adjacent property, and illustrating the existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill, have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be completed in accordance with the agreed scheme before the development is first occupied.

Reason: In order to allow more detailed consideration of any changes in site levels where it is possible that these may be uncertain and open to interpretation at present and where there is scope that any difference in such interpretation could have an adverse impact of the surrounding area.

12 - Non-Standard Condition/Reason

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

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

13 - Non-Standard Condition/Reason

Notwithstanding the provisions of Classes F of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no hard surfaces shall be constructed within the curtilage of the dwelling unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interests of sustainability and to reduce the risk of flooding.

14 - Non-Standard Condition/Reason

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no windows/doors/rooflights/dormer windows or any other form of openings shall be inserted in the any elevation or roof slope of the dwelling except in accordance with details which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

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

15 - Non-Standard Condition/Reason

Notwithstanding the provisions of Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no fences, walls, gates or other means of

enclosure, other than any shown on the approved drawings, unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interests of visual amenity with regard to the context of the surrounding area.

16 - Non-Standard Condition/Reason

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

Reason: There is insufficient detail with regard to this to protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

17 - Non-Standard Condition/Reason

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

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable.

18 - Non-Standard Condition/Reason

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be 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,
 - archeological 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.

19 - Non-Standard Condition/Reason

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 must be prepared, and is subject to the approval in writing of 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.

20 - Non-Standard Condition/Reason

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. 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 report (referred to in PPS23 as a 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.

21 - Non-Standard Condition/Reason

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 120 "Site Characterisation", and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 21 "Submission of Remediation Scheme", 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 22 "Implementation of Approved Remediation Scheme".

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.

22 - Non-Standard Condition/Reason

Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

23 - Non-Standard Condition/Reason

No works shall take place until a Flood Warning and Evacuation/Emergency Plan (including temporary refuge and rescue or evacuation arrangements) has been submitted to and approved by the Local Planning Authority in writing. The approved Plan shall be implemented and remain in place thereafter.

Reason: To ensure residents are adequately protected in times of flooding.

24 - Surfacing Material to be Agreed

Prior to commencement of the development hereby approved full details of the permeable surfacing materials to be used for all private, non-adoptable accessways, driveways, footpaths, courtyards, parking areas and forecourts shall be submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason: There is insufficient information within the submitted application to ensure that these details are satisfactory in relation to their context and where such detail are considered important to the character of the area and sustainable development .

25 - Non-Standard Condition/Reason

Prior to commencement of development details of the flood recovery measures and other building level resistance and resilience measures shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason : To ensure the occupants of the building are safe in times of flood

26 – Non-Standard Condition/Reason

Prior to commencement of development details to demonstrate the building is structurally resilient to withstand the pressures and forces associated with flood water shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason: To ensure the safety of the building as the development has been designed to provide refuge above the predicted flood levels.

19.0 Informatives

(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction &

Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

(2) ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

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

(3) PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.

(4) PLEASE NOTE: This application is the subject of a Unilateral Undertaking legal agreement and this decision should only be read in conjunction with this agreement.

(5) Essex County Council as Highway Authority can assist in the production of appropriate material as packs of information are available for purchase by the developer. Contact the Sustainable Travel Planning team on 01245 436135 or email travelplanteam@essex.gov.uk for more information.

(6) INF01 Highway Works - All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to: Essex Highways, Colchester Highways Depot, 910 The Crescent, Colchester, CO4 9QQ.

(7) INF02 Cost of Works - The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

20.0 Positivity Statement

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

7.4 Case Officer: Mark Russell

Due Date: 23/12/2015

CHANGE OF USE

Site: Old Heath Recreation Pavilion, Recreation Road, Colchester

Application No: 152344

Date Received: 28 October 2015

Agent: Mr Lee Spalding, Colchester Borough Council

Applicant: Mr Aaron Hunter

Development: Redevelopment of the Old Heath Tennis Pavilion into a community cafe.

Ward: New Town

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because Colchester Borough Council is the applicant.

2.0 Synopsis

- 2.1 It is explained that the existing sports pavilion is no longer needed and that proposal is to convert it in to a community café. No objections have been received and approval is recommended subject to Sport England not objecting.

3.0 Site Description and Context

- 3.1 The building in question is a former sports pavilion on Recreation Road and near the south-eastern corner of the Recreation Ground at Old Heath. Close by are tennis courts and a children's play area. Opposite the site are the residential properties of Recreation Road.

4.0 Description of the Proposal

- 4.1 The proposal is for a change of use from changing facilities to a community café.
- 4.2 Also proposed is a small extension (store) to the front. It is also intended to internally reconfigure the building with the central section (currently housing toilets and washing facilities) being removed and the space inside being opened up to form a seating area.
- 4.3 The rear section (previously showers) is to be closed off and used for back of house functions (office, store, kitchen, cleaner's store), with three toilets and baby-changing facilities being provided off to the left-hand-side.
- 4.4 To the front it is proposed to install a glass door and screen inside the external doors and to insert two new windows (one either side of the door).

- 4.5 Externally it is proposed to provide a paved seating area to the side (west) of the building. This would be sand bedded, small element concrete with flag paving

5.0 Land Use Allocation

- 5.1 Public Open Space

6.0 Relevant Planning History

- 6.1 None

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

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

SD1 - Sustainable Development Locations
SD3 - Community Facilities

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

DP1 Design and Amenity
DP4 Community Facilities
DP10 Tourism, Leisure and Culture

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

n/a

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

n/a

8.0 Consultations

- 8.1 Sport England has been consulted as a statutory body whose views cannot be overridden. Its response is awaited at the time of going to press.

- 8.2 Highway Authority: No comments

- 8.3 Environmental Control: No objection, requested conditions limiting hours of opening and delivery and also that no external amplified music should be permitted.

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

9.0 Parish Council Response

- 9.1 n/a

10.0 Representations

- 10.1 One letter was received from a resident at Worsnop House, not objecting but raising points for consideration:

In principle I have no objection to the plan as proposed. However, there are currently no WC facilities on the Recreation grounds. Will those just visiting to use the playground be allowed to use the WC facilities in the proposed cafe without purchasing anything? At present, children using the swings, etc. go behind the bushes next to the fence bordering Worsnop House when needing a WC.

There are a number of health and safety risks arising from this. This has been reported to Council officials who have visited Worsnop House in the past but we have not received any feedback as to a solution to this. Also, I trust that no alcoholic beverages will be sold from the proposed cafe.

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

11.0 Parking Provision

- 11.1 n/a

12.0 Open Space Provisions

- 12.1 n/a

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

- 14.1 This application is not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

Principle

- 15.1 This building is no longer required in its former primary function as a sporting facility. This matter has been clarified by our Community Initiatives Officer as follows:

The old tennis pavilion used to operate as a changing room and open on a regular basis for formal football matches via booking.

Formal football matches via bookings have now been transferred to other pitches within the borough.

The recreation ground football pitch has not been removed, it is still there but is now only used on an informal basis by the community.

The old tennis pavilion is now no longer used as a changing room and following public consultation and subject to planning permission it is hoped that the building can be used as a community café with toilets for users of the Recreation Ground.

The facility will be run by a local community interest company CIC and it is hoped that the building will be used to host a number of events and sporting activities during its operation.

- 15.2 The proposed use is still community-based and is going to be run by GO4 (the group which also currently trades from Holy Trinity Church). Our Community Initiatives Officer has confirmed:

“The community café is intended for the use of community not for profit companies and groups only. It is an agreed arrangement that community groups will be allowed to use the café seating areas and toilet facilities.

Go4 Enterprises upon signing a lease will have the sole and exclusive use of the kitchen area within the community café.”

- 15.3 It is, therefore, a positive proposal and can still be described as a community facility rather than just being a change of use where an asset is lost to the community.

Design and Layout

- 15.4 The proposed external changes to the building are largely cosmetic as described above. The main change to the physicality would be the placing of tables and chairs outside and the laying of paving slabs to facilitate this.

Impact on the Surrounding Area

- 15.5 The above element means that activities would have a public presence. Tables and chairs would be visible to the right hand side of the building (as seen from the recreation ground) and would be visible from Recreation Road.

Impacts on Neighbouring Properties

- 15.6 Given the separation from and orientation away from the building to residential properties, it is unlikely that residential amenity will be harmed. The nearest measurement is about 24 metres to the houses opposite and this is to the front of those properties.
- 15.7 It is noted that there have been no neighbour objections and Environmental Control has not objected either. Its proposed hours of use (by condition) tally with those sought by the applicant and are within sociable times of day (07:30 – 20:00).
- 15.8 Hours of delivery are also to be restricted - Weekdays: 07:00-19:00, Saturdays: 07:00-19:00 Sundays and Public Holidays: No deliveries.

Other Matters

- 15.9 The matter of toilets has been raised. The applicant has confirmed that the toilets within the building will be made available to all parties during the hours of opening.
- 15.10 It is also proposed to place a personal condition on the site to prevent a general A3 use developing. It is also necessary to place an additional condition removing permitted development changes of use (without this, the building could become a shop, estate agents or office without the need for Planning permission).

16.0 Conclusion

- 16.1 The proposal is a positive, community-based re-use of an existing community building and raises no issues of residential amenity or highway safety. Therefore approval is recommended, subject to no objection from Sport England.

17.0 Recommendation

- 17.1 APPROVE subject to no objection from Sport England

18.0 Conditions

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - Non-Standard Condition/Reason

The development hereby permitted shall comply in all respects with the approved plans CBH/1415/7005 02 revision A, 03 revision A, 05 revision A, 06, 07 and 08 revision A, 09, 10 and 11.

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

3 - Non-Standard Condition/Reason

The materials used shall match those on the submitted application.

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

4 - Non-Standard Condition/Reason

The community cafe hereby permitted shall be for the use by community not for profit companies and groups only; community groups shall be allowed to use the cafe seating areas and toilet facilities.

Reason: In the interests of retaining this building as a community asset as this is the basis on which permission has been granted.

5 - Non-Standard Condition/Reason

Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 2015, the change of use hereby approved shall be restricted to the A3 (restaurant) use applied for and for no other use.

Reason: To ensure that the use does not benefit from permitted development rights which would be inappropriate for this location.

6 - *Restriction of Hours of Operation

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

Weekdays: 07:30-20:00

Saturdays: 07:30-20:00

Sundays and Public Holidays: 07:30-20:00

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

7 - *Restricted Hours of Delivery

No deliveries shall be received at, or despatched from, the site outside of the following times:

Weekdays: 07:00-19:00

Saturdays: 07:00-19:00

Sundays and Public Holidays: No deliveries.

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

8 - Non-Standard Condition/Reason

No external amplified music shall be permitted at any time.

Reason: In the interests of residential amenity.

19.0 Informatives

(1) ZT0 – Advisory Note on Construction & Demolition

The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

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

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

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

20.0 Positivity Statement

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

