

# Planning Committee Meeting

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

**Thursday, 15 February 2018 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: <http://www.colchester.gov.uk/haveyoursay>.

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**COLCHESTER BOROUGH COUNCIL**  
**Planning Committee**  
**Thursday, 15 February 2018 at 18:00**

**The Planning Committee Members are:**

Councillor Theresa Higgins  
Councillor Cyril Liddy  
Councillor Lyn Barton  
Councillor Helen Chuah  
Councillor Pauline Hazell  
Councillor Brian Jarvis  
Councillor Derek Loveland  
Councillor Jackie Maclean  
Councillor Philip Oxford  
Councillor Chris Pearson

Chairman  
Deputy Chairman

**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;

Kevin Bentley  
Peter Chillingworth  
John Elliott  
Mike Lilley  
Lee Scordis  
Martyn Warnes

Tina Bourne  
Phil Coleman  
Adam Fox  
Patricia Moore  
Jessica Scott-Boutell  
Dennis Willetts

Roger Buston  
Nick Cope  
Dominic Graham  
Beverley Oxford  
Lesley Scott-Boutell  
Tim Young

Nigel Chapman  
Robert Davidson  
Dave Harris  
Gerard Oxford  
Paul Smith

**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 available on the Council's website by 4:30pm on the day before the meeting here: <http://www.colchester.gov.uk/article/13489/Planning-Committee>

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 of 18 January 2018**

7 - 10

The Councillors will be invited to confirm that the minutes are a correct record of the meeting held on 18 January 2018.

## **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 171279 BP Eastwood, Eastwood Service Station, Ipswich Road, Colchester**

11 - 22

Application for variation of condition 9 (illumination) following grant of planning permission 160608.

### **7.2 172057 Former M & F Watts site, Parsons Heath, Colchester**

23 - 46

Erection of 8 no. houses and 2 no. chalet bungalows.

### **7.3 180307 Car park at Sheepen Road, Colchester**

47 - 52

Non material amendment following the grant of planning permission 151825.

## **Planning Committee Information Pages**

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

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so

that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

**Part B**  
**(not open to the public including the press)**



# Planning Committee

## Thursday, 18 January 2018

**Attendees:** Councillor Helen Chuah, Councillor Pauline Hazell, Councillor Theresa Higgins, Councillor Brian Jarvis, Councillor Cyril Liddy, Councillor Derek Loveland, Councillor Jackie Maclean, Councillor Philip Oxford, Councillor Chris Pearson

**Substitutes:** Councillor Nick Cope (for Councillor Lyn Barton)

**Also Present:**

### **546 Site Visits**

Councillors Chuah, Hazell, Jarvis, Liddy, Loveland and J. Maclean attended both the site visits. Councillors Higgins attended the site visit to Parkwood Avenue, Wivenhoe only.

### **547 Minutes of 30 November 2017**

The minutes of the meeting held on 30 November 2017 were confirmed as a correct record.

### **548 Minutes of 11 December 2017**

The minutes of the meeting held on 11 December 2017 were confirmed as a correct record.

### **549 172816 University of Essex, Wivenhoe Park, Colchester**

**Councillor Higgins (in respect of her spouse's employment by the University of Essex) declared a pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5) and left the meeting during its consideration and determination.**

The Committee considered a planning application to vary condition 4 of planning permission no 150895 at the University of Essex, Wivenhoe Park, Colchester. The application had been referred to the Committee because it was a proposal to vary a condition attached to a grant of planning permission for a major development and an objection has been received from Wivenhoe Town Council. The Committee had before it a report in which all information was set out. The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

RESOLVED (UNANIMOUSLY) that the application be approved with no conditions but subject to the informative set out in the report.

**550      172949 58 Parkwood Avenue, Wivenhoe, Colchester**

The Committee considered a retrospective planning application to Build a brick wall on the front boundary of the property to complement the house and existing planning conditions (Ref: 152105) at 58 Parkwood Avenue, Wivenhoe, Colchester. The application had been referred to the Committee because the application had been called in by Councillor Scott. The Committee had before it a report in which all information was set out. The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

Eleanor Moss, Planning Officer, presented the report and assisted the Committee in its deliberations. She confirmed that any approval of the application would need to be subject to the standard condition relating to approved drawings.

Shaun Boughton, on behalf of Wivenhoe Town Council, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He considered that the application had not followed usual planning rules. He was of the view that the replacement of the boundary hedge with a wall was detrimental as it made the house stand out and the hedge had created a softer look to the surrounding street scene. He queried the construction of the wall which incorporated a 'pinch point' which, in his view, limited access to the lane to the east and hindered the use of the neighbour's prescriptive easement for vehicular access. As such he asked for the 'pinch point' to be removed.

Craig Revell addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that, planning permission was being sought to enable him to complete the construction of the boundary wall. He apologised for his misunderstanding of the term 'highway' and explained that he believed the demarcation of the front boundary of his property was the path which had been laid out 20 or 30 years previously. For the avoidance of doubt or dispute, however, a Certificate B notice had been served on the owner of the lane, and, in response to which, no objection had been forthcoming. Following removal of the hedge the width of access had increased which could be confirmed from a topographical survey undertaken by the builder of the house. Although not a material consideration, he had researched the access requirements for the emergency services. He understood that, as the lane was not a highway, it was not shown as accessible on the fire service navigation system, the width of a fire engine would mean that the use of the lane would not be contemplated and fire service practice was such that a fire engine would not be parked directly outside the location of an emergency for safety reasons. He had also observed that when ambulances had been called to the vicinity of houses in the lane, the ambulance had



been parked in Parkwood Avenue and a stretcher had been used to transfer a patient from the house. He asked the committee to uphold the planning officer's recommendation in the report.

Councillor Scott attended and, with the consent of the Chairman, addressed the Committee. She was of the view that the plot had been developed in an overbearing and inappropriate size and design, the road being characterised mainly by bungalows and mixed homes. It had been sanctioned by the Planning Committee on condition that trees and hedges were retained to mitigate the loss of habitat and the size and style of the building. She considered the house to be domineering and overbearing with much of the hedging and trees having been destroyed. She was of the view that the hedge was more in-keeping with the street scene whilst the wall had been sited outside the boundary of the plot. She considered this constituted trespass and, as such, the committee could not give permission for this. She considered the matter was not a neighbour dispute but an access issue, and believed the planning committee had a duty to prevent the building of walls which blocked public access. She maintained the development did have an impact on design, amenity, highways and safety as well as disregarding conditions attached to a previous planning permission, which included the maintenance of a boundary hedge. She urged the committee to not feel obliged to approve the application on the basis that the wall had already been built.

The Planning Officer confirmed that the application was retrospective but the authority was obliged to determine it in the same way as any other application, whilst the legal access rights were not a material planning consideration, but needed to be dealt with through proper legal channels and the granting of planning permission would not override this. She explained that the lane was in private ownership and had therefore not generated an objection in relation to the wall from the Highways Agency or the Highway Authority. In relation to land ownership, both Certificates A and B had been submitted by the applicant and had therefore accorded with the correct planning processes in that planning permission related to the land rather than who owned the land. She further reminded the Committee of the existence of a number of bollards which had been in place for a considerable period of time which also contributed to the restrictions on accessibility of the lane.

Members of the Committee generally welcomed the design of the development and were of the view that the wall was not overbearing but was in-keeping with the dwelling and enhanced the area generally. Reference was made to new hedge planting which had been undertaken behind the wall which would mature over a short period of time. It was also acknowledged that access issues were matters which could not be taken into account in determining the application. Clarification was sought in relation to the 'pinch point' in the wall and whether it was possible to restrict the maximum height of the main part of the wall.

The Planning Officer confirmed that, as a design feature, it was intended that the wall

would include a series of small piers, along its length which would extend slightly higher than one metre. This was not considered to constitute significant harm to the character and appearance of the area. The lower part of the wall was not higher than one metre and, as such, was permitted development. Further planning permission would need to be sought in order to raise the wall any higher or to introduce any other features or gates, higher than one metre, not already identified on the current drawings. In relation to the 'pitch point' in the wall, she confirmed that this was entirely a civil legal matter, not a material planning consideration and on which she was unable to take a view, other than it needed to be dealt with through the correct legal channels. She also confirmed that the planting which had been undertaken behind the wall was subject to existing landscaping conditions which would need to be discharged, hopefully before the end of the planting season.

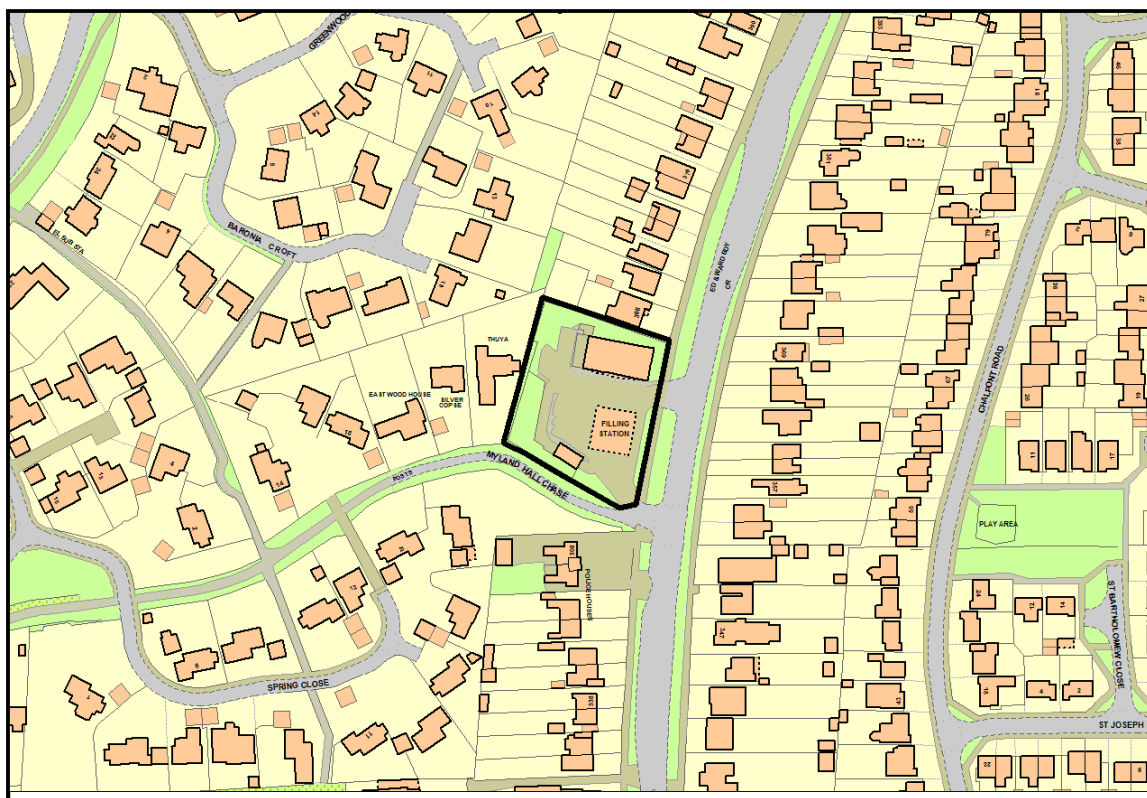
RESOLVED (SEVEN voted FOR and THREE ABSTAINED) that the application be approved subject to the standard condition relating to approved drawings and the informative set out in the report.

**551      172984 76-79 Maidenburgh Street, Colchester**

**Councillor Liddy (by reason of his directorship of the Colchester Borough Homes) declared a non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered a planning application for the replacement of windows to flats at 76-79 Maidenburgh Street, Colchester. The application had been referred to the Committee because the applicant was Colchester Borough Homes. The Committee had before it a report in which all information was set out.

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



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**Item No:** 7.1

**Application:** 171279

**Applicant:** BP

**Agent:** Chloe Ballantine, Rapleys LLP

**Proposal:** Application for variation of condition 9 (illumination) following grant of planning permission 160608.

**Location:** BP Eastwood, Eastwood Service Station, Ipswich Road, Colchester, CO4 0EX

**Ward:** Highwoods (Also affects St. John's)

**Officer:** James Ryan

**Recommendation:** Approval

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

- 1.1 This application is referred to the Planning Committee by officers because of the detailed planning and enforcement history attached to the site, and subsequently in the interests of complete transparency in the planning process as planning and enforcement officers have negotiated the compromises that are now proposed herein, but have not resolved all objections; therefore believing that they should be subject to democratic scrutiny via the Planning Committee.

## **2.0 Synopsis**

- 2.1 The key issue for consideration is the impact the variation of condition 9 will have on neighbouring amenity. The situation has been ongoing for some time, but many changes have taken place in this time, following the involvement of our enforcement team.
- 2.2 The current situation, following negotiations, as set out in the proposals now being considered, are considered to be acceptable on their own merits. The application is subsequently recommended for approval.

## **3.0 Site Description and Context**

- 3.1 The site previously had an Esso petrol station on it, but now homes a recently constructed BP petrol station on Ipswich Road. Residential dwellings are located to the North and West. Ipswich Road is located to the eastern boundary and runs broadly north-south. There are residential dwellings located on the opposite site of Ipswich Road facing the site. Myland Hall chase is located directly to the south and a former Police Station is located beyond that.

## **4.0 Description of the Proposal**

- 4.1 The application proposes the variation of condition of condition 9 of 160608 to allow some required lighting on site outside of approved hours. See section 6 for the full wording of condition 9.

## **5.0 Land Use Allocation**

- 5.1 The site is located within the defined settlement limits.

## **6.0 Relevant Planning History**

- 6.1 The application with the most relevance is 160608 which granted planning permission for the redevelopment of the petrol station including a new canopy, car wash, sale building and associated site layout.

6.2 Condition 9 of 160608 states:

*The development (including ATM) permitted by this planning permission shall only be illuminated during the opening hours of the premises.*

*Reason: This is an area where illumination is not common and where unlimited or excessive use of lighting could be detrimental.*

- 6.3 It is worth highlighting the reason for the condition. Sometimes it is misinterpreted that conditions set out exactly what is allowed, and that no other alternative would be permitted. This is not the case, conditions are usually used when an issue would need to be carefully considered if it changed. The key words in the reason for this are that it is "...where unlimited or excessive lighting could be detrimental". This does not mean that any lighting will be harmful, just that it needs to be carefully considered and controlled.

## 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 key policy is "ENV1 – Environment", whilst some regard may be given to "SD1 - Sustainable Development Locations".

- 7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to developments. Specific to this application the central policy is "DP1 Design and Amenity". Reference should also be made to:

DP4 Community Facilities

DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses

DP7 Local Centres and Individual Shops

- 7.4 Relevant Policies from the Emerging Local Plan (2017-2033) include:

SP1 Presumption in Favour of Sustainable Development

ENV1 Environment

## **8.0 Consultations**

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.
- 8.2 Environmental Protection - Following the submission of the BP Eastwood Lighting Plan and Protocol submitted 19/12/17 Environmental Protection does not object to the variation. The lighting shall be installed and maintained thereafter in accordance with the BP EASTWOOD SF CONNECT Lighting plan and protocol for access to and egress from the sales building outside of site opening hours.
- 8.3 Highway Authority – No objection to the scheme.
- 8.4 Natural England – No comment.

## **9.0 Parish Council Response**

- 9.1 Non-parished.

## **10.0 Representations**

- 10.1 The application originally included other proposed changes that BP desired, but that have since been negotiated away by planning and enforcement officers as they were deemed unacceptable. The original proposals, including those requests (such as earlier deliveries), resulted in a number of notifications to interested third parties including all neighbouring properties. The Council received 19 representations prior to the application being amended to remove the proposed variation to change to delivery times for newspapers.
- 10.2 Following the applicant amending the application (so that deliveries remain as previously approved), the amount of lighting was reduced, and the proposals now deal solely with condition 9 (lighting), 11 more representations were received. A number of addresses sent more than one representation.
- 10.3 The full text of all of the representations received is available to view on the Council's website and Members are advised to read them prior to the meeting. However, a summary of the material considerations is given below.
- The scheme is harmful to neighbouring amenity and therefore the conditions should not be varied.
  - The conditions were imposed to protect neighbouring amenity so should be retained as imposed.
  - This is a residential area not a commercial area.
  - The staff are noisy as they arrive early and when they leave.
  - The early arrival and late leaving causes significant disturbance to neighbours.
  - The staff arrive way before the other conditions allow – often at 5.30am or earlier and this causes disturbance.

- The lights make the petrol station appear as if it is open and this causes vehicles to pull up to the cones and then turn around when they realize its closed.
- CBC have not enforced the conditions imposed on 160608 and the residents expect CBC to do this.
- Residents deserve their 8 hours of peace.
- The applicants often let the alarm ring causing further disturbance.
- The applicants cannot be trusted to run the site in a manner that is respectful of the residents.
- The opening hours should not be changed.
- The site seems to run ok.
- I have no objection to the light on a timer to allow staff to exit the shop in safety.
- I support the service and the employment it generates but it must not be run to detriment of public amenity.

10.4 Representations were also received from the Highwoods Ward Member Councillor Oxford, and from two Ward Members of St Johns (which is directly opposite on the other side of Ipswich Road), Councillor Smith and Councillor Hogg. Cllr Oxford commented on the 29th of May 2017, stating at that time:

*"I strongly oppose any suggestion of removal of the conditions I think they are reasonable given this station is in a dense housing area. The conditions were I stated recently to offer so protection from noise and disturbance etc."*

Cllr Hogg said, on the 15th of June 2017, that:

*"It is my belief that alterations to the existing conditions with regard to usage, lighting, and delivery times will be further detrimental to the residential amenity of those St John's residents living opposite the service station that I represent. I therefore ask that the views of my residents be respected, and the applications be denied"*

On the same day Cllr Smith emailed in to confirm that:

*"I support Cllr Hogg's comments"*.

10.5 It is noted that in addition to the items mentioned above, a number of the representations related to details of what the neighbours perceived to be breaches of planning control by the applicant. All of these were sent to the Enforcement Manager and were investigated at the time.

## **11.0 Parking Provision**

11.1 This variation of condition application has no impact on the parking provision.

## **12.0 Open Space Provisions**

12.1 This variation of condition application has no impact on the 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 No Planning Obligations should be sought via Section 106 (s.106) of the Town and Country Planning Act 1990, due to this variation of condition.

### **15.0 Report**

- 15.1 The main issues in this case is whether or not the proposed changes to light are acceptable on their own merits, or if they cause harm to amenity that warrants a refusal of planning permission. The changes relate solely to lighting levels, as everything else remains as previously approved (and beyond the scope of this application).

- 15.2 As background context, it is worth clarifying that the original submission was for more changes than is now being considered. It also originally expanded the conditions being varied to include condition 7, and sought earlier deliveries of newspapers. BP wanted us to allow newspapers to be delivered to the shop from 6.30am onwards (and not from 7am as with the other deliveries). They were doing this without consent once they opened. During this application period the applicants managed the delivery situation, on instruction from CBC, to ensure compliance with the condition. As condition 7 could clearly be complied with, officers negotiated this out of the application. The variation of Condition 7 is not part of this application now. However, it is referenced in some representations, and may be mentioned at the meeting. Members should be clear that this issue is now resolved and is not under consideration herein.

- 15.3 The sole change proposed is that under condition 9 of the planning permission 160608. This requires the following:

*“The development (including ATM) permitted by this planning permission shall only be illuminated during the opening hours of the premises.*

*Reason: This is an area where illumination is not common and where unlimited or excessive use of lighting could be detrimental.”*

- 15.4 The applicants wish to vary this condition to allow some illumination outside of the opening hours (7am to 11pm every day). The petrol station is being run in this manner currently, and has been for a month or two now; so the application is to regularise the recent situation. Prior to that, BP did have more lights on, and they were illuminated for longer. They were reduced over time following ongoing dialogue with enforcement, and therefore comments made much earlier will not be with regard to later reductions. It is now the case that a lighting protocol has been provided and the applicants have requested the condition is reworded to require compliance with it. This involves allowing some internal and external illumination as is set out below.



- 15.5 The applicants have fitted a small bulkhead light to the rear fenced area to allow the staff to have some light to get to their cars when they leave the shop after closing. This is linked to 5 downlights that sit within the underneath of the overhanging fascia at the front of the shop. These are on a timer which gives the staff ten minutes to exit the building, lock the door shutter, lock the ATM shutter, get in their cars and exit the site.
- 15.6 The locking up process has been witnessed by the case officer and by the Enforcement Manager and it is a reasonable requirement. It is not held to be demonstrably harmful to residential amenity and is welcomed in the interest of the safety of the staff. The visit to observe was unannounced in order to get a true reflection of what occurs.
- 15.7 It is also requested that the ATM is left illuminated for technical reasons. As it is behind a (solid) non-perforated roller shutter and, as the lighting plan and protocol states that all shutters apart from the main shop door will be down outside of opening hours, this is also considered to be acceptable. The roller shutter blocks these lights from view when the petrol station is shut.
- 15.8 Further to this it is also proposed to leave the digital displays on the petrol pumps on. The lights on the numbering dims after use and the level of light they emit is so low it cannot reasonably be held to be materially harmful to amenity.
- 15.9 The variation also proposed some low level internal lighting. As will be set out in detail in the following section of the report, the staff arrive an hour and a half (and sometimes more) prior to opening in order to stock shelves, but primarily to warm the oven and put pastries on to bake. This means the 'Wild Bean Café' has fresh baked goods ready for sale at 7am for opening. The Wild Bean Café use is one that is ancillary to the main petrol station use.
- 15.10 The applicants request that they have some lighting so the staff can do this in safety. They have fitted infrared PID (motion) sensors on two ceiling lights. One is located over the main shop floor and one is located over the oven, close to the cash desk. These light up when activated by movement and then go off when there is no movement detected. There is also a light in the windowless back office, but being windowless this has no impacts outside of the building. The lights on the chiller cabinets have had timers fitted so they go off once the shop has closed, again following enforcement officer negotiations.
- 15.11 There are a number of items inside the shop which can be seen at night if one looks very closely. For example, the 'emergency exit' sign, the fly killing machine and some LCD monitors. These may indirectly emit light but they are not lights in their own right and the light they emit is not close to being harmful to neighbouring amenity. However, there is a clear distinction between the appearance of the site when it is open, and that when it is shut. They are quite unmistakable when compared.

15.12 The lights on site have been witnessed (during another unannounced visit) in operation at 5.30am in the morning by the case officer and by the Enforcement Manager. Apart from the front door shutter, which is a separate section of shutter, the shutters also remain down. The situation was not considered to cause light spill that is close to being harmful to neighbouring amenity, nor was it held that the very limited light visible resulted in situation where the reasonable person would think the petrol station is open when it is closed. Drivers who turn into the station site must do so because they expect the petrol station to be open at this time because of other petrol stations being open, rather than the visual appearance of this site as they pass by. They appear to turn in having decided to do so before seeing the site, and realise once turned in that it is shut.

15.13 When making this assessment officers have been mindful of the reason for Condition 9. This stated that the condition was imposed as:

*“This is an area where illumination is not common and where unlimited or excessive use of lighting could be detrimental”.*

It is not held that the very modest lighting proposed is ‘unlimited or excessive’. The reason for the condition does not specify what unlimited or excessive lighting would be detrimental to; but it is not at a level that could be considered ‘detrimental’ to either neighbouring or visual amenity. The reasons is also clear that it “could” be detrimental, but that means that it could also not be detrimental; it does not mean that any additional lighting will be harmful.

15.14 It is noted that Ipswich Road is one of the main roads into the north of Colchester and has always been a key link road to the A12 and A120. It has traffic moving along it at all hours, even early in the morning and late at night, although the level does vary as expected. The road also benefits from streetlights which means the wider area is rarely in complete darkness. Indeed, the streetlights appear to be brighter than the BP since the reduction in on site lighting at the times the shop is shut. The variation of condition 9 is therefore held to be acceptable.

15.15 Other conditions attached to 160608 were subject to many of the objections. These relate to the earlier arrival of the staff on site. The objectors consider that this is controlled by condition 6 of 160608 which reads:

*The use (including ATM) hereby permitted shall not OPERATE/BE OPEN TO CUSTOMERS outside of the following times:*

*Weekdays: 7am to 11pm*

*Saturdays: 7am to 11pm*

*Sundays and Public Holidays: 7am to 11pm*

*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.*

- 15.16 Whilst accepting that this condition restricts the opening hours of the site, the applicant's planning agents did not consider that this condition prevented staff from being on site doing preparatory work such as shelf stacking, cleaning and baking. Your officers did not agree with this assessment and requested that the applicant's commission an independent Legal Opinion on the matter. BP agreed to do this and the full legal opinion can be read on line. It is detailed and assesses the wording of the condition as part of the permission as a whole. In summary however, Robert Walton of Landmark Chambers stated:

*First, if the restriction on operation means there can be no staff on site then the words "[or] be open to customers" would be otiose because the service station cannot be open to customers unless there are staff on site.*

*Second, the word "operate" relates to the use "hereby permitted" which must in my view relate to the use of the service station as a service station (notwithstanding that the 2016 Permission in fact permits operational development, not a use). The question is therefore whether the presence of staff on site performing tasks that are ancillary to the use of the service station as a service station could be said to be operating that use. Although that it is not clear cut, in my view the answer to this is "No". To take a few examples: could someone cleaning the toilet facilities at midnight really be said to be operating the service station use? What about a security guard checking the premises or a member of staff stocking the shelves or getting the tills ready for the day's trade? In my view it would be stretching the word "operate" too far to suggest that it prevents activities of this nature. Using "operate" according to its ordinary meaning, anyone asked whether the service station was being operated in any of the above scenarios would surely answer "No, it is closed"...*

*..."In conclusion, my view is that the 2016 Permission, read as a whole, does not prevent staff being on site before 7am or after 11am. I should make plain that I would reach this conclusion even without reference to the Officer's Report."*

- 15.17 Your officers sought our own Legal Opinion. Nina Pindham of No.5 Chambers provided this, and concurred with Mr Walton. The full Legal Opinion is available on the website however in summary Ms Pindham noted:

*"It follows that I do not consider that it would be considered reasonable to a member of the public to expect the site to be opened to the public / accepting deliveries without the need for a staff member to be on the site prior to and after these activities have taken place"...*

*..."One cannot read condition 6 in isolation. It is clear that the permission contemplates the site being open to the public and accepting deliveries from 7am and until 11pm. It would therefore be reasonable to interpret the condition as permitting staff onsite for a reasonable period outside of those hours in order to prepare the site for the arrival of customers and deliveries and clean up after the site has closed to the public for the day."*

- 15.18 On that basis it is held that the Council could not serve a Breach of Condition Notice requiring the current operational situation to stop. This is not a decision that has been taken lightly. It is also not a decision that is covered by Condition 9, and is therefore not part of the application being considered. However, it is mentioned for completeness, transparency, and because it is a source of objection for some residents who do not agree with this legal standpoint. They state that the lighting condition that is the subject of this application prevents staff from being on site outside of the opening hours and that should be enough. It is held that BP could operate for much of the year via daylight from the windows as there is no condition requiring the shutters to be down presently. The staff could potentially use torches for the rest of the time which would not fall under the control of the condition. This is not a situation that is particularly satisfactory or safe for the staff who work in the shop however and is not a route the Council want to pursue; particularly as BP have formally required the variation of this condition and officers have secured a proposal that they deemed to be acceptable on objective planning merits.
- 15.19 This has been discussed at length with the Enforcement Manager and the Planning Manager. It is considered that to proceed to serve a Breach of Condition Notice when in possession of two independent Legal Opinions that say the applicants are not in breach of a condition would be wholly unreasonable and would not be defensible in Court. We understand the views of residents, but the facts of the matter post-legal opinion do not support enforcement action on this point.
- 15.20 Fundamentally it is held that the situation as it is operating today is acceptable in planning terms. As noted above, the early staff movements (and the locking up process) have been witnessed by your officers and they are not held to be materially harmful to neighbouring amenity or to visual amenity. To pursue it through the Courts would therefore be unreasonable, costly and unwarranted. That said, the matter under consideration herein is whether or not condition can be varied to allow different lighting to that previously approved, and not some of the previous or wider issues.

## **16.0 Conclusion**

- 16.1 To summarise, the variation to condition 9 is not held to be materially harmful to neighbour amenity. Whilst it means the site does emit some light outside of opening hours the levels are so low they cannot reasonably be held to be harmful to neighbouring amenity, nor would the reasonable person conclude the petrol station was open because of them.

## **17.0 Recommendation to the Committee**

17.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following condition:

### **1. ZAW - \*Removal/Variation of Condition(s) Approval\***

With the exception of condition 9 of Planning Permission 160608 which is hereby varied, the requirements of all other conditions imposed upon planning permission 160608 remain in force and shall continue to apply to this permission, including the details and provisions of any approved matters discharging any condition(s) of that permission.

Reason: To avoid any doubt that this application only applies for the variation of the stated condition(s) of the previous planning permission as referenced and does not seek the review of other conditions, in the interests of proper planning and so that the applicant is clear on the requirements they need to comply with.

### **2. Z00- Bespoke Lighting Condition**

There shall be no illumination whatsoever on site, including inside the shop building, outside of operational hours, except in complete accordance with the document titled “BP EASTWOOD SF CONNECT Lighting plan and protocol for access to and egress from the sales building outside of site opening hours” as hereby approved.

Reason: To provide adequate planning controls to prevent excessive light spill that has the potential to cause harm to neighbouring amenity and to ensure that the petrol station does not appear as being open to customers when it is closed, in the interests of neighbouring amenity.

### **3. Z00 – Bespoke Shutters Condition**

Apart from the section of the main front door shutter, all shutters (including all of the window shutters and the ATM shutter) shall be fully closed and in the down position from 11pm on any one day and 7am on the following day, every day.

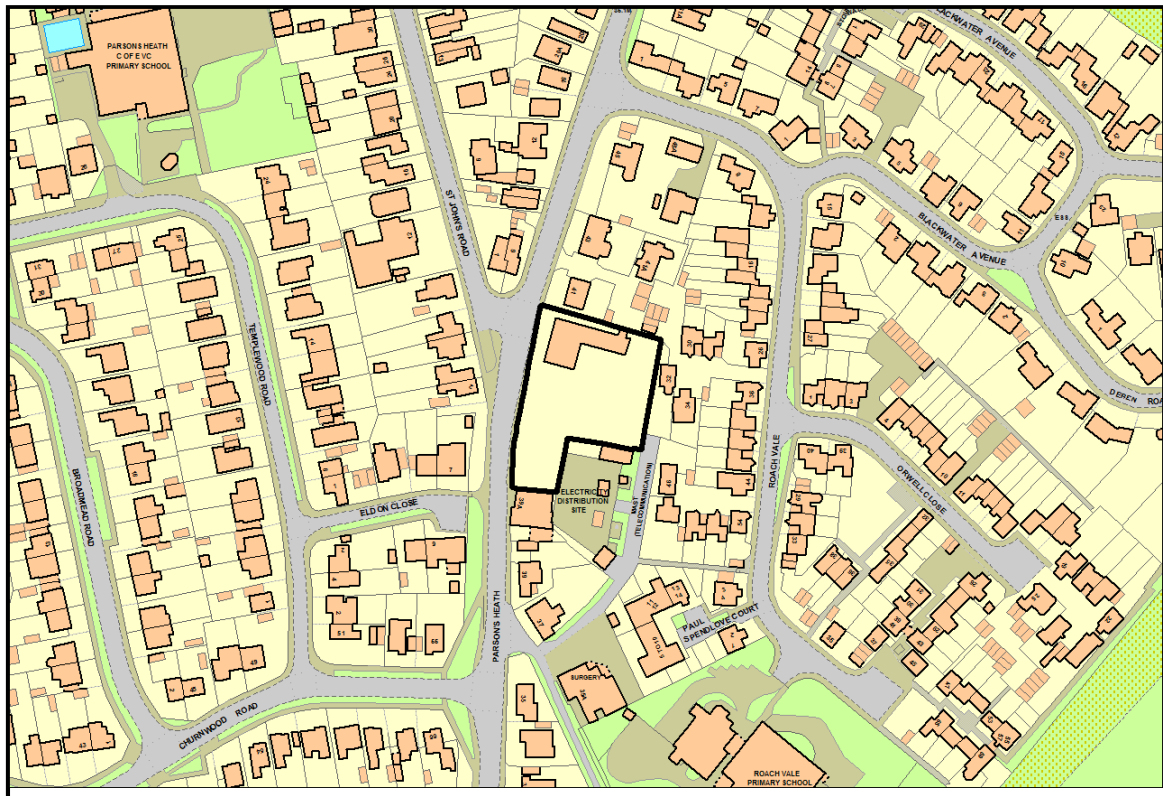
Reason: To ensure the operation of the site complies with the “BP EASTWOOD SF CONNECT Lighting plan and protocol for access to and egress from the sales building” document outside of site opening hours, to reduce the impact of any light spill from the PID activated internal lights, to prevent light emanating from the ATM and to ensure the petrol station appears as closed to the public outside of opening hours.

18.1 **Informatives**

18.1 The following informatives are also recommended:

**INS – Non-Standard Informative (Neighbour Respect)**

PLEASE NOTE that it is strongly advised that all new staff should be instructed on the opening and closing procedures, made aware of the planning conditions, and told that they need to be considerate to neighbours when they arrive at, or leave, the site; doing so as quickly and quietly as possible.



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## Item No: 7.2

**Application:** 172057

**Applicant:** Mr Cock

**Agent:** Mr Robert Pomery

**Proposal:** Erection of 8 no. Houses and 2 no. Chalet Bungalows

**Location:** former M & F Watts, Parsons Heath, Colchester, CO4 3HT

**Ward:** St Anne's & St John's

**Officer:** Ishita Sheth

**Recommendation:** To delegate authority for APPROVAL of planning permission subject to there being no unresolvable objection from UK Power Networks. In the event that UK Power Networks raises an objection that cannot be overcome via officer negotiation or condition(s), to delegate authority to the Head of Service to refuse the application.

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

- 1.1 This application is referred to the Planning Committee because it is a major application, and material objections have been received.

## **2.0 Synopsis**

- 2.1 The key issues for consideration are the design and layout, highway matters including traffic generation and parking provision and neighbour amenity.
- 2.2 The application is subsequently recommended for a conditional planning permission subject to no objections being received from UK Power Networks.

## **3.0 Site Description and Context**

- 3.1 The application site measures approximately 0.24 hectares and is located east of the A137 at Parsons Heath. Historically, the site was in use as a car sales and body shop operated by M&F Watts. The site has been vacant for approximately 11 years however. Until recently, the site contained two industrial buildings, which have since been demolished. The remaining site is hard surfaced and previously used for storing and displaying used cars for sale.
- 3.2 The site has a long frontage on to the highway of some 66 metres. The site contains no trees or vegetation.
- 3.3 To the north and east, the site is bounded by housing. To the south is a small commercial building and beyond that, residential properties. Also to the south is a compound containing an electricity sub-station. To the west, over the A137 are residential properties.

## **4.0 Description of the Proposal**

- 4.1 The application scheme comprises eight houses in two terraces onto Parsons Heath. Five of the houses are three bed units and four are two bed and all are two storeys. To the rear of the site are two chalet bungalows at 1.5 storeys, these properties have three bedrooms.

## **5.0 Land Use Allocation**

- 5.1 Residential

## **6.0 Relevant Planning History**

- 6.1 071866 - Construction of 22no. 2 bedroom flats and associated car parking, refuse and cycle stores. Refused in October 2007.



## **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
- H1 - Housing Delivery
- H2 - Housing Density
- H3 - Housing Diversity
- UR1 - Regeneration Areas
- UR2 - Built Design and Character
- 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
- DP4 Community Facilities
- DP12 Dwelling Standards
- DP13 Dwelling Alterations, Extensions and Replacement Dwellings
- DP16 Private Amenity Space and Open Space Provision for New Residential Development
- DP17 Accessibility and Access
- DP18 Transport Infrastructure Proposals
- DP19 Parking Standards
- DP20 Flood Risk and Management of Surface Water Drainage

7.4 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
- Backland and Infill
- Affordable Housing
- Community Facilities
- Open Space, Sport and Recreation

## 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 Contaminated Land Officer - Based on the information provided, it would appear that the site could be made suitable for the proposed use, with potential contamination matters dealt with by way of planning conditions. Consequently, should permission be approved for this application, Environmental Protection would recommend inclusion of conditions and informatives – **officer note: these have all been included in the list of conditions at the end of the report**
- 8.3 Environmental Protection Services – Recommends the conditions – **officer note: these have all been included in the list of conditions at the end of the report**
- 8.4 SUDS Authority – No objection subject to conditions - **officer note: these have all been included in the list of conditions at the end of the report**
- 8.5 Anglian Water – No objection subject to condition and informative - **officer note: these have all been included in the list of conditions at the end of the report**
- 8.6 Natural England – No comment to make
- 8.7 Landscape Officer – No objection subject to condition - **officer note: these have all been included in the list of conditions at the end of the report**
- 8.8 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.
- 8.9 Urban Designer - Revised proposals address my (*original*) comments and therefore I'm more than happy to support the scheme. Key building and landscape materials and details should be conditioned to be in accordance with the Essex Design Guide and Colchester's External Materials Guide SPD with samples submitted as appropriate, including local-type stock brick; natural clay, slate or (fibre cement) slate-effect tiles (not concrete as proposed); paved surfaces (see above), natural timber (not uPVC as proposed) exposed carpentry except windows (e.g. barge boards, soffits, fascias, finials), roof features (stacks), window design, eaves (not boxed – see EDG, 106), front boundary treatments, and 100mm min. reveals to masonry walls (EDG, p.198).
- 8.10 Highway Authority – From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to mitigation and conditions - **officer note: these have all been included in the list of conditions at the end of the report**

## **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.

- Issues in respect of visibility and therefore safety from the hoardings
- The close proximity of the proposed house (Plot 10) on their boundary/back garden fence
- Overlooking issues
- Privacy Issues
- Noise issues
- Inadequate parking provision
- Will there be a provision of double yellow lines to prevent residents parking outside
- What will prevent residents parking in the doctor's surgery parking area
- Entrance to the development opposite the busy turning to Parsons Heath, this will be dangerous
- Highway safety issues
- The road is already congested
- Would like to know what the council / highways will be implementing to ensure the continual road safety, traffic flow and appropriate parking arrangements when it is clear the allocated spaces will be insufficient to meet the new residents' needs
- The site at the moment is an eyesore and that a LIMITED housing development would be appropriate - certainly no more than are proposed - and ideally two properties less.
- Drainage infrastructure not adequate
- Maintenance issues for their premises

10.2 Comments on the consultation responses are as follows:

- Parking by members of public in the doctor's surgery car park is not something the Planning Authority can control.
- Drainage infrastructure is dealt with by the relevant statutory body.
- Maintenance issues at a party wall boundary is a civil matter and covered under the Party Wall Act.
- Provision of double yellow lines is a matter dealt by the Highway Authority.
- Other relevant planning matters are discussed in the evaluation section.

## **11.0 Parking Provision**

11.1 The proposal results in implications for parking provision; these are discussed in the evaluation section.

## **12.0 Open Space Provisions**

12.1 There are no implications in respect of Open Space provisions

## **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 a “Major” application, there was a requirement for this proposal to be considered by the Development Team. It was 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 site is located within the settlement boundary within a residential area and a highly sustainable location, where residential development is acceptable in principle. However, an assessment must be made on the proposed development in respect of other implications as set out below.

### Design and Layout

15.2 Core Strategy Policy UR2 states that the Borough Council will promote and secure high quality and inclusive design in all developments to make better places for both residents and visitors. Developments that are discordant with their context and fail to enhance the character, quality and function of an area will not be supported while Development Policy DP1 requires all development to be designed to a high standard, avoid unacceptable impacts on public and residential amenity, and demonstrate social, economic and environmental sustainability. This is consistent with national guidance in the form of the NPPF and PPG; which attach great importance to the design of the built environment. “Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people” (NPPF).

15.3 Consideration also needs to be given to the Council’s adopted Supplementary Planning Document (SPD) ‘Backland and Infill’ which states that ‘all infill development should reflect the character of the surrounding area and protect the amenity of neighbours. It should reinforce the uniformity of the street by reflecting the scale, mass, height, form, materials, fenestration and architectural details of its neighbours. This is important in reinforcing local character and ensuring the context of the street scene is not adversely affected’. However, whilst the SPD asks for new development to reinforce the character and

appearance of the existing area, Policy H3 of the Core Strategy states that housing should be diverse.

- 15.4 The application proposes an infill development of 10 dwellings comprising of 8 terraced dwellings fronting Parsons Heath and two chalets to the rear. The site is located in a prominent position within the street, at the junction of St. John's Road and Parsons Heath. The layout of the properties is influenced by the need to provide a strong road frontage and also to maximise the utilisation of this "L-shaped" site. The character of the area in vicinity of the application site is very mixed. The proposed development of terraces fronting Parsons Heath would provide a strong frontage and would be a significant improvement to the existing appearance of the application site. It would result in an enhancement to the appearance of the streetscene/area and would be more in keeping with adjacent predominantly residential properties.
- 15.5 The proposal includes adequate private amenity space to accord with the requirements of adopted policy. The gardens each meet policy requirement. However, it may be necessary to use conditions to control the siting of any outbuildings towards the rear of the site, due to the substation, although this is more from a health and safety angle than any spatial consideration.
- 15.6 It is also considered prudent to control some matters, such as the materials and architectural detailing by condition to ensure that these are delivered as expected; and therefore complement the proposed composition. Overall though, it is considered that the design and layout of the proposed development conforms to the aforementioned development plan policies and the guidance set out in the NPPF.

#### Residential Amenity

- 15.7 Development Plan Policy DP1 states that all development must be designed to a high standard and avoid unacceptable impacts on amenity. Part III of this policy seeks to protect existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, pollution (including light and odour pollution), daylight and sunlight. The adopted Essex Design Guide also provides guidance on the protection of residential private amenity.
- 15.8 The 'Backland and Infill Development' SPD states that access by vehicles or pedestrians should not cause an adverse impact on the amenity of the adjacent residents these impacts can include noise, vibration, impacts on road safety and visual impacts. Access arrangements that will result in significant nuisance to the residents of adjacent dwellings or cause problems of safety to road users will be resisted. The SPD requires the provision of a minimum of a 3m protection zone on either side of accesses to backland development.

- 15.9 Concerns have been raised by neighbouring residents in respect of overlooking, privacy and noise issues (from proximity of the development to their property) and the application site is surrounded by residential properties on three sides. To the west, the relationship between properties is front to front, separated by a road; there are no amenity issues likely to result from this relationship. The site's relationship with the commercial properties to the south pose no amenity issues. To the north and east there are residential properties close to the site boundary. It is noted that the most immediate neighbouring properties contain no first floor windows, which might directly overlook the site. None of the proposed dwellings have first floor windows that would overlook any neighbouring properties. The dwelling at Plot 8, adjacent to No. 41 Parsons Heath, would maintain an acceptable relationship with this neighbouring dwelling and would not result in any amenity issues.
- 15.10 The proposed dwelling at Plot 10 is located in in close proximity to the eastern boundary and the neighbouring site at No. 32 Roach Vale. The proposed dwelling would stretch for some 4m along the party wall boundary and the proposed suppressed gabled roof would slope away from the boundary above a height of 4.3m. This would have limited impact in respect of dominance from the garden of No. 42 Roach Vale. Taking into consideration the orientation, the proposed dwelling at Plot 10 would also result in limited overshadowing of the garden in the evenings. However, both matters are within acceptable tolerances.
- 15.11 Given the site specific circumstances and the design of the proposed development, it is considered that the proposed development would not result in any materially harmful impacts with regards to overbearing impacts, overshadowing, loss of light or loss of privacy to neighbouring occupiers. On this basis, it is concluded that the proposed development would not result in any materially harmful impacts on neighbouring amenities, thus complying with the afore-mentioned policy.

#### Access, Parking and Highway Safety

- 15.12 The proposal provides adequate car parking for the proposed dwellings. 2 visitor car parking spaces have also been provided. Whilst this is less than the required 2.5 visitor spaces, it is noted that the site is located in a sustainable location with access via public transport (and it is impossible to provide half a space). It is not considered that a refusal on the basis of a shortfall of 0.5 visitor spaces could be successfully sustained on appeal, when taking all matters into account and balancing them up. It should be also noted that the Highway Authority has raised no objection to the proposal on this basis and would not offer defence for a refusal. Subject to a condition requiring the retention of the parking spaces for parking purposes, which is essential to protect this necessary level of parking, no objection is raised in respect of parking provision.

- 15.13 Concerns have also been raised by neighbouring residents in respect of safety issues at the junction of access. However, the Highway Authority has not raised any concerns in respect of this matter. Subject to conditions, the Highway Authority raises no objection to the scheme. Although it is in close proximity to a roundabout this slows traffic, whilst visibility can be achieved in both directions; offering safe entrance and exit from the site.

#### Contamination

- 15.14 Development Plan Policy DP1 requires all development to avoid unacceptable environmental impacts; part (vi) requires the appropriate remediation of contaminated land. The support text to this policy notes that Colchester's approach to dealing with the development of land that could be contaminated is set out in 'Land Affected by Contamination: Technical Guidance for Applicants and Developers, 2nd Edition'.
- 15.15 A Phase 1 Desk Study and Preliminary Risk Assessment has been submitted. The Contamination Officer has no objections to the proposal subject to conditions.

#### Drainage and Flood Risk Assessment

- 15.16 The application site is not located within a Flood Zone and as such there is little to no risk of flooding. However, as this is a major application ECC SUDs (Sustainable Urban Drainage systems) team are consulted regarding SUDs and surface water drainage. The SUDS Authority have no objection to the scheme subject to conditions which have been included in the recommendation below.

#### Refuse and Recycling

- 15.17 Policy DP12 requires the provision of an accessible bin and recycling storage area. Whilst the properties fronting Parsons Heath would have roadside refuse collection, those further into the site would not. A refuse store has been proposed to the rear of Plot 3 for the dwellings at Plot 9 and 10. This is considered to be acceptable, and meets the carry distances. However, details of the bin store would need to be provided to ensure it has a satisfactory finish. A condition can be attached to any consent granted to provide appropriate details of the refuse/recycling bin area.

#### Contributions

- 15.18 At 10 residential units, the site falls below local and national requirements for Affordable housing provision, which was redefined in recent years by central Government. No other contributions have been required to be provided by individual stakeholders when this application discussed at the Development Team Meeting. There are highway improvements, but these are being delivered without the need for any s106 agreement.

## Other Matters

- 15.19 A sub-station is located to the rear of the site. The UK Power Networks has been consulted and their comments are awaited.

## **16.0 Conclusion**

- 16.1 This is a brownfield site in a sustainable location and the principle of development is therefore acceptable, and meets the requirement to make the most efficient use of land. The proposed new dwellings are of a good design and scale with a traditional local character integrating it well into its surroundings, thereby providing a sense of place characteristic of the area. It is therefore concluded that the proposed development represents an acceptable form of development for this site and does not compromise the character and appearance of the wider area, neighbouring amenities or highway safety or efficiency to such a degree that would warrant a refusal.

## **17.0 Recommendation to the Committee**

- 17.1 The Officer recommendation to the Committee is for:

To delegate authority for APPROVAL of planning permission subject to there being no unresolvable objection from UK Power Networks. In the event that UK Power Networks raises an objection that cannot be overcome via officer negotiation or condition(s), to delegate authority to the Head of Service to refuse the application. The Permission will also be 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 Numbers 6410 -1105 Rev B, 6410-1106 Rev D, 6410-1203 Rev A, 6410-1204 Rev A, 6410- 1205 Rev A, 6410-1206 Rev A, 6410-1301 Rev A, 6410-1302 Rev A, 6410-1303 Rev A and 6410-1304 Rev A. .

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

### **3. Non Standard Condition – Windows and Doors Inset**

All windows and doors in masonry walls must be inset at least 100mm and shall be fitted with sub-cills.

Reason: There is insufficient information provided in the submission to guarantee this key detail.



#### **4. Non Standard Condition – Details of materials**

Details of all facing, roofing and external materials to be used (including bricks, pavers, tiles, gable to canopy and barge boards) shall be submitted to and approved by the Local Planning Authority prior to their use in the construction. The development must be then carried out in complete accordance with the approved details.

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

#### **5. Non Standard Condition – Details of windows**

Notwithstanding the submitted details, all exposed carpentry except windows (e.g. barge boards, soffits, fascias, finials), roof features (stacks), window design, eaves) shall be made from natural timber.

Reason: In order to ensure that suitable materials are used on the development.

#### **6. Non Standard Condition - Eaves Detail**

Eaves to all roofs shall be open with exposed rafter feet rather than boxed.

Reason: There is insufficient information provided in the submission to guarantee this key detail.

#### **7. Non Standard Condition – Plumbing**

All soil and waste plumbing shall be run internally and shall not be visible on the exterior. All rainwater shall be finished in black.

Reason: There is insufficient information provided in the submission to guarantee this key detail.

#### **8. ZBF Surfacing materials to be agreed**

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.

#### **9. Non Standard condition - Landscaping**

No works shall take place until full details of all landscape works have been submitted to and agreed, in writing, by the Local Planning Authority and the works shall be carried out prior to the occupation of any part of the development unless an alternative implementation programme is subsequently agreed, in writing, by the Local Planning Authority. The submitted landscape details shall include:

Proposed finished levels or contours;

Means of enclosure;

Front boundary treatment;

Car parking layouts;

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, signs, lighting etc.);  
Proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. Indicating lines, manholes, supports etc.);  
Earthworks (including the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform)  
Planting plans;  
Written specifications (including cultivation and other operations associated with plant and grass establishment);  
Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and  
Implementation timetables and monitoring programs.  
Reason: To ensure that there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development within its surrounding context in the interest of visual amenity.

#### **10. Non Standard Condition - Implementation and Monitoring Programme required for Landscape**

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.

#### **11. Non Standard condition - 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.

### **12. Non Standard condition – 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 dwellings 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. Non Standard condition - SUDS**

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 at least 50% betterment of the existing run off rate 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.
- 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.
- 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. Non Standard condition - SUDS**

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.

#### **15. Non Standard Condition - SUDS**

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.

Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.

Reason

- To ensure appropriate maintenance 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.

#### **16. Non Standard condition - SUDS**

The applicant or any successor in title must maintain yearly logs of maintenance 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 approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

### **17.ZCE - Refuse and Recycling Facilities**

Details for the refuse and recycling facilities for the proposed development shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The approved scheme must be installed on site prior to the first occupation of the development and permanently retained thereafter.

Reason: To ensure appropriate provision of refuse and recycling facilities.

### **18.ZDA - \*General Removal of Residential PD Under Schedule 2 Part 1\***

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 Classes A to E of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration to the dwelling shall be erected or carried out except in accordance with drawings showing the siting and design of such enlargement, improvement or other alteration which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: The site is already heavily constrained and developed and any further development on the site would need to be considered at such a time as it were to be proposed.

### **19.ZGX - Contaminated Land Part 1 of 4 (Site Characterisation)**

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.

#### **20.ZGY - Contaminated Land Part 2 of 4 (Submission of 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.

#### **21.ZGZ - Contaminated Land Part 3 of 4 (Implementation of Approved 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.

#### **22.ZG0 - Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 27, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 28, 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 29.

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

### **23.ZG3 - \*Validation Certificate**

Prior to the first occupation 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 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.

### **24.ZGK - \*External Noise\***

Prior to the commencement of development, a noise survey for proposed residential properties that are in the vicinity of the road shall have been submitted to and approved, in writing, by the Local Planning Authority. The survey shall have been undertaken by a competent person, shall include periods for daytime as 0700-2300 hours and night-time as 2300-0700 hours, and identify appropriate noise mitigation measures. All residential units shall thereafter be designed so as not to exceed the noise criteria based on current figures by the World Health Authority Community Noise Guideline Values/BS8233 “good” conditions given below:

Dwellings indoors in daytime: 35 dB LAeq, 16 hours

Outdoor living area in day time: 55 dB LAeq, 16 hours

Inside bedrooms at night-time: 30 dB LAeq, 8 hours (45 dB LAmax)

Outside bedrooms at night-time: 45 dB LAeq, 8 hours (60 dB LAmax)

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

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

**25.ZPD - Limits to Hours of Work**

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

Weekdays: 8am and 6pm

Saturdays: 8am and 1pm

Sundays and Bank Holidays: Not at All

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.

**26.ZPF - Limits to Peak Hours Construction Traffic**

No construction worker vehicle movements or any deliveries to or from the site shall take place during the peak traffic hours from 07:30 – 09:00 or from 14:30 – 16:00 on weekdays.

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the existing levels of traffic already reaching high peak levels during these times because of the close proximity to Roach Vale Primary School and Parsons Heath C of E Primary School.

**27. Non Standard Condition – Highways**

Prior to the first occupation of the proposed dwellings, the proposed vehicular access shall be constructed to a width of 6.0m for at least the first 6m. within the site tapering one-sided over the next 6m. to any lesser 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 all vehicles using the private drive access do so in a controlled manner and to ensure that opposing vehicles may pass clear of the limits of 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.

**28.Non Standard condition – Highways**

Prior to the first occupation of the proposed dwellings, the proposed vehicular access shall be constructed to a width of 6.0m for at least the first 6m. within the site tapering one-sided over the next 6m. to any lesser 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 all vehicles using the private drive access do so in a controlled manner and to ensure that opposing vehicles may pass clear of the limits of 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.



**29. Non Standard Condition – Highways**

Prior to the proposed access being brought into use, minimum vehicular visibility splays of 43m by 2.4m by 43m as measured along, from and along the nearside edge of the carriageway, shall be provided on both sides of the centre line of the access and shall be retained and maintained free from obstruction clear to ground thereafter.

Reason: To ensure adequate intervisibility between drivers of vehicles using the proposed access and those in the adjoining highway, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

**30. Non Standard Condition – Highways**

Prior to the proposed access on the proposed development being brought into use, a 1.5m. x 1.5m. pedestrian visibility splay, relative to the highway boundary, shall be provided on both sides of that access and shall be retained and maintained free from obstruction clear to ground thereafter. These splays must not form part of the vehicular surface of the access.

Reason: To ensure adequate intervisibility between drivers of vehicles using the proposed access and pedestrians in the adjoining highway, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

**31. Non Standard condition – Highways**

Prior to first occupation of the proposed development, a recycling/bin/refuse collection point shall be provided within 20m of the highway boundary or adjacent to the highway boundary and additionally clear of all visibility splays at accesses and retained thereafter.

Reason: To minimise the length of time a refuse vehicle is required to wait within and cause obstruction of 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.

**32. Non Standard Condition – Highways**

No unbound materials shall be used in the surface treatment of the proposed vehicular access within 6m of the highway boundary.

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.

**33. Non Standard Condition – Highways**

Prior to occupation of the proposed development, details showing the proposed means of preventing the discharge of surface water from the development onto the highway shall be submitted to and approved in writing by the Local Planning Authority and retained thereafter.

Reason: To prevent hazards caused by water flowing onto the highway and to avoid the formation of ice on 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.

### **34. Non Standard Condition – Highways**

The development shall not be occupied until such time as the car parking and turning area, has been provided in accord with the details shown in Drawing Numbered 6410-1106-REV B. 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 thereafter. 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.

### **35. Non Standard Condition – Highways**

Prior to the occupation of the proposed development, details of the provision for the storage of bicycles for each dwelling sufficient for all occupants of that dwelling, of a design this shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.

Reason: To promote the use of sustainable means of transport in accordance with Policy DM 1 and 9 of the Highway Authority's Development Management Policies February 2011.

### **36. Non Standard condition – Highways**

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) the parking of vehicles of site operatives and visitors
- (ii) loading and unloading of plant and materials
- (iii) storage of plant and materials used in constructing the development
- (iv) wheel and under body washing facilities

Reason: 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.

### **37. Non Standard Condition – Highways**

Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport for each dwelling, approved by Essex County Council.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the Highway Authority's Development Management Policies February 2011.

### **38.Z00 – Highways**

Prior to the occupation of any of the proposed dwellings the footway across the entire sites frontage shall be extended to a minimum of 2.0m in width and being provided entirely at the Applicant/Developer's expense including new kerbing, surfacing, drainage, any adjustments in levels and any accommodation works to the footway and carriageway channel and making an appropriate connection in both directions to the existing footway to the specifications of the Highway Authority.

Reason: To make adequate provision for the additional pedestrian traffic generated within the highway as a result of the proposed development in accord with Policy DM 9 of the Highway Authority's Development Management Policies February 2011.

### **39. Non Standard Condition – Highways**

Prior to the first occupation of any of the proposed dwellings the existing bus stop in the vicinity of the proposed vehicular access shall be relocated to the southern end of the site to the boundary with Number 39a Parsons Heath and the proposed Plot 1 including the provision of level entry kerbing, new post and flag, timetables, any adjustments in levels, surfacing and any accommodation works to the footway and carriageway channel being provided entirely at the applicant/Developer's expense to the specifications of the Highway Authority.

Reason: To make adequate provision for the additional bus passenger traffic generated as a result of the proposed development in accord with Policy DM 9 of the Highway Authority's Development Management Policies February 2011.

## **18.1 Informatives**

The following informatives are also recommended:

### **1. ZT0 – Advisory Note on Construction & Demolition**

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

### **2. INS - Land Contamination Informative**

The required additional assessment of risks must include a site walkover and consideration of risks from the adjacent electricity substation.

Reason – insufficient information was provided in the submitted information and Environmental Protection wish 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. Responsibility for securing a safe development rests with the developer and/or landowner.

### 3. 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/C @ <http://www.colchester.gov.uk/article/13592/Landscape-Guidance-for-Developers>.

### 4. Anglian Water Informative

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

### 5. Highway Authority 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](mailto:development.management@essexhighways.org) or by post to:

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

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

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

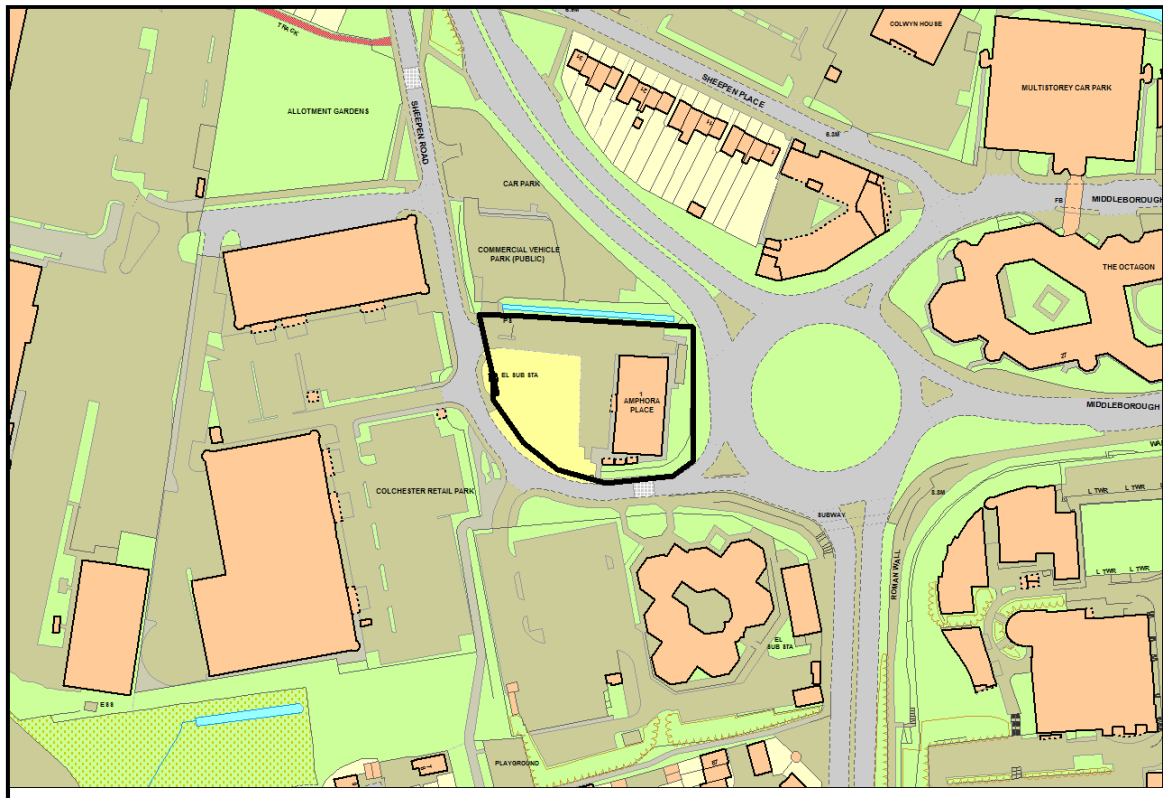
PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you 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](http://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.

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

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





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**Item No:** 7.3

**Application:** 180307

**Applicant:** Holly Brett, Colchester Borough Council

**Agent:** Kevin Whyte

**Proposal:** Non material amendment following the grant of planning permission 151825

**Location:** Car Park at, Sheepen Road, Colchester

**Ward:** Castle

**Officer:** Sue Jackson

**Recommendation:** Approval

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

- 1.1 This application is referred to the Planning Committee because Colchester Borough Council is the applicant. The application is for a non-material amendment concerning bin areas and external plant. As these applications involve only a minor change to an approved development they would normally be determined by officers under the scheme of delegation.

## **2.0 Synopsis**

- 2.1 The key issue for consideration is the suitability of the proposed location for the external plant and bin store compounds compared to the approved location. The conclusion is that the proposed location will be less prominent in the street scene and is therefore acceptable.
- 2.2 The application is subsequently recommended for approval as a non-material amendment to application reference 151825.

## **3.0 Site Description and Context**

- 3.1 The site is on Sheepen Road immediately to the west of the Middleborough roundabout. Sheepen Road links the Middleborough Roundabout to the Avenue of Remembrance and provides access to Colchester Borough Council offices, Colchester Institute, a small retail park, allotments, a car dealership, a small number of residential properties and St Helena School.
- 3.2 Planning permission was granted for the erection of two office buildings in November 2015, one building is now occupied. Work has not commenced on the second building and this application proposes a minor change to the approved development.

## **4.0 Description of the Proposal**

- 4.1 The application is for a non-material amendment and proposes a revised Location for the external plant and bin store compounds.
- 4.2 Members may recall they considered a non-material amendment application in December 2017 for a small reduction in the footprint of the approved second building and a revised layout for a small increase in the number of parking spaces.

## **5.0 Land Use Allocation**

- 5.1 The site is within a Mixed Use area on the Proposals Map. Appropriate land uses in Mixed Use Centres are defined in the Core Strategy and offices are identified as a primary use.



## **6.0 Relevant Planning History**

- 6.1 151825 – proposed phased development of two office buildings and associated buildings, parking and landscaping. Approved 6 November 2015
- 6.2 151826 – totem board to front of building. Approved 6 November 2015
- 6.3 161291 printed site hoarding temporary consent (hoarding has now been removed)
- 6.4 163132- Directional sign. Approved 20 January 2017
- 6.5 171236 – agents letting board – temporary consent 10 July 2017
- 6.6 172815 Non Material Amendment - smaller building footprint, revised parking layout. Approved

## **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  
CE2 - Mixed Use Centres  
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

- 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 CE1 Mixed Use Sites

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

External Materials in New Developments

## **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.

No one is affected by this non-material amendment and no consultation was necessary.

## **9.0 Parish Council Response**

- 9.1 N/A

## **10.0 Representations from Notified Parties**

- 10.1 The application is for a non-material amendment which does not impact on any neighbouring premises and notification was not necessary. The adjacent land is owned by the Borough Council and is operated as a lorry/coach park.

## **11.0 Parking Provision**

- 11.1 Parking provision is unaffected by this amendment.

## **12.0 Open Space Provisions**

- 12.1 The application relates to commercial development and there is no open space requirement.

## **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

15.2 This application proposes a non-material amendment to an application granted planning permission in 2015, the principle of the development is therefore already established.

15.3 The approved development includes a compound for external plant and a bin store close to Sheepen Road and adjacent to an area of landscaping along the road frontage.

### Design and Layout

15.4 Planning permission has already been granted for the external plant and bin store compound and this amendment is simply for a revised location. A 2m high vertical lapped timber boarding fence stained deep green will enclose the area. The details will match the compound provided for building one.

### Scale, Height and Massing

15.5 There is no substantive change proposed.

### Impact on the Surrounding Area/Neighbouring Properties

15.6 There will be a positive impact as the compound has been moved from the Sheepen Road frontage to a location adjacent to the vehicular access.

### Amenity Provisions

15.7 The relocation of the compound will improve the appearance of the scheme from Sheepen Road and thereby will enhance public amenity.

### Landscape and Trees

15.8 The landscaped area fronting the road will be extended to include the area of the compound.

### Highway Safety and Parking Provisions (including Cycling)

15.9 The vehicular access and parking provision is unaltered by this amendment.

### Public Open Space Provision

15.10 There is no public open space as the scheme is commercial in nature (office development).

#### Private Amenity Space Provision

15.11 N/A

#### Parking Provision

15.12 The parking provision is unchanged from the extant consent.

#### Other Matters

15.13 None identified.

### **16.0 Conclusion**

16.1 To summarise, this non-material amendment raises no material planning issues and will in fact have a positive impact on amenity. It is recommended the non-material amendment is approved. The conditions on the original planning permission, application 151825, will still be in force and no new conditions are therefore required.

### **17.0 Recommendation to the Committee**

17.1 The Officer recommendation to the Committee is that the revised location for the external plant and bin store compound shown on drawings 1992 DE10-04 revision B and 1842 PI 10-L1 revision G is approved as a non-material amendment to application 151825.

## 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.*

