

AMENDMENT SHEET

**Planning Committee
25 May 2023**

**COMPOSITION OF COMMITTEE FOLLOWING ANNUAL MEETING 24/05/2023
AND
DRAFT MINUTE FROM PLANNING COMMITTEE HELD ON 27/04/2023
AND
AMENDMENTS OF CONDITIONS
AND
REPRESENTATIONS RECEIVED**

Composition of Committee as agreed at the annual Meeting on the 24/05/2023

- Cllr Lilley – Chair
- Cllr Barton – Deputy Chair
- Cllr Davidson
- Cllr Hogg
- Cllr MacLean
- Cllr Mannion
- Cllr McCarthy
- Cllr McLean
- Cllr Tate
- Cllr Warnes

Draft Minute 987 – Colchester City Council Planning Committee- 27 April 2023

Please note that this is a draft minute and is subject to amendment.

987. 230031 Land between 7 & 15 Marlowe Way, Colchester, CO3 4JP

The Committee considered an application for the variation of condition 2 following grant of planning permission of application 212888 (daylight and sunlight report received) . The application was referred to the Planning Committee as it had been called in by Councillor Buston who raised the following concerns:

1. Overdevelopment
2. Ignoring the planning conditions imposed on 212888 approved 21 April 2021
3. Development over a formerly publicly accessible Open Green space
4. The previous application for development on this site (210304) was dismissed on 10 September 21, citing, as reason for dismissal (inter alia): “1. The proposed three dwellings, by reason of their detailed design, form and scale (including being higher than the adjacent properties) would be out of keeping with and harmful to the character of the established street scene and surroundings.” Thus that the current buildings have been erected on the site without reference to the plans approved in 212888, in particular the height of these buildings. Policies UR 2 and DP 1, and the (Borough) Council’s adopted “Backland & Infill Development SPD, are in particular infringed.

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

Chris Harden, Senior Planning Officer presented the application to the Committee and assisted the Committee in its deliberations. The Committee were shown the location of the site and the surrounding properties including the drawings of what had previously been approved on the site. The Committee heard that the application had been made to overcome the issue that plot 1 was 0.715m taller than the ridgeline of the neighbouring property, and that plot 3 was 0.587m taller than the adjacent neighbouring property. It was further noted that plot 1 had been built closer to the neighbouring property than approved and that the rear kitchens on all properties have been built 0.6-0.7m taller than the approved drawings. It was confirmed that the outlook from existing neighbours and the newly built dwellings would not conflict with the 45 degree angle test for the outlook from windows. The Committee were shown close up views of the differentiation in height, the submitted pictures and the approved elevations. The Senior Planning Officer detailed that there was concern raised over the elevations which were shown to be out of keeping and noted that the drawings for the proposal were approved in good faith. Furthermore, it was noted that comments had been received on matters including: noise emanating from the area, that the planning system favoured the developer and that the development was overcrowding of the street scene. The Committee heard that the principle for development had been previously agreed and that it was for the Committee to decide whether the proposal before them was acceptable. The Senior Planning Officer outlined that in officer's opinion the proposal was acceptable and that the daylight and sunlight report had concluded that there would not be a significant impact that would warrant refusal of the scheme and detailed that the amenity impact had been considered as acceptable. The Senior Officer concluded by outlining that the recommendation was for authority to approve the application subject to any further consultation responses received and that a new unilateral undertaking was not now required as this had been paid on the previous scheme.

Simon Sorrell addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that the first proposed scheme on this site had been refused in 2021 due to the height of the proposal and its impact on the street scene and loss of open space with members of the local community taking comfort from the material planning concern had been addressed through the conditions that detailed that the proposal needed to be built in accordance with the drawings however it is now obvious that the proposal is taller than agreed. The Committee heard that the Council's enforcement team showed that the applicant had misled the Council and a new planning application amendment had been required. It was noted that although they had admitted that it was wrong this did not alter the material consideration. It was detailed that the developers actions were reprehensible and their non-compliance with the conditions would make the Council look like fools if agreed. It was noted that this could set a precedent for future developments and asked the Committee to refuse the application and force the applicant to put it right.

Robert Pomery (Agent) addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that the intention from the original application had not been to mislead anyone and confirmed that the dwellings as built were taller than the street scene than shown on the indicative drawings and confirmed that there had been no intention to deceive the Council. The Committee heard that the height of the dwellings had been reassessed to conclude that there was no demonstrable harm and that there should be no reason why approval should not be granted. Members heard that the error was an unintended misrepresentation in the height, that the site was being supplied by local merchants, and that if not agreed there would be an appeal on the application. The speaker concluded by detailing that the homes would be left empty and could be susceptible to anti social behaviour and that it would be disproportionately harsh not to agree this proposal and asked for the Committees support.

Councillor Roger Buston addressed the Committee as Ward Member for Prettygate, he addressed the Committee and referred back to the comments made by Simon Sorrell and the impact on local residents. The Ward Member detailed that the site had previously been on green public open space and that when the Committee had refused an application in Highfield Drive on grounds of cramped development this should be considered in conjunction with this case. The Committee heard about the principle of development on the site and precedent within planning and how planning law was inflexible detailing that as the dwellings had been built too tall that they would breach the conditions as agreed and noted that the application would have been refused if the buildings had been taller than proposed and closer to existing dwellings. Members heard that the OS maps were incorrect and queried why this was not pointed out at the outset to avoid this issue and detailed that the dwellings should be lowered in height to accord with the permission as agreed.

The Chair addressed the meeting and detailed their concern that the matter was before the Committee again and the precedent that it sets. They noted that a site visit had been conducted and that if the developer had done their job properly the application would not be before Members. The Chair added that Marlowe way was not an area that suffered from anti-social behaviour.

At the request of the Chair, the Senior Planning Officer responded to the points that had been raised by the speakers. The Committee heard that the dwellings when approved were considered to be acceptable and confirmed that the drawings had misled the Committee regarding the height in comparison to the neighbouring properties. They noted that over their 35 years of experience they were aware of this happening on other applications and that it was for the Committee to decide whether the difference in height was too far beyond what was originally approved. The Committee heard that there was no bias from officers regarding the application as it had been assessed on the evidence that had been submitted and had confirmed that they had reviewed the case in great depth. It was noted that the proposal was separate from the one on Highfield Drive that had been refused and that there were different material considerations with that application. The Senior Planning Officer concluded by detailing that the judgement for the Committee would be to decide on whether the additional height of the dwellings, the proximity of the dwelling (plot 1) and the height of the kitchens was acceptable and that demolishing the dwellings would be an excessive option.

Members of the Committee debated the application querying when the difference in height from the plans became significant and how this was judged. Serious concern was raised that the planning conditions had not been adhered to. The Chair queried whether approving the proposal would set a precedent for the Council.

At the request of the Chair, Senior Planning Officer and Development Manager responded to the queries that had been raised. The Committee heard that the difference in height was not insignificant and that 0.3m was the de minimis measurement and that the difference above that should be considered as noncompliance. The Committee also heard that the Committee's decision would not set a precedent in the same way that other functions of the Council did as every application was considered on its own merits. The Development Manager detailed that no significant harm had been identified and that although it was different from the approved plans this did not automatically warrant a refusal.

Members continued to debate the application and expressed their disappointment that of the situation with some members expressing the view that the proposal ruined the street scene and would have an impact on the existing building behind the proposal and that it was a significant amount of difference from the approved scheme with questions being raised how this could have happened.

At the request of the Chair the Senior Planning Officer responded to the points that had been raised. The Committee heard that the street scenes were not properly plotted and heights were not correctly measured in relation to existing properties. It was noted that the dwellings had been built to the correct height in the other approved plans but that the relationship between the existing dwellings had been misrepresented.

Members debated the proposal and commented whether building regulations officers had visited the site and raised significant concerns that one of the sole reasons that the application had been agreed upon had been flouted. Members noted the comments from the agent and questioned what grounds of demonstrable harm there were and what options to Committee had other than imposing the height restriction and the consequences of doing this.

At the request of the Chair the Development Manager responded to the points that had been raised. The Committee heard that the Committee could seek a deferral on whether it was possible for the applicant to return the design to that which had been approved. The Committee heard that the Council did not have the resources to check sites and relied upon neighbours and members of the community to bring the matters to the attention of the enforcement team. It was noted that there was not a requirement for the ridge height to be uniform along Marlowe Way.

Members debated the responses from Officers with some members disagreeing with the assessment of the impact of the roofline and the impact on the street scene with some members suggesting that amendments could be made to the roof to lower the height and that if not then it would make a mockery of the committees decision making ability. Members queried why the developer had not stopped building when it had become apparent that they were taller than the surrounding neighbours properties.

Some Members detailed that they believed that the buildings had been built in accordance with the correct measurements, with the plans for their relationship to neighbouring properties being incorrect, and accepted that there was an error on the site but that it did not substantially alter the street scene.

At the request of the Chair the Development Manager responded to the points that had been raised. The Committee heard that they understood Members dissatisfaction with the proposal but confirmed that it was extremely common for applications not to be in accordance but that the ridge height was given serious consideration by the Committee when it was determined. It was noted that Officers deemed the difference to be substantial hence why the application but that it was related to the harm that the additional height and other changes made to the approved application.

Members discussed the application and noted that there were differing ridge heights in the area and expressed concern that the developer had continued to build the proposal from the base plate to be higher than approved. Members discussed what the process would be for deferral and the options that would be available to them and what the consequences would be if the application was appealed.

The debate concluded with a resolution that was proposed and seconded as follows:

- That the application be deferred to enable officers to discuss options with the developer for lowering the roof ridge of the constructed dwellings.

RESOLVED (UNANIMOUSLY) That the application be deferred to enable officers to discuss options with the developer for lowering the roof ridge of the constructed dwellings.

7.1 230031 – Land between 7 & 15 Marlowe Way, Colchester

Highway Authority: No objections. Standard informative.

11 further letters of objection has been received which make the following points:

- chimneys not in the original application. Object strongly to this addition to the property. Sets dangerous precedent that anyone can do anything. I urge you to reject the application. Concerned about air pollution emitted from the chimney when solid fuel heating is being phased out.
- Permission given on the condition that the newbuild should be no higher than the surrounding houses. Now we are being asked to accept that “no higher than” actually means “quite a bit higher than” and that a height difference of going on a metre is “de minimis”. Human eye does not see things that way, and is very sensitive to even small differences that cause things to look out of place.

- Proposed change to the built design is a mere fig leaf, and does nothing to affect the basic problem that the new build is higher than it should be.
- all considerably higher (approx. x 12 bricks higher) than adjacent properties and also of every other property on the Marlowe Way estate. Not a minor discrepancy.
- new builds have high pitched roofs, and surrounding properties have shallow ones. Means new builds are out of keeping with and are harmful to the character of the established street scene and surroundings. Blatant disregard of the grounds for refusal of the initial plans.
- Street scenes submitted were wrong.
- Took six months after the roof ridge height differences were first reported (in November 2022) for this matter to go to committees.
- Faux chimneys are not in keeping with the builder's architect who described the properties as a modern interpretation of 70s/80s builds.
- The builders should be held accountable: they should remodel all three properties according to the revised street scene which previously met with council approval;
- Scheme was meant to blend in with existing street scene, yet the design, materials and colour palette do not achieve this.
- If not corrected developer should compensate the community by investing in the land opposite and gifting it to the community to preserve the open space.
- Object to the height of the three new builds due to the pitch of the roofs being not as stated in the Design and Access Statement (DAS) and subsequent letters provided by the Applicant's architect on the 12/10/2021, see page 3 of DAS;
- Roof pitches are too steep (and make the existing houses look small in comparison) and should be in keeping with the more shallow pitched roofs of the adjacent houses (without any faux chimneys). Plus 0.715 metre and plus 0.587 metre higher roofs than adjacent houses is not insignificant and does not correspond with the submitted architects drawings.
- Overbearing and out of keeping properties are extremely detrimental to the street scene and surrounding area.
- Sad that a beautiful green space enhancing a residential street has been lost and over 70 objections ignored.
- Five Poets Residents' Association object to this amendment.
- New plans don't deal with the rear extension heights. This has not happened by accident.
- Dummy chimneys would actually increase the house's overall height.
- Developer claims that the houses are completely lawful but admits that the kitchens; clearly visible from adjacent properties, are 400mm higher than approved. Therefore the houses as built are not legal.
- No indication of why the roof height of all three houses cannot be reduced fully to that of neighbouring properties.
- Recent planning statement application from the developers representative is factually incorrect and he even contradicts his own claims within the statement. Pomery claims the buildings were built in accordance with the approved plans but accepts the single story rear projections (kitchens) were

constructed 0.4 meters higher than the approved plans. Therefore the buildings were NOT built in accordance with planning permission.

- Committee need to recognize dangerous precedent being set by this particular application. A developer in Colchester can effectively seek retrospective approval on any building once completed.
- Developers response to the deferral of this application has taken less than a 2 weeks and residents have 2 weeks to counter before this goes back to committee. Urgency relates to the financial consequences of the developers actions.
- Development of this green space within Colchester should not have been approved. Although the Committee initially refused plans, they approved the secondary phase of the application as the height of the buildings were equal to adjacent homes.
- Committee and neighbouring properties accepted the street views in good faith showing equal ridge heights.
- Why not all 3 adjusted?
- Plot 3 may be a different style but still breaches approval and is closest to any neighbouring property thus height difference is more prominent and has more impact on the adjacent houses amenities (0.5 metres higher is not insignificant).