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## Item No: 7.3

**Application:** 180185

**Applicant:** Ms Michelle Schweyer

**Agent:** Miss Lily Green, Ingleton Wood LLP

**Proposal:** Application to remove condition 10 (requiring the sports centre to be used in connection with the Gilberd School only) of planning permission 170369

**Location:** Gilberd School, Brinkley Lane, Colchester, CO4 9PU

**Ward:** Highwoods

**Officer:** Lucy Mondon

**Recommendation:** Approval

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

- 1.1 This application is referred to the Planning Committee because it is for the removal of a condition of a major planning permission where objections have been received.

## **2.0 Synopsis**

- 2.1 The application is made under section 73 of the Town and Country Planning Act 1990 to remove condition 10 of planning permission 170369. The condition requires the sports centre to be used in connection with the Gilbert School only. The key issue for consideration is whether the wider use of the sports hall would have any detrimental impacts in terms of residential amenity and whether there are any traffic implications such as highway safety, highway efficiency, or air quality. The report considers these matters, along with other material planning considerations, as well as representations received. The planning merits of the case are assessed leading to the conclusion that the proposal is acceptable and that a conditional approval is recommended.

## **3.0 Site Description and Context**

- 3.1 The building that is the subject of this application is a modern stand-alone sports hall located to the north-eastern side of the Gilbert School site. To the west and south of the building are the school sports fields and school buildings, with the school car park lying to the east. The existing sports facilities at the school (excluding the sports hall in question) are available to members of the public outside of school hours as part of Leisure World Highwoods.
- 3.2 To the northern boundary of the site is a security fence separating the site from the residential properties beyond. The southern boundary of the site, along Brinkley Grove Road has a hedge.
- 3.3 The site is within the settlement boundary of Colchester and is identified as Predominantly Residential and an area of Private Open Space in the Local Plan.

## **4.0 Description of the Proposal**

- 4.1 The application is made under section 73 of the Town and Country Planning Act 1990 to remove condition 10 of planning permission 170369. The condition requires the sports hall to be used in connection with the Gilbert School only. The condition reads:

*The sports hall hereby permitted shall be used in connection with the Gilbert School only.*

*Reason: As this is the basis on which the application has been submitted to, considered and approved by the Local Planning Authority having had regard to the context of the surrounding area. Any change to this use would need further consideration at such a time as it were to be proposed.*

- 4.2 The Agent's covering letter for the application states that 'although there are no current plans for letting out the facility, we wish for condition 10 to be removed to allow for the potential wider use of the sports hall and extend beyond the use of the Gilberd School only. Removing the condition would therefore futureproof the facility, allowing the school to let out the Sports Hall if they wish to do so.'

## **5.0 Land Use Allocation**

- 5.1 The site is within the settlement boundary of Colchester and is identified as Predominantly Residential and an area of Private Open Space in the Local Plan.

## **6.0 Relevant Planning History**

- 6.1 Planning permission was granted for the sports hall on 16<sup>th</sup> December 2013 following a Planning Committee resolution (ref: 131977). A subsequent application to vary the approved plans (condition 2) in order to amend the design of the sports hall was approved on 21<sup>st</sup> October 2014 (ref: 145553). An application to vary conditions relating to hours of use and noise levels of the original planning permission (conditions 4 and 6 respectively) was made in 2017 (ref: 170369). This application did not seek to vary the second permission as that permission did not set out the conditions individually (the conditions of 131977 were reapplied but simply numbered in a combined condition thereby making it difficult to vary their wording). The application was subsequently approved on 17<sup>th</sup> May 2017. The current planning application seeks to remove one of the conditions attached to the 2017 permission.

## **7.0 Principal Policies**

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.
- 7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

UR2 - Built Design and Character

ER1 - Energy, Resources, Waste, Water and Recycling

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

DP1 Design and Amenity  
DP15 Retention of Open Space and Indoor Sports Facilities  
DP19 Parking Standards  
DP20 Flood Risk and Management of Surface Water Drainage  
DP21 Nature Conservation and Protected Lanes

- 7.4 Submission Colchester Borough Local Plan 2017-2033

In addition to the above, consideration also needs to be given to the Emerging Local Plan. The following emerging policies are considered to be relevant:

SP1 Presumption in Favour of Sustainable Development  
SP6 Place Shaping Principles  
SG1 Colchester's Spatial Strategy  
ENV1 Environment  
DM15 Design and Amenity  
DM17 Retention of Open Space and Recreation Facilities  
DM20 Promoting Sustainable Transport and Changing Travel Behaviour  
DM21 Sustainable Access to Development  
DM22 Parking  
DM23 Flood Risk and Water Management  
DM25 Renewable Energy, Water, Waste and Recycling

Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

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

Officers have considered the weight to be attached to the Submission Colchester Borough Local Plan 2017-2033. As to the first limb, the Local Plan was submitted to the Planning Inspectorate in October 2017. An Inspector has been appointed and the formal examination commenced in January 2018. The Plan is at an advanced stage and may therefore be taken into consideration in the determination of this application. As to the second limb, in the context of this application proposal there are no fundamental unresolved objections to the aforementioned policies in the emerging plan. As to the third limb, it is considered, at this stage, that the relevant policies in the emerging Local Plan do not appear to contain obvious inconsistencies with the Framework.

Overall, for these reasons, the emerging Local Plan is considered to carry reduced weight.

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

The Essex Design Guide  
External Materials in New Developments  
EPOA Vehicle Parking Standards  
Sustainable Construction

## **8.0 Consultations**

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.
- 8.2 Environmental Protection: No objections subject to the retention of the remaining conditions of planning permission 170369. Particular attention is drawn to conditions 12 and 13.
- 8.3 Highway Authority: No objections.

## **9.0 Parish Council Response**

- 9.1 N/A

## **10.0 Representations from Notified Parties**

- 10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.
- 10.2 Councillor Gerard Oxford: This unit has been open for a few years and the ward councillors have not had one single complaint. I think this proposal is good for the community and the school. I strongly support this application.
- 10.3 A subsequent email from Councillor Oxford confirmed that he had had assurances from the school that the hall would not be used for parties or music concerts due to cost and damage to the sport hall floor.
- 10.4 Two objections have been received, summarised as follows:
- The planning condition should not be removed as it was made for good reason. Permission was granted on the basis that the hall would only be used for school activities and that times would be restricted for the protection of the peace and quiet of the adjoining residents;
  - The original application was to benefit pupils of Gilbert School in view of the context of the area which is all residential;
  - The justification for the application is that it would 'future proof' the building, but this does not describe the intended future of the building which could bring late night events, especially over the weekends and bank holidays;
  - Increased traffic in a quiet neighbourhood; and

- Issues of light pollution and noise has increased since the sports hall was erected.
- 10.5 One of the objectors has stated that they are in favour of community space, but believe there are other community halls in the locality that are better suited for this purpose.
- 10.6 One additional objection relating to the noise experienced during construction of the building and understanding that the building would only be used during school hours was updated with a general comment (following discussion with Councillor Gerard Oxford) that they now understand that the proposal would not include the hall being used for events such as birthdays and parties.

### **11.0 Parking Provision**

11.1 Parking is provided on site. No additional parking is proposed.

### **12.0 Open Space Provisions**

12.1 The site is identified within an area of private open space in the Local Plan.

### **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 Planning Obligations**

14.1 This application is classed as a “Major” application by virtue of it seeking to remove a condition of a “Major” planning permission. It does not, however, increase the scale or capacity of the building from that previously considered by the Development Team and was not, therefore, discussed further.

### **15.0 Report**

15.1 The main issues in this case are:

- Impact on the Surrounding Area
- Impacts on Neighbouring Properties
- Highway Safety and Parking Provisions (including Cycling)

15.2 The application is made under section 73 of the Town and Country Planning Act 1990 to remove condition 10 of planning permission 170369. The condition requires the sports centre to be used in connection with the Gilbert School only.

15.3 The first matter to consider in determining whether it is appropriate for the condition to be removed is the reasoning behind why the condition was imposed. In this case the reason for the condition is set out in the Decision Notice as: 'As this is the basis on which the application has been submitted to, considered and approved by the Local Planning Authority having had regard to the context of the surrounding area. Any change to this use would need further consideration at such a time as it were to be proposed.' The condition was not, therefore put in place to mitigate a particular issue, rather the application was made on the basis of the building being used by the school only and any change to the way the building would be used would require further consideration as to its impacts.

#### Impact on the Surrounding Area

15.4 The school site as a whole is used as a school during the day, with the sports facilities (excluding the sports hall in question) being open to the public in the evening and at weekends as part of Leisureworld Highwoods. The sports hall currently has permission to be used in the evenings, but for school use only; the removal of condition 10 would allow the building to be used by members of the public, but it would not change the character of the site given the current Leisureworld use.

#### Impacts to Neighbouring Properties

15.5 Objections have been received from neighbouring residents, the main concerns being noise from late night events (especially at weekends and during Bank Holidays), and light pollution.

15.6 Where an application under section 73 is granted, a new planning permission is issued, with the Decision Notice describing the new permission and setting out all conditions related to it; this includes conditions from the parent permission. Current conditions relating to protecting residential amenity include:

15.7 Condition 4. The sports hall hereby permitted shall not be used outside of the following times: Weekdays: 0800-2200  
Saturdays: 0800-2200  
Sundays: 0900-1700  
Public Holidays: Not at all.

- 15.8 Condition 5. Notwithstanding the submitted details, no external lighting fixtures shall be constructed, installed or illuminated until details of all external lighting proposals have been submitted to and approved, in writing, by the Local Planning Authority. Thereafter, no lighting shall be constructed or installed other than in accordance with those approved details. Any approved external lighting shall be turned off when the building is not in use.
- 15.9 Condition 6. Noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises when measured in accordance with the current version of British Standard 4142.
- 15.10 Condition 11. Access and egress to the building shall be via the main entrance only. All other external doors shall be kept closed at all times when the building is in use (except in the case of an emergency).
- 15.11 Condition 12. The building shall be used for sporting activities only and not used for music events or similar activities.
- 15.12 Condition 13. Any background music or amplified sound (announcements) played on the premises shall not exceed 0dB(A) above the background levels determined at all boundaries near to noise-sensitive premises when measured in accordance with the current version of British Standard 4142.
- 15.13 These conditions can be imposed on the new planning permission and are considered appropriate to mitigate noise, disturbance and light intrusion from the sports hall, regardless of whether it is being used by the school or members of the public.
- 15.14 Important conditions to note are conditions 12 and 13. These conditions require that the sports hall is used for sporting activities only and not music events or similar. Should any music or amplified sound be used in connection with the sports use of the building, the noise level is limited so that it is no greater than background levels. The concern of residents regarding the potential for late night parties at the sports hall is currently restricted by condition and will continue to be so.

#### Highway Matters

- 15.15 The Highway Authority does not object to the proposal. There are not, therefore, considered to be any adverse impacts from the removal of condition 10 in terms of traffic generation, highway efficiency, or highway safety.
- 15.16 In terms of parking (car and cycle), the use of the building by members of the public is not considered to give rise for the need for additional parking, given that it would take place outside school hours when the school use of the car park and cycle parking will have ceased.



## Other Matters

- 15.17 Should the application be approved, it is recommended that conditions from the previous permission are applied to the decision as advised by Planning Practice Guidance (Paragraph: 015 Reference ID: 17a-015-20140306). The existing conditions are, in the main, compliance conditions that can be amended to reflect the current situation.
- 15.18 The proposal is not considered to conflict with the aforementioned Local Plan Policies, or Emerging Local Plan Policies.
- 15.19 A Screening Opinion has been undertaken under Part 3, Article 8 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The proposal is considered to be Schedule 2 Development as set out in the Regulations, but does not exceed the thresholds for EIA Development.

## **16.0 Conclusion**

- 16.1 The removal of condition 10 of planning permission 170369 would allow for the sports hall to be used by members of the public. The impact of this wider use (previously being restricted to use by the Gilberd School only) is not considered to have a detrimental impact on the character of the area, residential amenity, highway safety, or air quality subject to the retention of the remaining conditions of planning permission 170369.

## **17.0 Recommendation to the Committee**

17.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

### **Time Limit**

1. ~~The development hereby permitted has commenced and there is no time limit for the start of development.~~

~~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.~~

The development has commenced.

### **Approved Drawings**

2. The development shall be in accordance with the details shown on the submitted Drawing Numbers 001 Revision C, 100, received on 15th October 2013, and drawing 200 Revision A, received on 9th February 2017.

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

### **Replacement Hard Court**

3. ~~The replacement hard court shall be provided and made available for use in accordance with planning permission 131098.~~

~~Reason: In order to compensate for the loss of community sports facilities in the siting of the sports hall on existing outdoor hard courts.~~

Replacement hard court provided under planning permission 131098.

### **Hours of Use**

4. The sports hall shall not be used outside of the following times:

Weekdays: 0800-2200

Saturdays: 0800-2200

Sundays: 0900-1700

Public Holidays: Not at all.

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.

### **External Lighting**

5. No additional external lighting fixtures shall be constructed, installed or illuminated until details have been submitted to and approved, in writing, by the Local Planning Authority. Thereafter, no lighting shall be constructed or installed other than in accordance with those approved details. Any approved external lighting shall be turned off when the building is not in use. Reason: To reduce the risks of any undesirable effects of light pollution

### **Noise from Plant, Equipment, and Machinery**

6. Noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises when measured in accordance with the current version of British Standard 4142.

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

### **Planting**

7. The planting shown on drawing 102 Rev B ('Proposed Block Plan') shall be fully implemented within the first planting season from the date of planning permission 170369, being 17<sup>th</sup> May 2017. The planting shall be maintained for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

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

### **Retention of Existing Trees and Hedgerows**

8. All existing trees and hedgerows shall be retained, unless shown to be removed on the approved drawing. All existing trees and hedgerows shall be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

Reason: To safeguard the continuity of amenity afforded by existing trees and hedgerows.

### **Ecology**

9. The development shall be carried out in accordance with the recommendations set out in the Landscape Planning Ltd Preliminary Ecological Appraisal, dated April 2013, unless the Local Planning Authority agrees in writing to a variation.

Reason: In order to prevent disturbance to protected species and to enhanced bird and bat habitat.

### **Removed Condition**

10. This condition has been removed by virtue of this planning permission.

### **Access and Egress to the Building**

11. Access and egress to the building shall be via the main entrance only. All other external doors shall be kept closed at all times when the building is in use (except in the case of an emergency).

Reason: To ensure that the permitted development does not harm the amenities of the area by reason of undue noise emission.

### **Use of the Building for Sporting Activities Only**

12. The building shall be used for sporting activities only and not used for music events or similar activities.

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 or disturbance as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

### **Noise Levels of Background Music or Amplified Sound**

13. Any background music or amplified sound (announcements) played on the premises shall not exceed 0dB(A) above the background levels determined at all boundaries near to noise-sensitive premises when measured in accordance with the current version of British Standard 4142.

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

## **18.0      Informatives**

18.1      The following informatives are also recommended:

### **ZTB - Informative on Any Application With a Site Notice**

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.