

Planning Committee Meeting

**Council Chamber, Town Hall, High Street,
Colchester, CO1 1PJ**

Thursday, 03 March 2016 at 18:00

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

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

Information for Members of the Public

Access to information and meetings

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

Have Your Say!

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

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The Council audio records all its public meetings and makes the recordings available on the Council's website. Audio recording, photography and filming of meetings by members of the public is also permitted. The discreet use of phones, tablets, laptops, cameras and other such devices is permitted at all meetings of the Council. It is not permitted to use voice or camera flash functionality and devices must be kept on silent mode. Councillors are permitted to use devices to receive messages and to access papers and information via the internet and viewing or participation in social media is at the discretion of the Chairman / Mayor presiding at the meeting who may choose to require all devices to be switched off at any time.

Access

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

Facilities

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

Evacuation Procedures

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Material Planning Considerations

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

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

The following approach should be taken in all planning decisions:

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

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

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

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

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

The above list is not exhaustive

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

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

- matters specifically controlled through other legislation

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

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

Planning Obligations

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

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

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

Human Rights, Community Safety and Equality and Diversity Implications

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

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

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

Using Planning Conditions or Refusing Planning Applications

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

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

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

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

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

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

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

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



Colchester Borough Council Development Management

Highway Safety Issues

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

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

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

Parking Standards

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

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

For residential schemes:

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

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



Colchester Borough Council Environmental Control

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

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

Best Practice for Construction Sites

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

Noise Control

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

Emission Control

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

Best Practice for Demolition Sites

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

Noise Control

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

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

Emission Control

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

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

Class A1. Shops

Use for all or any of the following purposes—

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

Class A2. Financial and professional services

Use for the provision of —

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

Class A3. Restaurants and cafes

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

Class A4. Drinking establishments

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

Class A5. Hot food takeaways

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

Class B1. Business

Use for all or any of the following purposes—

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

Class B2. General industrial

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

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

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

Class C2. Residential institutions

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

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

Class C3. Dwellinghouses

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

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

Class C4. Houses in multiple occupation

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

Class D1. Non-residential institutions

Any use not including a residential use —

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

Class D2. Assembly and leisure

Use as —

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

Sui Generis Uses

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

theatres, amusement arcades or centres, funfairs, launderettes sale of fuel for motor vehicles, sale or display for sale of motor vehicles, taxi businesses or a business for the hire of motor vehicles, a 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.

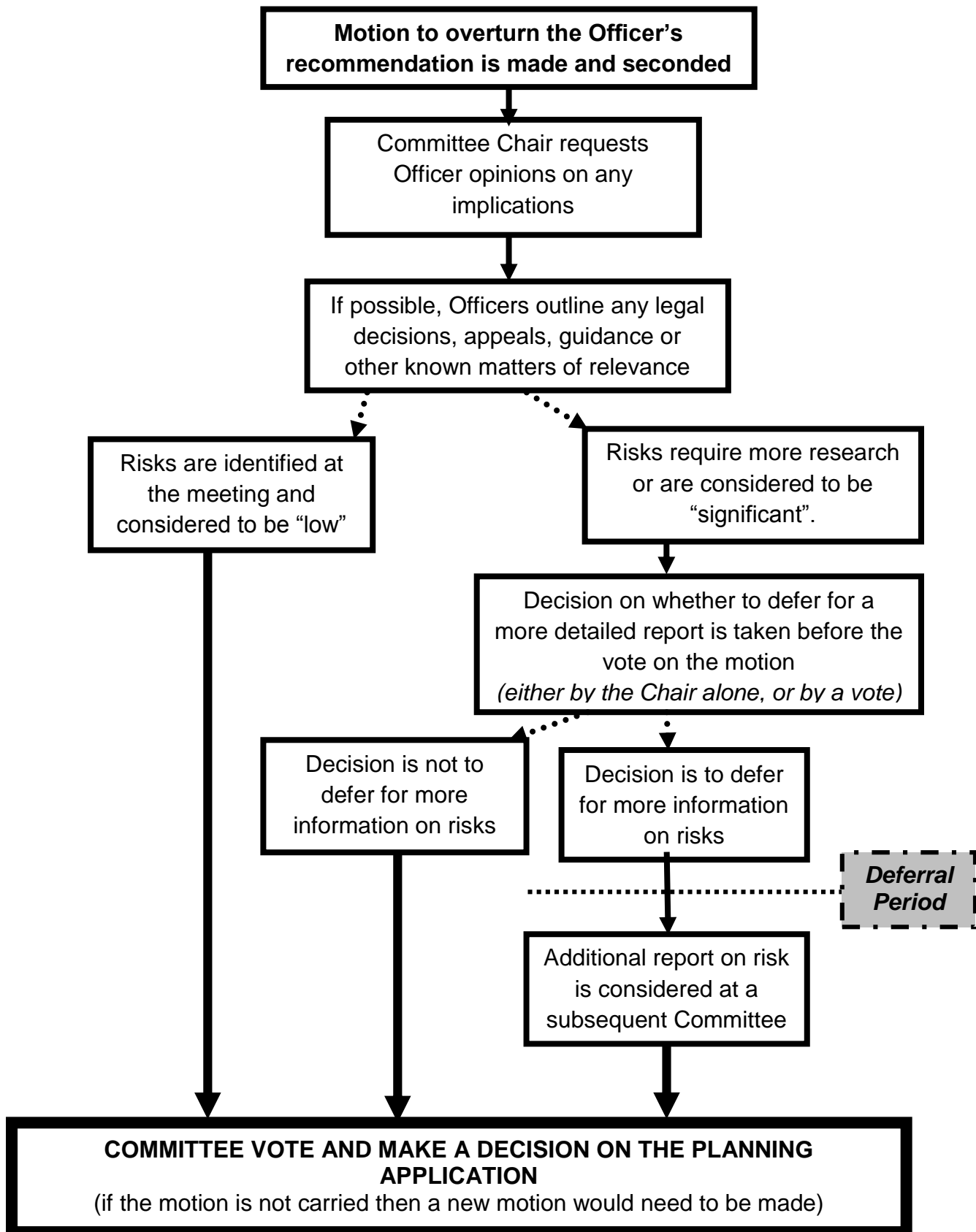
Interpretation of Class C4

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

Deferral and Recommendation Overturn Procedure (DROP) Flowchart

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

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



COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 03 March 2016 at 18:00

Member:

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

Chairman
Deputy Chairman

Substitutes:

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

Councillors Christopher Arnold, Lyn Barton, Tina Bourne, Roger Buston, Nigel Chapman, Barrie Cook, Nick Cope, Robert Davidson, Beverly Davies, John Elliott, Annie Feltham, Bill Frame, Ray Gamble, Martin Goss, Dominic Graham, Annesley Hardy, Marcus Harrington, Dave Harris, Julia Havis, Peter Higgins, Theresa Higgins, Darius Laws, Cyril Liddy, Sue Lissimore, Ben Locker, Fiona Maclean, Kim Naish, Nigel Offen, Gerard Oxford, Chris Pearson, Peter Sheane, Paul Smith, Dennis Willetts, Julie Young and Tim Young.

AGENDA - Part A

(open to the public including the press)

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

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

1 Welcome and Announcements

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

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

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

2 Have Your Say! (Planning)

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

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

3 Substitutions

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

4 Urgent Items

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

5 Declarations of Interest

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

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

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

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

6.1 **Minutes of 7 January 2016** 17 - 22

6.2 **Minutes of 21 January 2016** 23 - 30

7 **Planning Applications**

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

7.1 **151850 Cowdray Centre, Mason Road, Colchester** 31 - 62

Demolition of existing buildings and redevelopment to provide up to 154 dwellings within Class C3 and up to 2,517sqm B1 and/ or D1 floorspace, with related access, roads and paths, car parking and servicing, open space and landscaping

7.2 **152438 40 Boadicea Way, Colchester** 63 - 74

To retain additional windows, repositioning of side door and window in newly built garage

7.3 **160206 The Old Police Station, 37 Queen Street, Colchester** 75 - 80

Advertisement consent for a shroud to be placed on the front elevation showing the proposed creative business centres

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

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

Part B

(not open to the public including the press)

Planning Committee

Thursday, 07 January 2016

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

Substitutes: No substitutes were recorded at the meeting

256 Minutes of 5 November 2015

The minutes of the meeting held on 5 November 2015 were confirmed as a correct record, subject to Minute No 234 being amended as follows:

- Fifth paragraph, second sentence to be amended to read: 'She confirmed that the site had been sold by the Council with covenants effectively providing for the site to be maintained as a garden with the erection of a boundary fence.' and
- Eighth paragraph, second sentence amended to read: 'He also acknowledged that a meeting had taken place with one of the ward councillors and time had been spent in order to find a suitable solution for the site.'

257 Minutes of 19 November 2015

The minutes of the meeting held on 19 November 2015 were confirmed as a correct record.

258 Minutes of 3 December 2015

The minutes of the meeting held on 3 December 2015 were confirmed as a correct record.

259 152268 Northfields (formally Turner Village), Turner Road, Colchester

The Committee considered an application for the variation of Condition 2 (approved plans) of planning permission 091169 at Northfields (Formerly Turner Village), Turner Road, Colchester. The application had been referred to the Committee because it was a major application with a linking Section 106 agreement to the main Section 106

agreement for the Northfields Site. The Committee had before it a report and an amendment sheet in which all the information was set out.

James Ryan, Principal Planning Officer, presented the report and, together with Vincent Pearce, Planning Projects Specialist, assisted the Committee in its deliberations. He explained that amended plans had been submitted by the applicant which would mean that the plan references in proposed Condition 2 would need to be amended accordingly.

James Iles addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He explained that the application was in relation to minor amendments to the final phase of the development which was not an unusual occurrence once site construction was underway. The number of units would be unchanged but changes were required to internal dimensions, Juliet balconies and the level of cycle provision. The existing occupiers had been informed of the modifications and no representations had been received. He gave an assurance that no units would be subject to loss or relocation parking spaces.

Councillor Goss attended and, with the consent of the Chairman, addressed the Committee. He acknowledged that the implications of the modifications were unlikely to be significant but he was of the view that the changes had not been presented well visually. He was of the view that the modifications had caused confusion and more informative plans earlier in the consultation process would have been of assistance. Nevertheless, he welcomed the assurance that existing residents would not be affected. He also referred to ongoing problems within the development in relation to parking, quality of materials, the management company and communal cable telephone services. He welcomed and sought a continuation of the recent open dialogue which had been facilitated by Linden Homes.

Members of the Committee were generally of the view that cycling provision should not be reduced as a matter of principle whilst acknowledging the modifications being proposed were still within the Council's agreed standards. The loss of Juliet balconies and change to internal dimensions was considered regrettable whilst the overall design of the dwellings was thought to be unimaginative.

In response to specific questions the Planning Projects Specialist confirmed that, although regrettable the proposed reduction in cycling provision would not be sufficient grounds on which to base a refusal of permission whilst the internal room size would be a matter for Building Regulations to oversee. He gave reassurance in relation to the design of the dwellings in terms of it being of reasonable in terms of a contemporary approach.

RESOLVED (ELEVEN voted FOR and ONE ABSTAINED) that the planning application be approved subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting and in the event that the legal agreement is not signed within 6 months, to delegate

authority to the Head of Professional Services to refuse the application, or otherwise to be authorised to complete the agreement to provide a linking agreement to the main legal agreement for the site and on completion of the legal agreement, the Head of Professional Services be authorised to grant planning permission subject to the conditions set out in the report.

260 151286 Lakelands Phase 2 NR4, SR4 and SR5, Church Lane, Stanway

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

The Committee considered an application for approval of reserved matters following outline approval 121040 and 121041 for the developments of plots NR4, SR4 and SR5 of the second phase of the Lakelands development at Church Lane, Stanway, Colchester. The application had been referred to the Committee because it was a major application and objections had been received. The Committee had before it a report and an amendment sheet in which all the information was set out.

Sue Jackson, Principal Planning Officer, presented the report and, assisted the Committee in its deliberations.

Carole Sutton, on behalf of Stanway Parish Council, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. She considered that the proposals failed to meet the national guidelines for developments to function well, be attractive and comfortable places to live. The applications included three storey units on a small footprint. The buildings had been referred to as landmarks but she considered them to be out of character and not in accordance with the vision for Stanway. The road networks proposed were of the minimum width possible and would lead to parking problems, making an existing problem worse due to the perpetuation of on-street parking by local residents. She requested this issue should be factored into the determination of the application and for the road widths to be greater in order to accommodate both parked cars and access for refuse vehicles. The Parish Council were of the view that the development needed to be of a lower density and the road network needed to be wider. She was concerned that the developer had acknowledged that it would not be financially viable to deliver a lower density scheme.

Andy Black addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He explained that the application had followed several months of dialogue with planning officers. He was aware of concerns about the previous phases of development at Lakelands and this application was seeking to return to the concept contained within the original masterplan for the area. As such taller houses were proposed at key points in the development. He acknowledged the concerns about parking but the provision proposed accorded with the standards

adopted by the Council. In terms of the references to the development not being in keeping with the surrounding area, he reaffirmed the intention that the proposals were in response to the principles contained in the original master plan.

Some members of the Committee sympathised with the concerns regarding density and the overpowering nature of the design, acknowledging that the first phase at Lakelands had been very low which gave an impression of units in the current proposal being very tightly packed in comparison. Clarification was sought about the location of the landmark buildings, one member stating a preference for these to be away from the entrance to the development. Reference was also made to the Parish Plan which had recommended dwellings no higher than three storey and the future maintenance of open spaces and to neighbourhood tensions which had come to light following the building of the first phase of the Lakelands development and the need to ensure that parking provision and space allocation was agreed before housing was occupied.

The Principal Planning Officer confirmed that the road network was already established and in place and that the master plan had provided for both three and four storey elements to the development, although this was not necessarily in accordance with the Stanway Vision. She confirmed that the Urban Designer was satisfied with the layout and design of the buildings and that the Highway Authority had raised no objection to the proposed road network.

Concerns were shared by a number of members regarding problems of excessive surface water, the risk of flooding and the measures being adopted to mitigate these issues. The previous use of the site for the extraction of sand and gravel was mentioned in the light of the number of dwellings planned to be built, whether the drainage proposals, which had been agreed some years ago for the first phase of the development, involved a reliance on artificial pumping and whether they needed to be reviewed in the light of changes in environmental circumstances.

The Planning Projects Specialist explained the hierarchy in terms of the Committee's consideration of the contents of the Village Design Statement, the forthcoming Neighbourhood Plan and the approved master plan. He stated that the application site was located at a higher level than existing dwellings, gave details of the water drainage arrangements, confirmed that the drainage proposals had been formulated based on the number of dwellings envisaged for the development as a whole and suggested the initiation of discussions with Essex County Council and Anglian Water to review the drainage arrangements for the site as a whole.

RESOLVED (SIX voted FOR, FOUR voted AGAINST and TWO ABSTAINED) that –

- (i) The planning application be approved subject to the conditions set out in the report
- (ii) The Head of Commercial Services make arrangements to facilitate discussions with Essex County Council, Anglian Water and, where appropriate, the developers to

review the effectiveness of drainage arrangements at Lakelands and to report back to the Committee in due course.

261 Lakelands, Stanway - Supplemental Agreement

The Committee considered a report by the Head of Commercial Services giving details of a supplemental agreement which would enable the Council to secure a financial contribution to be used for the provision of affordable housing should the 'Affordable Housing Scheme' not secure the required affordable housing percentage.

Vincent Pearce, Planning Projects Specialist presented the report and, assisted the Committee in its deliberations. He explained that a deed of variation required an 'Affordable Housing Scheme' to be agreed by the Local Planning Authority and whilst a Scheme had been submitted not all the parcels of land identified had received planning permission. There was therefore a small chance the parcels identified would not deliver the approved percentage of affordable housing as the relevant reserved matters were resolved and final layout and density were established. A Supplemental Agreement was therefore proposed which secured a financial contribution of £120,000 for each unit below the required 19.2% affordable housing delivery target.

RESOLVED (UNANIMOUSLY) that the supplemental agreement to enable the Council to secure a financial contribution to be used for the provision of affordable housing at Lakelands, Stanway should the 'Affordable Housing Scheme' not secure the required affordable housing percentage be approved and the Head of Commercial Services together with the Head of Corporate and Financial Management be authorised to finalise, complete and issue the final document.

262 Scheme of Delegation to Officers – Affordable Housing

The Committee considered a report by the Head of Commercial Services giving details of a request to provide the Head of Commercial Services with delegated powers to enter into a Deed of Variation to amend Section 106 planning agreements in respect of affordable housing mortgagee exclusion covenants.

Alistair Day, Principal Planning Officer presented the report and, assisted the Committee in its deliberations. He explained that the current Scheme of Delegation necessitated that requests for an amendment to the affordable housing mortgagee exclusion clause(s) in existing Section 106 planning agreements were first approved by the Planning Committee. A number of enquiries had been received from housing associations regarding the possibility of amending such covenants to enable them to increase their borrowing potential for the building of new affordable housing. In order to improve the efficiency of dealing with these requests it was proposed that the Head of Commercial Services be given authority to enter into a Deed of Variation to amend these clauses in Section 106 agreements.

In response to a specific question it was further explained that the requests to amend an existing Deed of Variation were confined to Registered Providers (Housing Associations).

RESOLVED (UNANIMOUSLY) that the Head of Commercial Services be authorised to enter into a Deed of Variation to amend Section 106 planning agreements in respect of affordable housing mortgagee exclusion covenants in respect of requests made by Registered Providers (Housing Associations) only.

Planning Committee

Thursday, 21 January 2016

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

Substitutes: Councillor Annesley Hardy (for Councillor Pauline Hazell)

263 Site Visits

Councillors Chillingworth, Chuah, Hardy, Hayes, Jarvis, J. Maclean, Manning, Moore, Scott, Scott-Boutell and Sykes attended the site visits.

264 151379 Wickhams, Bures Road, West Bergholt

The Committee considered an application for a proposed replacement dwelling, associated parking, car port and garaging, hard and soft landscaping at Wickhams, Bures Road, West Bergholt, Colchester. The application had been referred to the Committee because it had been called in by Councillor Harrington. The Committee had before it a report in which all the information was set out.

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

James Firth addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He explained that the application was similar to the application for the replacement dwelling which had already received approval and involved minor alterations to accord with the landscaping scheme and sustainability issues. He confirmed that the site would be returned to agricultural use which would mean there would be no loss to the countryside. He considered the revised site for the dwelling was the optimum location whilst the proposals would enhance the quality of the site by means of significant landscape enhancements, the nearest properties were over 200 metres away and, as such, caused no significant impact to the neighbourhood.

Councillor Harrington attended and, with the consent of the Chairman, addressed the Committee. He explained that he had called in the application as a consequence of the Planning Officer's recommendation to refuse the application. The application was for

permission to replace a dwelling which had been demolished, located 45 metres away from the original location together with landscape enhancements which would align with the historic landscape as well as improving the screening to the application site. He confirmed that there no neighbours within 200 metres along Bures Road and, as such, the density was sufficiently low that this would not constitute a pattern of development against which to judge the application. Although the design of the dwelling was considered to be an exemplar, no objections had been received from the Parish Council or the landscape officer and the proposal was in-keeping with the West Bergholt Village Design Statement, he was disappointed that the application had not received a recommendation for approval. He considered the grounds for refusal to be weak whilst those for approval were compelling.

The Planning Officer considered that there were no valid reasons to move the location of the dwelling as the landscaping enhancements could be undertaken without such a change. He confirmed that no other dwelling in the area extended so far into the countryside and, as such, the proposal was not in-keeping with its surroundings. The landscape officer had confirmed that the new planting was likely to take up to 10 years to grow into a juvenile woodland which would mean the dwelling would remain exposed for this period of time. The recommendation was an 'on balance' judgement which had been debated with Principle Planning Officer colleagues which had concluded that it would set a precedent for the one neighbouring dwelling located opposite the application site.

Some members of the Committee were of the view that the application would not set a precedent as the existing permission for a replacement dwelling had already moved away from the curtilage of the previous dwelling. In addition it was considered that there was no pattern of development in the area of the application and there was no material harm caused to the countryside due to the proposal to recreate the old historic hedgerows. The house was also considered to be an exemplar in terms of its architectural design merits and that there was no requirement for development in the countryside to necessarily follow uniformity with neighbouring properties. Reference was also made to assurances being sought in relation to the future use of the site of the previous dwelling and the need for it to be returned to agricultural use.

Other members of the Committee, whilst welcoming the enhancements to biodiversity in terms of replacement tree planting, were unconvinced of the need to change the location of the dwelling and were of the view that there was an absolute presumption to not build isolated dwellings in the countryside. Reference was also made to the possibility to requiring the planting of semi-mature trees for better screening results.

The Planning Officer confirmed that whilst the siting of the replacement dwelling did not correspond with the footprint of the previous dwelling, it did not extend beyond the curtilage. He was of the view that the demolition of the previous dwelling demonstrated intent to rebuild but that this needed to be respectful of the surrounding countryside. He had received reassurance regarding the future agricultural use of the site fronting the proposed development and acknowledged that future development was unlikely given

the aspiration to gain additional peace and quiet.

The Planning Manager confirmed that the additional cost associated with the planting of semi-mature trees rather than whips would be considerable and, as such, unreasonable to impose by condition. He also confirmed that the proposal was an 'on balance' judgement and the Committee had fully explored the material considerations in relation to the application.

As the discussion suggested that the Committee may be minded to refuse the application contrary to the officer's recommendation in the report the Chairman invited the Committee to consider invoking the Deferral and Recommendation Overturn Protocol (DROP). The Committee did not support invoking the DROP and accordingly, the Chairman then invited the Committee to determine the application without deferral.

RESOLVED (SIX voted FOR, SIX voted AGAINST and the Chairman exercised his casting vote FOR) that the planning application be refused for the reasons set out in the report.

265 152042 39 Harvey Crescent, Stanway

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

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

The Committee considered an application for the erection of a detached three bedroom dwelling and parking at 39 Harvey Way, Stanway, Colchester. The application had originally been referred to the Committee because it had been called in by Councillor Sykes and the Committee's consideration had been deferred at the meeting on 5 November 2015 to allow the applicant the opportunity to produce a better design for the proposal. The Committee had before it a report in which all the information was set out.

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

Robert Pomery addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He explained that the application had been deferred for discussions to secure proposals which better reflected the location. The house had been re-orientated through 180 degrees, the ridge of the roof was now parallel and the doors and windows better reflected the neighbouring buildings. This was not a contemporary approach but he was hopeful it would be acceptable by Committee members. He considered the proposal was in accordance with Local Plan policies, the 45 degree angle guidelines and was acceptable to the Highway

Authority. He referred to the objection to the visual impact of the parking proposals at the front of the site but that this had not raised concerns with the Highway Authority. The proposal had received five letters of support and one objection. He considered that he had met all the requirements of the Committee members but was willing to try other options if necessary.

The Planning Officer explained her concerns about the proposed parking arrangements to the front of the site, the loss of opportunity for landscaping that this presented and the encroachment to the front of the dwelling. She also referred to the lack of detail in the drawings and the cramped layout which may adversely affect the users of the adjacent footpath.

Some members of the Committee were of the view that a lot of work had been done to improve the design of the proposal and welcomed the options to deliver more parking spaces. The requirement not to reverse out of parking spaces was not considered reasonable given the practice observed to be adopted by other residents. Reference was made to the support offered by other residents and the change in the street scene already created due to the rendered appearance of the existing dwelling. The opportunity to improve the appearance of the site was also welcomed.

Other members of the Committee acknowledged the efforts made by the applicant to present an acceptable proposal for development but there were concerns that this still did not meet acceptable parking standards or design guidelines. Reference was also made to the untidy and unkempt nature of the site, the need for it to be maintained as a garden /open space and the measures that could be taken to improve its appearance other than development. In addition the existing character and layout of Harvey Crescent was considered to be important and the need to maintain the open aspect at each corner and the general integrity of appearance of the locality.

The Planning Officer confirmed that her view was that the proposal was not appropriate and it would not improve the character of the area. The Planning Manager acknowledged that, if the Committee was minded to approve the application, appropriate conditions should be applied to a planning permission.

As the discussion suggested that the Committee may be minded to approve the application contrary to the officer's recommendation in the report the Chairman invited the Committee to consider invoking the Deferral and Recommendation Overturn Protocol (DROP). The Committee did not support invoking the DROP and accordingly, the Chairman then invited the Committee to determine the application without deferral.

RESOLVED (EIGHT voted FOR and THREE voted AGAINST and ONE ABSTAINED) that the planning application be approved on the basis of the scheme of four and subject to appropriate conditions to be agreed by the Head of Professional Services.

The Committee considered an application for a proposed alterations and an extension at 19a Belle Vue Road, Wivenhoe. The application had been referred to the Committee because it had been called in by Councillor Liddy. The Committee had before it a report in which all the information was set out. The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

Chris Harden, Planning Officer, presented the report and, together with the Planning Manager, assisted the Committee in its deliberations. He provided details of an additional letter of objection which had been received from the resident at 19 Belle Vue Road, Wivenhoe.

Edwin Willett addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. He explained that he was objecting to the application as he considered that the 45 degree angle guidance had not been complied with. He considered the building to be overbearing as the proposals provided for a two storey building although the neighbouring properties were chalet bungalow, the windows would be intrusive should the fence be removed and the sight lines had been undermined. He was unhappy that the application had been submitted over the Christmas and New Year period and he had been left with reduced time to submit his comments on the proposals.

Kevin Hall addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the applications. He explained that the dwelling was intended as a home to which to retire for the applicant. He referred to the extension which had been erected at no 20 Belle Vue Road and the previous removal of permitted development rights which had required the current proposal to be subject to permission by the Planning Authority. He was of the view that the extension was not overbearing as it was being constructed away from the boundary to the neighbouring property and a cupola had been added to the roof in order to reduce any negative impact whilst the 45 degree angle test had also been adequately satisfied. As such he considered that the proposal would not materially harm the amenity of either of the neighbouring properties.

Councillor Liddy attended and, with the consent of the Chairman, addressed the Committee. He explained that he had called in the application at the request of Mr Willetts on the basis that the proposals were overbearing and oppressive. He further explained that he was also a resident of Belle Vue Road but the application did not affect him personally. He referred to the objector's view that the proposal would reduce the natural light entering his property and, as such, his amenity would be adversely affected. The objector was also of the view that the extension could not be viewed in isolation of the host dwelling which was considered incongruous with the street scene and the addition of the extension would further increase the oppressive nature of the property and exacerbate the problems experienced.

The Planning Officer confirmed that the proposal did meet the 45 degree angle criteria,

the side window would not lead to overlooking issues as it was at ground floor level and screened by a fence. He explained that the submission of applications over the Christmas period was permitted and any reduction in time for comments was in relation to amended plans to illustrate the lower roof proposal. He considered there would be no loss of light for the neighbour as the proposal was ground floor only and was not a cramped form of development.

Some members of the Committee acknowledged the work done with the proposal to reduce any negative impacts but were concerned about the addition of an extension in the light of the permitted development rights removal. Reference was also made to the design of the extension and whether it could be considered inappropriate in the context of the surrounding area.

Other members of the Committee considered the more recent leniency of permitted development rights, the modest nature of the extension proposed and the compliance of the proposal with policies and guidelines regarding overlooking and loss of light.

In response to specific questions the Planning Officer confirmed the removal of permitted development rights did not prevent further development, rather that control was retained by the Planning Authority. He was also of the view that the extension, including the lantern feature in the roof included welcome design elements and, as such, did not constitute a reason for refusal.

The Planning Manager did not consider it reasonable to add a condition to provide for the retention of the side fence as any loss of privacy could be rectified by the neighbour whilst design criteria for developments at the rear of properties tended to be more lenient than those visible from the highway.

RESOLVED (SEVEN voted FOR, THREE voted AGAINST and TWO ABSTAINED) that the planning application be approved subject to the conditions set out in the report.

267 152438 40 Boadicea Way, Colchester

The Committee considered an application to retain additional windows, repositioning of side door and window in newly built garage at 40 Boadicea Way, Colchester. The application had been referred to the Committee because it had been called in by Councillor Hazell. The Committee had before it a report in which all the information was set out. The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

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

Simone Bradshaw addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the applications. She explained that she had purchased her property adjacent to the application site 15 months previously since

which time she had lost over half of the natural sunlight entering her rear garden. She referred to overlooking from four windows in the proposed garage and the loss of access to her rear garden as a result of the garage construction.

Councillor Hazell attended and, with the consent of the Chairman, addressed the Committee. She explained that the construction of the garage had taken place some 12 months after that of the house which it was served by. She questioned the repositioning of the windows to the garage and referred to the size and height of the garage and the impact on the privacy of the neighbouring property in that it seriously affected the neighbour's ability to enjoy her leisure time. She also referred to the fencing in of the rear access to the neighbouring garden and considered, as the garage was capable of being used as a separate dwelling, that enforcement action should be taken to return the windows to their original position within the garage. If the Committee approved the application she requested consideration of conditions to prevent the use of the structure as a separate dwelling, the windows to be of obscured glazing in perpetuity and for the rear access of the neighbouring property to be reinstated.

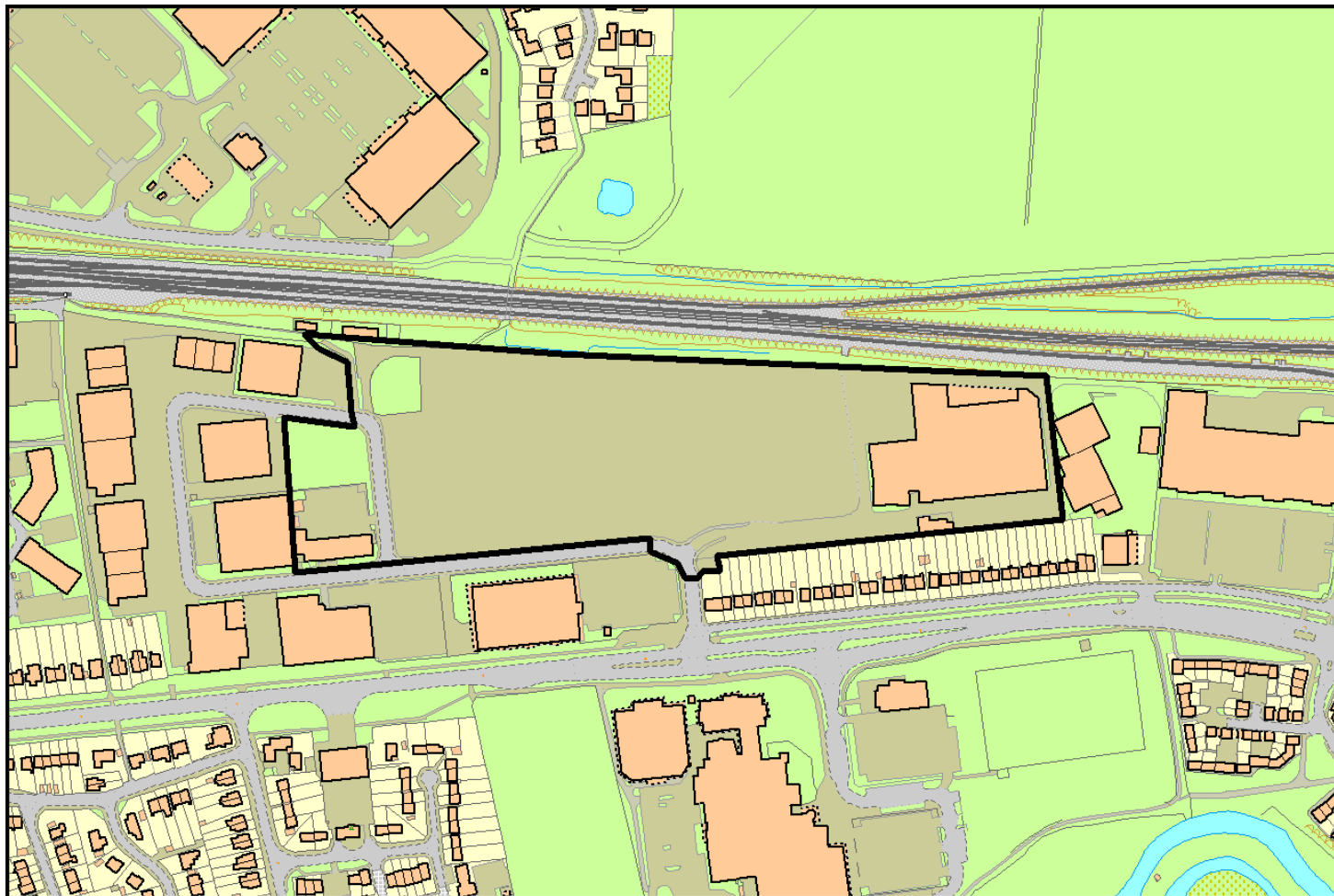
Members of the Committee were generally of the view that the applicant should be required to revert the position of the windows to that illustrated in the existing planning permission and sympathised with the neighbour's concerns about the access to her rear garden. Reference was also made to the inclusion of conditions to provide for windows being of obscured glazing as well as non-opening and the door being non-glazed on the grounds of potential for noise, fumes and the perception of overlooking.

The Planning Officer confirmed that the existing permission for the garage included a condition to prevent its use as a dwelling and that this had been repeated for the current proposal. In addition conditions had been proposed to provide for obscured glazing in relation to the windows facing the neighbouring property. She explained that the windows and door facing the rear of the house on the application site were not causing harm, that conditions to provide for the reinstatement of the rear access to the neighbouring property were not considered reasonable as they were not relevant to the development and that this was a matter which needed to be the subject of separate legal advice by the neighbour. She went on to advise against refusal of the application on grounds of future use as the applicant had confirmed its use for the storage of cars and it was also proposed to apply a condition to address this eventuality. She also referred to the 1.6m boundary fence to the neighbouring property which provided screening to the garden and prevented overlooking from windows.

The Planning Manager took the opportunity to explain that a refusal of the application would mean that the site would revert to the existing permission which did not include any conditions to prevent the introduction of additional windows. The determination of the existing application would give the Planning Authority additional control as it would include conditions preventing additional windows. Given the Committee's discussions, he offered to arrange for further negotiations with the applicant with a view to securing

greater protection for the neighbour if that was possible.

RESOLVED (ELEVEN voted FOR and ONE ABSTAINED) that consideration of the planning application be deferred and the Head of Professional Services be requested to facilitate further negotiations with the applicant in order to seek a better level of protection to neighbouring properties, by means of an amendment to the proposed windows and to secure more control over the garage use and to report back to Committee in due course.



Application No: 151850

Location: Cowdray Centre, Mason Road, Colchester, CO1 1BX

Scale (approx): 1:2500

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Committee Report

Agenda item

7

To the meeting of **Planning Committee**
on: **3rd March 2016**
Report of: **Head of Professional/Commercial Services**
Title: **Planning Applications**

7.1 Case Officer: Lucy Mondon Due Date: 04/03/2016

MAJOR

Site: Cowdray Centre, Mason Road, Colchester, CO1 1BX

Application No: 151850

Date Received: 25 August 2015

Agent: Ms Paula Stratford, Montagu Evans

Applicant: F & C

Development: Demolition of existing buildings and redevelopment to provide up to 154 dwellings within Class C3 and up to 2,517sqm B1 and/ or D1 floorspace, with related access, roads and paths, car parking and servicing, open space and landscaping

Ward: Castle

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

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because:

- It is a major application on which material planning objections have been received and the Officer recommendation is to approve; and
- A S106 is required.

2.0 Synopsis

- 2.1 The application seeks OUTLINE permission for the redevelopment of a brownfield site and existing business premises for housing (Class C3) and B1 and D1 floorspace. The only matter being applied for in full is access. The report describes the site and its setting, details of the proposal, and the consultation responses received. Material planning matters are then considered together with issues raised in representations.
- 2.2 The key issues explored below are traffic and highway implications; noise; contamination; flood risk; ecology; and archaeology. Impact on neighbouring amenity and the surrounding area will also be discussed, as will the impact upon existing businesses. Matters surrounding the viability of the scheme will also be addressed in so far as they relate to necessary planning contributions towards infrastructure.
- 2.3 The planning merits of the case are assessed leading to the conclusion that the proposal is acceptable and that a conditional approval is recommended, subject to the completion of a S106 agreement.

3.0 Site Description and Context

- 3.1 The application site forms part of Cowdray Trade Park, a trade and industrial park, located to the north of the town centre (town centre fringe) off Cowdray Avenue. The Cowdray Trade Park site as a whole is within a Regeneration Area and is allocated for mixed use development (Site Allocation policies SA CE1 and SA TC1) in the Local Plan.
- 3.2 For ease of reference, the application site can be divided into three areas:
Area A: The main central part of the site;
Area B: Eastern side;
Area C: Western side (Unit 22).



- 3.3 Area A: The site originally contained a large printing factory (from c.1938), which was extended and subsequently divided into individual units. However, following a fire in 2006, the majority of the building was demolished and its site has remained vacant. This part of the site is now fenced off with solid hoardings. There is a Local Wildlife Site to the north-western corner of the site, which is overgrown.

- 3.4 Area B: The building to the eastern part of the site formed part of the previous factory, but has remained in use and contains a variety of existing business units. These include (but are not limited to) a motorcycle MOT shop; dance studio; a triathlon store; and guitar shop. Approximately 65% of the units are currently occupied, equating to 19 businesses, and are running on short term leases.
- 3.5 Area C: The western part of the site consists part of an existing unit (Unit 22), an adjacent car park and an area of grass. The unit is currently vacant and the car park is used as overflow car parking for nearby units.
- 3.6 The remainder of the Cowdray Trade Park lies to the west and south of the application site and, whilst being within the same ownership, does not form part of the application. The trade park as a whole measures approximately 10.19 ha, with the application site measuring 5.36 ha.
- 3.7 Beyond the confines of the site and the trade park is the Lookers car servicing and sales building (to the east), with Colne View Retail Park beyond. Highwoods Country Park lies immediately north of the site. The site is separated from the country park by a railway track, although there is a public footpath (Public Right of Way 73) under the track that enables access. The footpath also enables access to Turner Rise Retail Park and North Station railway station. The footpath is allocated as a Green Link within the Local Plan. The railway track runs along the northern boundary of the site in its entirety and is set at a much higher level (approximately 5-7 metres). Other facilities, such as Leisure World and allotments, lie to the south of the site across Cowdray Avenue.
- 3.8 There are residential properties in close proximity to the site. Those closest are a linear development of 1930s houses running along part of the southern boundary on Cowdray Avenue. The rear boundary of these properties forms the boundary of the site and consist a mix of fencing and walls, some of which are overgrown. There is also more recent residential development at Clarendon Way, Bloyes Mews, Gilbert Court, and Imperial Court to the west of the trade park.

4.0 Description of the Proposal

- 4.1 The application seeks OUTLINE planning permission for up to 154 dwellings and up to 2,517sqm of B1 and/or D1 floorspace, including roads and paths, car parking, servicing, open space and landscaping. The only matter being applied for in full is access. The proposal was subject to a preliminary enquiry in March 2015, whereby Case Officer advice was given regarding planning policy and supporting evidence requirements.
- 4.2 A plan (ref: 6234/1115 Revision B) has been submitted with the application showing access points onto Mason Road and also indicating a mixed use scheme of residential development within the main body of the site, with non-residential units located on land adjacent unit 22 of the Cowdray Trade Park. A number of illustrative layouts have also been submitted.

- 4.3 Documents submitted with the application include:
- Planning Statement
 - Design and Access Statement
 - Statement of Community Involvement
 - Preliminary Archaeology Assessment
 - Ecological Appraisal and Invertebrate Survey
 - Noise, Vibration and Air Quality Assessment
 - Preliminary Environmental Risk Assessment
 - Flood Risk Assessment
 - Transport Statement

5.0 Land Use Allocation

- 5.1 The site is within the Town Centre and North Station Regeneration Area and is allocated for mixed use development within the Local Plan. Site Allocation Policies SA CE1 and SA TC1 are relevant.
- 5.2 Site Allocation Policy SA TC1 states that the Cowdray Centre 'should provide a range of uses within the categories of retail, residential, leisure, hotel, and employment. The residential element shall comprise no more than 50% of the site area and existing businesses will be encouraged to remain.' The policy goes on to state that 'development of the site should also deliver improved connectivity to the Town Centre and North Station for vehicles (especially public transport), pedestrians and cyclists; and a green link between Highwoods Country Park and Leisure World/Castle Park. In addition land should be safeguarded for a potential future vehicular link under the railway to Turner Rise.'

6.0 Relevant Planning History

- 6.1 There is no planning history with direct relevance to the application site. Planning history relating to the existing business units to the east of the site consists of changes of use to a variety of retail (A1) and leisure (D2) uses. Recent planning permissions include: a 2012 change of use from B1/B2/B8 to D2 fitness centre at Block D8 (ref: 121412) and a 2014 change of use from warehouse and storage to full retail outlet at Durrant Guitars Block D10 (ref: 145824).

- 6.2 Previous planning applications relating to redevelopment of the site include:

81/0579 - Outline application APPROVED for warehouse and industrial development (not more than 113,000 sq.ft. industrial) with ancillary office, circulation road, car parking and service facilities. 15th June 1981;

O/COL/01/0449 – Outline application for redevelopment of redundant warehouse (former Ozalid Works Site and adjoining land) to retail warehouse and employment development. Approved subject to legal agreement, but subsequently CLOSED due to lack of progress.

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

- SD1 - Sustainable Development Locations
- SD2 - Delivering Facilities and Infrastructure
- SD3 - Community Facilities
- CE1 - Centres and Employment Classification and Hierarchy
- CE2 - Mixed Use Centres
- CE2a - Town Centre
- H1 - Housing Delivery
- H2 - Housing Density
- H3 - Housing Diversity
- H4 - Affordable Housing
- UR2 - Built Design and Character
- PR1 - Open Space
- PR2 - People-friendly Streets
- TA1 - Accessibility and Changing Travel Behaviour
- TA2 - Walking and Cycling
- TA3 - Public Transport
- TA4 - Roads and Traffic
- ENV1 - Environment
- ER1 - Energy, Resources, Waste, Water and Recycling

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

- DP1 Design and Amenity
- DP2 Health Assessments
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
- DP12 Dwelling Standards
- 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
- DP21 Nature Conservation and Protected Lanes

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

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

Backland and Infill
Community Facilities
Vehicle Parking Standards
Sustainable Construction
Open Space, Sport and Recreation
The Essex Design Guide
External Materials in New Developments
Affordable Housing
Archaeology and Development Strategy
Sustainable Drainage Systems Design Guide
Street Services
Planning Out Crime

8.0 Consultations

- 8.1 Network Rail: No objections. Detailed comments on future maintenance, drainage, plant and materials, scaffolding, piling, fencing, lighting, noise and vibration, landscaping, vehicle incursion.
- 8.2 Environment Agency: No objections. The water environment at this site is of low environmental sensitivity with regards to contamination.
- 8.3 Highway Authority: Confirmation that they are content the proposal would not have a material impact on existing traffic conditions as the proposal is unlikely to lead to a significant number of additional trips. Having checked the figures quoted in the Transport Assessment, they are content these represent negligible increases. In terms of highways and transportation, the impacts of the proposal are acceptable subject to a construction management plan; residential travel information packs; a travel plan (for the non-residential element of the proposal); and the following requirements and improvements:
- A roundabout in Mason Road to provide access to the proposal site
 - If and when a bus service uses Cowdray Avenue, upgrade to current Essex County Council specification the two bus stops in vicinity of the Cowdray Avenue/Mason Road junction (details shall be agreed with the Local Planning Authority prior to commencement of the development)
 - A footpath/cyclepath between Cowdray Avenue, the subway under the railway line immediately north of the proposal site and North Station Road (south of the railway line) (details shall be agreed with the Local Planning Authority prior to commencement of the development)
 - Improvements to the subway under the railway line immediately north of the proposal site (details shall be agreed with the Local Planning Authority prior to commencement of the development)

- 8.4 Natural England: No objections. The proposal is not likely to have a significant effect on any statutory nature conservation sites. SSSIs do not represent a constraint in determining this application. Natural England would encourage the incorporation of Green Infrastructure (GI) into this development. The authority should consider securing measures to enhance biodiversity. Standing advice regarding protected species.
- 8.5 Essex County Council SuDs: No objection subject to conditions requiring detailed surface water drainage scheme and a management and maintenance plan of the surface water drainage system.
- 8.6 Ramblers Association: No objections provided footpaths and public rights of way are wide enough, safe enough and well-maintained.
- 8.7 Anglian Water: No objections subject to a condition that no hardstanding areas are constructed until works have been carried out in accordance with a surface water strategy. Requested informatives regarding Anglian Water assets on site; applications required regarding the discharge of trade effluent; petrol/oil interceptors; and fat traps for catering establishments.
- 8.8 Planning Policy:
'Policy SA TC1 1(ii) provides that the Cowdray Centre is designated for Mixed Use redevelopment, with the residential element comprising no more than 50% of the site area. The current proposal provides for approximately half of the site to be residential, which is considered to comply with the policy target. It will, however, be important to consider the residential use within the wider context of other commercial uses on the remainder of the site, and evidence demonstrating masterplanning for the site as a whole and inclusion of appropriate commercial uses should be submitted.'
- 8.9 Landscape Officer: Recommendation for additional tree planting to the south of the proposed light industrial units in order to help soften the street scene at maturity [Comments based on indicative layout drawing submitted]. No objection subject to conditions for full landscape proposals and a landscape management plan.
- 8.10 Arboricultural Officer: Following the receipt of an Arboricultural Implications Assessment, no objections subject to conditions for protective fencing for retained trees; tree monitoring; and hand excavation under tree canopies.
- 8.11 Urban Design: Issues with illustrative layouts submitted, but supportive comments regarding concept of proposal:

'This is a strategically important site offering potential walking/cycling distance access to both the mainline railway station and town centre. It has the opportunity to provide a strong, mixed and relatively self-contained community, benefitting from good sustainable access to facilities and open countryside, well landscaped streets and spaces, wildlife corridors and high quality housing. The site can also significantly join up and enhance the strategic foot and cycle network and therefore promote sustainable travel locally.'
- 8.12 Environmental Protection: No objections subject to conditions relating to noise and vibration levels; construction method statement; limited hours of construction and

demolition; details of the management of communal storage areas; lighting; restricted hours of operation and delivery; and control of fumes and odours.

- 8.13 Environmental Protection (Air Quality): Recommended conditions to mitigate any increase of pollution as a result of the development. Recommended conditions include: a demolition and construction management plan; provision of EV charging point infrastructure (both residential and commercial); and a travel plan to include mechanisms for discouraging high emission vehicle use and encouraging modal shift (i.e. public transport, cycling and walking).
- 8.14 Contaminated Land Officer: Following receipt of further clarification from Waterman Infrastructure and Environment Ltd, no objections subject to conditions dealing with site characterisation, submission of remediation scheme, implementation of approved remediation scheme, reporting of unexpected contamination, and submission of a validation certificate.
- 8.15 Archaeology: The proposal is located in an area of archaeological interest, adjacent to the site of a Roman cremation cemetery. There is high potential for encountering buried archaeological remains (and potentially further burials) at this location, given the proximity to known remains. Groundworks relating to the proposed development would cause significant ground disturbance that has potential to damage any archaeological deposits that exist. No grounds to consider refusal of permission in respect of archaeology subject to a condition to record and advance the understanding of the significance of any heritage asset before it is damaged or destroyed.
- 8.16 No comments have been received from:
Essex Wildlife Trust
Essex County Council Footpaths
Bridleways
Essex Fire Planning Liaison
Street Services (Waste)

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

10.1 Representations

10.1 Five letters of objection and one comment has been received from local residents and business owners, the contents of which are summarised below:

- Traffic and parking issues
- Mason Road blocked with traffic at rush hour
- Would the NHS support a doctor's surgery?
- Smaller businesses will suffer
- What will existing businesses do in the interim?
- Concern regarding the affordability of the new business units.
- Existing businesses (B2) would not be able to go to the new units (B1 and D1)
- Vacant larger units should be split into smaller units to provide for small businesses

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

11.0 Parking Provision

11.1 The application is for outline permission only and no layout or detailed design is to be agreed at this stage. Any Reserved Matters application would be required to comply with the Council's adopted Vehicle Parking Standards, subject to material planning considerations.

12.0 Open Space Provisions

12.1 Current planning policy would require at least 10% of the site to be open space. The application is for outline permission only and no layout, including any layout to indicate areas of open space, is to be agreed at this stage. The illustrative layouts submitted with the application fall short of the policy requirement for open space. However, due to the location of the site, in very close proximity to Highwoods Country Park, Leisure World and Castle Park, it is considered difficult to justify a refusal on these grounds.

12.2 It is, however, considered important that equipped areas of play are provided on site, as similar facilities are not within easy reach. As such, it is recommended that a requirement for locally equipped areas of play (LEAPs) is included within a S106 attached to the permission.

13.0 Air Quality

13.1 The application site is not within an Air Quality Management Area and Environmental Protection has assessed the proposal on its own merits. There is the potential for increased levels of pollution due to increased traffic movements, but it is considered that this can be mitigated via conditions. Recommended conditions include the following: a demolition and construction management plan; provision of EV charging point infrastructure (both residential and commercial); and a travel plan to include mechanisms for discouraging high emission vehicle use and encouraging modal shift (i.e. public transport, cycling and walking). Environmental Protection have confirmed that these conditions are considered to adequately mitigate the impacts of the proposed development in terms of air quality and are in line with medium proposal

mitigation measures contained in the draft Air Quality & Emissions Technical Planning Guidance and also the Air Quality Action Plan which is currently in consultation.

14.0 Development Team and Planning Obligations

14.1 This application is classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. It was considered that Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990. The Obligations sought were:

- Affordable Housing: 20% on-site provision
- Education: £413,848 for primary places, index linked from April 2015 using the PUBSEC index
- Open Space, Sport and Recreation: £771,599 (although this sum would vary according to whether play sites were provided and whether the Borough Council would be required to take on maintenance)
- Community Facilities: £197,000

14.2 Following confirmation of the planning obligations required, the Applicant submitted a Viability Appraisal, which concluded that the development would be unviable should the obligations be met. Paragraph 173 of the NPPF states that ‘pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.’ Therefore, issues surrounding the viability of the scheme need to be assessed and taken into consideration.

14.3 The appraisal underwent an Independent Viability Review which agreed that the development would be unviable if planning obligations were pursued. However, the review concluded that a number of sums (costs and gains) could change as and when the site is actually developed. Although some costs could increase at the time of development, the review considered that sales values could increase due to the high potential of the site (in terms of proximity to facilities and the town centre) and remediation costs could be reduced, leading to a potential surplus over and above the developer’s cited profit of 20%. If this were the case, some contribution could be made towards the necessary planning obligations. It was therefore recommended that the Council seek agreement to a review mechanism so that any improvements in viability that result in a surplus being generated by the scheme can generate contributions. This approach would deal with the uncertainty over actual costs and sales values, which are especially ambiguous due to this being an outline application without details of the exact numbers and types of build, without potentially making the scheme unviable.

14.4 The Applicant has agreed to a viability review and the mechanism for this is to be included in a S106.

15.0 Report

Principle

- 15.1 One of the core planning principles set out by the National Planning Policy Framework (NPPF) is to encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value. The main body of the application site is brownfield land, so its redevelopment would be encouraged, subject to material planning considerations. However, the site also comprises existing commercial uses and so the principle of its redevelopment as a whole needs to be considered further.
- 15.2 The site is allocated within the Local Plan for mixed use redevelopment under Site Allocation Policies SA CE1 and SA TC1. This allocation covers the Cowdray Centre and Cowdray Trade Park as one site and seeks to provide a range of uses within the categories of retail, residential, leisure, hotel, and employment. Policy SA TC1 states that 'the residential element shall comprise no more than 50% of the site area and existing businesses will be encouraged to remain. Development of the site should also deliver improved connectivity to the Town Centre and North Station for vehicles (especially public transport), pedestrians and cyclists; and a green link between Highwoods Country Park and Leisure World/Castle Park. In addition land should be safeguarded for a potential future vehicular link under the railway to Turner Rise.'
- 15.3 The proposal is considered to comply, for the most part, with the requirements of the site allocation. In terms of the mixed use designation, the residential element of the proposal would not exceed 50% of the overall Cowdray Trade Park site; the Cowdray Trade Park is 10.19 hectares in size and the residential element of the proposal would cover approximately 4.96ha, according to the outline proposal. In addition, land could be safeguarded for a potential future vehicular link under the railway to Turner Rise, as shown in illustrative layouts submitted with the application.
- 15.4 In terms of improved connectivity, the illustrative plans do show a path running along the northern boundary of the site which links to the subway under the railway track, which in principle would result in good access from the site to Highwoods Country Park, the retail park, and the train station beyond. In order to adhere to highway requirements, as well as the provisions of policy SA TC1, it is also necessary to secure the following:
- A footpath/cyclepath between Cowdray Avenue, the subway under the railway line immediately north of the proposal site and North Station Road (south of the railway line) (details shall be agreed with the Local Planning Authority prior to commencement of the development)
 - Improvements to the subway under the railway line immediately north of the proposal site (details shall be agreed with the Local Planning Authority prior to commencement of the development)
- 15.5 Subject to the above requirements, and in consideration of this being a brownfield site within the settlement boundary of Colchester, the proposal is considered to be acceptable in principle.

Design and Layout

- 15.6 The application is for outline planning permission and all matters of layout, appearance, and landscaping do not form part of this application and will be submitted and agreed under the reserved matters application. The access arrangements submitted do form part of the application and consist of vehicular access points to the north and south of the non-residential part of the site and a roundabout from Mason Road into the residential part of the site. The access arrangements are considered to be acceptable.
- 15.7 Whilst the design and layout of the proposed development is a matter for the Reserved Matters application, it is beholden on an applicant to show how a given number of units could be accommodated on site. Illustrative plans have been submitted which show a mixed-use development of residential properties and commercial properties. Whilst the illustrative plans show how development could be arranged on site, the layout and design is not considered to be successful. However, as the plans are purely illustrative they do not preclude the determination of whether outline planning permission should be granted provided that the Council can be satisfied that the amount of development proposed can be achieved on site. In terms of design and layout, issues would need to be addressed and resolved in the submission of reserved matters to ensure that the development adheres to planning policy in a satisfactory manner.
- 15.8 It is considered that the site can potentially accommodate the level of development proposed. In this case, it is important to note that the proposal is for **up to** 154 dwellings and **up to** 2,517 sqm B1 and/or D1 floorspace. The amount of development is therefore a maximum rather than a set figure. In terms of the residential element of the proposal, the density of development could be increased should additional land be required for increased garden space, landscape buffers, car parking, and open space; indeed, Core Strategy Policy H2 states that locations with good access to centres are more suited to higher density development, although a flexible approach will be important to ensure that densities are compatible with the surrounding townscape. Flats have been included within the illustrative layouts submitted and these numbers could be increased in order to intensify the density of development.
- 15.9 The non-residential element of the proposal appears to be relatively successful in its layout. Although the number of units may change (as it is an area of floorspace, rather than unit numbers, that is being applied for) the illustrative plans show that it can be comfortably sited and adequate landscaping can be included.
- 15.10 The landscaping of the scheme has been considered to be acceptable, subject to conditions. Landscape details would be required as part of reserved matters.

Impact on the Surrounding Area

- 15.11 The visual impact of the proposal is considered to be relatively minimal. The site would be clearly visible from the higher ground of Highwoods Country Park, but it would be set against a backdrop of well-established existing development, such as housing, Leisure World, and the town centre beyond. The development would not be a prominent or imposing feature when viewed from Cowdray Avenue due to it being set back and largely obscured by existing buildings within the trade park, as well as existing housing along Cowdray Avenue itself.

- 15.12 A reserved matters application would need to show the design, layout and scale of development so that its impacts can be fully considered.

Impacts on Neighbouring Properties

- 15.13 In general terms, the proposal is unlikely to have a significant impact upon neighbouring properties, provided that the layout at reserved matters stage is respectful in terms of back-to-back distances and privacy.
- 15.14 The non-residential uses proposed are such that they are unlikely to cause undue noise and disturbance, particularly as conditions are recommended that control noise levels, opening times, and deliveries in order to protect residential amenity.
- 15.15 The greatest impact upon neighbouring properties is likely to be during the construction phase of development. It has therefore been considered important to include a condition requiring a construction management plan so that disturbance can be kept to a minimum.

Amenity Provisions

- 15.16 Issues of garden sizes and privacy would be fully assessed when considering a detailed layout at reserved matters stage. In terms of the illustrative plans submitted as part of this application, garden sizes are lacking in some places, particularly for the three-bedroom houses and flats, but this can be addressed at reserved matters stage.
- 15.17 A noise and vibration mitigation strategy would be necessary in order to ensure that future occupants are not disturbed by noise and vibration from the nearby railway line or adjacent existing businesses. This can be secured by condition.

Highways

- 15.18 The main objection received during public consultation was concern that the proposal would have a significant impact on existing traffic issues on Cowdray Avenue. The Highway Authority considered the Transport Assessment submitted, as well as additional information requested regarding traffic flows. Following assessment of this information, they accepted that there would be increased traffic, but that the increase would not be significant; the commercial use of the site generates significantly more trips than those generated by the residential units proposed. The Highway Authority concluded that, in terms of highways and transportation, the impacts of the proposal are acceptable subject to a number of requirements including a construction management plan and measures aimed at encouraging travel by more sustainable modes of transport such as public transport, cycling and walking.
- 15.19 A further consideration is that, although residents and users of the development would undoubtedly use their cars for certain trips, the site is in a very accessible location, within walking and/or cycling distance of many facilities (such as Highwoods Country Park, the town centre, Castle Park, retail parks, trade park, leisure centre, allotments, and train station) that other residents of Colchester would be likely to drive to.

15.20 Whilst the concerns of local residents and local business owners are taken into account and sympathised with, given the proposal is unlikely to generate a significant increase in trips and that the site is in a highly accessible location, leads to the conclusion that the proposal is acceptable in highway terms and that there are no highway reasons to refuse the application.

Other matters:

15.21 Trees:

An Arboricultural Implications Assessment was requested in order to assess the impact of the proposals upon trees adjacent the site. Following receipt of the assessment the Council's Arboricultural Officer confirmed that there are no objections in respect of arboricultural matters, subject to conditions for protective fencing for retained trees; tree monitoring; and hand excavation under tree canopies.

15.22 Ecology:

Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. The National Planning Policy Framework (NPPF) is clear that a core principle for planning is that it should contribute to conserving and enhancing the natural environment. In meeting this aim, Development Policy DP21 states that, for all proposals, development will only be supported where it:

- i. Is supported with acceptable ecological surveys where appropriate. Where there is reason to suspect the presence of protected species, applications should be accompanied by a survey assessing their presence and, if present, the proposal must be sensitive to, and make provision for, their needs;
- ii. Will conserve or enhance the biodiversity value of greenfield and brownfield sites and minimise fragmentation of habitats;
- iii. Maximises opportunities for the restoration, enhancement and connection of natural habitats in accordance with the Essex Biodiversity Action Plan; and
- iv. Incorporates beneficial biodiversity conservation features and habitat creation where appropriate.

15.23 Additionally, proposals for development that would cause direct or indirect adverse harm to nationally designated sites or other designated areas or protected species will not be permitted unless:

- a) They cannot be located on alternative sites that would cause less harm;
- b) The benefits of the development clearly outweigh the impacts on the features of the site and the wider network of natural habitats; and
- c) Satisfactory prevention, mitigation and compensation measures are provided.

15.24 The application site is brownfield land in the main, with existing commercial units to the east and west. The Ecological Appraisal submitted with the application states that the application site as a whole is considered to be very poor ecologically due to large areas of bare ground and commercial buildings in an urban situation. However, there is a wildlife area to the north-west corner of the site where plants, reptiles and invertebrates of interest have been recorded previously. There are also records of protected reptiles and invertebrates along the railway embankment on the northern boundary. The north-west corner of the site has been fenced off from the remainder of the site for some time to retain it as a wildlife area, but has become quite overgrown.

According to the 2015 appraisal, the loss of open grassland in this area has resulted in previously recorded plants of interest (Bee Orchid and Dittander) being absent. However, the appraisal concludes that these species, and others, may still be present and could reappear if the land were properly managed. Reptiles and invertebrates were still recorded during the 2015 survey as part of the appraisal.

- 15.25 Without appropriate mitigation, development of this site would result in the loss of habitat, invertebrate diversity and reptile population, although it should be noted that some loss of habitat would still occur should the site remain as it is due to the further deterioration of the unmanaged wildlife area. The retention, management and enhancement of the wildlife area, as well as the management and protection of the habitat areas along the base of the railway embankment, are therefore considered to be necessary in order to adhere to the provisions of the NPPF and Development Policy DP21.
- 15.26 The wildlife area is outside the redline of the application site so is not intended for development, although it can be conditioned for improvement and management as it is within the ownership of the Applicant. A Mitigation Strategy, Implementation Timetable and Management Plan can be conditioned, which would include a number of mitigation and enhancement opportunities which are set out in section 7.2 of the Ecological Appraisal and section 4 of the Invertebrate Survey submitted.
- 15.27 As the wildlife area and railway embankment would remain undeveloped, development on the application site would, therefore, only result in the loss of the well-vegetated areas immediately adjacent the wildlife area. These vegetated areas do have interest for invertebrates and reptiles. However, the improvements to the wildlife area, as well as the other enhancements and mitigation measures proposed are considered to adequately compensate for this loss. The proposal is therefore considered to meet the requirements of the NPPF and Development Policy DP21.

Contamination:

- 15.28 Due to previous industrial and commercial uses of the site, a Preliminary Environmental Risk Assessment was submitted as part of the application to ascertain contamination risks. The report concludes that there is a potential for contaminants to be present within the underlying soil and groundwater. It has been recommended that actions are required to address the potentially unacceptable risks identified, including additional investigations of groundwater and ground gas and in previously inaccessible or un-investigated areas, and decommissioning of a groundwater abstraction borehole. The Council's Contamination Officer is satisfied with the content of the report, having received some points of clarification, and has no objections to the proposed development subject to conditions dealing with site characterisation, submission of remediation scheme, implementation of approved remediation scheme, reporting of unexpected contamination, and submission of a validation certificate. The proposal is therefore considered to be acceptable in terms of contamination, subject to the aforementioned conditions.

Drainage and Flood Risk:

- 15.29 The site is located within Flood Zone 1 and the application has been assessed in line with the NPPF and Environment Agency Standing Advice. As a Flood Zone 1, the site is unlikely to be susceptible to flooding. The Environment Agency has no objections to the proposal and comment that 'the water environment at this site is of low environmental sensitivity with regards to contamination.'
- 15.30 Essex County Council, as the Lead Local Flood Authority (LLFA), have assessed the application and have no objections to the scheme subject to conditions requiring a detailed surface water drainage scheme, as well as a management and maintenance plan of the surface water drainage system. Similarly, Anglian Water has no objections to the scheme subject to a condition that no hardstanding areas are constructed until works have been carried out in accordance with a surface water strategy.
- 15.31 Following an assessment of Environment Agency standing advice and consideration of the consultation comments received from the Environment Agency, Essex County Council as LLFA, and Anglian Water, it is concluded that development on this site is acceptable in terms of drainage and flood risk.

Archaeology:

- 15.32 The Council's Archaeology Officer has assessed the proposal and commented that the site is in an area of archaeological interest, adjacent to the site of a Roman cremation cemetery. There is high potential for encountering buried archaeological remains (and potentially further burials) at this location, given the proximity to known remains. Groundworks relating to the proposed development would cause significant ground disturbance that has potential to damage any archaeological deposits that exist. The Archaeology Officer has no objections to the proposal subject to a condition to record and advance the understanding of the significance of any heritage asset before it is damaged or destroyed. A pre-determination archaeological evaluation is not required for this proposal. However, it is advised that the applicant undertake trial-trenching at the earliest opportunity to assess the archaeological potential at this location in order to quantify the risk in terms of cost and time for any further archaeological investigation that might be required.

Existing businesses:

- 15.33 The proposal would result in the loss of existing business units. Site Allocation Policy SA TC1 states that existing businesses will be encouraged to remain on site as part of a mixed-use development. Unfortunately, due to the type/use class of many of the existing businesses (A1, D2, sui generis), this would not be possible as only B1 and D1 floorspace is proposed and the remainder of the trade park is currently fully occupied. The existing businesses are not strictly employment uses and are therefore capable of relocating to the town centre or edge of town centre.

15.34 Information from the Applicant (January 2016) sets out the businesses currently on site:

Number of Available/Vacant units – 10

Tenants List: **C Block**

Marriages
The Bunker
Simply Living

D Block

Sound Attak (Vacating March 2016)
Toy library
Pink Ladies
Demon Xtreme
Crossfit
Peach Guitars
5312

E Block

PM Tech
Lloyds Motors (Expires Dec 2016)
Brian Nunn & Son
Panelcraft
API
P.Barker (Vacating April 2016)
H&S Motors
M.Rytel
Dance Studio

15.35 The businesses have been on short-term leases since the fire in 2006. In anticipation of relocation, the Applicants have issued a newsletter to all the aforementioned tenants in order to offer assistance in finding new premises.

15.36 Enquiries have been made with the Council's Enterprise team who have confirmed that they would be able to offer the following support as and when required:

- A wider trawl of available properties across all the commercial agents in Colchester
- Liaise with our Estates team on properties which are/will become vacant on a range of lease terms
- Specific business advice and support from Colchester Business Enterprise Agency (COLBEA)
- If any redundancies are planned particularly for skilled staff we can circulate CV/s to prospective employers in Colchester/Essex

15.37 Therefore, whilst there are limited opportunities for existing businesses to remain at the trade park, there are a variety of avenues with which to get support for relocation. The lack of opportunities for on-site relocation is not considered to be a reason for refusal of planning permission as it is not the function of the planning system to protect individual traders and the proposal accords with the amount of development set out in the Local Plan site allocation.

16.0 Conclusion

- 16.1 The proposal is considered to be acceptable in principle, having had regard to national and local planning policy, and is satisfactory in terms of highway, ecology, contamination, drainage and flood risk, and archaeology matters, subject to necessary conditions.

17.0 Recommendation

- 17.1 APPROVE subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Environmental and Protective Services to refuse the application, or otherwise to be authorised to complete the agreement to provide the following:

- Viability review.
- Land to be set aside for a possible future road link under the railway line to Petrolea Close. Details to be provided.
- Provision of play area on site – details to be provided and details of management company
- Open space secured at reserved matters stage: to be managed by private management company (details to be provided). Details of provision to be provided.

- 17.2 On completion of the legal agreement, the Head of Service be authorised to grant planning permission subject to the following conditions:

18.0 Conditions

1. No development shall be commenced until plans and particulars of "the reserved matters" referred to in the below conditions relating to the DESIGN AND APPEARANCE, LANDSCAPING, LAYOUT AND SCALE (including levels) have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
Reason: The application as submitted does not provide sufficient particulars for consideration of these details.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.
3. The development hereby permitted shall be begun before the expiration of

two years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

4. The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Number 6234/1115 Revision B.
Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.
5. The following drawings are NOT approved as part of this permission: 6234/1110 Revision C; 6234/1111C Revision C; 6234/1116; and 6234/1401.
Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.
6. The reserved matters application shall be for a MAXIMUM of 154 Class C3 dwellings and a MAXIMUM of 2,517 sqm B1 and/or D1 floorspace, with related access, roads and paths, car parking and servicing, open space and landscaping.
Reason: In the interests of proper planning as this is the basis on which the application was submitted and subsequently considered and the Local Planning Authority would need to give further consideration to the impacts of any increased development.
7. The reserved matters application shall make provision for a Locally Equipped Area for Play (LEAP) within the site; improved connectivity to the Town Centre and North Station for vehicles (especially public transport), pedestrians and cyclists; and a green link between Highwoods Country Park and Leisure World/Castle Park. In addition land should be safeguarded for a potential future vehicular link under the railway to Turner Rise.
Reason: In the interests of sustainable development and in order to comply with the Colchester Local Plan Site Allocation Policy SA TC1.
8. The reserved matters application shall include a noise survey for proposed residential properties. The survey shall have been undertaken by a competent person, shall include periods for daytime as 0700-2300 hours and night-time as 2300-0700 hours, and identify appropriate noise mitigation measures. All residential units shall thereafter be designed so as not to exceed the noise criteria based on current figures by the World Health Authority Community Noise Guideline Values/BS8233 "good" conditions given below:
 - Dwellings indoors in daytime: 35 dB LAeq,16 hours
 - Outdoor living area in day time: 55 dB LAeq,16 hours
 - Inside bedrooms at night-time: 30 dB LAeq,8 hours (45 dB LAmix)
 - Outside bedrooms at night-time: 45 dB LAeq,8 hours (60 dB LAmix)Such detail and appropriate consequential noise mitigation measures as shall have been agreed, in writing, by the Local Planning Authority shall be implemented prior to occupation of ANY/SPECIFY building on the site and

shall be maintained as agreed thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the future residents by reason of undue external noise where there is insufficient information within the submitted application.

9. The reserved matters application shall demonstrate that all residential units have been designed so as not to exceed the noise criteria based on current figures by the World Health Authority Community Noise Guideline Values/BS8233 “good” conditions given below:

- Dwellings indoors in daytime: 35 dB LAeq,16 hours
- Outdoor living area in day time: 55 dB LAeq,16 hours
- Inside bedrooms at night-time: 30 dB LAeq,8 hours (45 dB LAm_{ax})
- Outside bedrooms at night-time: 45 dB LAeq,8 hours (60 dB LAm_{ax})

Such detail and appropriate consequential noise mitigation measures as shall have been agreed, in writing, by the Local Planning Authority shall be implemented prior to occupation of ANY/SPECIFY building on the site and shall be maintained as agreed thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the future residents by reason of undue external noise where there is insufficient information within the submitted application.

10. The reserved matters application shall include a scheme for protecting the proposed development from vibration from the railway along the northern boundary of the site. The vibration protection scheme shall include a combination of land separation, vibration control techniques and other measures as set out in current guidance on vibration levels and such secure provision as will ensure that it endures for so long as the development is available for use, and that any and all constituents parts are repaired, maintained or replaced in whole or in part so often as occasion may require. The approved attenuation scheme shall be implemented in its entirety prior to the first occupation of the development and adhered to thereafter.

Reason: To ensure that the amenities of occupiers are not prejudiced by rail and/or road traffic vibration in the immediate surroundings.

11. Any lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) shall fully comply with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note EZ2 rural, small village or dark urban areas.

Reason: In order to safeguard the amenity of the surrounding area by preventing the undesirable, disruptive and disturbing effects of light pollution.

12. No development shall commence until an Ecological Mitigation Strategy, Implementation Timetable, and Management Plan have been submitted to and agreed, in writing, by the Local Planning Authority. The mitigation strategy shall include, as a minimum, the ecological mitigation and enhancement measures set out in section 7.2 'Mitigation and Enhancement Opportunities' of the Green Environmental Consultants Ecological Appraisal (Report Number 1043/1), dated June 2015. The mitigation strategy shall be implemented as approved prior to first occupation of the development and shall thereafter be maintained as approved.

Reason: In order to safeguard protected wildlife species and their habitats and in the interests of ecological enhancement.

13. No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:
the parking of vehicles of site operatives and visitors;
hours of deliveries and hours of work;
loading and unloading of plant and materials;
storage of plant and materials used in constructing the development;
the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
wheel washing facilities;
measures to control the emission of dust and dirt during construction;
a scheme for recycling/disposing of waste resulting from demolition and construction works; and
a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during 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.
14. No occupation of the development shall take place until a roundabout in Mason Road to provide access to the proposal site, as shown on drawing 6234/1115 Revision B, is provided.
Reason: To protect highway efficiency of movement and safety.
15. No development shall commence until details of a footpath/cyclepath between Cowdray Avenue, the subway under the railway line immediately north of the proposal site and North Station Road (south of the railway line) has been submitted to, and agreed by, the Local Planning Authority. The footpath/cyclepath shall then be implemented as approved prior to the occupation of the development.
Reason: To ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.
16. No development shall commence until details of improvements to the subway under the railway line immediately north of the proposal site have been submitted to, and agreed by, the Local Planning Authority. The improvements shall then be implemented as approved prior to the occupation of the development. The improvements shall include, but not be limited to, lighting, surveillance, surfacing, and drainage.
Reason: To ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.
17. No development shall take place until a detailed surface water drainage

scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented prior to occupation.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and to ensure the effective operation of SuDS features over the lifetime of the development.

18. No development shall commence until a Maintenance and Management Plan of the surface water drainage system is submitted to and agreed, in writing, by the Local Planning Authority.

Reason: To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended for the lifetime of the development to ensure mitigation against flood risk.

19. No demolition or construction work shall take place outside of the following times;

Weekdays: 0800-1800

Saturdays: 0800-1300

Sundays and Bank Holidays: No working

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

20. No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been 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

21. No works shall take place until 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 has been prepared and then submitted to and agreed, in writing, by 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.
22. No works shall take place other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved. 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.
23. 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 20, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 21, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 22.

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

24. 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 21.

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.

25. No works shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation that has been submitted to and approved, in writing, by the Local Planning Authority. The Scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
- b. The programme for post investigation assessment.
- c. Provision to be made for analysis of the site investigation and recording.
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- e. Provision to be made for archive deposition of the analysis and records of the site investigation.
- f. Nomination of a competent person or persons/organisation to undertake the works.

The site investigation shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority. The development shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance with Policy SD1 and ENV1 of Colchester Borough Council's Core Strategy (2008).

26. No works shall take place until all trees, shrubs and other natural features not

scheduled for removal on the approved plans have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

27. All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site in accordance with the Local Planning Authorities guidance notes and the relevant British Standard. All existing trees and hedgerows shall then be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

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

28. During all construction work carried out underneath the canopies of any trees on the site, including the provision of services, any excavation shall only be undertaken by hand. All tree roots exceeding 5 cm in diameter shall be retained and any pipes and cables shall be inserted under the roots.

Reason: To protect trees on the site in the interest of visual amenity.

29. No development of the non-residential premises shall commence until a scheme for the control of fumes, smells and odours, and dust has been submitted to, and agreed in writing by, the Local Planning Authority. The approved control measures shall then be installed prior to the first use of the non- residential development. The control measures shall thereafter be retained and maintained to the agreed specification and working order.

Reason: To ensure that there is a scheme for the control of fumes, odours, dust, and smell in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

30. For the residential element of the proposal, no occupation shall take place

until Residential Travel Information Packs have been provided. The packs shall include walking and cycling maps, site specific public transport information, park and ride service information, school travel plan information, local taxi information, car sharing scheme information, information on reducing the demand for travel, and sustainable travel vouchers.

Reason: To ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.

31. Prior to occupation the two bus stops in the vicinity of Mason Road shall be upgraded in accordance with details that shall have been submitted to and agreed by, the Local Planning Authority.
Reason: In the interests of promoting sustainable development and transport.
32. Prior to the occupation of the non-residential element of the proposal, if there are 50 or more employees, a travel plan shall be submitted to and agreed, in writing, by the Local Planning Authority. The travel plan shall then implemented as agreed.
Reason: In the interests of promoting sustainable development and transport.
33. Prior to the first occupation of the development hereby permitted, details of the management company responsible for the maintenance of communal storage areas and for their maintenance of such areas, shall be submitted to, and agreed in writing by, the Local Planning Authority. Such detail as shall have been agreed shall thereafter continue.
Reason: The application contains insufficient information to ensure that the communal storage areas will be maintained to a satisfactory condition and there is a potential adverse impact on the quality of the surrounding environment.
34. Prior to the first use or occupation of the non-residential development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.
Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.
35. Each residential property shall be provided with 1 No. EV charging point for vehicles. The EV charging point shall be installed prior to the first occupation of the residential property.
Reason: In the interests of sustainability and air quality by encouraging the use of ultra-low emission vehicles.

36. Prior to the first use of the non-residential development hereby permitted, E.V charging point infrastructure for vehicles shall be installed and made available for at least 10% of the off-road parking spaces.
Reason: In the interests of sustainability and air quality by encouraging the use of ultra-low emission vehicles.
37. Notwithstanding the provisions of Article 3, Schedule 2 Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the non-residential development hereby approved shall be used as B1 and D1 only.
Reason: This is the basis on which the application was submitted and subsequently considered and the Local Planning Authority would need to give further consideration to the impacts of a different use at this site at such a time as any future change of use were to be proposed.
38. The non-residential use hereby permitted shall not OPERATE/BE OPEN TO CUSTOMERS outside of the following times:
Weekdays: 0700-1900
Saturdays: 0700-1800
Sundays and Public Holidays: No operation
Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.
39. No deliveries shall be received at, or despatched from, the non- residential site outside of the following times:
Weekdays: 0700-1900
Saturdays: 0700-1800
Sundays and Public Holidays: No deliveries
Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from delivery vehicles entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

19.0 Informatives

(1) PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.

(2) PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the

development or before you occupy the development. ****This is of critical importance****. If you do not comply with the condition precedent you may invalidate this permission. ****Please pay particular attention to these requirements****.

(3) PLEASE NOTE: This application is the subject of a Section 106 legal agreement and this decision should only be read in conjunction with this agreement.

(4) With regards to condition 5, the drawings are considered to be unacceptable for a number of reasons that include (but are not limited to) the following:

- Lack of useable open space (10% open space has not been provided and there is limited provision of equipped areas of play);
- Lack of private amenity space for flats (particularly at ground floor where balconies would not be included);
- Additional landscape buffer on eastern side of the site (adjacent garage) has not been provided;
- The off-road foot and cycle path is too meanly dimensioned in places, with some parts being tight up against back garden fences and the railway embankment;
- The development backs onto areas of public realm in parts, giving secure-by-design and visual concerns;
- There are areas of car parking dominance within the public realm which would have visual amenity concerns;
- Potential overlooking issues from flats to houses due to close proximity; and
- Back to back distances, as set out in the Essex Design Guide, are not met.

(5) The Applicant/Developer is directed to the comprehensive comments from Network Rail, attached to this Decision Notice.

(6) Anglian Water has assets close to or crossing this site or there are assets subject to an adoption agreement. Therefore the site layout should take this into account and accommodate those assets within either prospectively adoptable highways or public open space. If this is not practicable then the sewers will need to be diverted at the developers cost under Section 185 of the Water Industry Act 1991. or, in the case of apparatus under an adoption agreement, liaise with the owners of the apparatus. It should be noted that the diversion works should normally be completed before development can commence.

(7) PLEASE NOTE: Any drainage features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.

(8) Further intrusive ground test should take place before commencement of the development to ensure that no infiltration is possible on this site and that ground water will not cause any flooding issues which cannot be mitigated through the site design.

(9) 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.

(10) PLEASE NOTE that, with regard to and noise measurement and sound insulation, a competent person is defined as 'someone who holds a recognised qualification in acoustics and/or can demonstrate relevant experience'.

(11) With regards to condition 17, the surface water drainage scheme should be based on the information listed in the Detailed SuDs checklist, available at www.essex.gov.uk.

(12) Please be advised that the National Planning Policy Framework paragraph 103 states that local planning authorities should ensure that flood risk is not increased elsewhere by development. Construction may lead to excess water being discharged from the site. If dewatering takes place to allow for construction to take place below groundwater level, this will cause additional water to be discharged. Furthermore, the removal of topsoils during construction may limit the ability of the site to intercept rainfall and may lead to increased runoff rates. To mitigate against increased flood risk to the surrounding area during construction there needs to be satisfactory storage/disposal of surface water and groundwater which needs to be agreed before commencement of the development.

(13) With regards to Condition 18 and the requirement for a surface water drainage Maintenance and Management Plan, please be advised that the Plan should include, but is not limited to, details of who is responsible for each element of the surface water drainage system; the maintenance activities and frequencies; and the procedure for keeping yearly logs of maintenance, as well as their availability for inspection upon request by the Local Planning Authority.

(14) With regards to conditions 8 and 9 and noise mitigation measures, please be advised that the units with facades facing Mason Road will require the level of glazing specified in the Acoustic Air Noise Assessment submitted with the application and also require passive acoustic ventilation in habitable rooms to provide adequate ventilation with windows closed. Private gardens will have to be screened by the buildings as recommended in the assessment. Units with facades facing the railway will require the level of glazing specified in the Acoustic Air Noise Assessment and require passive acoustic ventilation in habitable rooms to provide adequate ventilation with windows closed.

(15) It is advised that all private gardens within direct sight of Mason Road be bounded with a two metre high close-boarded fence. In addition, a two metre high close-boarded fence should be erected along all boundaries with existing residential properties.

(16) It is recommended the the applicant or developer undertake trial trenching at the earliest opportunity in order to assess the archaeological potential at this location in order to quantify the risk in terms of cost and time for any further archaeological investigation that may be required.

(17) The proposal includes employment/commercial use. To discharge trade effluent from

trade premises to a public sewer vested in Anglian Water requires Anglian Water consent. It is an offence under section 118 of the Water Industry Act 1991 to discharge trade effluent to sewer without consent. An application to discharge trade effluent must be made to Anglian Water and must have been obtained before any discharge of trade effluent can be made to the public sewer.

(18) It is recommended that petrol / oil interceptors be fitted in all car parking/washing/repair facilities. Failure to enforce the effective use of such facilities could result in pollution of the local watercourse and may constitute an offence.

(19) The installation of properly maintained fat traps on all catering establishments is recommended. Failure to do so may result in this and other properties suffering blocked drains, sewage flooding and consequential environmental and amenity impact and may also constitute an offence under section 111 of the Water Industry Act 1991.

20.0 Positivity Statement

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



Application No: 152438

Location: 40 Boadicea Way, Colchester, CO2 9BE

Scale (approx): 1:1250

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7.2 Case Officer: Nadine Calder

Due Date: 04/03/2016

HOUSEHOLDER

Site: 40 Boadicea Way, Colchester, CO2 9BE

Application No: 152438

Date Received: 2 November 2015

Agent: Mr Steve Dobbs

Applicant: Mr Oris Bojko

Development: To retain additional windows, repositioning of side door and window in newly built garage

Ward: Shrub End

Summary of Application: Conditional Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This item returns to the Committee for deliberation after the Planning Committee deferred it at its meeting on 21 January 2016. Then, members considered the officer report that recommended conditional approval, but was concerned that the windows and rooflights the subject of this application would have a harmful impact on neighbouring amenities and that the garage would be used for purposes other than the parking of vehicles. It was therefore resolved 'that consideration of the planning application be deferred and the Head of Professional Services be requested to facilitate further negotiations with the applicant in order to seek a better level of protection to neighbouring properties, by means of an amendment to the proposed windows and to secure more control over the garage use and to report back to Committee in due course'.
- 1.2 No additional consultation letters have been sent out to neighbours as their comments have already been taken into consideration as part of the original report. This report considers the changes that have been made to the proposed development following the Planning Committee deferral, having regard to concerns that have been raised by the Committee and representations made by third parties. A copy of the original report to the Committee is included at the end of this report as an addendum.

2.0 Report

- 2.1 Following the Planning Committee's request to seek assurance that the windows and rooflights the subject of this application would not cause any undue loss of privacy to the neighbouring occupier, the applicant has taken off the window handles on the ground floor windows in the rear elevation of the existing garage. Those two windows would now not only be obscure glazed but also non-opening, thereby eliminating any form of overlooking of the neighbouring rear garden or property. This could be conditioned to offer protection in perpetuity, as other means of ventilation are available.

- 2.2 Concerns were also raised by Members of the Planning Committee that due to the very pleasant internal fitting of the existing garage, the structure may in the future be used for purposes other than the parking of vehicles. When revisiting the site, the applicant confirmed that they were requested to plaster the ceiling for Building Control purposes. Instead of just the ceiling, the applicant decided to plaster all four internal walls at ground floor too. It should be noted that this in itself does not represent development and would therefore not require planning permission. The applicant has suggested that their previous garage elsewhere in the Borough was also finished to this quality, but was nonetheless maintained as a garage (this has not been substantiated by officers).
- 2.3 In any event, planning law confirms that you cannot take in to account matters that are not certain with regard to future uses. A planning authority must determine cases on the situation “on the ground” and at “face value” rather than giving weight to assumptions of what may be the intentions later on. Where necessary, conditions can be used to prevent unacceptable development from taking place by the removal of permitted development rights. However, this may not be necessary (a legal test of all conditions) where planning permission would be required anyway. This is because the planning system then builds in automatic controls against potential future changes. In other words, should the garage be converted into a dwelling later on then this would require permission in its own right and would be dealt with at that time. If permission was not sought, it would be proper for the enforcement system to be employed to rectify this as appropriate at that time.
- 2.4 It is also worth noting that the issues around the rear access to the neighbouring property at No. 39 is not a planning matter and can therefore not be given any material weight. This is a private matter between the applicant and the neighbor and should not influence Member’s decision with regards to the proposal. At the Committee meeting it was previously suggested that a right of way existed across the site. The applicant has since suggested that this was an informal arrangement allowed for a short time, and never an actual right of way. However, this would not be relevant to planning and therefore the evidence one way or another is not pertinent to the consideration of the application on its planning merits. Even if a right of way exists, planning permission being granted would not change that, it is simply a matter for private dispute through the courts.
- 2.5 With regards to the retrospective nature of this current planning application, Members of the Committee are aware that planning law again dictates that retrospective application are treated no different to “normal” planning applications. That means that if they would have been acceptable then they should be approved, and if they are not then they should be refused. However, the fact that no permission was originally sought should not affect that decision in any way, shape or form and applicants are not allowed to be penalised simply because they originally failed to make an application for something that required permission. Not making an application is not a planning breach in itself, it is not an offence to do works without permission and as it is not illegal the Council will often permit a retrospective application where planning permission is deserved on the merits of the development that already took place. In order to refuse a (retrospective) planning application, it is necessary to identify the actual *material harm* caused as a direct result of the development. In many ways, this is easier to evidence than from plans of what will later be built. As indicated in the original report, in this instance, no such harm could be identified and it is therefore

your Officer's opinion that the proposed development is acceptable. The retrospective nature of this application does not alter this assessment.

- 2.6 The concerns of overlooking seem to have been central to the Committee's concerns in the lead up to the deferral. As stated above, the rear facing windows are now without handles, so that they cannot be opened, and it can be conditioned that they remain fixed shut and obscure glazed. Officers have visited the site again, and it is our opinion that none of the windows offer an opportunity for overlooking. It was also noted that the fence is lower than usual, but the result of this is that you can see into the neighbouring garden from the applicant's garden, where it seems more likely to occur frequently and for longer durations (compared to the garage). The "loft" of the garage has multiple beams, which make access into this part of the building inconvenient for regular use and it does appear likely to be only for storage use, minimising the use of that area. Furthermore, the rooflights do not offer views downwards into the neighbours garden and therefore cause no actual overlooking concerns (although from the outside the presence of windows may make it feel like there is potential for overlooking, but that is not the case)..

3.0 Conclusion

- 3.1 Having revisited the application site and negotiated with the applicant to secure improvement where this may be possible, it is now acknowledging that the ground floor windows have been changed to be non-opening as well as obscure glazed, Officer's remain of the opinion that the proposed development would not cause any visual or material harm to neighbouring amenities or the character and appearance of the surrounding area. Whilst it is accepted that the proposed garage has been finished to a high standard, this does not impact on the acceptability of the proposed development the subject of this application as this is outside the scope of this proposal. There are sufficient restrictions in place to ensure that the existing building can only be used as a domestic garage and for no other purpose and considering the fact that speculation is not a valid planning matter, a refusal on the basis of local residents' concerns in terms of any potential future use of the building would therefore not warrant a refusal that would be sustainable at an appeal. On this basis, it is your Officer's view that the development is acceptable, subject to conditions.
- 3.2 It is also considered necessary to reiterate the fact that the garage shall only be used for the purpose of parking of motor vehicles and for the sole benefit of the occupants of 40 Boadicea Way or their visitors, and for no other purposes whatsoever via condition rather than, as originally suggested, via informative. The full list of suggested conditions is therefore as follows:

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 BOJKO3 Sheets 1 to 3 of 3 dated 29th October 2015.
Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.

3 - Non-Standard Condition/Reason

The 2 no. windows and 2 no. rooflights in the northern elevation hereby approved shall be obscure glazed (to a minimum equivalent of level 4 of the Pilkington scale) and non-opening, and shall be permanently retained as such thereafter.

Reason: To avoid the overlooking of neighbouring rear gardens in the interests of the amenities of the occupants of those properties.

4 - Non-Standard Condition/Reason

Notwithstanding the provisions of the The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class A (or any Order modifying or re-enacting that order), no windows or openings other than those hereby permitted shall be inserted into any wall or roof-slope of the garage.

Reason: In the interests of residential amenity.

5 - Non-Standard Condition/Reason

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order modifying or re-enacting that order), the garage shall be used solely for the parking of motor vehicles and for the sole benefit of the occupants of 40 Boadicea Way or their visitors, and for no other purposes whatsoever.

Reason: In order to ensure that the development retains adequate parking provision in accordance with the Council's adopted standards and in order to allow further consideration of any intensification in the use of the building that may increase the opportunity for overlooking or loss of other amenities).

ADDENDUM – PREVIOUS REPORT

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee at the request of Councillor Pauline Hazell on grounds of “loss of privacy to neighbouring occupier at No. 38 Boadicea Way” [though it is assumed that this relates to the directly adjacent occupier, i.e. 39 Boadicea Way]. Further comments were made with regards to the potential use of the building as additional living accommodation as well as the location of the garage and its impact on the amenities of the neighbouring occupier at No. 39 Boadicea Way in terms of loss of light, however, these comments are either not relevant planning matters or not relevant to the current application and can therefore not be given any weight.

2.0 Synopsis

- 2.1 The key issues explored below are the impact the proposed development would have on the amenities of neighbouring occupiers as well as the character and appearance of the surrounding area. Having carefully assessed the proposed development, and having had regard to representations received from local residents and Councillors, it is considered that the proposed development would not cause any material or visual harm on either the amenities of neighbouring occupiers or the character and appearance of the wider area. The proposal is therefore found to be satisfactory and is recommended for conditional approval.

3.0 Site Description and Context

- 3.1 The application site relates to a corner plot towards the south eastern end of the residential development on the western side of Boadicea Way. The site comprises an end of terrace dwelling on the north eastern end of the rectangular plot and a detached garage at the bottom of the garden of the application site (towards the south western end). The site is located within the defined settlement limits of Colchester in a predominantly residential area. To the north, the site adjoins its neighbouring property 39 Boadicea Way and associated private rear amenity space, while to the south west of the site (outside of the curtilage of the application site) there are three garages. The north western corner of the application site also shares a boundary with the rear garden of No. 39 Gloucester Avenue.

4.0 Description of the Proposal

- 4.1 Retrospective planning permission is sought for the relocation of an approved window and door in the side elevation of the existing garage (leading into the garden of the application site) and the installation of two windows as well as two rooflights in the rear elevation of the building (facing the neighbouring rear garden to the north).

5.0 Land Use Allocation

- 5.1 The application site is located in a predominantly residential area.

6.0 Relevant Planning History

- 6.1 Planning permission for the detached garage was granted in December 2014 (146125) and this has since been implemented. The residential property itself was granted permission in 2013 (reference 121907).

7.0 Principal Policies

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

SD1 - Sustainable Development Locations
UR2 - Built Design and Character

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

DP1 Design and Amenity
DP13 Dwelling Alterations, Extensions and Replacement Dwellings
DP19 Parking Standards

8.0 Consultations

- 8.1 n/a

9.0 Parish Council Response

- 9.1 This area is non-parished.

10.0 Representations

- 10.1 One letter of objection was received from the directly adjoining neighbour at 39 Boadicea Way. The main reasons for objecting can be summarised as follows:
- Loss of privacy; and
 - Speculation with regards to use of the garage as additional habitable accommodation.

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

11.0 Parking Provision

- 11.1 The proposed development would not impact on the provision of parking which complies with current standards.

12.0 Open Space Provisions

- 12.1 There is no requirement for public open space provision in connection with this application.

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

- 15.1 The current application solely seeks permission for the installation of two windows and two rooflights in the rear elevation of the garage and the relocation of the previously approved door and window in the side elevation (to be positioned more centrally in the same elevation). It is understood that the openings have already been created without planning permission having been sought. It was noted that the original consent for the garage includes a condition that limits the use of the garage to the parking of motor vehicles and for the sole purpose of the occupier of No. 40 Boadicea Way. The desire for more daylight in the garage to ‘make it a practical space to work’ therefore required further clarification with regards to the use of the garage to ensure that this would not breach the afore-mentioned condition. On this basis, the Agent was requested to confirm the proposed use of the garage. The following clarification was received:

“The garage has been built as part of this domestic dwelling and is purely used for domestic purposes i.e. parking of vehicles. As with any domestic garage built for car storage, my client as a householder inevitably wants to keep his personal motor related supplies in the garage e.g. motor oil and other motor sundries, vehicle tools, battery charger etc. etc. (things that one would not store [in] a house) and also store his personal cycle(s) and his routine garden equipment - no different to any householder who benefits from having a garage or double garage. It is totally understood that permission is not for any other purpose e.g. living accommodation or any commercial use and nor is it intended to be.”

- 15.2 It is acknowledged that the requirement for natural light for a garage is questionable, however, it is not the role of planning to question the need for development but to assess whether this is acceptable in terms of its impact on the surrounding area and neighbouring amenities.

- 15.3 The existing garage is located at the bottom of the garden of the application site, directly adjacent to the neighbouring garden of 39 Boadicea Way. The submitted drawings, however, indicate that the four new openings in the rear elevation, i.e. two ground floor windows and two rooflights, are proposed to be obscure glazed. Whilst this is not considered to be ideal, it would provide the internal space with more daylight as sought by the Applicant while at the same time ensuring that the new openings would cause no material harm to the amenities of neighbouring occupiers in terms of loss of privacy. Furthermore, it should be noted that the garage is located at the very bottom of the garden of the application site and therefore, any impact on neighbouring amenities is considered to be limited as the protected sitting out areas would not be affected. It is acknowledged that the additional openings may result in some perceived overlooking (rather than actual overlooking given that the windows are proposed to be obscure glazed - with the velux rooflights also being non-opening - a detail that could be conditioned). There is usually held to be a lesser degree of privacy at the bottom end of the garden of an application site and, as stated above, even the sense of perceived overlooking would not cause such material or adverse harm to the amenities of the directly adjoining neighbour, or any other neighbours in the vicinity of the application site, that would justify a refusal on that basis. In the absence of any identified material harm, it is concluded that the proposal would be acceptable in terms of its impact on neighbouring amenities.
- 15.4 There are some concerns with regards to the resulting appearance of the outbuilding which would be comparable to a small residential dwelling as a result of the added windows. These are, however, located away from public view and with the exception of the relocation of the previously approved window and door in the side elevation, the proposal would not have any impact on the street scene. The relocation of the two openings in the side elevation is not considered to cause any significant harm to the character and appearance of the application building or that of the surrounding area and there is therefore no objection to this element of the proposal. Similarly, having regard to the above, whilst the proposed openings in the rear elevation are considered to give the garage a more residential appearance, its use for parking purposes only is secured via the condition on the original consent for the garage and this, coupled with the location of the openings to the rear and away from public views, would ensure that the proposed development would not be conspicuous from any vantage point or result in an unacceptable impact on the character and appearance of the surrounding area. As set out above, the proposal would not cause any materially harmful impact on neighbouring amenities and the number of parking spaces would remain the same, thereby complying with current parking standards.
- 15.5 The comments with regards to the potential use of the garage are noted; however, as stated above, the original consent restricts the use of the garage to the parking of motor vehicles and for the sole purpose of the occupier of 40 Boadicea Way and any other use of the garage would be in breach of this condition. Similarly, the existence of the garage is a matter of fact and the only relevant matters in the determination of this current application are the impact the proposed windows and the relocation of the existing openings have on neighbouring amenities and the character and appearance of the surrounding area. Therefore, no further consideration is given to the location of the garage and its potential impact in terms of loss of light as these are matters that would have been given adequate consideration in the determination of the original application.

16.0 Conclusion

- 16.1 On the basis of the above, it is concluded that, on balance, the proposed development accords with the Council's policy requirements. It is, however, considered necessary to reiterate the fact that the garage shall only be used for the purpose of parking motor vehicles and by the occupiers of 40 Boadicea Way (or their visitors) only, to ensure that the garage is not used for any other purpose which would require a detailed assessment in terms of its acceptability. Given that this condition and the previous consent remain extant, it is not necessary to impose the same condition on the current application and the reminder should therefore take the form of an informative. Furthermore, although the submitted drawings state that the proposed windows would be fitted with obscure glazing, with the velux rooflights also being non-opening, it is considered necessary to reiterate this by way of a condition, to ensure that these windows are retained as such at all times.

17.0 Recommendation

- 17.1 APPROVE subject to conditions and informatives.

18.0 Conditions

1. 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. The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers BOJKO3 Sheets 1 to 3 of 3 dated 29th October 2015.
Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.
3. The 2no. Windows and 2 no. rooflights in the northern elevation hereby approved shall be permanently retained in their approved form.
Reason: To avoid the overlooking of neighbouring rear gardens in the interests of the amenities of the occupants of those properties.
4. Notwithstanding the provisions of the The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class A, no windows or openings other than those hereby permitted shall be inserted into any wall or roof-slope of the garage.
Reason: In the interests of residential amenity.

19.0 Informatives

- 19.1 PLEASE NOTE that the original consent for the double garage the subject of this application (reference 146125) conditioned its use to the sole purpose for the parking of motor vehicles and for the sole benefit of the occupants of 40 Boadicea Way or their visitors, and for no other purposes whatsoever. This condition remains extant and should be adhered to at all times.

20.0 Positivity Statement

- 20.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Site: **The Old Police Station, 37 Queen Street, Colchester, CO1 2PQ**

Application No: **160206**

Date Received: 21 January 2016

Applicant: Mr Neil Coy, Phelan Construction Ltd

Development: Advertisement consent for a shroud to be placed on the front elevation showing the proposed creative business centre.

Ward: Castle

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 Council is involved in the redevelopment of the building.

2.0 Synopsis

- 2.1 The key issues explored below are the impacts on public safety and visual amenity. Both are held to be acceptable. The scheme is also held to be in accordance with the Council's corporate objectives.

3.0 Site Description and Context

- 3.1 The site comprises The Old Police Station building on Queen Street. It is currently being redeveloped into a Creative Business Centre.
- 3.2 37 Queen Street, Colchester is a Grade II listed building located within the Colchester Town Centre Conservation Area, designated in 1968. Its immediate neighbours to north and south, numbers 35 and 39 Queen Street, are also Grade II listed.
- 3.3 St Botolphs quarter is in the process of transformation. Firstsite is located nearby and 15 Queen Street has become an important cultural hub. The former bus station and St James' House and Roman House are proposed for redevelopment.

4.0 Description of the Proposal

- 4.1 The proposal is for the retention of the non-illuminated plastic printed banner. It is 8 metres high by 17.3 metres wide and is 2.45 metres from ground level. It masks some of the scaffolding and construction work that is currently ongoing behind.

5.0 Land Use Allocation

- 5.1 The site is located in Colchester Conservation Area 1, is in a regeneration area and is located in the mixed use policy area.

6.0 Relevant Planning History

- 6.1 The most relevant application in the planning history is 122272 which granted consent for the conversion to a Creative Business Centre.

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
UR2 - Built Design and Character

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

DP1 Design and Amenity
DP14 Historic Environment Assets

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

- Shopfront Design Guide

8.0 Consultations

- 8.1 Highway Authority – No objection.
- 8.2 Environmental Protection - No objections.

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 Non-parished.

10.0 Representations

10.1 None received.

11.0 Parking Provision

11.1 This scheme raises no parking issues.

12.0 Open Space Provisions

12.1 This scheme raises no open space issues.

13.0 Air Quality

13.1 This scheme raises no air quality implications.

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

15.1 As an application for advertisement consent this scheme can only be assessed in terms of visual amenity and public safety.

Visual Amenity

15.2 This application is for the retention of the existing shroud whilst the building is converted into a Creative Business Centre. It is anticipated that this will be up and running this year. As the sign is tied to the scaffolding it will not realistically be retained any longer than it needs to be. On that basis it is held to have a neutral impact on the Conservation Area and therefore preserves it. It could be argued that it has a harmful impact on the setting of the listed building and on the neighbouring listed buildings but this is considered to be acceptable for the very limited time in question. It is not considerably different to the impact the scaffolding and other items needed for the conversion have on the listed building and its neighbours.

Public Safety

15.3 This scheme raises no public safety concerns. The Highway Authority has no objection to the scheme.

16.0 Conclusion

16.1 The scheme is acceptable and therefore temporary advertisement consent should be granted.

17.0 Recommendation

17.1 APPROVE advertisement consent subject to the following conditions:

18.0 Conditions

1 - Standard Advert Condition

Unless an alternative period is specifically stated in the conditions below, this consent expires five years from the date of this decision and is subject to the following standard conditions:

1. Any advertisements displayed, and any site used for the display of advertisements, shall be maintained in a clean and tidy condition to the reasonable satisfaction of the Local Planning Authority.
2. Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a safe condition.
3. Where an advertisement is required under these Regulations to be removed, the removal shall be carried out to the reasonable satisfaction of the Local Planning Authority.
4. No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
5. No advertisement shall be sited or displayed as to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air or so as otherwise to render hazardous the use of any highway, railway, waterway or aerodrome (civil or military).

Reason: In order to comply with the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

2 - *Limited Period Advertisements

The advertisement hereby approved shall be displayed for a limited period only expiring on 30/12/16 or when the building is first occupied for the Creative Business Centre use, whichever is the earlier.

Reason: To ensure the advertisement display is removed at the appropriate time in the interests of visual amenity.

19.0 Informatives

(1) ZT0 – Advisory Note on Construction & Demolition

The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

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

(3) The Highway Authority have requested the following informative:

Note: Any sign or overhang of any part of the highway may require the structure to be licensed under Section 177 or 178 of the Highways Act, 1980 which will incur a charge of £725.00. The Highway Authority reserves the right under Section 152 of the Highways Act, 1980 to remove or alter any sign overhanging the highway which is considered to be an obstruction to the safe and convenient passage of the public in the highway. Contact should be made with the Highway Authority on 0845 603 7631 in order to identify the extent and nature of the highway in the vicinity of the application site prior to any works being undertaken.

Note: No part of any sign, including any foundations required, shall be erection on land covered by highway rights as this would constitute a breach of the Highways Act 1980.

INF1 Highway Works - All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to: Essex Highways, Colchester Highways Depot, 653 The Crescent, Colchester, CO4 9YQ.

INF2 Cost of Works - The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by 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.

