

# Planning Committee

Council Chamber, Town Hall  
22 August 2013 at 6.00pm

## **This 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

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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 Attending Meetings and "Have Your Say" at [www.colchester.gov.uk](http://www.colchester.gov.uk)

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## Material Planning Considerations

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

The following approach should be taken:

- 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.

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 Colchester’s own Local Plan documents
- Government guidance, case law, appeal decisions, planning history, “fallback” positions
- Design, scale, bulk, mass, appearance and layout
- Protection of residential amenities (light, privacy, outlook, noise or fumes)
- Highway safety and traffic issues, including parking provisions
- Heritage considerations such as archaeology, listed buildings or a conservation areas
- Environmental issues such as impacts on biodiversity, trees and landscape, flooding
- Economic issues such as regeneration, job creation, tourism
- Social issues such as affordable housing, accessibility, inclusion, education, recreation
- The ability to use planning conditions or obligations to overcome concerns

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 including 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
- unless they are “exceptional”, personal circumstances, including hardship

Strong opposition to a particular proposal is a common feature of the planning process. However, in the absence of substantial evidence of harm or support from the Development Plan is unlikely to carry much weight. The same principles apply in reverse where there is strong support for a proposal that is contrary to the Development Plan and there is harm (or lack of substantially evidenced benefit).

Inspectors and Courts (see *North Wiltshire DC V SoS & Clover, 1992*) have established that precedent can be a legitimate consideration, but it is not enough to have a “general anxiety” and there has to be evidence of a real likelihood that similar applications (in all respects) will be submitted.

### **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 and Considering Reasons for Refusing Applications

The Planning System is designed to manage development, facilitating (not obstructing) sustainable development of a satisfactory standard. The National Planning Policy Framework reinforces this by 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. However, not all development is acceptable and almost every permission will require planning conditions in order to make them acceptable. Some will remain unacceptable and should therefore be refused. Circular 11/95 (The Use of Conditions in Planning Permissions) and Circular 03/2009 (Costs Awards In Appeals And Other Planning Proceedings) set out advice on the government’s policy regarding the appropriate use of planning conditions and when decision makers may make themselves vulnerable to costs being awarded against them at appeal due to “unreasonable” behaviour. They derive from an interpretation of court judgments over the years and, although not planning law, are important material considerations. A decision to set them aside would therefore need to be well-reasoned and justified.

In terms of the Planning Committee, Circular 03/2009 makes it clear that “*Planning authorities 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*”.

The power to impose conditions is an important material consideration in any determination. Circular 03/2009 states that “*Whenever appropriate, planning authorities 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. *The Circular adds that “A planning authority refusing planning permission 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.”* Advice on the need to consider whether conditions may make a proposal acceptable which would be otherwise unacceptable is also to be found in Circular 11/95.

Any planning condition imposed on a development must be necessary, relevant to planning, relevant to the development to be permitted, reasonable, precise and enforceable. Unless conditions fulfil these criteria, which are set out in Circular 11/95, 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, Circular 03/2009 makes it clear that planning authorities must “*properly exercise their development control responsibilities, 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 public authorities act fairly and reasonably in executing their decision making functions, and that it is evident to all that they so do.

# COLCHESTER BOROUGH COUNCIL PLANNING COMMITTEE 22 August 2013 at 6:00pm

## Members

Chairman : Councillor Theresa Higgins.  
Deputy Chairman : Councillor Helen Chuah.  
Councillors Peter Chillingworth, Stephen Ford, Sonia Lewis, Cyril Liddy, Jackie Maclean, Jon Manning, Philip Oxford and Laura Sykes.

## Substitute Members

: All members of the Council who are not members of this Committee or the Local Plan Committee and who have undertaken the required planning skills workshop. The following members meet the criteria:-  
Councillors Nick Barlow, Lyn Barton, Kevin Bentley, Mary Blandon, Mark Cable, Nigel Chapman, Barrie Cook, Nick Cope, Beverly Davies, John Elliott, Andrew Ellis, Annie Feltham, Bill Frame, Ray Gamble, Marcus Harrington, Dave Harris, Julia Havis, Jo Hayes, Pauline Hazell, Peter Higgins, Brian Jarvis, Margaret Kimberley, Michael Lilley, Sue Lissimore, Colin Mudie, Nigel Offen, Gerard Oxford, Will Quince, Lesley Scott-Boutell, Peter Sheane, Paul Smith, Terry Sutton, Colin Sykes, Anne Turrell, Dennis Willetts and Julie Young.

## Agenda - Part A

(open to the public including the media)

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. Could 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.

## Pages

### 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!**

The Chairman to invite members of the public to indicate if they wish to speak or present a petition on any of 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.

## **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 and to give reasons for the urgency.

## **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 judgment 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. Minutes**

To confirm as a correct record the minutes of the meeting held on 1 August 2013.

## **7. Planning Applications**

**1 - 6**

In considering the planning applications listed below, the Committee may chose 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.

1. 131325 - Berryfields Firstsite Development, Queen Street, Colchester (Castle)

**7 - 15**

Change of use of temporary bus station to Playing field. (Change to D1 / D2 use) Part removal of shelters, retaining wall and other elements of street furniture. Extension of exisiting playing field including new earthworks, boundary enclosure and soft landscape works.

2. 130939 - 41 Priory Street, Colchester (Castle)

**16 - 33**

Demolition of existing works buildings, Change of Use from Light Industrial to Residential and erection of 2no. semi-detached houses and 7.no apartments.

3. 130996 - Chrysmond Croft, Moor Road, Great Tey (Great Tey)

**34 - 42**

Erection of single storey 3-Bed dwelling including new single garage, widening of existing vehicular access and provision of new vehicular access to existing dwelling.

**8. Completion of S106 Agreement // Application No. 120412 - Local Centre at Butt Road, Colchester (Christ Church) 43 - 46**

Please see the attached report of the Head of Commercial Services.

**9. Agreements on Land at Rowhedge Wharf (East Donyland) 47 - 50**

Please see the attached report of the Head of Commercial Services.

**10. Cooling Off Periods 51 - 62**

Please see the attached report of the Head of Professional Services.

**11. Exclusion of the Public**

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).



**PLANNING COMMITTEE  
1 AUGUST 2013**

*Present :-* Councillor Theresa Higgins\* (Chairman)  
Councillors Peter Chillingworth\*, Helen Chuah\*,  
Stephen Ford, Sonia Lewis\*, Cyril Liddy\*,  
Jackie Maclean\*, Jon Manning\*, Philip Oxford and  
Laura Sykes\*

(\* Committee members who attended the formal site visit.)

**36. Minutes**

The Minutes of the meetings held on 11 July 2013 were confirmed as a correct record.

**37. 120110, 120112, 120115, 120859, 121700 - Formerly Jewsons Ltd, Hawkins Road, Colchester**

The Committee considered applications for the change of use of commercial space to residential units and for the reinstatement of the fifth floor to Block D and associated residential units at that level. The Committee had before it a report and amendment sheet in which all the information was set out.

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

*RESOLVED (UNANIMOUSLY) that -*

(a) subject to the Environment Agency lifting their objection and the completion of the Section 106 Legal Agreement within six months of the date of the Committee meeting to provide to following –

- five Affordable Housing Units; and
- nomination rights to the other housing units in Block D to be sold privately to a Registered Provider,

authority be delegated to the Head of Professional Services to approve the application, subject to the conditions set out in the report and amendment sheet.

(b) In the event that the Section 106 Legal Agreement is not signed within six months, authority be delegated to the Head of Professional Services to refuse the application.

**38. 130956 - Co-op Fiveways & Homemakers Site, Peartree Road, Stanway**

**Councillor T. Higgins and Councillor Liddy (in respect of their membership of the East of England Co-operative) declared a non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered an application for the variation of condition 25 of planning permission 111923 in order to vary the opening hours of Unit 4. The Committee had before it a report in which all the information was set out.

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

**39. 130858 - Colchester Wine Company, (Mixing Bowl), 117 Gosbecks Road, Colchester**

The Committee considered an application for the demolition of an existing retail unit and industrial building and the erection of a supermarket with associated car parking and re-aligned access. The Committee had before it a report and amendment sheet in which all the information was set out.

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

**40. 122238 - International Farm Unit, Hall Road, Tiptree**

The Committee considered an application for the removal of conditions 13 and 14 attached to planning permission 121071. The Committee had before it a report and amendment sheet in which all the information was set out.

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

**41. 130631 - Visitors Centre, Turner Road, Colchester**

The Committee considered an application for free standing entrance signage at the driveway to Highwoods Country Park. The Committee had before it a report in which all the information was set out.

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

**42. 131130 - Colchester Town Centre, St Botolphs Circus, Colchester**

The Committee considered an application for the removal or variation of conditions 2, 3, 12, 13, 14 and 15 of planning permission 111981 for the development of the town station approach area, including removal of the parking area, to form a new pedestrian space. Works include new paving, lighting and bespoke artwork for seating, guarding / gates and feature rails. The Committee had before it a report and amendment sheet in which all the information was set out.

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

#### **43. 131210 - 1 Launceston Close, Colchester**

The Committee considered an application for a single storey extension to create disabled facilities. The Committee had before it a report in which all the information was set out.

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

#### **44. 121949 - Highfields Farm, Highfields Lane, Messing**

The Committee considered an application for the construction of a 36.54 hectare solar park, to include the installation of solar panels to generate electricity, with transformer housings, security fencing and cameras, landscaping and association works. The Committee had before it a report and amendment sheet in which all the information was set out.

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

Mr Simon Osborn, Planning Officer, and Mr Adam John, Landscape Planning Officer, attended to assist the Committee in its deliberations and explained the several alterations to Conditions that had been included in the amendment sheet.

Ms Kate Innes, of The Old Rectory, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She explained that she was objecting, not to the principle of a solar park on the site but to the large size proposed, rural situation, visual impact and proposed access. She referenced the National Planning Policy Framework (NPPF), which stated that development should enhance an area. She made the point that the site would be 50 metres from a public footpath and that the proposed control room would be highly visible, with trees and hedgerows taking several years to become established. She requested that the control and converter room be moved.

Ms Peta Donkin, of Pegasus Planning Group, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application.

She explained that local residents had been consulted on the development, which had resulted in a reduction in size to 29 hectares. She emphasised that existing hedgerows would be used to minimise visual impact, with new hedgerows being introduced where this is not possible. She indicated that environmental diversity would be improved on the site, in this manner. She explained that the Parish Council had removed their objections and that a survey would be undertaken of Windmill Hill and Marlborough Cottage to assess traffic movement.

The Planning Officer explained that, in accordance with the NPPF, he believed that the removal of two fields from the development had made the proposal acceptable and, in the long term, the site would be improved. He stated that there would be visual impact from the site but all that could be done had been done to keep this at a minimum.

The Committee recognised that this was the first application of its type in the Borough and that several alterations had been made to make it more acceptable for residents. It was suggested that this proposal was a step in the right direction in relation to environmental issues and, although the residents concerns were understood, significant mitigation measures had been achieved.

In response to questions raised regarding construction times the Planning Officer clarified that HGV delivery was limited to between 10:00am and 4:00pm and that other works could take place between 8:00am and 6:00pm, Monday to Friday and 8:00am to 1:00pm Saturdays. He also explained that conditions had been suggested in order to achieve the best position for the control room.

In order to address concerns about traffic, the Planning Officer suggested that wording stipulating the use of advanced warning signs could be added into the Informative from the Highways Authority.

*RESOLVED* (UNANIMOUSLY) that subject to no objections being raised by National Grid, the Head of Professional Services be authorised under delegated powers to grant planning permission subject to the conditions set out in the report and amendment sheet and an addition to the Informative regarding the use of advanced warning signs.

#### **45. 131131 - Land Adj to 20 Swan Grove, Chappel**

The Committee considered an application for the erection of 2 no. 3 bed affordable houses with associated parking. The application was a resubmission of planning application 121486. The Committee had before it a report and amendment sheet in which all the information was set out.

Mr David Whybrow, Principal Planning Officer, attended to assist the Committee in its deliberations and explained that he was satisfied that there was no net loss in overall car parking spaces.

Ms Hazel Oliver addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She stated that in her

opinion the development would result in an overall loss of 13 car parking spaces and that cars were already parking in the spaces proposed, so no improvements would be seen. She suggested that the lack of allocated parking would cause problems and that vehicles would be forced to park closer to the bend in the road. She urged the Committee, if they could not make the situation better, to not make it worse.

Ms Charmaine Biggle addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. She stated that similar schemes introduced in Essex had received positive feedback. She said the development provided good space at a low cost and would remain low in cost. Following a previous refusal of permission, the issues raised had been addressed and the Committee's comments taken on board.

The Committee admitted that there was a problem with parking on the estate generally, however believed this application was providing more than adequate parking. A Member of the Committee highlighted an issue involving a gap between the application site and the adjoining dwelling on land owned by the Council which was causing a security problem for number 20 Swan Grove.

The Principal Planning Officer explained that the passage was gated and could be locked, as it wasn't providing access to anywhere. Mr Andrew Tyrrell, Planning Manager, explained that, when the sites were first surveyed, it had been assumed that this gate belonged to the neighbour and there had been an encroachment. However, if this were not the case, as it had transpired, then it seemed that all the parties were willing to resolve the situation. It was suggested that the matter was not planning related and the issue could be raised with Colchester Borough Homes for them to resolve outside of the planning application.

*RESOLVED* (NINE voted FOR, ONE ABSTAINED from voting) that the application be approved, subject to the conditions set out in the report and amendment sheet.

#### **46. 131043 - Clear View, Colchester Road, Chappel**

The Committee considered an application for a single storey rear extension, loft conversion including roof alterations and the formation of front and rear roof dormers. These were revisions to the design of a previous planning application which had been granted permission. 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 proposal upon the locality and the suitability of the proposal for the site.

Mr David Whybrow, Principal Planning Officer, attended to assist the Committee in its deliberations.

Mrs Rampley addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. She explained that the application had been submitted in order to address the objections raised by her

neighbours. She hoped that the flat roof of the proposed extension would alleviate their concerns. She also drew attention to the fact both neighbours had extended their properties on plots of about the same size.

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

#### **47. Request to Amend the Scheme of Delegation to Officers Following Changes to the General Permitted Development Order**

The Committee considered the report of the Head of Professional Services requesting that the Committee agree that all applications for a determination as to whether the prior approval of the Authority is required would be exempt from the Member Call-In process. The Committee had before it a report in which all the information was set out. A summary of the changes to the General Permitted Development Order on 20 May 2013 was included in Appendix A to the report.

Mr Andrew Tyrell, Planning Manager, attended to assist the Committee in its deliberations.

The Committee suggested that this was a sensible proposal but requested clarification regarding what decisions Officer would be making and whether Ward Councillors could register any objections.

The Planning Manager explained that only adjoining land owners could object and that only issues of amenity would be taken into account when considering applications, which were mainly technical. He clarified that Parish Councils would not be consulted and that Ward Councillors could be notified, but it would be for information only.

*RESOLVED* (UNANIMOUSLY) that all applications for a determination as to whether the prior approval of the Authority is required under the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 be exempt from the Member Call-In process.



**Application No:** 131325

**Location:** Berryfields Firstsite Development, Queen Street, Colchester, Essex

**Scale (approx):** NOT TO SCALE

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## Committee Report

Agenda item

**7**

To the meeting of **Planning Committee**  
on: **22 August 2013**  
Report of: **Head of Professional/Commercial Services**  
Title: **Planning Applications**

**7.1 Case Officer: Sue Jackson Due Date: 02/10/2013**

**MAJOR**

**Site: Berryfields Firstsite Development, Queen Street, Colchester, Essex,**

**Application No: 131325**

**Date Received: 3 July 2013**

**Agent: AH Landscape Consultants Ltd**

**Applicant: Colchester Borough Council**

**Development:** Change of use of temporary bus station to Playing field.( change to D1/D2 use) Part removal of shelters, retaining wall and other elements of street furniture. Extension of existing playing field including new earthworks, boundary enclosure and soft landscape works

**Ward: CAS**

**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 the applicant is Colchester Borough Council. Whilst the application is classed as major development due to the size of the site no objections have been received and the application has not been "called-in".

### **2.0 Synopsis**

2.1 The key issues explored below are the principle of the change of use in policy terms and its impact on archaeology and historic features.

### **3.0 Site Description and Context**

3.1 The application site has an area of 0.69 hectares, 0.34 hectares former bus station and 0.35 existing green space. The north boundary abuts the Firstsite building, the east The Mulberry Tree Centre, the south the Roman Wall next to Priory Street car park and the west other land previously forming part of the bus station. The part of the site comprising the former bus station is a flat concrete area with bus shelters and other structures the other part of the site is grassed and is used as playing field. Other land close to site is also owned by the Council and the Firstsite building is leased from CBC, and to the east is owned by ECC.

### **4.0 Description of the Proposal**

4.1 The main element of the proposal involves the change of use of land from bus station to a D1/D2 use. The D1 use will be used as School playing field. Outdoors sports/recreation use falls within Use Class D2. (D2 is defined as assembly and leisure uses including outdoor sports and leisure uses.

4.2 Existing structures comprise bus shelters, lighting columns, signage and other street furniture and will all be removed. A 2.4 metre high security railing and retaining wall will be constructed on the existing concrete slab along the western boundary of the site. Railings are proposed to close off the boundary with the town wall similar to the railing already existing on site. A section of wall adjacent to and within the 10 metre zone of the town wall will be reduced in height, however, all foundations and construction below ground will be untouched. The remaining sections of the wall will be removed. An existing rock filled gabion retaining wall adjacent to the Firstsite building will be retained and covered over by the new earthworks.

4.3 There is no pedestrian access on to the site for the general public and the open space use will be controlled by the Council. Access for Thomas More School will be available via the existing steps and gate on the southern boundary. A second access point is provided via new gates adjacent to the Firstsite building on the northern site boundary. There is no vehicular access onto the site. Access for occasional maintenance vehicles and grass cutting machines will be via the double opening gates adjacent to the Firstsite building on the northern boundary.

4.4 Clean top soil will cover the concrete area and the area will be grassed together with other planting of this area and the existing playing field. Where the existing playing field meets the former bus station soil will be used to infill and grade the edge to provide a level surface across the two areas of land.

### **5.0 Land Use Allocation**

5.1 Regeneration Area, Mixed use Area, Conservation Area. The site abuts a scheduled ancient monument and is immediately next to the Roman town wall

### **6.0 Relevant Planning History**

6.1 The land originally formed part of the garden of East Hill House. It was developed as part of the bus station in 1960/61. The bus station closed in 2006/7 and a smaller bus station operated until it closed in 2012.

## **7.0 Principal Policies**

7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Government's primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and an environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

The Practice Guide that accompanied PPS5 Planning for the Historic Environment remains extant and provides non-statutory guidance concerning the impact of development on the significance of heritage assets.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) 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
- CE2 - Mixed Use Centres
- UR1 - Regeneration Areas
- UR2 - Built Design and Character

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

- DP1 Design and Amenity
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP4 Community Facilities
- DP6 Colchester Town Centre Uses
- DP10 Tourism, Leisure and Culture
- DP14 Historic Environment Assets

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

- SA CE1 Mixed Use Sites
- SA TC1 Appropriate Uses within the Town Centre and North Station Regeneration Area

7.5 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

- Community Facilities adopted September 2009
- External Materials in New Developments
- Better Town Centre Plan Colchester adopted December 2012
- Town Centre Public realm Strategy adopted June 2011

## **8.0 Consultations**

8.1 Natural England has no comment

8.2 Highway Authority raises no objection

8.3 The Archaeology Officer comments as follows:-

“The site in question abuts two areas designated as scheduled monuments, including the town wall, and CBC has applied to English Heritage, and received, scheduled monument consent for this proposal.

There would appear to be minimum ground disturbance associated with this scheme; for example the existing drainage system is to be utilised and the concrete base of the bus station is to remain in place.

As this site is located within a sensitive archaeological area in the heart of the historic town and where past small scale excavation, test pits and chance discoveries have revealed extensive Roman structural features, I would recommend that if consent is granted standard archaeological condition ZNN is imposed.”

8.4 Landscape Officer has no objection subject to conditions

8.5 English Heritage comment as follows:-

“Thank you for your letter of 16 July 2013 notifying us of the application for planning permission relating to the above site. We do not wish to comment in detail, but offer the following general observations.

English Heritage Advice

The proposals will positively contribute to the setting of the Roman Town Wall, the landscape setting of the Firstsite building and the amenity of the school playing field. There will be no material impact on the scheduled monument, or undesignated buried archaeological features.

Recommendation

We would urge you to address the above issues, and recommend that the application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice. It is not necessary for us to be consulted again.”

8.6 CBC Contaminated Land officer has commented that given the site’s previous uses a Phase 1 Desk Study and site walk over is required. This work is in hand and it is anticipated a report will have been submitted and considered prior to the committee meeting.

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 None received

## **11.0 Parking Provision**

11.1 N/A

## **12.0 Open Space Provisions**

12.1 This issue will be discussed in the main body of the report

## **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 no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

## **15.0 Report**

### Background information

15.1 The Regeneration Team has provided the following clarification:-

“Colchester Borough Council and Essex County Council signed an agreement in July 2007. Transaction eight of this agreement was a joint land use agreement between Colchester Borough Council, Essex County Council and the St Thomas More Primary School, Priory Street.

- Transaction eight stipulates that six months after the closure date of the temporary bus station the land, (including land forming the application site) would be included in the joint land use agreement until 31 December 2036. At this point the land could revert to Colchester Borough Council or remain as part of the agreement on a year to year basis or until terminated by one of the parties.
- As part of the agreement above the Borough Council assumed the responsibility for the entire cost of the removal of a wall and for rendering the surface to ensure it is suitable for use by the school as a playing field.
- St Thomas More Primary School will have exclusive use of this area; this is the whole Berryfield grassed area, from Monday to Sunday during school terms for educational uses.
- The Borough Council will have exclusive use of the area Monday to Sunday outside of term time for public open space
- The Borough Council may apply to the school for use of the land at other times at the school's discretion”

## Impact on surrounding area and neighbouring properties

- 15.2 Since the closure of the bus station the area now has an unkempt appearance. This proposal to use it for school educational use and public open space use is to be welcomed. It will make a positive contribution to the setting of Firstsite and enhance the character and appearance of the conservation area and setting of the roman wall by covering the concrete surface with soil and introducing an extension to a grassed landscaped space. It will have a positive impact on neighbouring properties.
- 15.3 Due to the archaeological importance of the site the concrete surface will not be removed. Clean soil will be brought onto the site. The soil will be retained by existing and proposed walls then grassed and planted. The area will in effect be a giant “planter”.
- 15.4 Soft landscaping on the former bus station site is limited to wildflower meadow planting adjacent to the roman wall. The existing playing field will also be landscaped with a larger wildflower area and shrub planting adjacent to the roman wall.
- 15.5 Outside the Firstsite building running around its south boundary is a path and a grassed bank sloping down to the boundary with the playing field and former bus station land.
- 15.6 The Town Centre Public Realm Strategy identifies regeneration areas as an opportunity to enhance the overall quality of the town centre public realm. Firstsite is identified as an “attractor” and the Firstsite open space as a key space in the town centre. The application proposal for a new green space in a strategic location therefore meets the aspirations of this report

## **16.0 Conclusion**

- 16.1 This proposal is to be welcomed it will enhance the character of the area and add a significant green space to an important location in the town centre within a regeneration area. Its use by the Council for open space purposes which in conjunction with Firstsite could be used for an exciting range of outside art and performance activities will encourage visitors to this part of the town.

## **17.0 Recommendation**

- 17.1 APPROVE subject to the following conditions

## **18.0 Recommended Reasons for the Decision**

- 18.1 YES - Reason for Approval (No Objections - Standard)  
The proposal accords with the relevant policies in the Statutory Development Plan (as set out above). Having also had regard to all material planning considerations, the Council is of the opinion that the proposal will not cause any significant harm to interests of acknowledged planning importance.

## 19.0 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 13.1695.01, 02, 03, 04 and 10 unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

### 3 - \*Full Landscape Proposals TBA

Prior to the commencement of development, full details of all landscape works shall have been submitted to and agreed, in writing, by the Local Planning Authority and the works shall be carried out prior to the occupation of any part of the development unless an alternative implementation programme is subsequently agreed, in writing, by the Local Planning Authority. The submitted landscape details shall include:

- PROPOSED FINISHED LEVELS OR CONTOURS;
- MEANS OF ENCLOSURE INCLUDING RETAINING WALLS;
- PROPOSED AND EXISTING FUNCTIONAL SERVICES ABOVE AND BELOW GROUND (E.G. DRAINAGE POWER, COMMUNICATIONS CABLES, PIPELINES ETC. INDICATING LINES, MANHOLES, SUPPORTS ETC.);
- RETAINED HISTORIC LANDSCAPE FEATURES;
- PROPOSALS FOR RESTORATION;
- PLANTING PLANS;
- WRITTEN SPECIFICATIONS (INCLUDING CULTIVATION AND OTHER OPERATIONS ASSOCIATED WITH PLANT AND GRASS ESTABLISHMENT);
- SCHEDULES OF PLANTS, NOTING SPECIES, PLANT SIZES AND PROPOSED NUMBERS/DENSITIES WHERE APPROPRIATE; AND
- IMPLEMENTATION TIMETABLES AND MONITORING PROGRAMS.

Reason: To ensure that there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development within its surrounding context in the interest of visual amenity.

Plus any conditions required by Environmental Control

## 20.0 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.

## **21.0 Positivity Statement**

21.1 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.



**Application No:** 130939  
**Location:** 41 Priory Street, Colchester, CO1 2QA  
**Scale (approx):** 1:1250

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**Case Officer:** Mark Russell      **Due Date:** 29/08/2013

**MINOR**

**Site:** 41 Priory Street, Colchester, CO1 2QA

**Application No:** 130939

**Date Received:** 4 July 2013

**Agent:** Mr David Barclay Riba

**Applicant:** Mr Simon Wood

**Development:** Demolition of existing works buildings, Change of Use from Light Industrial to Residential and erection of 2no. semi-detached houses 7no. apartments

**Ward:** Castle

**Summary of Recommendation:** Conditional Approval

## 1.0 Reason for Referral to the Planning Committee

- 1.1 This application has been called in to the Planning Committee by Councillor Barlow for the following reasons:

*Following discussions with residents and looking at the plans for this development, I have requested that this application be called in to be determined by the Planning Committee. I feel that while the site is suitable for development, the proposed development and the associated disruption it would cause to nearby residents are not suitable for this site. I would ask that councillors and officers request that the developer come back with a scheme that's more appropriate for the site and less likely to harm the amenity of neighbours.*

*To begin with, the proposed development has to be considered in the primary context of Priory Street, not The Dell or Nicholsons Grove. The lane on which it is situated is part of Priory Street and it will only be accessible through Priory Street, so it should be in the context of that street, especially the neighbouring houses on the lane, such as Laurel House and Nursery Cottage. Houses in this section of Priory Street are single dwellings, not blocks of flats, and development on this site should reflect that fact. As an aside, the developer refers to the private road as 'Watts Lane' but from conversations with residents, I'm not sure that this nomenclature is in common usage, with residents considering themselves as part of Priory Street.*

*The proposed block of flats will cause overshadowing to Laurel House and possibly Nursery Cottage as well. It will be a very large presence in the street scene in that area, drawing its cues from The Dell and Nicholsons Grove, not its neighbours. The proposed houses on the site are more in keeping with the style of the area. It seems clear that the proposed changes to the lane are required to make the development possible, yet to do this will damage the amenity of residents. The proposed resurfacing removes areas that are customarily used for parking by residents in the lane, and will thus displace this to neighbouring areas, adding to an already difficult parking situation. The proposal also seems to assume that various areas are unowned, and I would request that officers make detailed enquiries to the Land Registry and the building owners about the boundaries of Laurel House and Nursery Cottage, to ascertain if the assertions made in the application are correct. The proposal also appears to propose removing the laurel bushes from the side of Laurel House to make way for the new road, which would remove the privacy of the residents of that property, and may be in contravention of the planning permission for it. To reiterate, I am not against the principle of development on this site, and I believe that is the opinion of most residents in the area, but any proposed development needs to be better thought out to ensure it is in keeping with the needs of the area and doesn't cause any loss of amenity or disruption to existing residents.*

## **2.0 Synopsis**

- 2.1 The proposal for 2 x 2-bed dwellings and seven x 2-bed flats is described below. Consultation replies including those from nearby properties are then detailed. These objections, relating generally to issues of parking and access to the lane, as well as overdevelopment, loss of amenity and poor design are carefully considered.
- 2.2 It is acknowledged that access arrangements are restricted, but that they are achievable. Amenity is not generally negatively affected and whilst the design could be more sensitive to the area the proposal is, on balance, acceptable.

## **3.0 Site Description and Context**

- 3.1 The site comprises land at the former Watts stone-mason's. This is currently derelict, with some of the former buildings and stone slabs remaining *in situ* in the yard. To the front of the yard, and striking out towards Priory Street is an unmade lane, known to some as Watts Lane. To the south is the Nicholson's Grove housing development, to the east is the synagogue and spiritualist church to the west and north is The Dell, a flatted development for retired people. Also to the north is Laurel Cottage which was built on part of the Watts site within the last ten years.
- 3.2 The lane leads past the locally listed flint building Nursery Cottage and to Priory Street in the heart of Colchester Conservation Area 1 with a largely Victorian building stock. Opposite is the town wall, with Roman sections and bastions. Views of part of the site are available from Priory Street itself.

## **4.0 Description of the Proposal**

- 4.1 The proposal is to demolish the existing buildings and erect a residential scheme. This would comprise a pair of two-bedroom dwellings and a set of seven flats in two and three storey elements. Nine parking spaces, plus cycle parking, amenity space and some small allotments are also proposed.

## **5.0 Land Use Allocation**

- 5.1 Predominantly residential, Conservation Area, Potentially Contaminated Land, Area of High Archaeological Importance.

## **6.0 Relevant Planning History**

- 6.1 O/COL/03/0193 03/02/2003 –Outline Permission For Residential Development Approved- 02/10/2003.
- 6.2 O/COL/04/0718 - Detached house with garage. Approved 02/07/2004
- 6.3 F/COL/05/0746 - Erection of detached 4 bedroom house and garage. Refused 17/06/2005.
- 6.4 F/COL/05/1560 - Construction of a detached 4 bedroom house. Resubmission of F/COL/05/0746. Approved 09/12/2005
- 6.5 *These last three applications relate to the now built Laurel Cottage which was part of the original development site.*

## **7.0 Principal Policies**

- 7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Governments primary objective that there be “a presumption in favour of sustainable development”. There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) 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  
PR2 - People-friendly Streets  
TA1 - Accessibility and Changing Travel Behaviour

TA2 - Walking and Cycling  
TA4 - Roads and Traffic  
TA5 - Parking  
ER1 - Energy, Resources, Waste, Water and Recycling

- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):  
DP1 Design and Amenity  
DP12 Dwelling Standards  
DP14 Historic Environment Assets  
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  
DP25 Renewable Energy
- 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  
The Essex Design Guide  
External Materials in New Developments  
Cycling Delivery Strategy

## 8.0 Consultations

- 8.1 Environmental Control: No comments other than a construction method statement being requested.
- 8.2 Environmental Control (Contaminated Land): The submitted desk study report is satisfactory for Environmental Protection purposes. Some potential for contamination has been identified; however, based on the information provided, it would appear that the site could be made suitable for use, with the necessary investigative works (including the need for an appropriate asbestos survey prior to any demolition/site clearance) and revised risk assessment conditioned. Please see my comments from 26/6/13 (attached) for further clarification.
- Consequently, should permission be granted for this application, the Contaminated Land Officer would recommend inclusion of conditions (detailed at the end of this report):
- 8.3 Museum Resources: – A watching brief is required due to possible points of archaeological interest.
- 8.4 Design & Heritage Unit: - Over the years this scheme has slowly evolved into the application. There have been numerous engagements with the architect over time and the final scheme has some merit.

The arrangement on site has been led by a series of constraints but from these dictates a satisfactory arrangement has been achieved.

The scale and massing is largely acceptable. The relationship to the bungalow to the north is acceptable given that the relatively contemporary bungalow has less in keeping with the context than the proposed apartments. The proposed scheme interacts with the bungalow at two storeys which is acceptable.

Architecturally the scheme has been well considered with a degree of detailing and visual composition rarely found on this type of housing.

The boundary treatment provides no security for the storage, allotments and cycle stores. I would suggest that the proposed 1 metre high trellis is insufficient to be considered secure by design. There does not appear to be enclosure to the private space between the apartments and the bin stores, this again is inherently insecure and needs resolution. The same applies on the east edge beside the two houses.

The large communal area appears as merely grassed and as such has limited social function. With the sustainable ambitions for this scheme drifting into social sustainability within the DAS I would expect a higher degree of facilities for recreation within the garden area such as seating and perhaps BBQs built in. A better design of open space should be required to accompany this application.

The reduced parking standard is acceptable in this central location; visitors could use the Priors Street car park and the Parking Standards SPD allows for a reduced standard in sustainable locations such as this.

In conclusion I would suggest that the scheme has some originality and is visually of a higher standard than the majority of similar applications we receive. The disappointing element is that the scheme does not achieve anything above standard environmental credentials and the rhetoric of the DAS could be considered misleading in this regard. I support the application but would require the landscaping, surfacing and boundary treatments to be conditioned.

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 Fourteen letters of objection, plus a petition, have been received. These covered the following points

- Overdevelopment
- The lane is unable to cope with the extra traffic/measurements provided are inaccurate
- The lane is not wide enough to accommodate two-way traffic;
- Danger to pedestrians;
- The Dell might be used for lorries while the flats are being built and by refuse freighters later;

- Drainage could be affected;
- Existing properties have a right to park on the lane;
- The lane should not be resurfaced;
- Design (fenestration, lack of detailing)
- Overbearing/loss of light to Laurel House;
- Three-storey is out of keeping;
- Proposed removal of laurel is unacceptable;
- Insufficient parking;
- Too much parking
- Proximity of refuse store to The Dell;
- Possible Asbestos;
- The archway between 34 & 35 is a private alleyway that only serves 33,34,35 & 36;
- A local land-owner was not consulted.

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

### **11.0 Parking Provision**

- 11.1 One space per unit is being provided, with bays being to a compliant size of 2.9 x 5.5 metres. Two of these spaces are larger to accommodate parking for people with disabilities.

### **12.0 Open Space Provisions**

- 12.1 No public open space is provided, see report section for details of amenity 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**

#### Design and Layout:

- 15.1 The layout is dictated by the access from Watts Lane and is a logical fit into the available space, spanning east to west along the top of the developable part of the site, then returning north-south deeper into the site wrapping itself around the proposed open space. The density is 64 dwellings per hectare.

- 15.2 The design itself is unashamedly modern in detail, albeit with a more vernacular form in the case of the houses. This has evolved through discussions with your Officers pre-application. The design ethos is also informed by an ecological approach with a stack ventilation system and “dwelling emission rate and fabric efficiency (being) enhanced by the choice of construction details and materials.” Various other ecological credentials are included in the submitted documents. The result is the design which Members have before them today, which is prosaic with smaller windows to the north and east, but with more visual interest on other aspects.
- 15.3 The design is such as to contrast with its largely Victorian surroundings. Whether this is acceptable is a subjective issue, however this approach was worked up during pre-application discussions and our Urban Designer has not objected. It must be further noted that the standard of existing development behind the main Priory Street frontage, for example The Dell and the synagogue is not of such a high quality. Whilst this in itself is not a reason to lower the bar, it does form part of the context.

#### Scale, Height and Massing:

- 15.4 The development is massed so as to appear as a continuous form. In any event this will be scarcely perceived from a public aspect, with the possible exception of glimpses from Nicholson’s Grove.

#### Impact on the Surrounding Area:

- 15.5 The site is adjacent to Colchester Conservation Area 1, and its entrance is within it. Priory Street represents of a high quality of built environment, with St. Botolph’s Priory, the town wall and its bastions and several locally listed buildings. The development itself will be visible down the lane, sometimes referred to as Watts Lane. The choice of design will have an impact which misses the chance of introducing vernacular charm, but has the advantage of filling an undesirable space, resolving an incomplete view and softening matters with planting at the bottom of the land on the left hand side.
- 15.6 Whilst the chance to introduce a vernacular scheme, particularly into the more visible element of the scheme (the two houses) has been missed, the other physical improvements mean that the scheme, on balance, has a positive impact on the area and helps to enhance the Conservation Area.

#### Impacts on Neighbouring Properties:

- 15.7 The proposed development sits cheek-by-jowl with several other residential sites, and its effect requires careful examination.
- 15.8 Overbearing- The objections relating to impact on neighbours have been noted and examined. In relation to the loss of outlook etc. from Laurel Cottage and to a lesser extent Nursery Cottage, it is noted that the front to front distance between the flats and Laurel Cottage is almost ten metres. This almost complies with the Essex Design Guide which asks for ten metres, but given that the proposed building is a little higher than average then it would require a little more separation. This is worked out on the formula of two metres in height + 25 degrees not being infringed by a new building. However, the failing is so slight, this is not considered enough to warrant amendment.

- 15.9 Loss of Light – The proposal will inevitably lead to the loss of some light to Laurel Cottage as it is to the south of it. Sunlight and daylight schematics were submitted with the application. However, these showed the situation in summer and winter, whilst the key tests relate the equinoxes of March and October. It would appear that these tests are marginally failed to that dwelling.
- 15.10 Privacy – The distance between the proposed flats and the existing flats at The Dell is 35 metres. This complies with the Essex Design Guide standards which seek 25 metres, or 35 metres in the case of first floor living rooms (i.e. flats).
- 15.11 The expansive nature of the proposed windows does cause some concern and could give rise to slightly higher levels of lost privacy, or at least a perception of the same. It was mooted with the developer that the lounge windows should be flipped to the other side, overlooking fields to the east. However, this was not taken up as an idea (the lounge windows enjoying evening light being a key consideration) and as the distance is compliant with guidance, loss of privacy is not held to be a sustainable reason for refusal. It is further noted that planting on the site of The Dell assists with securing some extra privacy.
- 15.12 To the south (Nicholson’s Grove) the separation is 26-27 metres, thus an apparent slight fail. However, there is a slight angle to the view, approximately 10 degrees, in addition existing vegetation on the boundary adds to screening. Whilst this is not perfect, it is felt to be reasonably compliant with standards.
- 15.13 To the north, the only front-facing windows are bedrooms, thus casual rather than routine loss of privacy is possible.
- 15.14 To the east, the distances are generally greater, and the only neighbouring property is the synagogue, and the playing fields of St. Thomas More school - i.e. non-residential properties.

#### Amenity Provisions:

- 15.15 A shared open space of 400 metres is proposed for the flats, as well as other areas of incidental open space. In addition to this, the houses have been provided with a small amount of private space (about 24 metres each). Whilst this element is deficient, the overall scheme enjoys a surplus of open space which it is intended will also be for the use of the occupiers of the two houses.
- 15.16 It is also noted that provision of eight allotments is proposed. These are small (each about the size of a parking space), but would also hopefully add to the outdoor enjoyment of the site by future occupiers.

#### Highway Issues:

- 15.17 The consultant’s report suggests that the passing of vehicles can be accommodated safely. To an extent this is true, however it is tight in places (especially towards the bottom of the lane) and anecdotally vehicular/pedestrian conflict occurs. Your Officer has therefore requested the introduction of passing places.

- 15.18 It is further requested that the different realms (the main carriageway as opposed the passing place, any requested footway and those areas which are used for parking by existing residents) be clearly demarcated on a submitted drawing and laid out with contrasting materials.
- 15.19 The issues of accrued parking rights, and right of access onto the lane, have been raised by several parties. Strictly speaking, the stance can be taken that these are outside of the considerations of Planning. However, the applicant has been advised that these issues need to be considered now, hence the above suggestion about different realms.
- 15.20 The lane appears very narrow and does not seem to tally with the measurements in the submission documents. However, the applicant has advised that there is some gain to be had from using the space taken up by, and the small amount of land behind, the fence on the left-hand side looking down the lane. It has been established, therefore, that there is space for vehicles to park and for cars to pass by. Indeed, the Council's own Recycling & Fleet Duty Manager has confirmed that, subject to raising the canopy of some trees lining the road there is sufficient space for a refuse freighter to pass.
- 15.21 Should documentary evidence be provided which shows a right to park on the carriageway of the lane, then a legal dispute will occur (as the applicants have rights down the lane). This could obstruct the delivery of the scheme, but is outside of Planning considerations.
- 15.22 It is noted that representations have been given both ways in terms of the proposed parking provision being not enough/too much. However, your Officers feel that this provision is reasonable for a town centre location.
- 15.23 At the time of writing (9<sup>th</sup> August 2013) the Highway Authority had not formally responded to the application, although it did have detailed pre-application discussions and is very unlikely to object at this stage. Any comments and requested conditions will appear on the amendment sheet.

#### Construction Phase:

- 15.24 This element could produce inconvenience of a different sort. The narrow access to the site needs to be used carefully. It is not acceptable for the larger vehicles to use this at all times of day, and in some circumstances it may not be acceptable at all. For this reason it is proposed that a construction method statement be placed as a condition so that these matters can be carefully controlled, for example the use of smaller vehicles.
- 15.25 It is also proposed to condition the hours of delivery of materials. Separately to this, the hours of work will be informed by a demolition and construction advisory note which state which hours of work are acceptable. Whilst it is tempting to cover this by condition as well, our experience has shown that Environmental Control legislation is more effective than Planning.

### Other Matters:

- 15.26 The comments from the owners of 37 Priory Street about not having been consulted are noted. However, 37 Priory Street was consulted, as were over 100 other properties. It is unreasonable and unrealistic to expect Colchester Borough Council to consult neighbouring properties and also expect them to establish whether the owners live remotely and consult them as well.
- 15.27 Drainage is a matter for Building Control, and the applicants have advised that the existing drainage system can be used.
- 15.28 It must also be recalled that the extant use of the site is as a B2 (general industrial) use. Therefore, at any time, all of the things which residents fear (large vehicles, parking nuisance) as well as noise and disruption from the works themselves, could occur. This fact must be mentioned as a material consideration.

### **16.0 Conclusion**

- 16.1 The principle of the development is acceptable. Whilst the design is modern this is not unacceptable in itself. Residential amenity is adequately protected and the usability of the lane is not held to be affected. Issues outside of the Planning system may be dealt with by other means. On balance, approval is recommended.

### **17.0 Recommendation**

- 17.1 APPROVE subject to the following conditions:

### **18.0 Recommended Reasons for the Decision**

- 18.1 The Planning Committee, having considered the recommendation contained in the officer's report, was of the opinion that the proposal does comply with the relevant policies in the Statutory Development Plan (as set out above). In particular Members were of the opinion that the proposal warranted approval because the site is currently unsightly as seen from Colchester Conservation Area 1 and this application represents a chance to get rid of a non-conforming industrial use in a predominantly residential area. Thus, having had regard to all material planning considerations the Council is of the opinion that the proposal will not cause any harm to interests of acknowledged importance that would warrant the refusal of this application.

### **19.0 Conditions**

- (1) ZAA - Time limit for full permission

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

With the exception of any succeeding conditions which require amendments, the development hereby approved shall comply in all respects with the submitted drawings DS/DL1, DS/DL2, DS/DL3, DS/DL4, DS/DL5A; DS/DL5B, DS/DL6, DS/DL7, DS/DL8, DS/DL9, DS/DL10, DS/DL11, DS/DL12, DS/DL13, DS/DL14, DS/DL15 and DS/DL16

Reason: For the avoidance of doubt as to the scope of this permission.

(3) Non Standard Condition

Prior to the commencement of development the applicants shall submit, to the satisfaction of the Local Planning Authority, drawings which clearly distinguish the proposed carriageway from existing parking spaces (as accrued over time and shown in legal deeds) and any proposed footway or passing places. Such domains shall be clearly demarcated by contrasting surface materials (as far as is within the control of the applicant) prior to the occupation of any of the units hereby approved.

Reason: In the interests of Highway safety and for the convenience of the users of the site.

(4) ZBC – Materials to be agreed

Prior to the commencement of development, precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction shall 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 unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

(5) Non Standard Condition

Prior to commencement of the development hereby approved full details of the surfacing materials to be used for the carriageway, existing parking places, passing places, private, non-adoptable accessways, driveways, footpaths and footways and proposed parking spaces 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.

(6) ZGX - Contaminated Land Part 1 of 4 (Site Characterisation)

Prior to the commencement of development, 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,
- archaeological sites and ancient monuments;

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

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

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

(7) ZGY - Contaminated Land Part 2 of 4 (Submission of Remediation Scheme)

Prior to the commencement of development, 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.

(8) ZGZ - Contaminated Land Part 3 of 4 (Implementation of Approved Remediation Scheme)

Prior to the commencement of development other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved, 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/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.

(9) ZG0 - Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 6, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 7, 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 8.

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

(10) ZG3 - \*Validation Certificate\*

Prior to the first OCCUPATION/USE of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 9.

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

(11) ZPA – Construction Method Statement

Prior to the commencement of development, including any works of demolition, a Construction Method Statement shall have 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.

(12) Archaeological Watching brief

Prior to commencement of development, details of a watching brief to be carried out by a suitably qualified archaeologist (during construction works) shall be submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in strict accordance with these agreed details. In the event that any significant archaeological features or remains are discovered which are beyond the scope of the watching brief (and require fuller rescue excavation) the construction work shall cease immediately and shall not recommence until a revised programme of archaeological work including a scheme of investigation has been submitted to, and approved in writing, by the Local Planning Authority.

Reason: To enable the inspection and recording of any items of archaeological importance.

(13) PD removal (houses)

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.

(14) Non Standard Condition - Travel Packs

Prior to the first occupation of the development, the developer shall be responsible for the provision and implementation of a Travel Information and Marketing Scheme for sustainable transport, which shall have been previously submitted to and approved, in writing, by the Local Planning Authority, to include vouchers for 12 months free bus travel for each eligible member of every residential household. The vouchers to be valid for exchange during the first 6 months following the occupation of the individual dwelling unit.

Reason: In the interests of promoting sustainable development and transport.

(15) Non standard Condition

Prior to the occupation of any of the units hereby approved, the applicants shall submit drawings showing each of the parking spaces to be allocated to specific units within the development. Such spaces shall then be clearly marked out in a manner to be agreed with the Local Planning Authority, and shall be retained as such thereafter.

Reason: To avoid parking conflict, and so that future occupiers may be aware of the restrictions on site prior to purchasing/occupying the units hereby approved.

(16) Non Standard Condition

Prior to the first OCCUPATION/USE of the development, the bicycle parking facilities indicated on the approved plans shall be provided and made available for use. These facilities shall thereafter be retained as such.

Reason: To ensure that adequate provision is made for cycle parking in order to encourage and facilitate cycling as an alternative mode of transport and in the interests of both the environment and highway safety.

(17) Non Standard Condition

Prior to the first occupation of the development hereby permitted, refuse and recycling storage facilities shall be provided in accordance with a scheme which shall have been previously submitted to and agreed, in writing, by the Local Planning Authority. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times.

Reason: The application contains insufficient information to ensure that adequate facilities are provided for refuse and recycling storage and collection.

(18) ZCA – Residentail Code for Sustainable Homes Part 1

Prior to the commencement of development, evidence that the development is registered with an accreditation body under the Code for Sustainable Homes and a Design Stage or Interim Code Certificate demonstrating that the development will achieve Code Level 3 or higher for all dwellings shall have been submitted to and agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the development is designed to be sustainable and will make efficient use of energy, water and materials.

(19) ZCB – Residential Code for Sustainable Homes Part 2

Within 3 months of the first occupation of any dwelling hereby approved, a post-construction Final Code Certificate issued by an accreditation body confirming that the dwelling has achieved a Code for Sustainable Homes rating of Code Level 3 or higher shall have been submitted to and agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the completed development is sustainable and makes efficient use of energy, water and materials.

(20) Non Standard Condition

The planting as shown on the submitted drawings shall be completed in the first available planting season after the substantial completion of the development hereby approved. This 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.

(21) Non Standard Condition

Prior to the commencement of development, the applicant shall provide drawings and information to the satisfaction of the Local Planning Authority which show a reduction in the depth of the laurel bordering Laurel Cottage and the crown lifting of the trees to allow refuse freighters to access the site. These works shall be carried out in accordance with such details prior to any unit being occupied.

Reason: For the avoidance of doubt as to the scope of this permission and in the interests of visual amenity in order to preserve existing vegetation.

(22) Non Standard Condition

Prior to the commencement of development, the applicants shall submit in writing, to the satisfaction of the Local Planning Authority, a proposed method for ensuring that The Dell cannot be used as access to or from the development site. Such arrangement must be in such a way as to accommodate existing rights of way where necessary. These arrangements must be kept in place at all times.

Reason: In the interests of the residential amenity of the elderly residents of The Dell.

(23) Non Standard Condition

Prior to the commencement of development, details of the provision, siting, design and materials of screen walls and fences shall have been submitted to and agreed, in writing, by the Local Planning Authority. The approved screen walls and fences shall then be erected prior to the first occupation of the dwelling to which they relate and shall thereafter be retained in the approved form.

Reason: There are insufficient details within the submitted application to ensure that the boundary treatments are satisfactory in relation to amenities and the surrounding context.

(24) Non Standard Condition

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, shall be erected 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.

## 20.0 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.

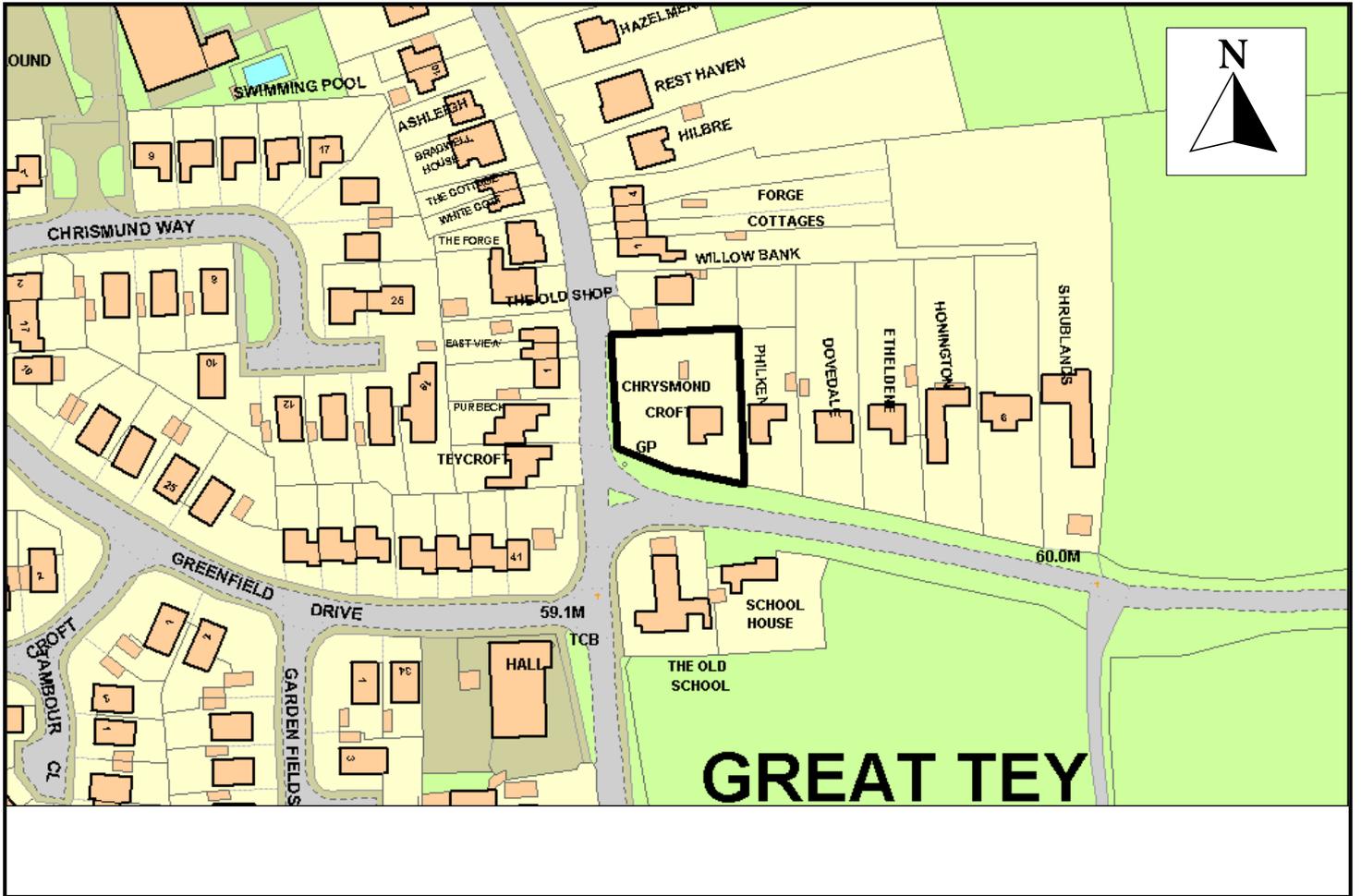
(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

(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.

## **21.0 Positivity Statement**

- 21.1 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:** 130996

**Location:** Chrysmund Croft, Moor Road, Great Tey, Colchester CO6 1JH

**Scale (approx):** 1:1250

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### 7.3 Case Officer: Mr David Whybrow

## MINOR

**Site:** Chrysmond Croft, Moor Road, Great Tey, Colchester CO6 1JH

**Application No:** 130996

**Date Received:** 13 June 2013

**Agent:** Mr Paul Newbould

**Applicant:** Mr D Eady

**Development:** Erection of single storey 3-Bed dwelling including new single garage, widening of existing vehicular access and provision of new vehicular access to existing dwelling.

**Ward:** Great Tey

**Summary of Application:** Conditional Approval

### 1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee as a result of a call in by Cllr Chillingworth mainly for reasons of highway safety.

### 2.0 Synopsis

2.1 The following report will describe the application, the site and its context. The reasons for the call in will be assessed along with the response of the highway authority and the representations of neighbours. It will be concluded by your officer that notwithstanding these concerns the proposal is acceptable from a planning point of view and is recommended for approval.

### 3.0 Site Description and Context

3.1 The application site forms part of the garden area of the bungalow, Chrysmond Croft, and lies adjacent to the junction of Moor Road and Chappel Road, close to the centre of Great Tey. The site, which is currently laid to lawn and includes a small weeping willow tree, is raised above the level of Chappel Road and evergreen hedging defines the boundary with the highway.

3.2 Adjoining properties in Moor Road are single storey. Those in Chappel Road, including that immediately to the north and opposite, are 2 or 1.5 storey in height.

## **4.0 Description of the Proposal**

- 4.1 A three bedroomed bungalow is proposed to the west of the host dwelling, with hipped roof forms and clad in red brickwork and clay, plain tiles. The staggered form of the footprint acknowledges the corner location and seeks to address both street frontages. The new plot includes a garage and turning area and a new driveway is proposed to the existing bungalow with a possible garage position identified on the plan.
- 4.2 Additional tree planting is proposed to the garden boundary and the existing hedge is also to be allowed to grow taller so as to properly screen the Chappel Road boundary.
- 4.3 A Design and Access statement is submitted and concludes :

*The siting of the proposed dwelling on the plot with its projecting lounge element to the rear provides an enclosure to the street frontage and will enable future screening of garden equipment such as washing line. In addition, the relationship between the new dwelling and the existing, Chrysmond Croft, is spacious in nature and will not lead to any excess overshadowing or loss of sunlight particularly later in the day. The size of the new dwelling proposed within its plot is similar to other properties within Moor Road, many of which have been extended in the past.*

## **5.0 Land Use Allocation**

- 5.1 Within village settlement boundary.

## **6.0 Relevant Planning History**

- 6.1 Replacement of timber clad single garage with double garage – Approved 13/8/99

## **7.0 Principal Policies**

- 7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Governments primary objective that there be “a presumption in favour of sustainable development”. There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policy is most relevant:

UR2 Built Design & Character

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

DP1 Design and Amenity  
DP12 Dwelling Standards  
DP 13 Dwelling alterations, extensions, etc.

7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

Extending Your House?  
The Essex Design Guide  
Parking Standards  
Materials Guide

## **8.0 Consultations**

8.1 The Highway Authority recommend approval with conditions to cover sight splays, parking/turning facilities, surface treatment of driveways and travel information packs.

## **9.0 Parish Council Response**

9.1 The Parish Council has no objections subject to:-

- i) detailed analysis from Essex County Council Highways regarding ingress and egress off Moor Road
- ii) consideration to be taken of neighbours' views.

## **10.0 Representations**

10.1 Objections have been received from three residents of Chappel Road whose concerns are paraphrased as follows :

- i) A bungalow opposite our home will radically change the skyline to the front of our property due to its height relative to existing outbuildings.
- ii) the new dwelling will be overlooked from the front of our property
- iii) a vehicular access on corner of Moor Road is already a hazard and the extra access point will make matters worse. This is a busy route used as a cut through to Aldham and Marks Tey Station
- iv) will reduce rural character of village
- v) will necessitate removal of well established willow tree
- vi) will reduce our daylight; part of the bungalow is just 12m from our windows.

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

## **11.0 Parking Provision**

11.1 The submitted drawing illustrates a garage to the proposed property, a possible garage site for Chrysmond Croft and lengthy driveways to both the existing and proposed bungalows, amply satisfying your minimum car parking requirements, which in this case would be two spaces per dwelling.

## **12.0 Open Space Provisions**

12.1 The application is accompanied by the standard Unilateral Undertaking.

## **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 other than that referred to at 12.0

## **15.0 Report**

### Design and Layout

15.1 Design and Layout – there can be no basic land use objection to this proposal having regard to the siting within the village settlement boundary on land currently part of a residential curtilage. As indicated in the Design and Access Statement this proposal has evolved through discussions with officers with special consideration given to the corner location and the need to satisfactorily address both road frontages. The bungalow form, its scale, height and massing, reflect those dwellings in Moor Road, many of which have themselves been extended, and plot widths are consistent with others in this row so as to maintain a regular rhythm to the built form. The conclusion is that this form of development is in keeping with its context.

### Impacts on Neighbouring Properties and Amenity Provisions

15.2 The spacing between dwellings is such that the proposals will have no direct impact on the light, outlook or amenity of adjoining residents and the proposals fully satisfy “Extending Your House?” and Essex Design Guide criteria for safeguarding neighbours’ amenities. Objectors indicate that the proposed property may be overlooked from their upper floor windows but this is not grounds for refusal. The application attempts to reinforce the screening provided by the existing roadside hedge and in any event any future purchaser will be aware of the situation they are buying into.

## Highway Issues

- 15.3 Notwithstanding the concerns expressed in the representations over the site's proximity to a busy junction, Members will see that the Highway Authority has recommended approval and requires conditions securing suitable visibility splays and a turning facility for the new bungalow. With these requirements in place it is not considered that an objection could be sustained on highway safety grounds.

## Other Matters

- 15.4 Reference is made in the representations to the need to remove the willow tree. This is not a preserved tree nor is it considered to have sufficient amenity value to warrant its retention. Members will note that other tree planting is proposed on the site with an existing hedge being allowed to increase in height on the boundary thereby producing an overall increase in tree cover and vegetation at the site.

## **16.0 Conclusion**

- 16.1 Although the reasons for the call in and concerns of local people are acknowledged, these have been fully considered by this report. For the reasons set out the proposal is considered satisfactory from a planning point of view and is therefore recommended for approval.

## **17.0 Recommended reasons for the Decision**

- 17.1 The Planning Committee having considered the recommendation contained in the officer's report was of the opinion that the proposal does comply with the relevant policies in the Statutory Development Plan (as set out below). Having had regard to all material planning considerations the Council is of the opinion that the proposal will not cause any harm to interests of acknowledged importance that would warrant the refusal of this application. In reaching this decision the Council is mindful of the particular circumstances and reasons set out below, namely: because the scheme complies with adopted standards and guidance.

## **18.0 Recommendation**

- 18.1 APPROVE subject to the following conditions

## **19.0 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 nos 1622-01B and 02 unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

## 3 - Materials to be Agreed

Prior to the commencement of development, precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction which shall be substantially as shown on the approved drawings shall 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 unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

## 4 - Simple Landscaping Scheme Part 1 of 2

Prior to the commencement of development, there shall have been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard and soft landscaping works for the publicly visible parts of the site, which 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.

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.

## 5 - Landscape Management Plan

Prior to the first occupation of the development, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas other than small, privately owned, domestic gardens shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved at all times.

Reason: To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area.

## 6 - Non-Standard Condition/Reason

Prior to occupation of the development, new access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 17 metres to the west and 2.4 metres by 43 metres to the east, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the access and those in the existing public highway in the interest of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011, and condition ZID in Colchester Borough Council's Model Planning Conditions document dated July 2012 .

#### 7 - Non-Standard Condition/Reason

Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the new vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.

Reason: To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011 and condition ZIC in Colchester Borough Council's Model Planning Conditions document dated July 2012.

#### 8 - Non-Standard Condition/Reason

Prior to occupation of the development the vehicular parking and turning facility, as shown on the submitted plan shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011 and condition ZIE in Colchester Borough Council's Model Planning Conditions document dated July 2012.

#### 9 - Non-Standard Condition/Reason

No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011 and condition ZIF in Colchester Borough Council's Model Planning Conditions document dated July 2012.

#### 10 - 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 and condition ZIS in Colchester Borough Council's Model Planning Conditions document dated July 2012.

#### 11 - 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 and condition ZJD in Colchester Borough Council's Model Planning Conditions document dated July 2012.

## 20.0 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.

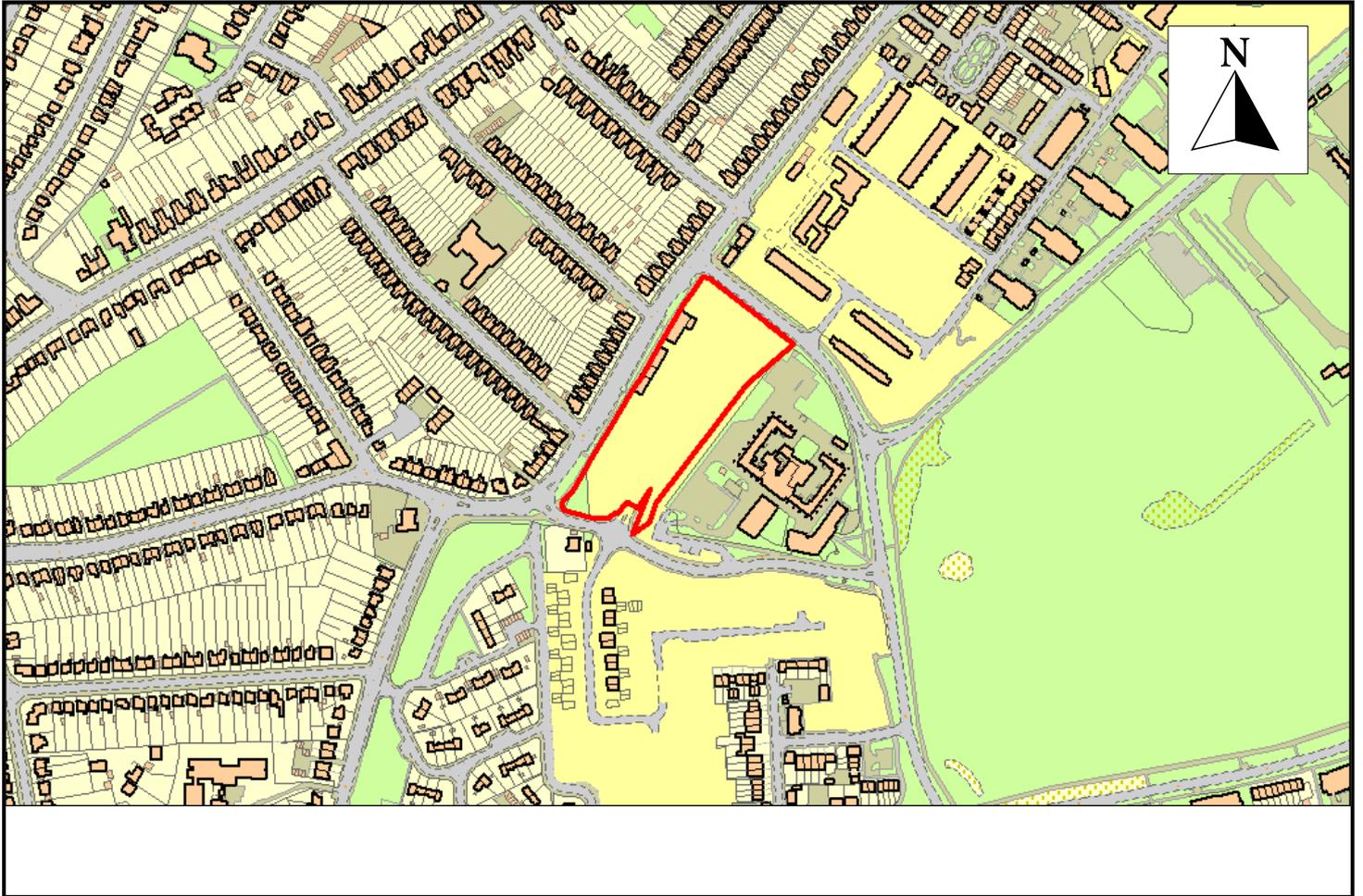
(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

**(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.

## 21.0 Positivity Statement

21.1 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.



**Application No:** 120412

**Location:** Butt Road, Colchester

**Scale (approx):** 1:1250

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## Planning Committee

Item

Date 22 August 2013

Report of	Head of Commercial Services	Author	Vincent Pearce ☎ 01206 282452
Title	Application No. 120412 - Local Centre at Butt Road, Colchester		
Wards affected	Christ Church		

**This report seeks Members' approval to complete the s106 agreement in relation to the agreed scheme for a local centre at Butt Road, Colchester. comprising a supermarket, 6 no retail units, affordable housing and car parking**

### 1. Decision(s) Required

- 1.1 Members are asked to provide the Head of Commercial Services with delegated powers to complete the s106 agreement in respect of the proposed scheme for a local centre at Butt Road comprising a supermarket, 6 no retail units, affordable housing and car parking.

### 2. Reasons for Decision(s)

- 2.1 At its meeting on 13 December 2012 the Planning Committee resolved to grant planning approval for a local centre at Butt Road subject to the applicant entering into a legal within four months of the date of the committee meeting. Delegated powers were granted to the Head of the Environmental and Protective Services to enter into this agreement and issue the conditional planning approval.
- 2.2 The planning agreement has taken longer than originally anticipated to agree and sign by other parties. The legal agreement has now been signed by all parties bar the Borough Council. Members are asked to provide a 'top-up' resolution so that the Council can sign this agreement and issue the conditional planning approval.
- 2.3 Since the resolution to grant planning permission in December last year, the Council has undergone a structural reorganisation. The original committee resolution provides the Head of Environmental and Protective Services with delegated powers to sign the agreement and issue the planning approval. The post of Head of Environmental and Protective Services no longer exists. Members are therefore asked to resolve to grant delegated power to the Head of Commercial Services to enter into the s106 agreement and issue the planning decision notice.

### **3. Alternative Options**

- 3.1 Members could decide not to extend the resolution to grant planning permission. If this option is selected, the planning application previously the subject to a resolution to grant by Members would need to be refused. There has been no material change in the planning position since Members resolved to grant planning approval for this development and, as such, there is not considered to be any justifiable reasons for refusing this application. Similarly it would almost certainly not be appropriate or reasonable to fundamentally amend requirements within the S106 or in proposed conditions. Should Members decide to refuse this application, the applicant is likely to appeal this decision and seek costs against the Council for acting unreasonably.

### **4. Supporting Information**

- 4.1 The main planning issues generated by this planning application were set out in the original officer report to the Planning Committee (June 2012) and the supplementary report considered by Members in December 2012.

- 4.2 At the December Planning Committee meeting Members resolved that:

- Consideration of the application be deferred and the applicant be advised that the Borough Council was minded to grant a conditional approval provided that a legal agreement was signed, within four months of the date of the Planning Committee meeting [13 December 2012] and;
- Upon receipt of a satisfactory Section 106 Agreement, the Head of Environmental and Protective Services be authorised to grant consent with conditions and informatives.

### **5. Proposals**

- 5.1 The legal agreement in respect of the planning application for the proposed local centre at Butt Road has been drafted in accordance with the recommendation made on 12 December 2012 and has been signed by all parties bar the Borough Council.
- 5.2 Members are asked to grant the Head of Commercial Services with delegated powers to sign the s106 agreement and issue the planning approval.

### **6. Strategic Plan References**

- 6.1 The proposal will facilitate the provision of affordable housing which is identified as a key priority for the Council. The construction of this development and proposed commercial uses will also create employment and training opportunities for local residents.

### **7. Consultation & Publicity Considerations**

- 7.1 None

### **8. Financial Implications**

- 8.1 The s106 agreement provides for commuted sums to be paid to the Borough Council to mitigate the impact from this development.

**9. Equality, Diversity and Human Rights Implications**

9.1 None directly arising from this report

**10. Community Safety Implications**

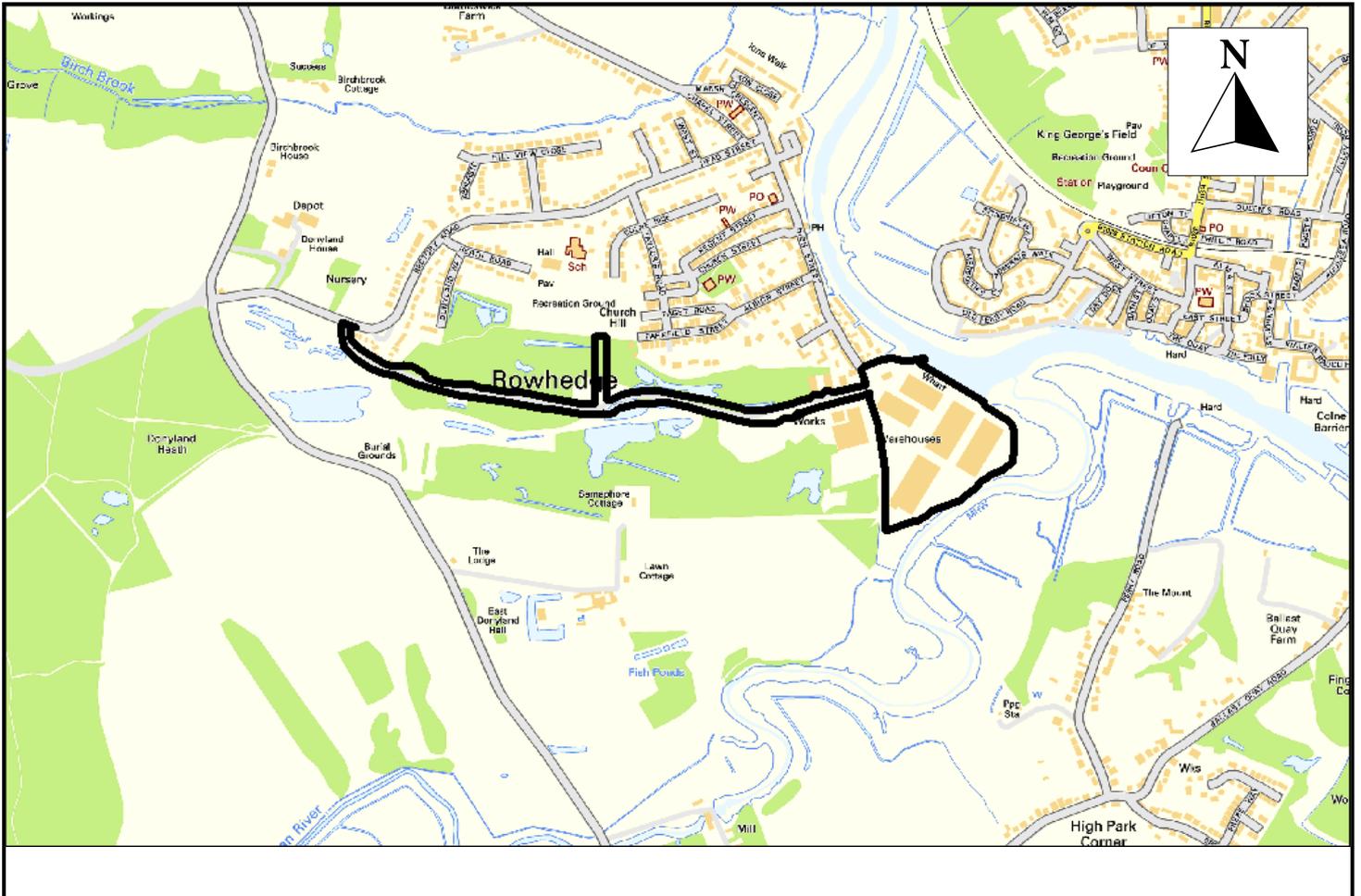
10.1 None directly arising from this report

**11. Health and Safety Implications**

11.1 None directly arising from this report

**12. Risk Management Implications**

12.1 None directly arising from this report



**Application No:** 110217

**Location:** Rowhedge Wharf, High Street, Rowhedge, Colchester CO5 7ET

**Scale (approx):** NOT TO SCALE

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## Planning Committee

Item  
**9**

22 August 2013

<b>Report of</b>	<b>Head of Commercial Services</b>	<b>Author</b>	<b>Sue Jackson</b> <b>☎ 01206 282450</b>
<b>Title</b>	<b>Land at Rowhedge Wharf</b>		
<b>Wards affected</b>	<b>East Donyland</b>		

**This report concerns three agreements under the Town and Country  
Planning Act on land at Rowhedge Wharf**

### 1.0 Decision(s) Required

- 1.1 To agree to a deed of release being prepared and signed by the Council in respect of the provisions of two section 52 agreements and a section 106 agreement (legal agreements were made under section 52 of The Town and Country Planning Act 1971 until the act was amended and agreements are now made under section 106 of The Town and Country Planning Act 1990)

### 2.0 Reasons for Decision

- 2.1 The receivers of GLPF Two Ltd the proprietor of a site at Rowhedge Wharf are looking to discharge their duties by entering into a sale of the property. The prospective purchaser has requested the receivers obtain a deed of release from the Council in respect of three historic planning permissions.

### 3.0 Alternative Options

- 3.1 To not agree to the deed of release or to agree the deed of release in respect of only one or two of the planning agreements.

### 4.0 Supporting Information

- 4.1 The agreements all relate to land at Rowhedge Wharf which has been vacant for some years. In addition to its use as a wharf, buildings on the land were also used for concrete block making. Three planning applications on the site have been subject to a legal agreement under The Town and Country Planning Act. The application and provisions of the agreements are summarised below:

- application COL/958/78 to erect extensions to existing portal framed block works buildings. The section 52 agreement requires all commercial vehicles to access the site via the existing haul road.

- application COL/304/85 to consolidate a bank and construct a 30 metre extension of the wharf in an easterly direction. The section 52 agreement requires the Council to be paid on demand the full costs of hydrographic surveys to be carried out by the Council of the River Colne along specified points (approx the wharf frontage). If the surveys reveal silt deposition of the main channel of the River Colne between the specified points is additional to that which would have been deposited prior to the extended wharf the applicant shall pay to the Council the cost of the necessary dredging required to remove the additional material.
- application COL/90/0858 to demolish an existing office and erect new office and weighbridge and application COL/90/0882 temporary office for a period of 2 years. The section 106 agreement requires an existing office building to be demolished and for all vehicular traffic to and from the site to travel by way of the existing haul road.

4.2 The block works ceased operation many years ago and the buildings are now derelict.

4.3 The wharf buildings including the office buildings have been demolished.

4.4 Colchester Borough Council is no longer the Port Authority and the River Colne has not been regularly dredged for many years. As far as your officer is aware the provisions of the 1985 agreement were never invoked.

4.5 There is no objection to a deed of release.

## **5.0 Proposals**

5.1 N/A

## **6.0 Strategic Plan References**

6.1 The redevelopment of the site accords with the Strategic Plan.

## **7.0 Consultation**

7.1 N/A

## **8.0 Publicity Considerations**

8.1 N/A

## **9.0 Financial Implications**

9.1 None, the councils costs in respect of the deed and other work will be paid by the receivers.

## **10.0 Equality, Diversity and Human Rights Implications**

10.1 None

## **11.0 Community Safety Implications**

11.1 None

## **12.0 Health and Safety Implications**

12.1 None

## **13.0 Risk Management Implications**

13.1 None

### **Background Papers**

Section 52 agreements dated 22<sup>nd</sup> February 1979, section 52 agreement dated 18<sup>th</sup> December 1985 and section 106 agreement dated 5<sup>th</sup> February 1991; Planning applications Ref: COL/304/85, COL/90/0858, COL/90/0882 and allied.



## Planning Committee

Item  
**10**

22 August 2013

Report of	Head of Professional Services	Author	Andrew Tyrrell
Title	Planning Committee - Cooling Off Periods (COPs)		
Wards Affected	All		

This report sets out proposed changes to the Colchester Borough Council Planning Procedures Code of Practice to formalise a process for considering the implications (primarily risk) of overturning a recommendation made to the Planning Committee by its Officers. This process is known as a “Cooling Off Period”, whereby any uncertainty can be addressed through a deferral to allow the Officers to present a detailed report on the risks and implications prior to such a decision being taken. At the same time there are several other sentences in the Code of Practice which it is proposed should be updated to reflect the new Service names resulting from the UCCFSR; however these changes do not alter the requirements Code of Practice.

### 1. Decision Required

- 1.1 Members are asked to agree, with immediate effect, that a new protocol for “Cooling Off Periods” be introduced to allow the Committee a formal process to minimise any risk implications from taking a decision contrary to Officer recommendation. This process would then need to be followed in any such event in future as it would form a new Schedule to the Planning Procedures Code of Practice.
- 1.2 Members are also asked to agree to the update to the Service names resulting from the UCCFSR changes which has divided the Planning Service between 2 Services of Colchester Borough Council and changed the resultant reference in the Code of Practice from “Environmental & Protective Services” to include both “Professional Services” and “Commercial Services”. This change is solely to updated the references to the Service(s)

### 2. Reasons for Decisions

- 2.1 Members are being asked to agree this decision so that the Planning Committee has a clear process for deciding whether or not to overturn an Officer’s recommendation. In such events, it may sometimes be possible to immediately take a vote due to a clear justification to take a contrary decision. However, planning is often less clear in the considerations and weighting attached thereto, and in such events it may not be possible for Officers to adequately advise the Committee of a full and accurate account of the risks in taking a contrary decision. In such an event, Members would need to consider whether to proceed with the vote, or to allow time for Officers to seek additional information to report back to the Committee (including legal advice if necessary).

### **3. Report on the Proposed Changes**

- 3.1 The protocol provides a formal procedure for having a “Cooling Off Period”. It is proposed that this protocol would be appended as Schedule 3 to the Planning Procedures Code of Practice that the Committee follows. Within the main Code of Practice the only wording to be deleted is in Section 6 (6) and reads:

“If councillors disagree with officers’ professional advice, the reasons for rejecting a report’s recommendation must be clearly stated at the meeting and recorded in the minutes. In this situation, councillors need to be sure that their decisions are based on sound planning reasons.”

- 3.2 This section of wording would be replaced with:

“If councillors disagree with officers’ professional advice, then reasons for rejecting this advice must be given as part of a motion to overturn the recommendation. In this situation, the Cooling Off Periods (COPs) Protocol should then be followed as set out in Schedule 3”.

- 3.3 The wording of the Cooling Off Periods (COPs) protocol would then form Schedule 3 as set out in Appendix A to this report, and as shown in the flowchart in Appendix B. The existing Code of practice is included in full in Appendix C to this report.

### **4. Alternative Options**

- 4.1 An alternative option is not to have any formal procedure in place. However, in the past experience has shown some uncertainty as to how to proceed when Members and Officer’s have experienced different levels of concern over the risk implications of a contrary decision. Where there is uncertainty over procedures there is a risk that the Council may be found wanting in the event of a complaint to the Local Government Ombudsman, or could be exposed to an award of costs for unreasonable behaviour in the event of an appeal or judicial review.

### **5. Financial implications**

- 5.1 The introduction is proposed in order to minimise the risk of costs being awarded for unreasonable behaviour in taking planning decisions. Following a formal process means that there is less risk of any adverse financial implications from the decisions taken in future. As established in *R. v Kensington & Chelsea LB 1991*, the risk of a costs award after a planning decision is a material consideration in a planning authority’s determination of an application and this factor has become an important restraint on development management practice. Therefore, not having a formal procedure in place to consider the financial implications of a decision could be a financial risk in itself.

### **6. Equality, Diversity and Human Rights Implications**

- 6.1 There are no significant equality, diversity or human rights implications

### **7. Publicity Considerations**

- 7.1 There is no need to undertake any public consultation.

### **8. Risk Consideration**

- 8.1 The protocol being proposed is designed to minimise existing risk by formalising a procedure for the Committee.

### **9. Strategic Plan References**

- 9.1 The Planning Service contributes to all of the Council’s key objectives.

## **10. Community Safety Implications**

10.1 The proposed changes do not significantly affect community safety.

## **11. Background Papers**

11.1 Members will need to consider both Appendix A and Appendix B to this report with regard to the proposed Protocol. The Planning Procedures Code of Practice is also set out in full with tracked changes in Appendix C to show what would be agreed including the updates to Service names.

## **Appendix A: Cooling Off Periods (COPs) Protocol**

When Members of the Planning Committee disagree with their professional Planning Officer's advice those Members can raise a motion to overturn the recommendation. This motion should include clearly stated planning reasons so that other Members of the Committee can decide whether or not they also agree or disagree. Once the mover of the motion has stated their reasons for suggesting the Committee act contrary to the Officer's recommendation this motion must be seconded.

Once seconded, the Officers should be asked to give an opinion on the strengths of the motion, in order to highlight the potential implications of such a decision prior to any vote being taken. The Chairman will be responsible for seeking this clarity and deciding on the appropriate course of action thereafter as outlined below.

Where the Chairman believes that there are reasonable planning grounds for overturning the Officer's recommendation then it would be appropriate for the motion to be voted upon immediately so that a decision is made at that same meeting. However, Officers should always be given the opportunity to explain the implications of what has been proposed to the Planning Committee in public before any vote is taken.

Where the Chairman believes that the reasons for a contrary decision to overturn the Officer recommendation is ambiguous, tentative or if Officers otherwise highlight specific weaknesses, risks or uncertainty about the implications that may need more time to investigate, then it would be more appropriate for the Chair to defer the vote to a later meeting of the Planning Committee through a "Cooling Off Period". The Chair can take this decision on their own, or through a vote whether or not to use a Cooling Off Period, but either way the decision regarding using the Cooling Off Period must be taken prior to any vote on the original motion to overturn the Officer's recommendation. If a Cooling Off Period is to be used then the item will be deferred, if not then the vote can proceed on the original motion to overturn the Officer's recommendation at this time.

The ability to instigate a Cooling Off Period prior to any vote protects the Council so that both Officers and Members have more time to reflect on the issues. In such cases, the Cooling Off Period allows Officers an opportunity to write a short supplementary report focussing on the proposed motion, highlighting any implications (whether positive or negative) of overturning the officer's recommendation, such as whether there is evidence to support a contrary decision if challenged, or whether there is a pattern found in similar decisions in case law or appeals, or to seek legal advice that may help Members decide if the decision is right before they have voted on it.

On complex and controversial cases, where an overturn has been suggested it will be the expectation that the final decision on the application will usually be deferred through the Cooling Off Period until a later meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that Officers can provide appropriate advice as to the clarity and reasonableness of the reasons put forward for approval (including recommending suitable planning conditions) or refusal of the application. Officers should be asked for an indication as to likely timescale on a case by case basis as this will be dependent upon the further work required. When this report on the implications returns it is not envisaged that there would be a need for additional public speaking as the motion remains in place.

In all cases, there will be full and accurate minuting of resolutions with a careful record being kept of the debate when a resolution is proposed which is contrary to an officer recommendation. In such cases the Chairman will summarise, or cause to be summarised, the salient points of the debate, and ensure the text of the proposition is clearly understood before putting the matter to the vote or deferring the item for the Cooling Off Period following a motion contrary to the Officer's recommendations.

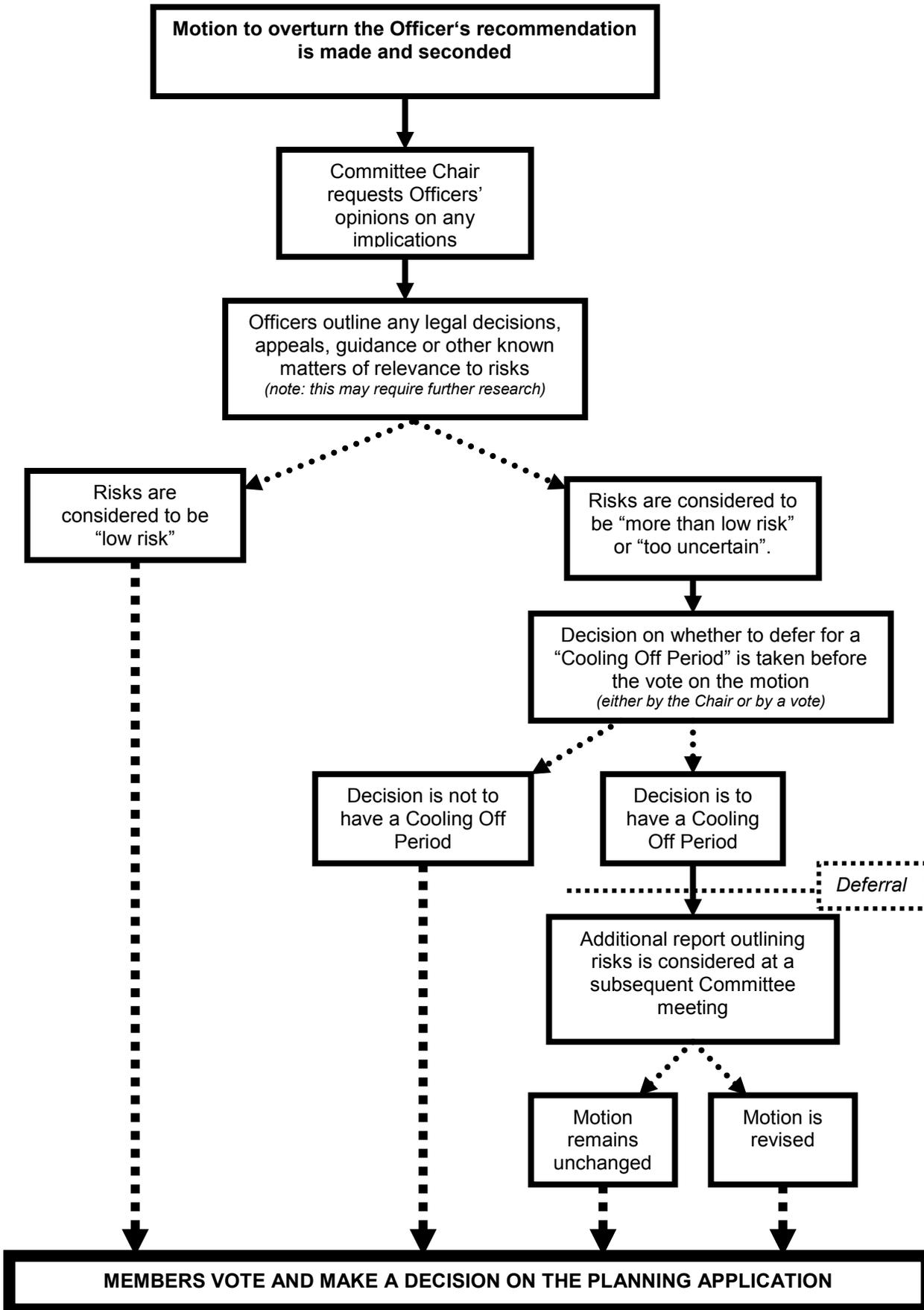
When the subsequent further written report highlighting the implications of a contrary decision returns to the Planning Committee, it shall also set out the detailed formal wording proposed for the decision notice, which will be based solely on the reasons given through the Committee's original motion. However, Officers will be allowed to add relevant policies and set out the exact wording as interpreted from the Committee's previous discussions (which will be minuted).

It would be for Members to decide to modify the motion should they wish to amend their reasons for their decision. If the Committee is still of the opinion that the original Officer recommendation should be overturned, then it will again consider its reasons for granting or refusing permission when the focussed

report returns to a subsequent meeting, and the planning reasons for that decision will be formally recorded in the minutes of the meeting alongside the justification for departing from Officers' recommendations which must also be given in public so that the justification is not subject to later elaboration.

The Courts have expressed the view that reasons should be clear and convincing. Members must satisfy themselves that where they reach a decision contrary to an Officer's recommendation their reasons are substantiated by evidence and that they are able to demonstrate reasonable planning grounds for taking a decision contrary to an Officer's advice. Where a decision is taken to refuse an application but the Officer's recommendation is to approve, the Committee must consider whether any conditions could have allowed the development to have proceeded. In addition, Members should exercise caution in not giving undue weight to any particular consideration.

**Appendix B: COPs Flowchart**



## **Section 1 - The role of Councillors**

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- (1) In making decisions on applications, councillors will:
    - act fairly and openly
    - approach each application on its own merits and with an open mind
    - carefully weigh up all the relevant material planning considerations
    - avoid undue contact with interested parties
    - ensure that the reasons for any decision are clearly stated
  - (2) The planning system exists to consider development proposals in the light of the wider public interest. Councillors must take into account the interests of the whole of the Borough of Colchester and act in a way which is fair and is clearly seen to be so.
  - (3) Councillors will not give instructions to officers, and they will not put pressure on officers to make a particular recommendation on an application. This behaviour would amount to a Councillor using his/her position improperly which would constitute a breach of the Members Code of Conduct.
  - (4) Councillors can expect officers to give them every help in answering questions on planning matters.
  - (5) Councillors who are members of the Planning Committee will be free to vote on planning applications in the way they consider appropriate, that is, without a Party 'whip'. They will also take account of all the relevant information, evidence and arguments. These will include the Development Plan and all relevant planning considerations.
  - (6) In the event that the Chairman of the Planning Committee is required to exercise his/her casting vote on an application, the Chairman will exercise his/her vote based solely on the planning merits of the application before them and the debate on the application by the Committee.
- NB: For more detailed guidance on Councillor/Officer relationships, please refer to the Council's Member/Officer Protocol in the Constitution.

## **Section 2 - The role of Officers**

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- (1) In making decisions on applications, officers will:
  - give professional and impartial advice
  - make sure that all the information is given that is needed for a decision to be made
  - put the application in context, in terms of the Development Plan and all other relevant material planning considerations
  - give a clear and accurate written analysis of the issues
  - give a clear recommendation, with reasons.
- (2) Officers will give advice only. The exception is if they have been given further powers under the Council's Scheme of Delegation to Officers, or when the Planning Committee gives specific delegated authority.
- (3) Officers are responsible for carrying out the decisions of the Planning Committee.
- (4) The Council endorses the Royal Town Planning Institute Code of Conduct in particular that Chartered Town Planners must not make or subscribe to any statements or reports which go against their own professional opinions.

## Section 3 - Discussions with Applicants

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- (1) The Council encourages officers to have meetings with prospective applicants before they make an application. To avoid misunderstanding, in most instances these meetings will only involve officers and should only be held at the Council's offices or on site. However, Councillors will be able to participate in pre-application discussions on major planning proposals in instances that accord with the Council's adopted protocol entitled "Member Engagement in Pre-Application Planning Discussions". The only other exception when Councillors will be allowed to participate in planning application discussions will be when the Planning Committee has passed a resolution that meetings will involve councillors. The resolution must have been passed during a meeting with the public present. In all of the above instances minutes of all such meetings must be recorded and inserted in the relevant planning application file, as well as being reported in any delegated officer report or planning committee agenda.
- (2) Officers will chair all pre-application meetings and they shall make it clear at each meeting that:
  - only informal opinions and provisional views can be given, and these shall be based on the Development Plan, other Council policy and material planning considerations;
  - no advice or opinions expressed at this time can bind or affect the Planning Committee (or the Head of Professional Services and/or Commercial Services, if he/she is delegated to make the decision) because not all of the relevant information will have been made available at this time.
  - Members are present to ask questions that may clarify elements of proposal and to raise awareness of any issues that their constituents may raise in due course, but they will not take part in any negotiation, which shall remain a role of the relevant officer(s).

All Council representatives taking part in these discussions will make it clear that decisions on planning applications are taken either:

- by the councillors on the Planning Committee; or
- under specific circumstances by the Head of Professional Services or Commercial Services (as appropriate\*) or an officer specified using delegated powers as under the Scheme of Delegation to Officers.

(3) The officer will make a written note of all issues discussed at each meeting. If appropriate, the Officer will also send a follow-up letter if the prospective applicant has left documentary evidence with the Council. The Officer will also make a note of any telephone conversations.

(4) If a pre-application meeting involves councillors, at least one officer will be present at all such meetings and a note of the discussion will be made. If an application is then made, the note will be made available for public inspection, as long as this is allowed under the usual rules about access to information.

(5) A note of any discussions will be taken. This will be made available for public inspection, as long as this is allowed under the usual rules about access to information. At least one officer will be present at all such meetings.

\* Where "as appropriate" is used in reference to a Head of Service within this document this is to distinguish that only the relevant Head of Service to the team handling the planning case is "appropriate"; i.e. The Head of Commercial Services cannot intervene in cases handled by Professional Services and vice versa.

## Section 4 - Role of Informal Briefings

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- (1) To assist in the decision making process, officers will undertake informal briefings where appropriate to explain underlying issues/policies relating to major development proposals.

## Section 5 - Lobbying

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(1) It is quite common for people to want to discuss a proposed development with councillors before an application is decided. Given their roles as elected community representatives, councillors should be free to meet with residents and other people not associated with the planning application submission to better understand local opinion. However, to avoid compromising the probity of planning, councillors should not meet an applicant or their appointed agent or architect in connection with a planning application on their own (i.e. without officers being present). In all cases, councillors (and in particular members of the Planning Committee) will:

- not make it known in advance whether they support or oppose a proposal until they have received all the relevant information, evidence and arguments from all sides.
- not publicly express an opinion which could be taken as support for, or opposition to, a proposal by any reasonable person.
- not organise support or opposition for a proposal or lobby other councillors (except when speaking before the committee).
- direct lobbyists or objectors to the case officer.
- inform the Monitoring Officer, Head of Professional Services and/or Commercial Services (as appropriate) and the Chairman of the Planning Committee about the existence of any lobbying interests.

(2) Councillors who are **not** members of the Planning Committee may express predisposed support for a particular body of opinion before the matter is considered by the committee. But they must make it clear that they will not reach a final view on a proposal until all the relevant information, evidence and arguments have been put before them.

(3) A councillor who had previously expressed support for a particular body of opinion as referred to in Paragraph (2) above who is subsequently substituted onto the Planning Committee will not be able to speak or vote on any item that they have expressed support for in advance. This will also apply if any item is referred to full Council for a decision.

(4) Any member of the Planning Committee (or councillor who is substituted onto the Planning Committee) whose impartiality has been compromised by them expressing a prejudicial view on an application prior to the Committee considering the matter will need to withdraw from the decision-making process. Any councillor who finds his/herself in this position should seek advice from the Monitoring Officer.

(5) Councillors must avoid putting themselves in a position that could lead to the public thinking that they are receiving preferential treatment for themselves, friends or relatives, or for any firm or body they are connected with. The Council's Members Code of Conduct gives more information about this.

## Section 6 - Reports to Planning Committee

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- (1) Committee papers will normally be available at least five clear working days before the meeting.
- (2) All applications presented to the Planning Committee for decision will have a full written report from officers. This will include:
  - the substance of any objections
  - the views of people who have been consulted
  - a clear explanation of the Development Plan, site and related

- history
  - any other material planning considerations
  - a reasoned consideration of the proposal
  - a clear recommendation.
- (3) Any relevant planning information which is received after the written report has been prepared and prior to 5pm on the day preceding the Planning Committee meeting will be presented to the Committee by officers. Any representations received after 5pm, the specified cut off time will not be presented to the Committee. In the event of significant new information being received after the specified cut-off time, the Head of Professional Services and/or Commercial Services (as appropriate) may recommend that the Planning Committee defers consideration of the application.
  - (4) If the circumstances of an application change between the preparation of the report and its discussion by the Planning Committee, the Head of Professional Services and/or Commercial Services (as appropriate) may remove any item from their respective Services that is on the agenda of the meeting.
  - (5) If an application is decided in the way an officer's report recommends, the decision will be worded as in the report. Any amendments that officers or councillors put forward at the Committee meeting will be taken into account.
  - (6) If councillors disagree with officers' professional advice, then reasons for rejecting this advice must be given as part of a motion to overturn the recommendation. In this situation, the Cooling Off Periods (COPs) Protocol should then be followed as set out in Schedule 3. Councillors must be aware that they may have to justify their decision at any appeal and may be held accountable by local residents.
  - (7) Applicants and third parties will be entitled to speak at the meeting, as allowed by the Council's "Have your Say" planning procedure.
  - (8) There will be an officer from the Council's Corporate Management at all meetings to make sure that procedures are properly followed.

## **Section 7 - Disclosure of interests – Councillors**

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- (1) The law and the Council's Members Code of Conduct set out rules and guidance for councillors on declaring their interests. Councillors must follow these rules and guidance and also review their own situation regularly. Under the Council's Code of Conduct impropriety must be avoided, and also any appearance of or grounds for suspicion of improper conduct. Where there is the possibility of an allegation of bias or predetermination, councillors must seek advice from the Monitoring Officer.
- (2) Councillors who are unsure whether an interest should be declared must seek the advice of the Monitoring Officer, or the Democratic Services Officer at the meeting.
- (3) Councillors are discouraged from receiving hospitality from people with an interest in a planning proposal. In accordance with the Council's Member's Code of Conduct councillors are required to register any gift or hospitality over the value of £25 on their Notice of Registerable Interest within 28 days of its receipt and declare the nature and existence of the gift and hospitality at the relevant committee meeting for a period of 3 years from the date of receipt.
- (4) Any member of the Planning Committee who has expressed a prejudicial view on an application will not participate in the determination of that application. If they do not wish to make representations in accordance with the Council's Member's Code of Conduct then they will leave the room for the duration of the discussion and vote on the application. If they wish to make representations they may do so as a visiting ward member (provided they are an eligible ward member) or from the public gallery in other instances (only if the public are so entitled) and must leave the room once they have finished their representations or the Committee decides that they have finished. They

must not remain in the room when the vote is taken on the application.

- (5) If a councillor has acted in such a manner as to give rise to an allegation of bias or predetermination they must seek advice from the Monitoring Officer prior to seeking to make any representations or participation at Planning Committee.

## **Section 8 - Disclosure of interests – Officers**

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- (1) If an officer has an interest in any planning matter then they must declare this to their Head of Service/Manager in writing. This is recorded on the relevant application file and they must take no part in the processing of the particular matter.
- (2) No officer will, when exercising a power granted by the Scheme of Delegation to Officers, exercise that power in the case of an application where they have been responsible for writing the report and making the recommendation to the Planning Committee. In these circumstances the officer will refer the case to another officer for advice.
- (3) No officer will deal with any planning application within a radius of 500m of their own property.
- (4) Officers are discouraged from receiving hospitality from people with an interest in a planning proposal. If this is unavoidable, officers will declare its receipt, as soon as possible, in the relevant register of gifts and hospitality. Any concerns in this regard must be raised with the Monitoring Officer.

## **Section 9 - Applications submitted by Councillors or Officers**

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- (1) All applications which are submitted by or on behalf of councillors, former councillors or officers or their spouse/partners, will be reported to the Planning Committee for a decision. Wherever this becomes apparent, they will not be dealt with under the Scheme of Delegation to Officers. The Monitoring Officer will be informed of all such applications as soon as it becomes apparent to the Planning Service.
- (2) The councillor (in accordance with the Members Code of Conduct) or officer concerned will take no part in the processing or deciding of the application.

## **Section 10 - Training**

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- (1) All councillors must receive training in planning procedures. The subjects covered by the training will be decided by officers in consultation with councillors. A councillor who does not undertake this training will be disqualified from the Planning Committee and from being a substitute for members of the committee who are unable to attend. They will also be disqualified from taking part in deciding an application referred to full council. They will also be unable to participate in any pre-application or planning application meetings that include the developer, applicant(s) or their agent(s).
- (2) A programme of training will be available each year, covering issues of current importance as well as updating knowledge. From time to time, specialist training will be provided to cover particular topics or to look at matters in greater depth.

## **Section 11 - Complaints and compliments**

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- (1) Complaints and compliments about the Council's development management process will be dealt with under the Council's corporate complaints and compliments procedure.

## **Section 12 - Review of this Code of Practice**

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- (1) This code will be reviewed regularly to make sure that it reflects changes in the law, the Council's structure or other relevant considerations.



## **Colchester Borough Council Development Control**

### **Advisory Note on Parking Standards**

The following information is intended as guidance for applicants/developers.

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.

A garage should have an internal space of 7 metres by 3 metres. Smaller garages do not count towards the parking allocation.

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. One visitor space must be provided for every four units.

Residential parking standards can be relaxed in areas suitable for higher density development.



## Colchester Borough Council Environmental Control

### **Advisory Notes for the Control of Pollution during Construction & Demolition Works**

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

#### **Best Practice for Construction Sites**

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

#### **Noise Control**

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

#### **Emission Control**

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

## **Best Practice for Demolition Sites**

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

### **Noise Control**

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

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

### **Emission Control**

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

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

## **Class A1. Shops**

Use for all or any of the following purposes—

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

## **Class A2. Financial and professional services**

Use for the provision of —

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

## **Class A3. Restaurants and cafes**

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

## **Class A4. Drinking establishments**

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

## **Class A5. Hot food takeaways**

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

## **Class B1. Business**

Use for all or any of the following purposes—

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

## **Class B2. General industrial**

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

## **Class B8. Storage or distribution**

Use for storage or as a distribution centre.

## **Class C1. Hotels**

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

**Class C2. Residential institutions**

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

**Class C2A. Secure residential institutions**

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

**Class C3. Dwellinghouses**

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

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

**Class C4. Houses in multiple occupation**

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

**Class D1. Non-residential institutions**

Any use not including a residential use —

(a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,

(b) as a crèche, day nursery or day centre,

(c) for the provision of education,

(d) for the display of works of art (otherwise than for sale or hire),

(e) as a museum,

(f) as a public library or public reading room,

(g) as a public hall or exhibition hall,

(h) for, or in connection with, public worship or religious instruction, (i) as a law court.

**Class D2. Assembly and leisure**

Use as —

(a) a cinema,

(b) a concert hall, (c) a bingo hall or casino,

(d) a dance hall,

(e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

**Sui Generis Uses**

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

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

**Interpretation of Class C3**

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

**Interpretation of Class C4**

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