

Planning Committee Meeting

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

Thursday, 04 April 2019 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. Usually, only one person for and one person against each application is permitted. Attendance between 5.30pm and 5.45pm will greatly assist in enabling 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 (the list of items to be discussed at a meeting), which is usually published five working days before the meeting, and minutes once they are published.

Dates of the meetings are available here:

<https://colchester.cmis.uk.com/colchester/MeetingCalendar.aspx>.

Most meetings take place in public. This only changes when certain issues, for instance, commercially sensitive information or details concerning an individual are considered. At this point you will be told whether there are any issues to be discussed in private, if so, you will be asked to leave the meeting.

Have Your Say!

The Council welcomes contributions and representations from members of the public at most public meetings. At Planning Committee meetings, other than in exceptional circumstances, only one person is permitted to speak in support of an application and one person in opposition to an application. If you would like to speak at a meeting and need to find out more, please refer to the Have Your Say! arrangements here:

<https://colchester.cmis.uk.com/colchester/HaveYourSay/HYSPlanning.aspx>.

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COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 04 April 2019 at 18:00

The Planning Committee Members are:

| | |
|----------------------------|-----------------|
| Councillor Pauline Hazell | Chairman |
| Councillor Brian Jarvis | Deputy Chairman |
| Councillor Lyn Barton | |
| Councillor Vic Flores | |
| Councillor Theresa Higgins | |
| Councillor Cyril Liddy | |
| Councillor Derek Loveland | |
| Councillor Jackie Maclean | |
| Councillor Philip Oxford | |
| Councillor Chris Pearson | |

The Planning Committee Substitute Members are:

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

Councillors:

| | | | |
|--------------------|---------------------|----------------------|-----------------|
| Christopher Arnold | Kevin Bentley | Tina Bourne | Roger Buston |
| Nigel Chapman | Peter Chillingworth | Helen Chuah | Nick Cope |
| Simon Crow | Robert Davidson | Paul Dundas | John Elliott |
| Andrew Ellis | Adam Fox | Dave Harris | Darius Laws |
| Mike Lilley | Sue Lissimore | Patricia Moore | Beverley Oxford |
| Gerard Oxford | Lee Scordis | Lesley Scott-Boutell | Martyn Warnes |
| Lorcan Whitehead | Dennis Willetts | Julie Young | Tim Young |

AGENDA
THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING
(Part A - open to the public)

Please note that Agenda items 1 to 6 are normally dealt with briefly.

An Amendment Sheet is published on the Council's website by 4:30pm on the day before the meeting and is available to view at the bottom of the relevant Planning Committee webpage. Please note that any further information for the Committee to consider must be received no later than 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

The Chairman will welcome members of the public and Councillors and remind everyone to use microphones at all times when they are speaking. The Chairman will also explain action in the event of an emergency, mobile phones switched to silent, audio-recording of the meeting. Councillors who are members of the committee will introduce themselves.

2 **Have Your Say! (Planning)**

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

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

3 **Substitutions**

Councillors will be asked to say if they are attending on behalf of a Committee member who is absent.

4 **Urgent Items**

The Chairman will announce if there is any item not on the published agenda which will be considered because it is urgent and will explain the reason for the urgency.

5 **Declarations of Interest**

Councillors will be asked to say if there are any items on the agenda about which they have a disclosable pecuniary interest which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other pecuniary interest or non-pecuniary interest.

6 **Minutes**

There are no minutes for confirmation at this meeting.

7 **Planning Applications**

When the members of the Committee consider the planning applications listed below, they may decide to agree, all at the same time, the recommendations in the reports for any applications which no member of the Committee or member of the public wishes to address the Committee.

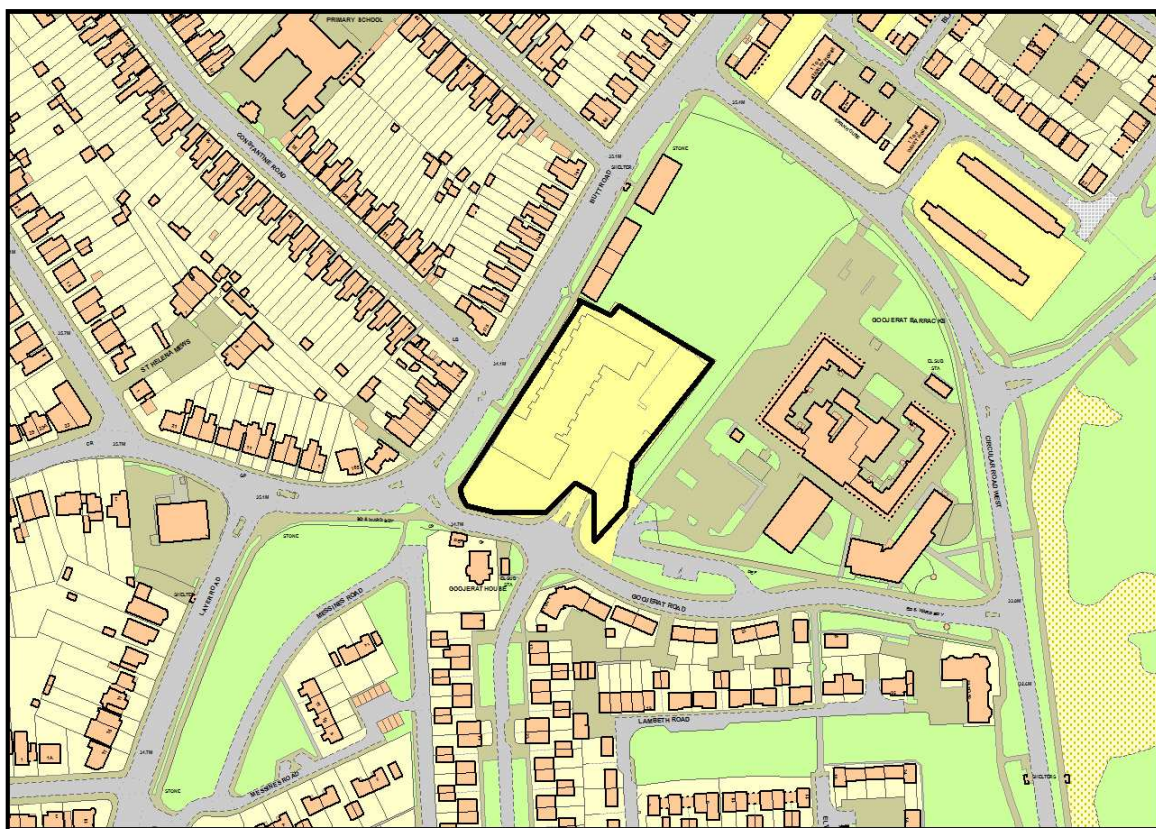
- | | | |
|-----|--|---------|
| 7.1 | 181537 Land off Butt Road, Colchester | 7 - 34 |
| | Application to vary conditions 2 and 10 and remove conditions 16, 17, 37 and 38 of planning permission 170621. | |
| 7.2 | 190212 65 John Kent Avenue, Colchester | 35 - 44 |
| | Application to vary condition 2 of planning permission 170475 | |
| 7.3 | 190020 45 Winston Avenue, Colchester | 45 - 54 |
| | Part single and part two storey side and rear extension | |
| 7.4 | 190279 Swan Grove, Chappel | 55 - 64 |
| | Proposal to create hardstanding to create two parking spaces | |
| | Planning Committee Information Pages v2 | 65 - 76 |

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)



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Item No: 7.1

Application: 181537

Applicant: Yourlife

Agent: Mrs Kim Rickards, The Planning Bereau Ltd

Proposal: Application to vary conditions 2 and 10 and remove conditions 16, 17, 37 and 38 of planning permission 170621.

Location: Land off, Butt Road, Colchester

Ward: New Town & Christ Church

Officer: Sue Jackson/Simon Cairns

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 an amendment to a major application, material objections have been received and a conditional planning permission is recommended subject to a legal agreement.

2.0 Synopsis

- 2.1 The key issues for consideration are the changes to the approved scheme, local plan policy, traffic generation and parking provision, neighbour representations and design issues.
- 2.2 The application is subsequently recommended for a conditional planning permission subject to the signing of a legal agreement.

3.0 Site Description and Context

- 3.1 The application site at Butt Road is known as Area K2 in the Garrison Urban Village Development Master Plan. The site has an area of 0.62 hectares and is located approximately 0.8 km to the south of the town centre.
- 3.2 It is a corner site with a dual frontage to Butt Road and Goojerat Road. It is separated from Goojerat Road by a fenced grassed area containing a group of lime trees protected by a Tree Preservation Order. Vehicular access to the site is established as provision was made when a new roundabout along Goojerat Road was constructed. The roundabout provides access to residential development on part of the former garrison and includes an access stub to the application site. The rear east boundary is adjacent to the Military Police Station but separated from it by a buffer security strip of land where development is prohibited.
- 3.3 The north boundary abuts undeveloped land also included in the Garrison Urban Village Development Master Plan known as Area K1; it is anticipated this area will be developed for residential purposes. Much of the planning history relates to applications which include both Area K1 and K2. Area K1 includes two locally listed buildings on the Butt Road frontage. The boundary of the Garrison Conservation Area generally follows the boundary between K1 and K2 but a small slither of the application site is within the Conservation Area.
- 3.4 On the opposite side of Butt Road are a number of parallel roads which extend to Maldon Road. These residential roads, Errington, Constantine, Hamilton and St Helena, comprise predominantly 2 storey semi-detached pairs of red brick slate roofed Victorian houses. Hamilton Road School has a frontage to both Hamilton and Constantine Roads. Butt Road comprises houses of a similar age and design and includes a small number of shops on corner sites.

- 3.5 On the same side of Butt Road as the application but closer to the town centre, sections of the historic, and new, Garrison boundary wall abut the footway. Recent residential development, in this location is predominantly 3 storeys in height, and is either set behind the Garrison wall or abuts the footway. This development is traditional in both design and use of materials.
- 3.6 New residential development close to the site off Goojerat Road is of a contemporary style including coloured boarding, cream brick and render with some mono-pitched roofs, building heights are generally 2 or 3 storey, with a 3 storey building facing the site across the roundabout.
- 3.7 The construction of the building approved under application 170621 is nearing completion.

4.0 Description of the Proposal

- 4.1 The approved development involves a single building part 3 part 4 storeys in height to provide 48 “Assisted Living” Extra Care Units and a retail store of approx. 550 square metres. The retail store is shown on the ground floor of the 4 storey element and overlooks Butt Road and the open space area.
- 4.2 The application proposes omitting the retail store and providing an additional 5 “Extra Care” Units; a total of 53. The applicant is therefore applying to vary and remove certain conditions on the original planning permission. Conditions which relate solely to the retail store will be deleted and those referring to both the Extra Care” Units and retail store will be amended.
- 4.3 The relevant conditions are detailed below;

2. Approved Drawings- wording to be amended to remove reference to the the superseded drawings and to include the revised drawings numbers

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 17769-P04_H, P05_H, P06_E, P07_I, P08_H, P10_C, P11_B.

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

7. Restriction on the size of service vehicles - condition to be removed

The vehicles servicing the retail store hereby approved shall not exceed 18 tonnes in weight.

Reason: The development is located in a predominantly residential area and the servicing areas within the site are restricted and incapable of accommodating larger vehicles. The use of larger vehicles could prejudice the interests of highway safety and the amenities enjoyed by surrounding dwellings and there is no capacity for safe on-street servicing on this corner site.

10. Clarification on the permitted uses- reference to the retail use to be removed

The proposed retail unit shall be restricted to a foodstore selling convenience goods only within Use Class A1 and the Assisted Living Extra Care accommodation to uses within Class C2 only as defined in the Use Class Order and for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) (Amendment) Order 2005, or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that Order, with or without modification.

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

16. Details of shopfront to be submitted – condition to be deleted

The shopfront glazing system and entrance lobby to the foodstore shall not be obscured by film or any other materials applied to or immediately behind the windows unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the store provides an active frontage to the public realm of the Neighbourhood Centre.

17. Restriction on the floor area of the retail store – condition to be deleted

The floor area of the foodstore hereby permitted shall not be extended either by the extension and/or other alteration of the building.

Reason: The Local Planning Authority wishes to retain control over any subsequent increase in the size of the foodstore to ensure it does not have an adverse impact on the amenity of the surrounding residential area.

37. Opening times of the retail store – condition to be deleted

The use hereby permitted shall not operate/open to customers outside of the following times:

Weekdays: 07:00-22:00

Saturdays: 07:00-22:00

Sundays and Public Holidays: 07:00-22:00

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.

38. Restriction on delivery times to the retail store – condition to be deleted

No deliveries shall be received at, or despatched from, the site outside of the following times:

Weekdays: 07:00-19:00

Saturdays: 07:00-19:00

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.

- 4.4 A Marketing Report has been submitted with the application. This report prepared by Taylor Wilcox states *the site has been marketed since 26th January 2016, and since March 2017 property details have been circulated on a regular basis to both the convenience store operators, as well as other prospective uses such as: medical; dentist; vets and health and fitness. In addition, two signs have been erected on the property indicating that it is available to let. Despite this marketing activity there has been no interest in the proposed unit and therefore Yourlife are seeking to change the retail unit to provide 5 additional Assisted Living apartments.*
- 4.5 In addition to the Marketing Report, a Retail Note has been prepared by Lichfields. *This sets out that within an 800 metre radius of the site there are two convenience stores. One is operated by Sainsbury's Local on the site of the former Drury Arms public house, Layer Road; approximately 80 metres to the west of the site. This store has a floorspace of approximately. 280 sqm net sales. The second is the Budgens store also located on Drury Road, around 600 metres from the site. This has a floorspace of 350 sqm net sales. There are also a number of stores within the wider vicinity of the site and therefore it is considered that the surrounding area, appears well served by local convenience provision, especially focused on the top up shopping food store market which lends itself to creating sustainable communities. The location of the Sainsbury Local and Budgens store particularly in relation to the application site is partly the reason why an occupier is proving difficult.*
- 4.6 This information has been has independently verified by the Councils Property Advisor (Chartered Surveyor MRICS) and it has been confirmed that the commercial unit has been comprehensively marketed over an extensive period and the presence of the Sainsbury and Budgen, both successful stores, have had an adverse impact on finding an occupier.

5.0 Land Use Allocation

- 5.1 Garrison Regeneration Area, Growth Area, Neighbourhood Centre (retail and/or other uses) Approved 8.07.2004 Colchester Garrison Urban Village – Master Layout Plan. The site is located within an area that was allocated as a Neighbourhood Centre in the Garrison Master Plan in 2001. This allocation was subsequently carried forward by the 2010 adopted Site Allocations DPD. Policy GAR1 provides for a 1000sqm (foodstore and three small shops); this policy does however note that ‘the levels of development [set out on policy GAR1] should not be considered prescriptive but a guide to inform development proposals’.
- 5.2 In the emerging Local Plan the site is not within an identified Local Centre.

6.0 Relevant Planning History

- 6.1 170621 - Mixed Used Development comprising the Erection of Assisted Living Extra Care (Use Class C2) accommodation for the frail elderly including communal facilities and car parking and Retail unit (Use Class A1) – Approved
- 6.2 120412 - Local centre comprising a supermarket, 6 no retail units, affordable housing and car parking. The site of this application includes Areas K1 and K2. Planning permission granted but has now expired. The proposal exceeded the guideline figures, in that the proposed foodstore was 1,328sqm (net), and six retail units were approved rather than three.
- 6.3 100981 - Application for change of use and conservation of former MOD occupied single storey buildings (Blocks A, B C D1 & D2) to create 535m2 (A1 Retail and A2 Financial and Professional services) accommodation, along with associated works – Approved
- 6.4 100982 - Reserved matters application (O/COL/01/0009) for the erection of two buildings to create 1080m2 A1 Retail and A2 Financial and Professional Services (Block E & Ground Floor of Block F) Accommodation and 14no. Affordable units (Block F) with associated works – Approved
- 6.5 100983 – Reserved matters application (O/COL/01/0009) for the erection of two buildings to create 1080m2 A1 Retail and A2 Financial and Professional Services (Block E & Ground Floor of Block F) Accommodation and 14no. Affordable units (Block F) with associated works – Approved
- 6.6 102537 - Extant permission to extend time limit for implementation of reserved matters application under outline consent O/COL/06/0783; siting; design; external appearance, means of access and landscaping for the erection of food store and shops with associated parking. (Reserved matters reference 090905) - Approved

- 6.7 090905 - Reserved matters application under outline consent O/COL/06/0783; siting; design; external appearance, means of access and landscaping for the erection of food store and shops with associated parking.
- 6.8 O/COL/06/0783 - Demolition of existing offices and construction of food store and shops with associated parking
- 6.9 F/COL/04/0716 Variation of condition 02 of planning permission O/COL/01/0692 to further extend the period for a further two years in which to submit a reserved matters application - Approved.
- 6.10 F/COL/01/0692 Application to vary condition 1 of planning permission COL/98/0947 to further extend the period (for a further 3 years) in which to submit a reserved matters application - Approved.
- 6.11 O/COL/01/0009 A new urban village comprising residential development (up to approx 2600), mixed uses including retail, leisure and employment, public open space, community facilities, landscaping, new highway & transportation improvements associated and ancillary development in accordance and subject to the provisions of the master plan
- 6.12 98/0947 – Outline application for the erection of food store and shop units (Renewal of Application COL/94/1423).
- 6.13 95/1432 - Outline application for the erection of food store and flats with ancillary car parking and highway works - Refused 7 March 1996.
- 6.14 94/1423 - Outline application for erection of food store and shop units Approved 7 March 1996

7.0 Principal Policies

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

SD1 - Sustainable Development Locations
SD2 - Delivering Facilities and Infrastructure
SD3 - Community Facilities
CE2b - District Centres
CE2c - Local Centres

- H1 - Housing Delivery
- H2 - Housing Density
- H3 - Housing Diversity
- UR1 - Regeneration Areas
- 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
- TA5 - Parking
- ENV1 - Environment

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

- DP1 Design and Amenity
- DP2 Health Assessments
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP4 Community Facilities
- DP7 Local Centres and Individual Shops
- DP12 Dwelling Standards
- DP14 Historic Environment Assets
- DP16 Private Amenity Space and Open Space Provision for New Residential Development
- DP17 Accessibility and Access
- DP18 Transport Infrastructure Proposals
- DP19 Parking Standards

- 7.4 Some “allocated sites” also have specific policies applicable to them. The adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

SA GAR1 Development in the Garrison Area

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

- The Essex Design Guide
- External Materials in New Developments
- EPOA Vehicle Parking Standards
- Sustainable Construction
- Urban Place Supplement
- Sustainable Drainage Systems Design Guide
- Street Services Delivery Strategy
- Managing Archaeology in Development.
- Planning Out Crime

- 7.6 The Council is developing a new Local Plan (Submission Colchester Borough Local Plan 2017-2033) that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:
1. The stage of preparation of the emerging plan;
 2. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
 3. The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo full examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

The most relevant policies in the emerging plan are set out below:

- Policy SP1: Presumption in Favour of Sustainable Development
- Policy SP3: Meeting Housing Needs
- Policy SG1: Colchester's Spatial Strategy
- Policy SG2 : Housing Delivery
- Policy SG7 : Infrastructure Delivery and Impacts
- Policy ENV 5 : Pollution and Contaminated Land
- Policy PP1 : Generic Infrastructure and Mitigation Requirement
- Policy DM 9 : Development Density
- Policy DM10 : Housing Diversity
- Policy DM15 : Design and Amenity
- Policy DM16 : Historic Environment
- Policy DM 20 :Promoting Sustainable Transport
- Policy DM 22 :Parking
- Policy DM 24 : Sustainable Urban Drainage

- 7.7 The National Planning Policy Framework and the Planning Practice Guidance are material planning considerations.

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

- 8.2 Essex County Council SUDS as the Lead Local Flood Authority (LLFA) this ECC provides advice on SuDS schemes for major developments. Having reviewed the Flood Risk Assessment & Surface Water Drainage Strategy and the associated documents which accompanied the planning application, acting on behalf of ECC we do not object to the granting of planning permission subject to conditions.

Officer comment: the recommended conditions were imposed on application 170621 and will be carried forward to any new permission.

- 8.3 Highway Authority has no comments to make on the proposal
Note: The proposal is in accordance with the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011

- 8.4 Contaminated Land Officer sought confirmation that the introduction of a more vulnerable receptor to this part of the site (residential from previous commercial) would not affect the assumed site conceptual model" This clarification has been received and the Contaminated Land Officer has no further comment.

- 8.5 Environmental Protection no comment

- 8.6 Landscape Officer there are no objections to this application on landscape grounds.

- 8.7 Urban Design Officer
The ground floor shop previously provided an architecturally strong, differentiated and engaging base to the building befitting its prominence on key nodal corner, to a 4 storey building (which was predicated on design quality) and overlooking the green. The current proposal is poor and noticeably diminishes the scheme. Many of the qualities from the shop front design are transferable to residential accommodation. Therefore I would suggest reverting back to the shopfront design except replacing shop windows with a complementary mix of windows, patio doors and metal (e.g. matt zinc) cladding, possibly including a cladding arrangement which is equivalent to a stall riser to lend solidity. Pilasters should be reinstated and brick entirely omitted between these and below the lower string course, so that there is a perception of larger, fewer, and more ordered openings (within which subtly sits windows and patio doors).
Landscape- public green landscaping and access across.

Officer comment: Following these comments Officers have negotiated amendments to the fenestration. The "shop front" appearance has been retained with a glazed curtain wall panel including a mix of panels, doors and windows. This is acceptable in principle, further details and refinement have been agreed and will be reported at the committee meeting.

- 8.8 Planning Policy were asked to advise on the loss of retail use and commented:

Allocation of Neighbourhood Centres formed part of the approach in Adopted Plan Policy CE2c to ensuring that new development meets the needs of local people and encourage sustainable travel behaviour. For the Garrison area, this translated into Policy SA GAR1 which provides for two retail areas in the Garrison: William Harris Way, which has been built, and 1000 sqm of retail at Butt Road. Reduction of the retail element on the site to 511 sqm was approved as part of the retirement dwelling scheme that followed the failure to implement the Tesco's scheme so the loss of some retail has already been accepted in principle.

The retail use proposed can also be considered to fall within the community facility category, and thus is covered by Policy DP4 Community Facilities. This provides that any proposal that would result in the loss of a site proposed for a community facility must meet criteria to demonstrate alternative provision nearby, lack of economic viability, and lack of alternative providers or community uses for the site.

The applicants have submitted a Briefing Note to address these criteria as follows:

Alternative provision - Two convenience shops lie within an 800 metre radius, including a Sainsbury's outlet at 60 m distance and a Budgens outlet at 600 metres, so the area is considered to be adequately .

Lack of viability – Subject to confirmation by the Council's estates officers on the adequacy of the marketing campaign, the applicants have demonstrated that the site is not currently viable for retail or wider commercial/community uses given the lack of commercial interest.

The useability of the alternative shopping provision should be enhanced by ensuring that access to the shops is facilitated by appropriate pedestrian crossings and dropped kerbs. *Officer comment: the application secures these improvements.*

- 8.9 English Heritage On the basis of the information available to date, we do not wish to offer any comments.

9.0 Parish Council Response

- 9.1 N/A

10.0 Representations from Notified Parties

- 10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.

- 10.2 Councilor Cope forwarded representations and asked that the comments be taken into account. He commented “The impact on the parking needs of residents in Constantine Road may well be more than has been anticipated because of the lack of provision within the area of the development”.
- 10.3 Six representations raising the following objection to the application have been received;
- The covering letter states that the extra parking provision was provided following concerns by residents for customers accessing the retail. However concerns also related to the disregard of adequate parking for the residents, staff and visitors accessing the site. It is not acceptable to further build residential units without increasing the parking significantly otherwise this will impact onto the surrounding roads, some of which are un-permitted and others that will be used outside of permit time
 - Concerns regarding the lack of need for a retail unit were also raised by residents. However this did not deter the application of retail. Its hardly surprising that the application has been changed for more units.
 - Constantine Road is under huge pressure for parking. Traffic is not being controlled by the 20mph signs installed last year and the road is continually used as a cut through with some cars regularly speeding at over 40mph.
 - This development must provide for adequate parking and residents on Constantine and Hamilton Roads must be protected. Please review the agreement both for resident parking and for this development so that an already miserable situation does not deteriorate even further.
 - The retail unit was for the benefit of residents, a large majority of which were deemed to be disabled so for it to be proposed that they are adequately served by local retail is simply not true.
 - In order for a person to be deemed disabled they would not be able to walk the required distance to Sainsbury and therefore the site would not meet the use for which it is intended and for which Planning was granted.
 - Conditions have not been complied with. *Officer comment: there are no issues regarding conditions pre-commencement conditions in respect of drainage, contamination, materials, Construction Management Plan and Habitat enhancement have been discharged. Landscaping, surface materials and parking will be implemented prior to occupation.*

11.0 Parking Provision

- 11.1 Parking matters are discussed in the main body of the report below.

12.0 Open Space Provisions

- 12.1 The application is for a C2 “extra care” use not a C3 residential dwelling use and there is no open space requirement for C2 uses. The 2017 permission secured enhancements to a green a space, currently not accessible, to the public, for public use. This is a prominent green space with mature preserved trees which will enhance the amenity of the wider area. **Any new permission will also secure these enhancements.**

13.0 Air Quality

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

14.0 Planning Obligations

- 14.1 As An amendment to a “Major” application, there was a requirement for this proposal to be considered by the Development Team.
- 14.2 Application 170621 secured the full range of contributions requested by the Development Team as set out below;
- NHS England contribution of £3,795
 - Cycleway contribution of £22,000
 - Open Space Sport & Recreation – enhancements to the local environment should be included. Seating and appropriate planting to the treed area on the corner of the site is recommended.
 - Highway mitigation a) Upgrading of the two bus stops in Butt Road adjacent to the proposal site to include but may not be limited to real time passenger information b) A zebra crossing in Goojerat Road, east of the proposal site access roundabout c) If 50 or more employees, a travel plan to include but shall not be limited to a £3,000 contribution to cover the Highway Authority’s costs to approve, review and monitor the Travel Plan.
- 14.3 The Development Team considered the revised application and requested that the following Planning Obligations should be sought.
- NHS England a contribution of £12,466 (an increase of £8671 from the £3795 requested for 48 units)
 - Cycleway contribution of £22,000
 - Open Space Sport & Recreation – enhancements to the local environment should be included. Seating and appropriate planting to the treed area on the corner of the site is recommended
 - Highway mitigation a) Upgrading of the two bus stops in Butt Road adjacent to the proposal site to include but may not be limited to real time passenger information b) A zebra crossing in Goojerat Road, east of the proposal site access roundabout

15.0 Report

15.1 The main issues in this case are:

The Principle of Development

15.2 Planning permission has been granted for 48 “Assisted Living” Extra Care Units on the site and the development is nearing completion, an additional 5 units is therefore acceptable in principle. However these additional units will replace a proposed retail unit and the loss of this retail use has to be considered. The applicant has submitted information to demonstrate that the site is not currently viable for retail or wider commercial/community use. The Councils Property Advisor has considered the reports and agrees with their conclusions. The removal of the retail unit is therefore considered acceptable.

Design and Layout

15.3 The retail unit was proposed on part of the ground floor of the building specifically the ground floor of the 4 storey element. The retail shop fronts provided an architecturally strong and differentiated base to the building befitting its prominence on key nodal corner. The original proposal which removed all the shop front details and simply inserted domestic scale windows in a brick façade was unacceptable. Amendments have been negotiated which involve reverting to the “shop front” form with a glazed curtain wall panel including a mix of panels, doors and windows. This is acceptable in principle, further details and refinement has been agreed and will be reported at the committee meeting.

Scale, Height and Massing

15.4 These matters are unaffected by the application

Impact on the Surrounding Area

15.5 A residential use, located within a predominantly residential area will not have an adverse impact on the surrounding area.

Impacts on Neighbouring Properties

15.6 Forty one representations were received in respect of the 2017 application; the majority objecting to the additional traffic generated by; and parking provision for the retail store. The removal of the retail store could therefore be considered to have a positive impact on residential amenity.

15.7 This is a brownfield site which previously contained a multi storey office building. It is considered “Assisted Living” Extra Care Units for elderly residents would generate less traffic than other residential development and any impact on residential properties is minimal.

Highway Safety and Parking Provisions (including Cycling)

- 15.8 The Councils' adopted parking standards for a C2 care home use are set out below; it should be noted that unlike the parking standards for C3 dwellings which are a minimum standard; parking standards for C2 use are a maximum standard for provision.
- 15.9 The Adopted Parking Standards for a C2 (residential care facility) use require a maximum of 1 space per full time equivalent staff plus 1 visitor space per 3 beds.
- 15.10 26 spaces were approved for the 48 units and a further 5 spaces are proposed for the additional units. A total of 31 spaces, of which 3 spaces are for disabled drivers this represents 88% of the maximum and is considered acceptable.
- 15.11 The development of this brownfield site close to town centre and public amenities is supported. Any use will generate some vehicular movements and other uses including family housing would be likely to generate more traffic than a C2 use.
- 15.12 The provision of cycle parking is controlled by condition.

Other Matters

- 15.13 The number of care units has increased from 48 to 53 a 10.4% increase whereas the financial contribution requested by NHS England has increased from £3,795 to £12,466 an increase of 328%. NHS England has confirmed the earlier request was incorrect. It should be noted the applicant has agreed the sum requested.
- 15.14 Since the receipt of the application Natural England has advised the Essex Authorities on the impact of all residential development, including C2 uses, on the East Coast European Site in terms of increased recreational disturbance and the requirement for appropriate mitigation. An Essex Coast RAMS contribution of £122.30 per dwelling is required. This contribution should be applied only to the 5 additional units and secured in legal agreement.
- 15.15 The applicant has agreed improvements to bus stops and a pedestrian crossing and is in discussion with the Highway Authority regarding the details of the works required.

16.0 Conclusion

- 16.1 To summarise, the removal of the retail unit and provision of an additional 5 care units is considered acceptable. The impact on residential amenity from a Assisted Living” Extra Care Unit use will be minimal. The number of parking spaces has increased from 26 spaces for 48 units to 31 spaces for 53 units which is considered acceptable. The revised ground floor fenestration is acceptable subject to further large scale drawings and approval of materials.
- 16.2 A conditional planning permission is recommended. The condition set out below retain the same order and numbering as planning permission 170621 with new conditions, required to secure the changes to the fenestration, at the end - conditions 41-43.

17.0 Recommendation to the Committee

- 17.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission 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 Service to refuse the application, or otherwise to be authorised to complete the agreement to secure the following

- NHS England a contribution of £12,466
- Cycleway contribution of £22,000
- Open Space Sport & Recreation – enhancements to the local environment should be included. Seating and appropriate planting to the treed area on the corner of the site is recommended
- Highway mitigation a) Upgrading of the two bus stops in Butt Road adjacent to the proposal site to include but may not be limited to real time passenger information b) A zebra crossing in Goojerat Road, east of the proposal site access roundabout or any alternative mitigation agreed with the Highway Authority
- An Essex Coast RAMS contribution of £122.30 per dwelling (5 x £122.30)

- 17.2 The Permission will also be subject to the following conditions:

1. **Time Limit** (not required development has commenced)

2. **Approved Drawings**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 17769-P06D **Revised drawing numbers to be added**

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

3. Large Scale Drawings of Architectural Features

Prior to the commencement of any works, additional drawings that show details of any proposed new glazed screens, chimneys, flue and extract terminals, ridges, shopfronts and associated facias; boundary walling including height, brick bond, coping detail and detail of associated piers; windows, reveals, doors, eaves, verges, cills, arches balconies, pilasters, dummy windows and all architectural features and detailing to be used, by section and elevation, at scales between 1:20 and 1:1, as appropriate, shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved additional drawings.

Reason: Inadequate details have been submitted as part of the application having regard to the prominence of the site and scale of the proposed built form adjacent to the Garrison Conservation Area.

4. Details of Rainwater Goods

All rainwater goods (gutters, downpipes, hopperheads and soil pipes) shall be finished in cast metal and painted black and shall be of ogee section unless an alternative has been submitted to and approved in writing by the local planning authority.

Reason: Inadequate details have been submitted as part of the application having regard to the prominence of the site and scale of the proposed built form adjacent to the Garrison Conservation Area.

5. Surface Materials

Prior to the laying down of any surface materials for private, non-adoptable access-ways, driveways, footpaths, courtyards, parking areas and forecourts, full details of these materials shall be submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason: There is insufficient information within the submitted application to ensure that these details are satisfactory in relation to their context and such details are considered important to the character of the area.

6. Refuse and Recycling Storage Facilities

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

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

7. Condition Deleted

8. Consent required for Advertisements

Notwithstanding the details shown on the approved drawings, no consent is granted nor implied for any signage and a subsequent application for advertisement consent to display any advertisements on the buildings or within the application site area.

Reason: For the avoidance of doubt as to the scope of this planning permission in accordance with the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

9. Clarification regarding the Use Class C2

The Assisted Living Extra Care (Use Class C2) accommodation for the frail elderly shall not be used otherwise than as a private place of residence for a person or persons of whom at least one must be a “qualified person” (defined below) at the date of his or her first occupation of the unit in question’. For the purposes of this schedule “a qualified person” means a person who is or has attained the age of 70 years and thereby in need of personal care by reason of old age or by reason of disablement. (whether or not such person suffers from a registered disability under the terms of the Chronically Sick and Disabled Persons Act 1970). An occupier of one of the individual units of residential accommodation who is not a “qualified person” but who shares or previously shared the accommodation with a “qualified person” (e.g. a spouse or surviving spouse) must have attained the age of at least 60 years.’

Reason: The proposed development is unsuited to use as unrestricted residential dwellings (Use Class C3) as the amenity space and parking provision would be inadequate for such a use in accordance with adopted Colchester local plan (2008,2010, 2014) policies PR1, TA5, DP12, DP16.

10. Restriction on Use

The Assisted Living Extra Care accommodation is restricted to uses within Class C2 only as defined in the Use Class Order and for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) (Amendment) Order 2005, or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that Order, with or without modification.

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

11. Habitat Enhancement

No development shall commence until a scheme of habitat enhancement within the application site including but not limited to provision for nesting and roosting opportunities for birds has been submitted to and agreed in writing by local planning authority. The scheme shall include details of the proposed measures together with a programme for implementation. Prior to the beneficial occupancy of any of the development the agreed scheme shall be implemented and thereafter so maintained.

Reason: To ensure that the biodiversity of the site is maintained and enhanced in accordance with the NERC Act 2006 and policy ENV1 of the Adopted Colchester Local Plan.

12. Foul Water Strategy

No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the Local Planning Authority.

Reason: To prevent environmental and amenity problems arising from flooding.

13. Surface Water Drainage Scheme

No works 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 should include but not be limited to:

- Limiting discharge rates to a maximum of 5l/s from the site for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change.
- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event. Any storage devices should have suitable half-drain times.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the CIRIA SuDS Manual C753.
- If infiltration is proposed anywhere on site it must be ensured that surface water does not infiltrate through contaminated ground.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy. 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. To ensure the effective operation of SuDS features over the lifetime of the development. To provide mitigation of any environmental harm which may be caused to the local water environment. Failure to provide the above required information before commencement of works may result in a system being installed that is not sufficient to deal with surface water occurring during rainfall events and may lead to increased flood risk and pollution hazard from the site.

14. Maintenance Plan

No works shall take place until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed in writing by the Local Planning Authority.

Reason: To ensure appropriate management arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk. Failure to provide the above required information before commencement of works may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.

15. Yearly Logs of Maintenance

The applicant or any successor in title must maintain yearly logs of maintenance of the drainage system which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason: To ensure the SuDS are maintained for the lifetime of the development as outlined in any Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

16. Condition Deleted

17. Condition Deleted

18. Trees Shrubs Protection

No work shall commence on site until all trees, shrubs and other natural features shown to be retained on the approved plans, are safeguarded behind protective fencing to a standard to be agreed by the Local Planning Authority (see BS 5837). All agreed protective fencing shall be maintained during the course of all works on site. 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.

19. No Burning or Storage of Materials

No burning or storage of materials shall take place where damage could be caused to any tree, shrub or other natural feature to be retained on the site or on adjoining land (see BS 5837).

Reason: To protect the health of trees, shrubs and other natural features to be retained in the interest of amenity.

20. Hedgerow and Tree Protection

All trees and hedgerows on and immediately adjoining the site shown on the approved plans to be retained shall be protected from damage as a result of works on site, to the satisfaction of the local Planning Authority in accordance with its guidance notes and the relevant British Standard. All existing trees to be retained shall be monitored and recorded for at least five years following contractual practical completion of the approved development. In the event that these trees and/or hedgerows (or their replacements) 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.

21. Hard and Soft Landscape Works

No works or development shall take place until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority (see BS 1192: part 4). These details shall include, as appropriate: Existing and proposed finished contours and levels. Means of enclosure (including position, height, design and material). Car parking layout. Other vehicle and pedestrian access and circulation areas. Hard surfacing materials. Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signage, lighting). Proposed and existing functional services above and below ground (e.g. drainage, power, communication cables, pipelines, etc. indicating lines, manholes, supports etc.). Retained historic landscape features and proposals for restoration. Soft landscape details shall include: Planting plans. Written specifications (including cultivation and other operations associated with plant and grass establishment). Schedules of plants, noting species, plant size and proposed numbers/densities. Planting area protection or decompaction proposals. Implementation timetables.

Reason: To safeguard the provision of amenity afforded by appropriate landscape design.

22. Implementation and Monitoring Programme

All approved hard and soft landscape works shall be carried out in accordance with the implementation and monitoring programme agreed with the Local Planning Authority and in accordance with the relevant recommendations of the appropriate British Standards. All trees and plants shall be monitored and recorded for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

Reason: To ensure the provision and implementation of a reasonable standard of landscape in accordance with the approved design.

23. Landscape Management Plan

A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved by the Local Planning Authority prior to any occupation of the development (or any relevant phase of the development) for its permitted use.

Reason: To ensure that due regard is paid to the continuing enhancement and maintenance of amenity afforded by the landscape.

24. Secure Cycle Storage/Stands

No development shall take place until details of secure cycle storage/stands (including those suitable for cycle buggies) for the occupants of, and visitors to, the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.

Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles.

25. Investigation and Risk Assessment

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

26. Remediation Scheme

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.

27. Remediation Scheme

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.

28. Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 25, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 26, 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 27.

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.

29. Certification in respect of Contamination

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 25.

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.

30. Construction Method Statement

No development shall take place, including any ground works or works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. hours of deliveries and hours of work
- ii. the parking of vehicles of site operatives and visitors
- iii. loading and unloading of plant and materials
- iv. storage of plant and materials used in constructing the development
- v. wheel and under body washing facilities
- vi. HGV Routing plan
- vii. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing
- viii. measures to control the emission of dust and dirt during construction
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable and to ensure that on-street parking of these vehicles in the adjoining streets does not occur, in the interests of highway safety and Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

31. Service and Delivery Parking and Turning Facilities

Prior to commencement of the proposed development, service and delivery parking and turning facilities in accordance with a scheme to be approved in writing by the Local Planning Authority shall be provided and maintained for that sole purpose in perpetuity.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety and in accordance with Policy DM 1 and 8 of the Highway Authority's Development Management Policies February 2011.

32. Provision of Parking

The development shall not be occupied until such time as the car parking area, indicated on the approved plans, including any spaces for the mobility impaired has been hard surfaced, sealed and marked out in parking bays. The car parking area shall be retained in this form at all times and shall not be used for any purpose other than the parking of vehicles related to the use of the development.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety and in accordance with Policy DM 1 and 8 of the Highway Authority's Development Management Policies February 2011.

33. Communal Bin/Refuse/Recycling Storage facility

Prior to the occupation of the proposed development a communal bin/refuse/recycling storage facility shall be provided within 25m of the highway boundary for each proposed use classes.

Reason: To minimise the obstruction caused in the highway by refuse vehicles, in the interests of highway safety and in accordance with Policy DM 1 and 8 of the Highway Authority's Development Management Policies February 2011.

34. Control of Demolition or Construction Working

No demolition or construction work shall take outside of the following times;
Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

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.

35. Control of Lighting

Prior to the first occupation/use of the development hereby permitted, a validation report undertaken by competent persons that demonstrates that all lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) fully complies with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ2 RURAL, SMALL VILLAGE OR DARK URBAN AREAS shall be submitted to, and agreed in writing by, the Local Planning Authority. Any installation shall thereafter be retained and maintained as agreed therein.

Reason: In order to allow a more detailed technical consideration of the lighting at the site, as there is insufficient information submitted within the application to ensure adequate safeguarding of the amenity of nearby properties and prevent the undesirable, disruptive and disturbing effects of light pollution.

36. Control of Noise Levels

Prior to the first use or occupation of the 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.

37. Condition Deleted

38. Condition Deleted

39. Materials

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

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

40. Scheme to minimise off-site Flooding

No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.

Reason: The National Planning Policy Framework paragraph 103 and paragraph 109 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution. 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 increased flood risk to the surrounding area during construction there needs to be satisfactory storage of/disposal of surface water and groundwater which needs to be agreed before commencement of the development. Construction may also lead to polluted water being allowed to leave the site. Methods for preventing or mitigating this should be proposed.

41 Time Limit for Implementing Revised Fenestration

The details of the revised elevations and the replacement shop fronts shown in principle on drawing nos **(TO BE INSERTED)** shall be implemented in full within 3 months from the date of this permission or an alternative timescale previously submitted to and approved in writing with local planning authority.

Reason: The fenestration as build is unacceptable and to secure the implementation of the approved details.

42 Large Scale Drawings

Prior to the commencement of work on the ground floor fenestration large scale drawings of the glazed curtain wall panel and surrounding brickwork at a scale between 1:20 and 1: shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full in accordance with condition 41.

Reason: To ensure these features which are essential to ensure the equality of the building are fully implemented.

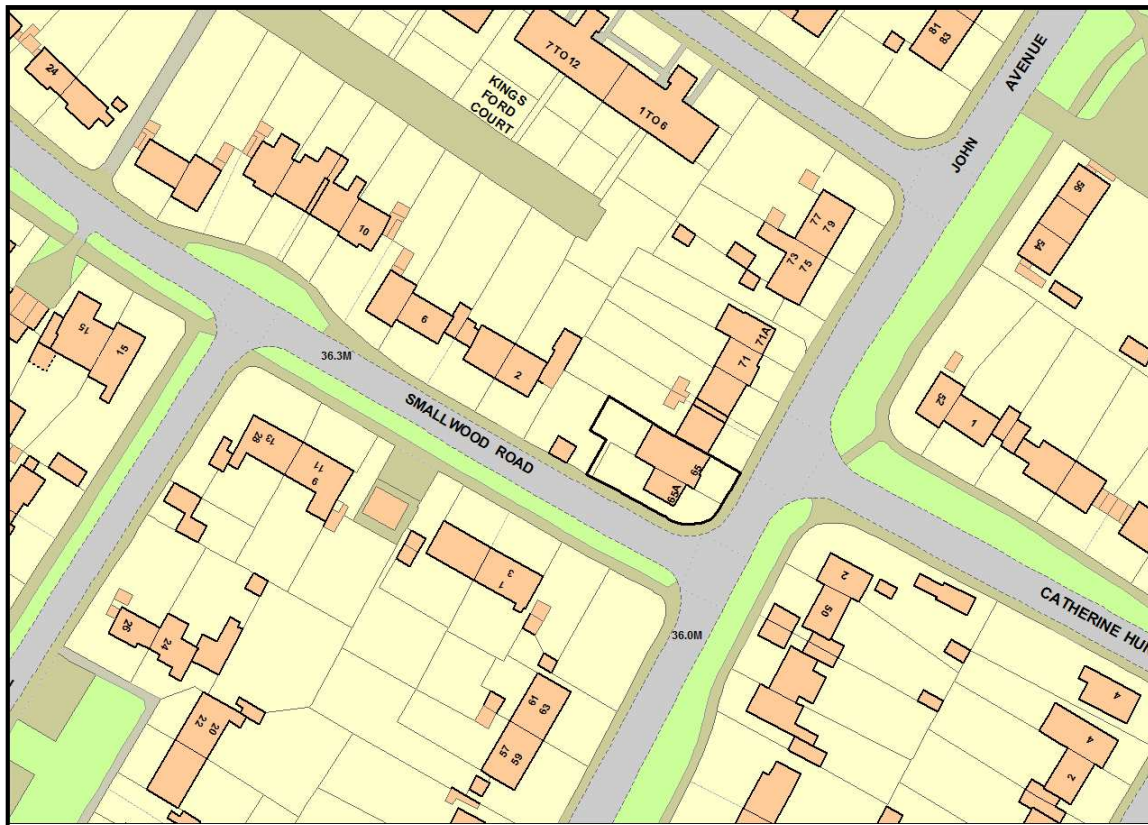
43 Materials

Prior to the commencement of work on the ground floor fenestration, to the additional 5 care units, samples of all the materials including glazing, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full.

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

Informatives

- (1) 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) 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 and be investigated by our enforcement team. ****Please pay particular attention to these requirements****. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.
- (3) 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.
- (4) The applicant should be advised to contact the Essex County Council travel plan team on travelplanteam@essex.gov.uk to make the necessary arrangements for the provision of the Travel Plan.
- (5) All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall 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: SMO1 – Essex Highways Colchester Highways Depot, 653 The Crescent, Colchester. CO4 9YQ.
- (6) 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.
- (7) 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. It is recommended that petrol/oil interceptors be fitted in all car park areas. It is recommended that properly maintained fat traps are fitted and installed on all catering establishments



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Item No: 7.2

Application: 190212

Applicant: Mrs V Bond

Agent: Mr Steve Norman

Proposal: Application to vary condition 2 of planning permission 170475

Location: 65 John Kent Avenue, Colchester, CO2 9HE

Ward: Shrub End

Officer: Chris Harden

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it has been called in by Cllr Vic Flores who states: "Application made without notification of the owners. Original plan not in keeping with DP16. Gate already exists without planning permission to rear section of Land. Continued mention of Rear Access but is in fact owned and fenced land cutting proposed plan into 2 separate segments of land. Owners of 65 have been treated poorly and I have had highly unsatisfactory contact from applicant."

2.0 Synopsis

- 2.1 The key issues for consideration are the revised layout which relates to different levels of amenity space provision for each dwelling compared to the approved plans. Accordingly the impact upon residential amenity and the character of the area needs to be considered along with an assessment as to whether the revised layout complies with the standards of private amenity space as outlined in Policy DP16.
- 2.2 The application is subsequently recommended for Approval. To summarise, the provision of private amenity space for each dwelling meets the standards outlined in Policy DP16. Accordingly it is not considered an objection can be raised to the variation of Condition 2. It is not considered that the character of the area has been compromised with this revised amenity space layout so the proposal also complies with Policy DP1.

3.0 Site Description and Context

- 3.1 The site lies within the settlement limits and consists of a corner plot on a housing estate. Planning permission was granted in 2017 (170475) to convert a recently constructed 2 storey side extension to the host dwelling to an independent two bedroom dwelling. This entailed converting the garage to a living room, providing extra parking at the front and a new access and parking space along Smallwood Avenue. Amenity space was also split, with the original dwelling retaining the majority of the garden (around 220m²) and the new dwelling being provided with approximately 75m² of private garden.

4.0 Description of the Proposal

- 4.1 The proposal is now to vary Condition 2 of approval 170475 and this condition relates to the approved drawings. The variation involves different proportions for the garden areas, with the original dwelling now having an amenity area reduced to 60m² and the newer dwelling having approximately 220 m² of amenity space, subdivided by a pathway that serves the new dwelling.

5.0 Land Use Allocation

- 5.1 Settlement limits
Residential Area

6.0 Relevant Planning History

- 6.1 170475 - Conversion of recent addition to dwelling into a separate dwelling house with provision of associated parking facilities. Approved 13/4/17.

182818 - Erection of a 2 bedroom detached dwelling house with associated parking facilities. Withdrawn 21/12/18

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

- 7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
UR2 - Built Design and Character

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

DP1 Design and Amenity
DP12 Dwelling Standards
DP13 Dwelling Alterations, Extensions and Replacement Dwellings
DP14 Historic Environment Assets
DP16 Private Amenity Space and Open Space Provision for New Residential Development
DP19 Parking Standards
DP21 Nature Conservation and Protected Lanes

- 7.4 Some "allocated sites" also have specific policies applicable to them. The adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

N/A

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

The Essex Design Guide
EPOA Vehicle Parking Standards
Backland and Infill
Sustainable Drainage Systems Design Guide
Managing Archaeology in Development.

- 7.6 The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

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

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.
- 8.2 Cllr Flores objects: “I have asked for this application to be called in, as there are a number of concerning elements to this proposal, not least of which is a seeming ultimate desire to squeeze another property into a tiny area of land behind numbers 65 and 65a John Kent Avenue. I also have some concern over the accuracy of the plans provided and the reality of the area concerned. I will be happy to expand further before the committee should the need arise.”

9.0 Parish Council Response

- 9.1 Non-Parished

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.

10.2 8 letters of objection have been received which raise the following points:

- The previous owner has put in a planning application in our property number which she no longer has anything to do with. This address is registered at the land registry in our names under Miss Taylor & Mr Jones. However, Ms Vee Bond has put in a planning application number 190212 where she plans to take part of our garden.
- This application needs to be removed with immediate effect.
- We purchased the property in July 2018, unbeknown to us Ms Vee Bond kept the end of the garden. Ms Bond kept this as she planned to build on this, as she put in a building application last month under application number 182818. This was withdrawn as she was advised it would be refused since she had 7 objections.
- Ms Bond has now decided to use this piece of land as part of 65A's garden, however in doing so she wants part of our garden to access it. She has already breached application number 170475 where the application clearly states 65 John Kent Avenue will be left with 230 square metres of garden.
- However, Ms Bond has only left us with 61 square meters of garden! Please see below our land registered at the land registry. Ms Bond has put in her planning application that the side entrance is public access, it is in fact not, it is our land.
- Plans are not clear- no dimensions.
- Number of plans approved over the years. None appear to have been completed to the approved plans.
- The kerbs: The 2 on the front of John Kent avenue are incomplete. Therefore the vehicles going on the drive of 65a are bumping over existing higher kerb. Neither of the drives of 65 and 65a are hard standing as per the highways requirement.
- Applicant did not plan to keep the land for the 2 bed dwelling but to develop it further in a piece meal fashion. Something I believe the council frowns upon, and tries to avoid. For this very reason the land has been divided in such a way that it is now detrimental to the property owners and the local area.
- This change to land configuration will cause 65 John Kent Avenue, a 3 bed property to have a significantly reduced garden area and 65a, the smaller 2 bed to have a large and separated garden. Proposal is not in keeping with the local layout and design of neighbouring properties all of whom have larger, long, narrow gardens. This change will also mean we, as a boundary property, have a further property to share our boundary with.
- application should be refused on the grounds of being poorly planned and not taking into consideration in its design the improvement and/or current designs within the local area.
- fail to understand how there can be a new revised certificate B plan 1 day before consultation period end.

- I often visit at 65 John Kent Avenue & 2 Smallwood Road. I am an elderly lady and am disabled I have trouble walking on the gravel and the step is too high, therefore my only way of accessing 65 John Kent Avenue is the back access. Sharing the access will be a great inconvenience as I suffer from anxiety. I therefore need access at all times and the owners will not be allowing access to anyone else under any circumstances. The applicant already has access via a gate towards 2 Smallwood Road so why do they need a second one?

11.0 Parking Provision

11.1 2 spaces per dwelling.

12.0 Open Space Provisions

12.1 N/A

13.0 Air Quality

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

14.0 Planning Obligations

14.1 This application is 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 (s.106) of the Town and Country Planning Act 1990.

15.0 Report

15.1 The principle of the subdivision of the plot into two dwellings has already been previously agreed under application 170475. The only aspect of significance that has changed since the previous approval is the way the amenity space has been subdivided. Parking layout is as previously approved.

15.2 Accordingly, Policy DP16 of the Local Plan is applicable and this provides that for two bedroomed houses (i.e 65A John Kent Ave.), a minimum of 50m² of private amenity space should be provided. As a total of 220 m² is now proposed to be provided for 65A, this level of provision easily meets the standard set in Policy DP16. The fact that this garden area is subdivided by an access to no.65 is not considered to be a reason to object to the application. A short walk along the pavement and through a gate would allow access to this extra area of garden for the occupants of 65A. This also accords with the provisions of Policy DP1 as it is a safe and secure environment and is not detrimental to residential amenity.

- 15.3 Number 65 John Kent Avenue has now been left with a smaller garden area of 60m². Again, this meets the criteria outlined in Policy DP16 which provides that for 3 bedroomed dwellings (i.e 65 John Kent Ave.) a minimum of 60m² private amenity space should be provided. Accordingly it is not considered an objection can be raised on this level of amenity space provision as it accords with Policy D16 and provides what is considered to be a reasonable level of amenity space for a property of this size. It can be accessed either from the rear of the dwelling or from the pathway from the pavement. Again, the proposal accords with Policy DP1 as a safe and secure environment is provided and there is not a reason to object on impact upon residential amenity. It also appears that this level of amenity space is what the new owners were expecting when the property was purchased.
- 15.4 It is not considered an objection can be raised in terms of the impact upon the character of the area. Whilst it is slightly unorthodox for the smaller of the two dwellings to have the larger garden area, this does not justify a reason for refusing the application. The character of the area, including visual impact is not significantly affected as the precise positioning of the rear boundary of number 65 and its extent of garden space makes little difference visually to the character of the area and is not detrimental to its surroundings.
- 15.5 The comments received from neighbours have been carefully assessed but for the above reasons, the revised amenity areas are considered acceptable. The correct Certificate B has now been served. If vehicular access kerbs have not been installed correctly, this can be addressed by the Enforcement Team. It should be noted that this will fall under the responsibility of the individual owners of each dwelling. It is not considered an objection can be raised relating to access to number 65 as raised by a neighbour.
- 15.6 Other matters: The site is within a zone of influence of a European designated site and in order to comply with the Habitats and Species Regulations 2017 (as amended), mitigation of recreational impact will be required in accordance with the forthcoming Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS). This equates to a financial payment which has been requested.

16.0 Conclusion

- 16.1 To summarise, the provision of private amenity space for each dwelling meets the standards outlined in Policy DP16. Accordingly no objection can be raised to the variation of Condition 2. It is not considered that the character of the area has been compromised with this revised amenity space layout so the proposal also complies with Policy DP1.

17.0 Recommendation to the Committee

17.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to receipt of a financial contribution to mitigate recreational impact in accordance with the forthcoming Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS) and the following conditions (includes previous conditions restated where applicable):

1. ZAM - Development To Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers: location plan, 1709/4 received 23/2/17 and block plan 1709 Rev A received 31/1/19.

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

2. Non Standard Condition – Parking Provision

The vehicle parking areas indicated on the approved plans (4 spaces of 2.9 m x 5.5 m each) and vehicular access with pedestrian visibility splays, shall have been hard surfaced, and made available for use to the satisfaction of the Local Planning Authority within 3 months of the date of this approval. The vehicle parking areas and access shall be retained in this form at all times and the parking areas shall not be used for any purpose other than for the parking of vehicles that are related to the use of the development and existing dwelling.

Reason: To ensure that there is adequate parking provision to avoid on-street parking of vehicles in the adjoining streets in the interests of highway safety.

18.0 Informatives

18.1 The following informatives are also recommended:

1. Non Standard Highway Informative.

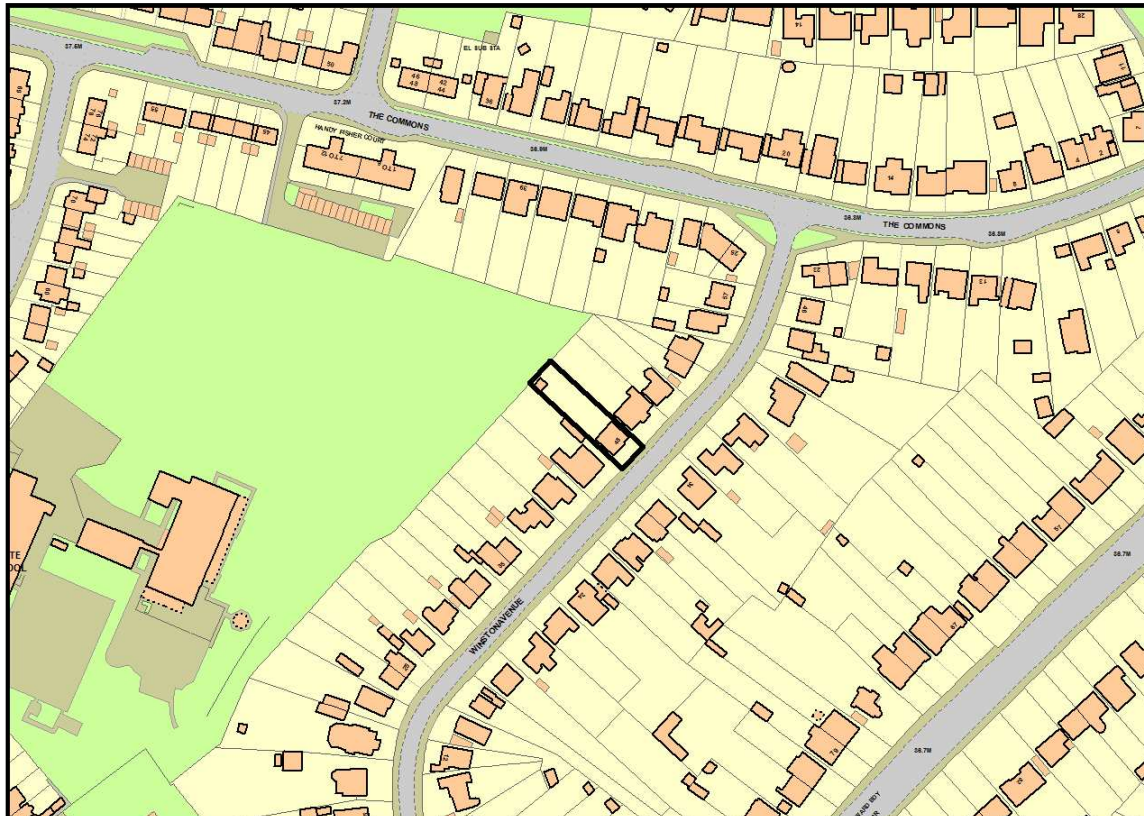
The applicant should note that additional dropped kerbs will be required. All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to:

SMO1 – Essex Highways
Colchester Highways Depot,
653 The Crescent,
Colchester.
CO4 9YQ.

2. 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.



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Item No: 7.3

Application: 190020

Applicant: Mr & Mrs Keiren Cahill

Agent: Mr W Andrew Todd

Proposal: Part single and part two storey side and rear extension

Location: 45 Winston Avenue, Colchester, CO3 4NQ

Ward: Prettygate

Officer: Annabel Cooper

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the application was called in by a member for the following reasons:
- 1.2 Reason 1: The scale, bulk, mass, appearance and layout of the proposed Extensions will unacceptably dominate the adjoining property, No 47 Winston Avenue.
- 1.3 Reason 2: The extensions proposed would prejudice the residential amenity of the adjoining property, No 47 Winston Avenue, particularly in regard to what would be the resultant blocking out of light to it and the compromising of both privacy and outlook for No 47.

2.0 Synopsis

- 2.1 The key issues for consideration are the design, scale and form of the proposed development, as well as its impact on neighbouring amenity in terms of outlook, light and privacy. These matters have been considered alongside planning policy requirements and other material matters, leading to the application being subsequently recommended for approval.
- 2.2 The report describes the site and its setting, the proposal itself, and the consultation responses received. Material planning matters are then considered together with issues raised in representations.
- 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.

3.0 Site Description and Context

- 3.1 45 Winston Avenue is a detached residential property that lies within a predominately residential area where development such as that proposed is considered to be acceptable in principle. The sites rear garden backs the open space associated with Prettygate Infants School.

4.0 Description of the Proposal

- 4.1 The proposal is for a ground floor rear extension and a first-floor side extension over the existing garage. The external materials proposed are to match the existing.
- 4.2 Initially the application sought permission for a ground floor extension and a first floor extension over the majority of the ground floor extension to the rear and to the side. Having assessed the proposal this was deemed unacceptable due to impact on neighbouring amenity. Following negotiations the proposal first floor extension has been significantly reduced and is now considered to be acceptable.

5.0 Land Use Allocation

5.1 Residential.

6.0 Relevant Planning History

6.1 There is no site history that is particularly relevant to the decision regarding this proposed development.

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
UR2 - Built Design and Character

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

DP1 - Design and Amenity
DP12 - Dwelling Standards
DP16 - Private Amenity Space and Open Space Provision for New Residential Development
DP - 19 Parking Standards

7.4 Emerging Local Plan

The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

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

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

- 7.5 There are no relevant policies within the adopted Borough Site Allocations Policies (adopted 2010, amended 2014).
- 7.6 There is no relevant Neighbourhood Plan.
- 7.7 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

The Essex Design Guide
External Materials in New Developments
EPOA Vehicle Parking Standards
Sustainable Construction
Stanway Joint Design Statement and Parish Plan

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.
- 8.2 Archaeological officer:

No material harm will be caused to the significance of below-ground archaeological remains by the proposed development. There will be no requirement for any archaeological investigation.

- 8.3 Arboricultural officer:

The Arboricultural Officer is in agreement with the Tree Assessment and Tree Protection Plan.

9.0 Parish Council Response

- 9.1 Non parish

10.0 Representations from Notified Parties

- 10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.

10.2 There were 3 objections received; a summary of the concerns are as follows:

- Impact on light
- Privacy
- Noise and fumes (from heating system vents and kitchen extraction)

11.0 Parking Provision

11.1 No impact on parking provision.

12.0 Open Space Provisions

12.1 N/A

13.0 Air Quality

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

14.0 Planning Obligations

14.1 This application is 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 (s.106) of the Town and Country Planning Act 1990.

15.0 Report

15.1 The main issues in this case are:

- The Principle of Development
- Design and Layout
- Scale, Height and Massing
- Impact on the Surrounding Area
- Impacts on Neighbouring Properties
- Amenity Provisions
- Landscape and Trees
- Private Amenity Space Provision
- Parking Provision

Principle

15.2 In terms of the principle of development, Core Strategy Policy SD1 seeks to locate growth at the most accessible and sustainable locations in accordance with the settlement hierarchy (Colchester Town and Stanway being at the top of that hierarchy, extending down to District Settlements of Tiptree, West Mersea, and Wivenhoe; with other villages in the Borough being identified as ‘Rural Communities’). The application site is within the settlement boundary of Colchester and is therefore considered to be in a sustainable location and acceptable in principle.

Neighbouring amenity

- 15.3 Development Plan policy DP1 requires all development to be designed to a high standard that protects existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, and daylight and sunlight.
- 15.4 The neighbour has expressed concerns with regards loss of light as a result of the proposed despite the reduction in the scale of the first floor of the scheme. The new proposal has been fully assessed using the combined plan and elevation as set out in the Essex Design Guide, The first floor extension does not breach the test in either plan or elevation and therefore satisfies the Councils standards for assessing this issue.
- 15.5 The ground floor extension breaches the plan test but does not breach the elevation test and is therefore considered to be acceptable. It must also be noted that there is already in place a 1.8m, height boundary fence as existing. It is also noted that the ground floor extension proposed is no greater than 4m from the original rear. Therefore, compliant with General Permitted Development order for a detached dwelling for permitted development.
- 15.6 To assess whether the scheme would appear overbearing on the outlook of the neighbours Council policy (Essex Design Guide) sets out that a 45 degree angle of outlook from the mid-point of the nearest neighbouring windows should be preserved and it is considered that the proposal satisfies this requirement.
- 15.7 The proposal does not include any new windows on the first floor level that would offer an unsatisfactory angle overlooking the private amenity space of the neighbouring property. However, there has been concerns raised with regards to the side window proposed on the ground floor. The side window is on the ground floor and there is a 1.8m fence along the boundary that will prevent any views to the neighbouring properties private amenity space. It is therefore considered that the amenity of the neighbours will not be harmed by the proposed.

Environmental protection

- 15.8 There have been concerns raised with regards to potential noise and fumes as a result of the extension to the kitchen and placement of vents. It is considered that the proposed is for a domestic use only and that the potential increased harm by the extension is negligible.

Design, scale and form

- 15.9 In considering the design and layout of the proposal, Core Strategy policy UR2 and Development Plan policy DP1 are relevant. These policies seek to secure high quality and inclusive design in all developments, respecting and enhancing the characteristics of the site, its context and surroundings.
- 15.10 The design, scale and form of the proposed development is considered satisfactory on its own merits. The proposed extension is designed to appear as a subservient addition and is complimentary to the existing dwelling and therefore is considered to be acceptable. The proposed materials are to match the existing. It is not considered that the proposed would harm the surrounding area it is in keeping with the character of the dwelling and the local area.

Parking and private amenity

- 15.11 Development Plan policy DP19 relates to parking standards in association with the Vehicle Parking Standards SPD (see Section 11 of this report for details of parking requirements).
- 15.12 There is to be no loss of parking provision for the site. The proposal does include the reduction in the size of the garage. The garage however is not in its existing form providing a parking space for the dwelling, as the garage has internal dimensions of less than 7.0m x 3.0m. Therefore according to the EPOA parking standards this cannot be classified as a parking space. Hence, the change to the garage will not result in the loss of existing parking provision.
- 15.13 Development Plan policy DP16 related to the private amenity space standards for new development. The dwelling will retain appropriate private amenity space.

Trees

- 15.14 Development Plan Policy DP1 requiring development proposals to demonstrate that they, and any ancillary activities associated with them, will respect and enhance the character of the site, context and surroundings including its landscape setting.

15.15 A tree assessment and tree protection plan was submitted in support of the application. There are 3 holly trees and 1 Ash tree in the neighbouring garden that have been assessed. It has been concluded that tree fencing has been recommended to protect the trees during construction. The Council's Arboricultural Officer is satisfied with the submitted assessment and protection plan, this document will be made an approved document.

15.16 On this basis, the proposal is considered to be acceptable in terms of its impact on trees in accordance with policy DP1.

16.0 Conclusion

16.1 To summarise, the proposed development fully accords with the Council's policy requirements.

17.0 Recommendation to the Committee

17.1 The Officer recommendation to the Committee is for:

17.2 APPROVAL of planning permission subject to the following conditions:

1. ZAA – Time Limit

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. ZAM – 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 PP-01-C dated 13/02/2019 and Tree Assessment & Protection Plan project number 7335 dated 11th March 2019.

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

3. ZBB – Materials as stated in Application

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings.

Reason: To ensure that materials are of an acceptable quality appropriate to the area.

4. ZFQ – Tree and Natural Feature Protection

No works shall take place until the protective fencing identified on the Tree Protection Plan drawing number 7335-D-TPP has been erected. All 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.

18.0 Informatives

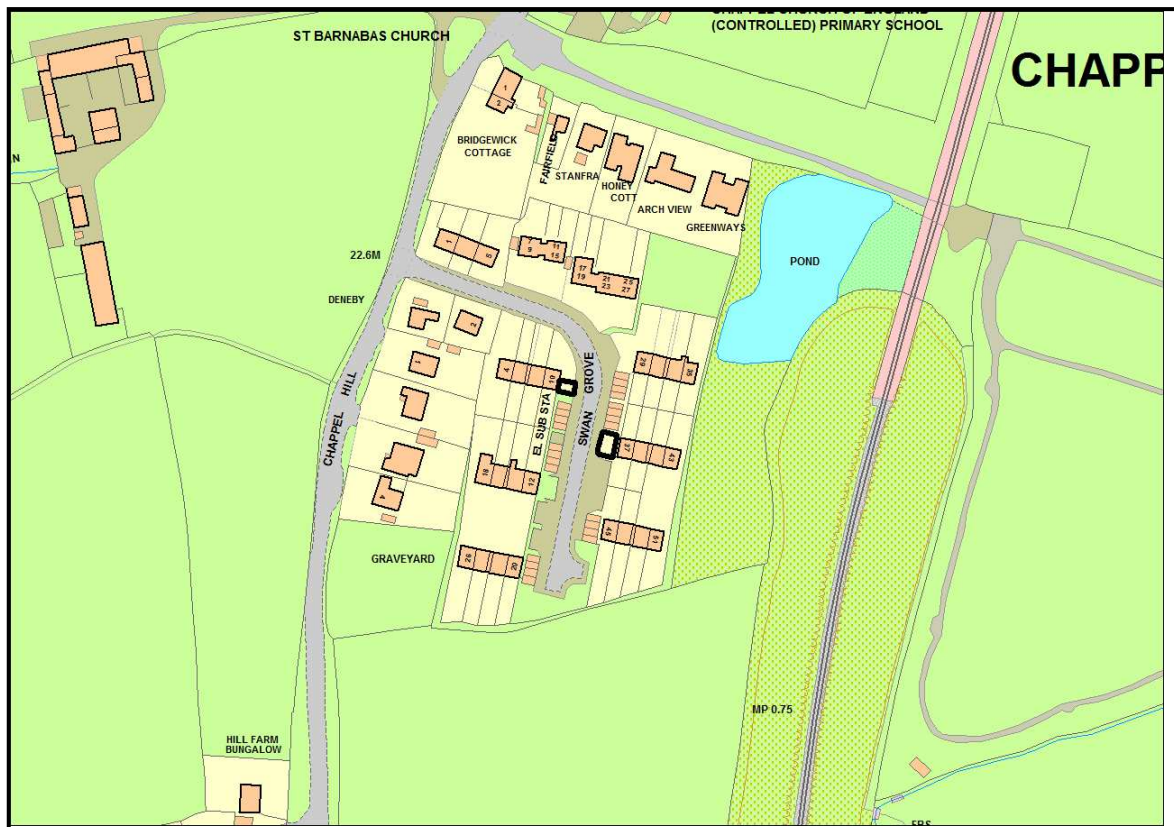
18.1 The following informatives are also recommended:

1. ZTO – Advisory Note on Constuction and 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. ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.



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Item No: 7.4

Application: 190279

Applicant: Mr Matthew Swingwood, Colchester Borough Homes

Proposal: Proposal to create hard standing to create 2 parking spaces.

Location: Swan Grove, Chappel

Ward: Rural North

Officer: Annabel Cooper

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the applicant is Colchester Borough Council.

2.0 Synopsis

- 2.1 The key issues for consideration are the impact on highways safety, landscape, visual amenity and neighbouring residential amenity.
- 2.2 The application is subsequently recommended for conditional approval. It is not considered there would be any detriment to highway safety and the highway authority have made no objections. The proposal is considered acceptable from a landscape and visual amenity point of view in this context.

3.0 Site Description and Context

- 3.1 Swan Grove is a residential street in Chappel in a formal local authority residential area, the estate is of its time.

4.0 Description of the Proposal

- 4.1 The proposed location of the additional parking spaces is currently a small grassed area that separates garages from a pedestrian access way to 37 - 43 Swan Grove.

5.0 Land Use Allocation

- 5.1 Residential.

6.0 Relevant Planning History

- 6.1 There is no site history that is particularly relevant to the decision regarding this proposed development.

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

- 7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
UR2 - Built Design and Character
TA5 – Parking

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

DP1 Design and Amenity
DP19 Parking Standards

- 7.4 Emerging Local Plan

The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

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

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

- 7.5 Some “allocated sites” also have specific policies applicable to them. The adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

There are no relevant policies within the adopted Borough Site Allocations Policies (adopted 2010, amended 2014).

- 7.6 There is no Neighbourhood Plan for Chappel.

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

The Essex Design Guide
External Materials in New Developments
EPOA Vehicle Parking Standards
Stanway Joint Design Statement and Parish Plan

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

- 8.2 Archaeological Officer:

No material harm will be caused to the significance of below-ground archaeological remains by the proposed development. There will be no requirement for any archaeological investigation.

- 8.3 Landscape Advisor:

Comments: The landscape content/aspect of the strategic proposals lodged on 06/02/19 would appear satisfactory, this provided the Arboricultural Officer is satisfied that the existing young maple tree to the side of plot 10, here: - will not be compromised by the proposal. This as this fairly young tree has considerable amenity value as it helps soften the street scene and will continue to do so for many years.

Conclusion: In conclusion, there are no objections to this application on landscape grounds, subject to the above.

References: NPPF: Part 15, clauses 170-183 & (where impacting on a heritage asset, e.g. listed park & garden) Part 16, clauses 184-202.

Recommended Landscape Condition(s) & Informative:

The following condition(s) is/are recommended.

Standard:

ZFE – Landscape management plan

Bespoke:

Z00 – No part of the development shall be occupied until a scheme of hard and soft landscape works for the publicly visible parts of the site has been submitted to and agreed, in writing, by the Local Planning Authority. This scheme shall include any proposed changes in ground levels and also accurately identify positions, spread and species of all existing trees, shrubs and hedgerows on the site, proposed planting, details of any hard surface finishes and external works, which shall comply with the

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recommendations set out in the relevant British Standards current at the time of submission. The approved landscape scheme shall be carried out in full prior to the end of the first planting and seeding season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In order to ensure that there is a sufficient landscaping scheme for the relatively small scale of this development where there are public areas to be laid out but there is insufficient detail within the submitted application.

Recommended informative:

‘Detailed landscape proposals, if/when submitted in order to discharge landscape conditions should first be cross-checked against the Council’s Landscape Guidance Note LIS/B (this available on this CBC landscape [webpage](#) under Landscape Consultancy by clicking the ‘read our guidance’ link).’

8.4 Environmental Protection:

No Comment.

8.5 Highways:

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

Site adjacent to No 37 Swan Grove.

The proposed vehicular access shall be constructed at right angles to the highway boundary and to a site full width and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority’s Development Management Policies February 2011.

No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.

Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority’s Development Management Policies February 2011.

Informative1: The applicant should be requested to provide evidence that the existing retaining wall is of sufficient design and construction to support the additional weight of upto 3 vehicles with the construction materials.

Informative2: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall 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:
SMO1 – Essex Highways
Colchester Highways Depot,
653 The Crescent,
Colchester
CO4 9YQ

9.0 Parish Council Response

9.1 The Parish Council have not commented on the application.

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The one objection was received full text is available to view on the Council's website.

10.2 The objection concerns a parking space that is no longer being sought as part of this application.

11.0 Parking Provision

11.1 The proposal increases the parking provision by two additional spaces.

12.0 Open Space Provisions

12.1 There is a minimal loss of open space.

13.0 Air Quality

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

14.0 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 (s.106) of the Town and Country Planning Act 1990.

15.0 Report

15.1 The main issues in this case are:

- The Principle of Development
- Design and Layout
- Impact on the Surrounding Area
- Impacts on Neighbouring Properties
- Landscape and Trees
- Highway Safety and Parking Provisions (including Cycling)
- Parking Provision

15.2 The initial application sought the approval of 3 parking spaces, 1 of these parking spaces has been removed from the planning application. Due to the proximity of a tree that has a high amenity value and an objection from a neighbour.

15.3 The principle of the development is to reduce the amount of on street parking. The road in question has a large number of garages along the road side. However, these are not of a sufficient size to accommodate modern cars. Therefore, they are predominantly used for storage purposes. The need for the increase in parking provision was brought to the attention of the Council by Chappel Parish Council.

15.4 The loss of a small area of grass is considered to be acceptable and no objections have been received from the Council's Landscape Advisor. The proposal is in accordance with policy DP1 as the proposed respects the character of the area.

15.5 The Highways Authority have not objected to the proposed. The proposed is in accordance with Policy DP19 – Parking Standards. It will be conditioned that the parking space is of sufficient size and in accordance with the EPOA Vehicle Parking Standards which is an adopted supplementary planning document.

15.6 There will be no adverse impact to neighbouring properties. Only one objection has been received the subject of the objection is no longer being considered as part of this application.

16.0 Conclusion

16.1 To summarise, the proposed development fully accords with the Council's policy requirements.

17.0 Recommendation to the Committee

17.1 The Officer recommendation to the Committee is for:

17.2 APPROVAL of planning permission subject to the following conditions:

1. ZAA - 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. ZAM – Development to Accord with Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Buy A Plan "Proposed Parking Swan Grove, Chappel, Colchester CO6 2DU indexed 12 March 2019.

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

3. ZIS – Parking Space/ Hardstanding size

Any vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space, retained in perpetuity.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety.

4. Non Standard Condition - Highways

The proposed vehicular access shall be constructed at right angles to the highway boundary and to a site full width and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

5. Non Standard Condition - Landscape

No works shall take place until a scheme of hard landscape works for the publicly visible parts of the site has been submitted to and agreed, in writing, by the Local Planning Authority. This scheme shall include any proposed changes in ground levels, details of any hard surface finishes and external works, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission. The approved landscape scheme shall be carried out prior to occupation of the development.

Reason: In order to ensure that there is a sufficient landscaping scheme for the relatively small scale of this development where there are public areas to be laid out but there is insufficient detail within the submitted application.

18.0 Informatives

18.1 The following informatives are also recommended:

1. Non Standard Landscape Informative

'Detailed landscape proposals, if/when submitted in order to discharge landscape conditions should first be cross-checked against the Council's Landscape Guidance Note LIS/B (this available on this CBC landscape webpage under Landscape Consultancy by clicking the 'read our guidance' link).'

2. Non Standard Highway Informative

The applicant should be requested to provide evidence that the existing retaining wall is of sufficient design and construction to support the additional weight of upto 3 vehicles with the construction materials.

3. Non Standard Highway Informative

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall 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:

SMO1 – Essex Highways
Colchester Highways Depot,
653 The Crescent,
Colchester
CO4 9YQ

4. 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.

5. ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

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 withhold 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 scrapyard 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

Supreme Court Decision 16 October 2017

CPRE Kent (Respondent) v China Gateway International Limited (Appellant).

This decision affects the Planning Committee process and needs to be acknowledged for future reference when making decisions to approve permission contrary to the officer recommendations.

For formal recording in the minutes of the meeting, when the Committee comes to a decision contrary to the officer recommendation, the Committee must specify:

- Full reasons for concluding its view,
- The various issues considered,
- The weight given to each factor and
- The logic for reaching the conclusion.

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.

