



Application No: 151898

Location: Bypass Nurseries, Dobbies Lane, Marks Tey, Colchester, CO6 1EP

Scale (approx): 1:1250

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Committee Report

Agenda item

7

To the meeting of **Planning Committee**
on: **3rd December 2015**
Report of: **Head of Professional/Commercial Services**
Title: **Planning Applications**

7.1 Case Officer: James Ryan Due Date: 01/12/2015

MAJOR

Site: Bypass Nurseries, Dobbies Lane, Marks Tey, Colchester, CO6 1EP

Application No: 151898

Date Received: 1 September 2015

Agent: Mr Ben Willis, Wingfield Planning

Applicant: Mr J Fenwick

Development: Change of use of polytunnel and area of hardstanding to B8 storage

Ward: Marks Tey

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it is a major application that has received material planning objections.

2.0 Synopsis

2.1 The key issues explored below are the impact the scheme will have on the Highway network, on neighbouring amenity and on the countryside.

2.2 It is concluded that these are acceptable and permission is recommended.

3.0 Site Description and Context

- 3.1 The application site comprises part of the wider grounds of ByPass Nurseries Ltd. This takes the form of a substantial collection of buildings all of permanent structure.
- 3.2 The precise application site comprises one of the polytunnels and an area of hardstanding directly adjacent to it. The surrounding land uses are residential to the north, commercial employment to the east, and open countryside to the south and west.
- 3.3 Vehicular access is provided onto Old London Road, which then links to the A120 and the A12.

4.0 Description of the Proposal

- 4.1 As set out in the planning statement, permission is sought to change the use of one of the polytunnels and an area of hardstanding to B8 storage. With regard to the polytunnel this would involve the replacement of the encasing with metal sheeting. The doors to the polytunnel would also be altered to a more secure roller shutter style.
- 4.2 Along with internal storage it is proposed to create an area of external storage directly adjacent. This would be sited upon an existing area of hardstanding.

5.0 Land Use Allocation

- 5.1 The site is previously developed but is located in the defined countryside in planning policy terms.

6.0 Relevant Planning History

- 6.1 The application site and the surrounding land within which it is set have a long historic use as a garden nursery under the ownership of ByPass Nurseries Ltd. Much of this history is of little relevance to this application; however the following historic applications are of some relevance:

Application 87/0820 – Planning permission approved for the change of use of a redundant nursery building to workshop for servicing and repair of cars and light commercial vehicles.

Application 90/1754 – Outline permission refused for the erection of a motorist lodge, restaurant, service station and shop and highway works to form improved access and egress to A12.

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
- SD2 - Delivering Facilities and Infrastructure
- CE3 - Employment Zones
- UR2 - Built Design and Character
- TA4 - Roads and Traffic
- TA5 - Parking
- ENV1 - Environment
- ENV2 - Rural Communities

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

- DP1 Design and Amenity
- DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
- DP8 Agricultural Development and Diversification
- DP9 Employment Uses in the Countryside
- DP17 Accessibility and Access
- DP19 Parking Standards
- DP20 Flood Risk and Management of Surface Water Drainage
- DP21 Nature Conservation and Protected Lanes

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:

- Vehicle Parking Standards
- Sustainable Construction
- External Materials in New Developments

8.0 Consultations

8.1 Environmental Protection – No objection.

8.2 Landscaping Officer – No objection subject to additional landscaping secured via condition.

8.3 Planning Policy –

The proposal lies outside the settlement boundary of Marks Tey and adjoins an Employment Zone. The site's location between the A12 and A120 is not an advantage given the difficulties of accessing the main roads from side roads, but the highway authorities do not appear to have raised any concerns on this point.

Policy DP5 provides for the safeguarding of sites and premises currently used or allocated for employment purposes. Although the use of the site as a commercial nursery does not fall within the B use class, the Core Strategy includes *sui generis* uses in its list of Employment Zone uses. It is accordingly accepted that the site served an employment function in the past and that retention of jobs on the site would be desirable. The re-use of buildings on the site is also a positive feature of the proposal.

It is however, a concern that the proposal covers only a part of the former employment site and that no information is provided on plans for the longer term use of the site as a whole. The proposal is thus considered to be acceptable as a pragmatic short-term re-use of existing buildings which will retain jobs for current employees and does not pre-empt a more comprehensive redevelopment scheme in future.

8.4 Network Rail – No comment to date.

8.5 Highways England – Offer no objection.

8.6 Highway Authority – Having regard to the fact that all access to this site is via the trunk road network (A12, and A120), this Authority does not wish to submit a formal recommendation and defers to the Highway Agency (Highways England) as the maintenance authority.

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

9.0 Parish Council Response

9.1 The Parish Council have stated that “at a meeting of the Parish Council on 21 September 2015 it was resolved that the Council would object to the application in view concerns relating to increased traffic movements”.

10.0 Representations

10.1 One observation and one objection was received. They stated:

- I would like to see the number of vehicle movements restricted, with none at night.

- I object to this application due to the increased traffic volumes on a narrow and already dangerous road that is unsuitable for anything larger than a long wheelbase Transit type van. Vehicular traffic from IWJS is already causing access and near-miss accident issues and any increased traffic volumes will merely serve to make a dangerous situation worse.

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

11.0 Parking Provision

- 11.1 The site has ample space for on-site parking and therefore this is not considered to constitute a restriction on this development.

12.0 Open Space Provisions

- 12.1 This scheme does not generate any open space requirements.

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

- 14.1 This application is classed as a "Major" application and therefore there was a requirement for it to be considered by the Development Team. It was considered that Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990. The Obligations that would be agreed as part of any planning permission would be:

- No obligations.

15.0 Report

The Principle of the Development

- 15.1 In planning policy terms this scheme is located in the defined countryside. Commercial development such as B8 storage uses are usually directed towards the defined settlement limits and in particular towards dedicated Employment Zones such as Severalls Industrial Park.
- 15.2 In this instance the site comprises part of a former nursery. The large polytunnel buildings are virtually empty (apart from a small amount of informal storage). They are more like large plastic greenhouses than polytunnels. They are significantly more substantial than the polytunnels one may expect to see on a temporary basis in more rural parts of the district.

- 15.3 On that basis it is considered that the polytunnels are buildings that are capable of reuse. However they are proposed to be re-clad in metal sheeting. This raises the issue of whether the buildings are actually proposed to be reused or are in fact being rebuilt.
- 15.4 The applicant maintains that, although the walls and the roof of the buildings are being replaced, as it is on a like-for-like basis in terms of shape and size, with the plastic material replaced with metal, this does not constitute a full demolition and rebuild as all of the internal supporting structure will be retained. On balance this is accepted and on that basis this scheme does constitute the useful reuse of rural buildings.
- 15.5 In many ways the rather lightweight manner in which the building structures are being improved helps the applicant's case. It will not constitute such an investment that it is reasonably likely to prejudice any possible future, more comprehensive use for the wider site.
- 15.6 The scheme proposes a storage facility with some internal and some external storage. The planning statement calls the use 'private storage' and it is understood that the units will be used on a personal 'self-store' basis. The scale of the proposal does not lend itself to a large scale commercial B8 use.
- 15.7 Added to this is the strong steer in the NPPF and PGG for economic development. Whilst there is no end user at the moment, it constitutes economic development and is likely to produce future employment opportunities. In this regard the agent has clarified the following:
- "There are currently three full time staff employed on site that will be retained rather than be made redundant if permission is refused. In respect of additional employment there will be a potential increase of at least four full time jobs in the next three years".
- 15.8 It is also suggested that the opening hours are restricted so the use is not open through the night when the residents of the Old London Road are most likely to enjoy less traffic noise.
- 15.9 On that basis the scheme is considered to be acceptable in terms of principle.

Design and Layout

- 15.10 In design terms this scheme proposed limited changes to the existing building. The recladding will not appear as a significant visual change. The external storage will be screened behind an existing hedge and tree belt which will be bolstered by additional planting secured via a landscaping condition. It is suggested that a condition restricting the height of the external element of the storage to no more than 3 metres above the existing concrete hardstanding is imposed to prevent the scheme becoming excessively visually prominent.

Scale, Height and Massing

- 15.10 The scheme raises no issues in this regard.

Impact on the Surrounding Area

- 15.12 The scheme raises no issues in this regard.

Impacts on Neighbouring Properties

- 15.13 The use of the site does not appear to raise any neighbouring amenity issues. It is relatively isolated from neighbours. As the proposed use is one of storage as opposed to storage and distribution it is not envisaged that the use will generate a great deal of day to day activity on site.
- 15.14 The neighbours' concerns appear to come from a perception of increased traffic movements. It must be remembered that this site has a historically lawful *sui generis* nursery use. The neighbours have enjoyed little traffic generation from this site as over the past few years the use has been very limited. The historic use has not been abandoned and could be reinstated or even intensified at any time. As set out above this could include HGV movements which are unlikely to be associated with a storage use of the scale proposed.
- 15.15 The dwellings most likely to be affected are located close to, or directly face, the A12 Trunk Road, a national distributor of regional importance that carries very significant levels of HGV's day and night. It is therefore concluded that the scheme will not generate traffic movements that would be demonstrably harmful to neighbouring amenity.

Amenity Provisions

- 15.16 This scheme does not generate any amenity provisions.

Highway Issues

- 15.17 Both of the representations and the Parish comments are concerned with the scheme due to the impact on the Highway network. The Highway Authority (Essex County Council) has not commented due to the proximity to the A12 Trunk road as in instances such as this they defer to Highways England. Highways England has no objection to the scheme.
- 15.18 The Planning Statement notes that the existing *sui generis* nursery use generated between two and four HVG movements a day. Due to the scale of the storage use proposed it is not envisaged that this scheme will generate HGV movements.
- 15.19 There is no opportunity for this scheme to realistically cause an intensification of traffic to the northwest (through the Long Green/Jay's Lane area) as the former level crossing has been removed, replaced with a footbridge and the road blocked to vehicular traffic. This means that cars or vans will arrive at the site either via the Old London Road or directly off of the A12. It is noted that there is direct access to/from the northbound A12 carriageway serving the large commercial site (housing CF Anderson Timber Products and others) to the northeast which has a dual access point that crosses the Old London Road and connects directly to the A12.
- 15.20 Notwithstanding the concerns raised by the Parish and residents as the scheme has generated no objections from Highways England it is not considered that the scheme

would be demonstrably harmful to the interests of highway safety. Therefore a refusal on that basis would not be reasonable.

Other Matters

- 15.21 As a brownfield site with good links to the open countryside a Phase 1 Habitat Survey has been requested and provided. It did not consider the site or buildings to be used by protected species and on that basis this scheme is not considered to be demonstrably harmful to the interests of ecology.

16.0 Conclusion

- 16.1 This scheme constitutes an acceptable re-use of a previously developed nursery site. It is a relatively low key use that is not of a scale that will prevent the future beneficial redevelopment of the wider site, nor will it be materially harmful to neighbouring or visual amenity. The scheme is not demonstrably harmful to highway safety. Therefore an approval is warranted.

17.0 Recommendation

- 17.1 APPROVE subject to the following conditions

18.0 Conditions

1 - Time Limit for Full Permissions

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

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

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers Location Revision A and drawing 01.

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

3 - *Premises Only for a Specific Use

The premises shall be used for private storage or self-store purposes only as defined in the Use Class Order and for no other purpose (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) (Amendment) Order 2005, or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that Order, with or without modification.

Reason: For the avoidance of doubt as to the scope of the permission as this is the basis on which the application has been considered and any other use would need to be given further consideration at such a time as it were to be proposed. For example a storage and distribution use would need further consideration due to the implications on the highway network and neighbouring amenity.

4 - *Removal of PD - Enlargement of Industrial and Warehousing

Notwithstanding the provisions of Article 3, Schedule 2, Part 7 of the Town and Country Planning (General Permitted Development) (England) Order 2015 no enlargement or extension to the polytunnel building shall be erected or carried out except in accordance with plans showing the siting and design of such enlargement or extension which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: In order to allow further consideration to the impacts that such a development may cause on this site, at the time that any a proposal comes forward.

5 - *External Storage Only Within Shown Areas

No goods, materials or equipment shall be stored, stacked or deposited on the site, except on the land indicated for that purpose marked with hatching and annotated as "External Storage" on the approved Drawing 'Location Plan Revision A'.

Reason: This is the basis indicated within the submitted application and upon which the proposal has been considered and any further external storage would need further consideration at such a time as it were to be proposed as it could cause visual harm to the surrounding areas.

6 - *External Storage Limited in Height

No goods, materials or equipment shall be stored, stacked or deposited externally on the site to a height exceeding 3 metres as measured from any immediately adjacent ground level.

Reason: The external storage of goods in excess of this height would be visible and would have a harmful visual impact on the surrounding areas.

7 -Non-Standard Condition/Reason

The use hereby approved shall not operate, shall not be open to customers, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times:

Mondays - Fridays: 7am to 11pm

Saturdays: 7am to 11pm

Sundays and Public Holidays: 7am to 9pm

Reason: For the avoidance of doubt as to the scope of the permission and in order to ensure a reasonable level of protection to the amenities of neighbours and the surrounding area in general.

8 - Materials to be Agreed

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

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

9 - Non-Standard Condition/Reason

No works shall take place until a scheme of soft landscaping works for the publicly visible parts of 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, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission.

Reason: In order to ensure that there is a sufficient landscaping scheme for the relatively small scale of this development. In particular the A 17m section of native hedging needs to be proposed directly to the northwest of the site entrance and extending along the boundary to meet the existing hedge, to help complement existing landscape structure, screen the development and soften the street scene.

10 - Non-Standard Condition/Reason

The hedge planting 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 - No External Light Fixtures

No external lighting fixtures shall be constructed, installed or illuminated at any time.

Reason: To ensure that there are no undesirable effects of light pollution

12 - Non-Standard Condition/Reason

No site clearance works shall take place until the ecological measures set out in paragraphs 6.10, 6.11, 6.13, 6.14 of the submitted Extended Phase 1 Habitat Assessment have been carried out in full in precise accordance with the methodology set out in the report. The biodiversity enhancements listed in 6.29 to 6.32 of the same report must be installed within six months of the use becoming operational.

Reason: To ensure that the proposal does not cause harm to protected species and to ensure the biodiversity enhancements suggested by the submitted report are carried out.

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 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.