

Planning Committee

Thursday, 26 September 2019

Attendees: Councillor Lyn Barton, Councillor Pauline Hazell, Councillor Brian Jarvis, Councillor Cyril Liddy, Councillor Derek Loveland, Councillor Andrea Luxford Vaughan, Councillor Jackie Maclean, Councillor Martyn Warnes

Substitutes: Councillor Gerard Oxford (for Councillor Philip Oxford)

Also Present:

737 Site Visits

Councillors Barton, Hazell, Jarvis, Liddy, Loveland, Luxford Vaughan and J. Maclean attended the site visits.

738 Planning Committee Minutes 13 June 2019

The minutes of the meeting held on 13 June 2019 were confirmed as a correct record.

739 Planning Committee minutes 25 July 2019

The minutes of the meeting held on 25 July 2019 were confirmed as a correct record.

740 Planning Committee Minutes 15 August 2019

The minutes of the meeting held on 15 August 2019 were confirmed as a correct record.

741 Planning Committee Minutes 5 September 2019

The minutes of the meeting held on 5 September 2019 were confirmed as a correct record.

742 171529 Land off Halstead Road, Eight Ash Green, Colchester

Councillor Willetts (by reason of the assistance he had given to Eight Ash Green Parish Council in the formulation of its Neighbourhood Plan) declared a non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(5).

The Committee considered an outline planning application for the development of up to 150 dwellings (including 30% affordable housing) with public open space, landscaping, sustainable drainage system (SuDS) and vehicular access points from Halstead Road and Fiddlers Hill, all matters reserved except for means of access at land off Halstead Road, Eight Ash Green, Colchester. The application had been referred to the Committee because it constituted a departure from the adopted Local Plan by virtue of the application site being outside the current settlement boundary of Eight Ash Green, the proposal also represented major development where objections had been received with a recommendation for approval and a Section 106 Agreement and Councillor Barber had also requested that the application be determined by the Planning Committee.

The Committee had before it a report and an amendment sheet 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.

Lucy Mondon, Principal Planning Officer, presented the report and assisted the Committee in its deliberations.

Kevin Waters addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He commended the work of the Eight Ash Green Neighbourhood Plan Group and confirmed that work had been ongoing for two years with that group as well as consultees and planning officers to ensure the application delivered the aspirations and needs of the community. He confirmed that the application fully accorded with the Neighbourhood Plan and additional conditions had been agreed, included one to secure the HGV route which was deemed a key benefit by residents. He explained that the scheme would deliver 150 units, 45 of which would be affordable housing, there would be four hectares of public open space, which the Parish Council could opt to manage with funding provided. Financial contributions would also be forthcoming, providing enhancement of the village hall, additional primary school capacity, secondary school transport and additional capacity at the local GP surgery. He also referred to local economic benefits, an absence of outstanding objections on technical matters. He asked for the Committee members to approve the scheme.

Councillor Willetts attended and, with the consent of the Chairman, addressed the Committee. He referred to public concern about the application potentially being determined prior to the holding of a referendum on the Eight Ash Green Neighbourhood Plan. However, the proposed method of dealing with this issue, as set out in the amendment sheet was fully supported. He referred to the current issues about access by heavy goods vehicles which frequently got stuck when travelling along Fiddler's Hill and the Neighbourhood Plan had identified a number of policies to address this issue, many of which would be more relevant for consideration at reserved matters stage. He

explained that the main benefit to the community was considered to be the delivery of a two-carriageway spine road across the site, connecting Fiddler's Hill to the A1124. He had been re-assured by the contents of the amendment sheet which confirmed that all but two of the Neighbourhood Plan policies were addressed by proposed conditions and that two further conditions and an informative were now also being proposed and would mean that the provision a suitable spine road would be accommodated. He, and the residents, strongly supported the allocation of the site and he fully supported the clarity around its future development which the outline application would deliver.

Members of the Committee generally agreed with the comments made by Councillor Willetts and welcomed the application on the grounds that it would bring benefit to the local community, in particular in relation to the spine road.

RESOLVED (UNANIMOUSLY) that: -

(i) The Assistant Director Policy and Corporate be authorised to approve the outline planning application subject to the conditions set out in the report and the two additional conditions and an informative in the amendment sheet and with authority to make changes to the wording of those conditions, as necessary, and subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within six months from the date of the Committee meeting, to provide for the following:

- Affordable Housing: 30%
- Archaeological financial contribution toward the display, promotion, and management of archaeological discoveries from the site;
- Community Facilities financial contribution towards Eight Ash Green Village Hall and/ or Fordham Village Hall or toward the provision of a new community facility within the vicinity of the site;
- Ecological Mitigation contribution for off-site mitigation, as well as securing 1.84 hectares of open space prior to occupation of any dwelling as on-site mitigation, as part of the Conservation of Habitat and Species Regulations 2017 and the draft Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS);
- Education financial contribution towards increased pupil capacity at Holy Trinity CE Primary School and/or Fordham All Saints CE Primary School and Secondary School Transport contribution;
- Healthcare financial contribution toward Ambrose Avenue Group Practice (including its main surgery);
- Secure provision of Public Open Space, amenity areas, and play areas on site.

(ii) In the event that the legal agreement is not signed within six months from the date of the Planning Committee, Assistant Director Policy and Corporate be authorised, at their discretion, to refuse the application or otherwise be authorised to complete the agreement.

743 183077 North Colchester Urban Extension, Mile End Road, Colchester

The Committee considered a planning application for the removal or variation of a condition following grant of planning permission (121272) at North Colchester Urban Extension, Mile End Road, Colchester. The application had been referred to the Committee because objections had been received, a Section 106 legal agreement was required and Councillor Goss had requested that the application be called in.

The Committee had before it a report and an amendment sheet 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.

Alistair Day, Planning Specialists Manager, presented the report and, together with Simon Cairns, Development Manager, assisted the Committee in its deliberations.

Amir Soormally addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He explained that he was a resident of Mile End Road, opposite Bartholomew Court and explained that he had submitted detailed letters of objection to the application, the contents of which he hoped had been taken into account. He was concerned that the original concept of the development would be contradicted by this proposal. He considered the applicant to be responsible for the delivery of the housing in accordance with the planning application. He was also of the view that the resolution of the dispute between the applicant and the land owner was the applicant's responsibility. He also considered it to be the applicant's responsibility to facilitate their own build rates. He referred to the principle of sustainable development upon which the development had originally been based and this was now being overlooked.

Arwel Owen addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He referred to the officer's report and its recognition of the continued delivery of housing supporting the Council's five-year housing land supply weighed in favour of the application; that there would not be detrimental impacts in air quality, residential amenity or car parking and no severe impact on highway capacity or highway safety being expected. He referred to the context of the application in relation to the speedy delivery of homes by the Chesterwell development, whilst meeting design and quality standards. He explained that the proposal was necessary to maintain this momentum and to prevent the stalling of the housing delivery achieved to date. He explained that the original concepts of the scheme, in terms of densities, green space and infrastructure would be unaffected by the proposal and referred to the Supplementary Planning Document (SPD) which anticipated the need for flexibility in terms of access. He explained that the conditions proposed would provide a reasonable means to control the development in a way which

a time-based constraint could not and the imposition of time-based restrictions would be open to legal challenge. He supported the officer's recommendation and commended it to the Committee members.

Councillor Goss attended and, with the consent of the Chairman, addressed the Committee. He considered that Colchester had far exceeded its targets in terms of housing delivery in recent years and he referred to the recent slow-down in the housing market. He referred to the original masterplan for the development, included provision for one road into the development and one road out and he considered this design principle underpinned the infrastructure at Chesterwell. He was concerned that the proposal would be contrary to the original planning permission and he did not consider a potential period of 5.2 years to be temporary. He considered that the housing numbers per year as quoted in the report were contradictory. He also explained that new housing developments had been underpinned by the government's Help to Buy scheme but this was coming to a close and was likely to slow house sales further. He referred to the masterplan for the site in terms of its phasing and construction, whilst a commercial dispute over the land value was the reason for the submission of the application. He considered that independent arbitration would settle this dispute in a short period of time and it was therefore not necessary for the proposal to be considered. He was also concerned that the anticipated 15% modal shift in travel choices had not yet been achieved, as well as parking in the area due to its proximity to the station and the potential for the access to be used by commuters. He explained that the development was being delivered by a consortium comprising Mersea Homes and Countryside and he was aware that Countryside were due to commence development on land which was not in dispute, off Boxted Road, as such the housing supply would be continued. He asked for clarification regarding the bus lane and whether any enforcement was envisaged.

Councillor King attended and, with the consent of the Chairman, addressed the Committee. He considered the proposal for the access was not right, not intended and contrary to an explicit understanding to residents and he considered the Committee members should weigh this up in their consideration. He was of the view that it was an error of judgement by the applicant and an act of poor faith which shouldn't be rewarded. He acknowledged the impact on the Council's five-year housing supply and that there were no objections from the Highway Authority. He considered the application, which constituted a fundamental change to the planning conditions, to be for the convenience of the developer as a consequence of their commercial dispute. He observed the presence of both ward councillors as well as a county councillor in support of the residents and he considered it to be critical that the conditions which were agreed for the original planning permission are adhered to, if only to keep the faith of the public. He also commented that he saw no distinction between the application for temporary permission and that for permanent permission, considering the reasons for refusal of the permanent application were equally valid for the Committee's determination of the temporary application.

The Planning Specialists Manager confirmed that he had received and considered very carefully the objection letters in respect of both applications from Mr Soormally and he was aware of the concerns about the contradictions of the principle of the development, his view that the developer was responsible for having the land available and concerns about capacity of Mile End Road. He explained that the over-delivery of housing numbers in the past did not bear weight for Planning Inspectors who would be looking at delivery now. He cited the West Bergholt appeal decision and the Inspector's belief that Colchester did not have a five-year supply. He explained that the numbers quoted in the report referred to Mersea Homes' current land availability, illustrating that, as houses were delivered in the north of the site over the next three years, the available land would decrease. He explained that the land to the north of Boxted Road was also subject to the same land dispute and, as such, wasn't available for development. He explained that the impact of not giving permission for the application would mean that a further 160 dwellings would not be delivered which would potentially put more pressure on other unallocated sites. He confirmed that the Highway Authority had been concerned about the application and had considered recommending refusal on the grounds of the extended delivery timetable for the spine road. He acknowledged the desire for the temporary access to be in place for a short a time as possible but he explained that it would take time to construct the spine road from the north, with availability of funding aligned with build programmes. As a consequence a condition had been negotiated which provided for the delivery of the road to be tied to the build programme. He acknowledged the concerns expressed about the sequence of development and the nature of the background to the proposal. He explained that the Council's Supplementary Planning Guidance (SPG) did provide for the use of a temporary access to enable the continuation of a development, as such, the application accorded with the Council's SPG unlike the application proposed for the refusal. He referred to concerns about parking within the development site and explained that this was a matter which would need to be addressed at reserved matters stage. He explained that the reference to a 15% modal shift was contained in the North Colchester Transport Strategy, a document which had not been adopted by the Council and, as such the 15% was not a target which this development was required to adhere to.

Some members of the Committee expressed significant concern about the proposal for two-way traffic access onto Mile End Road, the adequacy of delivery routes for construction traffic and the impact on residents of a temporary permission if it extended for the whole of the 5.2 years referred to. Concern was also expressed in relation to the time taken to resolve the land dispute and the impact on the Council's housing supply as well as the five-year period of time envisaged for the duration of the temporary access. The point of view was expressed that the original concept for the scheme should be adhered to and clarification was sought regarding the possibility of reverting to that concept should the land dispute be resolved over a shorter timescale than currently envisaged.

The Planning Specialists Manager explained that, in accordance with the conditions

attached to the original scheme, the width of Bartholomew Court would be widened in any event and this would be more than adequate for construction traffic and other vehicles to use in a safe manner. There were also conditions in relation to construction traffic, which would likely be routed to the south then onto the Northern Approach Road to the A12 and it would also be feasible to provide for the exclusion of deliveries at sensitive times, if considered necessary. He explained that it was important for the five-year housing supply to be borne in mind because its maintenance was a requirement for the Council and, if not maintained would make the Borough vulnerable to speculative development, potentially on sites which were not preferred by the Council and its residents. He also acknowledged concerns about the potential for further houses to be able to use the south access but he confirmed that this would require the submission of a separate planning application. Equally he understood the view that the resolution of the land dispute was the responsibility of the developer but he confirmed that the developer had planned in an appropriate way. He also explained that it would take some time to construct the route from the north of the site to the south, without the support of funding from the housing development and, as such, it would not be possible to revert to the northern access in a shorter period of time than that currently envisaged.

Other members of the Committee expressed concern regarding the maintenance of the Council's five-year housing supply and further clarification was sought in relation to the anticipated timescale required for the temporary access, whether there was justified expectation that the dispute could be resolved satisfactorily and whether there were any grounds for appeal against a refusal of permission, given the concept of development associated with the original planning permission.

The Planning Specialists Manager explained his understanding that the legal dispute would be referred to arbitration and a conclusion would be sought which would be imposed on all parties. He further explained that, in order to maintain housing delivery, it was necessary to plan in advance for an alternative access route to be delivered and that the potential for an alternative access route was provided for in the Council's adopted SPD. He also confirmed that the alternative access route had been confirmed as an acceptable solution by the Highway Authority.

The Development Manager explained that the Committee members were required to determine the application in accordance with the Development Plan unless material considerations indicated otherwise. He confirmed that the adopted SPD for the site provided for vehicular accesses from alternative points and that considerable thought had been given to the mitigation and control of the impacts of the deviation from the original concept. As such, the number of dwellings was considered to be the key criterion and that the access had been restricted to the delivery of a certain number of units rather than a period of time. He further explained that the delivery of housing was a material public benefit and this needed to be weighed against the negative aspects of the scheme. He therefore reminded the Committee members that they would need to identify the harm from the variation to the conditions of the original scheme.

Other members of the Committee referred to the SPD providing for the use of alternative access routes, the maintenance of the five-year housing supply being in the public interest and the reassurance provided by the restriction of the access to numbers of dwellings rather than a specific period of time. Clarification, nevertheless, was sought regarding the potential to limit the temporary access to a three-year period, given the significant impact associated with increased traffic on Mile End Road and the lack of safe means of crossing for pedestrians. Comment was also made regarding the lack of Highway Authority objection, given the more recent reduction in traffic and the significant width of Mile End Road and, whilst the strength of feeling of local residents was acknowledged, the proposal for a temporary and time-limited access was considered acceptable.

The Planning Specialists Manager explained that the proposed widening of Bartholomew Court had been designed to accommodate two-way bus traffic and, as such, would be sufficient to accommodate traffic generated by 160 dwellings as well as construction traffic. He also confirmed that discussions had taken place with the Highway Authority regarding a safe means of crossing of Mile End Road for pedestrians pedestrian Mile End Road but the view had been taken that there was no requirement for any additional traffic calming measures. He again confirmed that a wide range of options had been investigated regarding the most appropriate mechanism for securing the closure of Bartholomew Close to general traffic and the conclusion had been reached that it would be more beneficial to restrict it to the phasing of the development as this would provide greater certainty about when it would be delivered. He also confirmed that the SPD provided for a temporary vehicular access to be made if required for the phasing of the development but it did not specify a location for such an access. Bartholomew Court had been identified as it was an existing adopted highway and the associated infrastructure would be built ultimately as part of this development. He also confirmed that Bartholomew Court, as a cul-de-sac, would not be used as a bus route, but once forming the link north to south, it was hoped that operators would wish to use it as a bus route.

Possible reasons for refusal of the applications were identified by one Councillor, including the design, visual appearance and layout, protection of residential amenity, outlook, noise and fumes, as well as government guidance, previous decisions and planning history.

The Planning Specialists Manager explained that, in relation to design, the improvements to Bartholomew Court had already been agreed under the outline planning application and would be implemented and he confirmed that Environmental Protection had not raised any concerns in relation to noise or fumes and an air quality assessment had confirmed that there would be no significant impact. He also confirmed, in terms of planning history, that the SPD provided for the use of a temporary access to allow for the continual phasing of the development. As such, he was of the view that these criteria did not constitute material harm.

The Chairman acknowledged the difficulty of weighing up the benefits and impacts of the proposal, he was mindful of the dis-satisfaction of the residents and he was of the view that the statements made by ward councillors and residents were compelling. He had been disappointed to learn of defective and poor workmanship by a developer. However, he was also mindful of the wider benefit for the Borough as a whole and the need for a five-year housing supply to be maintained.

As the discussion suggested that the Committee may be minded to refuse the application contrary to the officer's recommendation in the report the Chairman invited the Development Manager to indicate any implications for the Committee should the Officer's recommendation be overturned. The Development Manager explained there would be no specific risk to the Council but he reminded the Committee members of the need to weigh very carefully the planning benefits associated with the maintenance of the housing supply against the harm which needed to be fully identified.

A proposal, which was seconded, to refuse the application was lost (FOUR voted FOR and FIVE voted AGAINST).

RESOLVED (FIVE voted FOR and FOUR voted AGAINST) that: -

- (i) The Assistant Director Policy and Corporate be authorised to approve the planning application subject to the conditions set out in the report and the amendment sheet and subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within six months from the date of the Committee meeting, to mirror the completed agreement for application 121272 and include clauses to cover RAMS contribution, a TRO in relation to the bus gate (to be in place before the commencement of the development) and the potential for joint implementation of this application and application 121272.
- (ii) In the event that the legal agreement is not signed within six months from the date of the Planning Committee, Assistant Director Policy and Corporate be authorised, at their discretion, to refuse the application or otherwise be authorised to complete the agreement.

744 191581 North Colchester Urban Extension, Mile End Road, Colchester

The Committee considered a planning application for the removal or variation of conditions 7, 8, 28 and 62 following grant of planning permission (121272) at North Colchester Urban Extension, Mile End Road Colchester. The application had been referred to the Committee because of its association with application 183077 (called in by Cllr Goss) which had been recommended for approval.

The Committee had before it a report and an amendment sheet 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.

Alistair Day, Planning Specialists Manager, presented the report and assisted the Committee in its deliberations.

Chris Partner addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He explained that he was a resident of Bartholomew Court and was speaking on behalf of three neighbours. He explained that he had been aware of the proposed development to the rear of his property when he had purchased but his intention had been to move prior to its implementation. This had not been possible due to construction defects to his and neighbour's properties which the NHBC had attributed to the use of incorrect materials. Whilst the work to rectify the defects had now been programmed, the problems had been detrimental in emotional and financial terms. He considered that the proposal for the access road would further affect his ability to move from his property and that its value would be reduced. He acknowledged that the developer had no legal responsibility towards him but he considered there ought to be a moral obligation to assist.

Arwel Owen addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He referred to the attributes of the proposal and explained that he disagreed with the officer's conclusions set out in the report that sustainable development would be undermined. He explained that only 10% of dwellings in the overall permitted development would be accessed from the south; local journeys and journeys to the station would most easily be made on foot, bike or bus; the overall development was not car dependent and it did not promote unsustainable travel behaviour. He explained that new direct walking and cycling routes would be provided and the public transport provision to and within the site would be unaffected. He also referred to the National Planning Policy Framework (NPPF) which he considered the proposals did not contravene as there was no unacceptable highway impact and that the impact on the highway network was not severe. He therefore considered that the proposal continued to represent sustainable development, as such, refusal was not warranted and he asked the Committee members to approve the application.

Members of the Committee generally considered the proposal to be contrary to the overall concept of development of the Chesterwell scheme and grave concern was expressed regarding the prospect of 160 dwellings using Bartholomew Court for access on a permanent basis.

RESOLVED (UNANIMOUSLY) that the application be refused on the grounds set out in

the report.

745 190274 International House, Moss Road, Colchester

The Committee considered a planning application for approval of reserved matter following outline approval 180886, residential use of former car park to International House following change of use from B1a (offices) to C3 (dwellings) of International House, Moss Road, Colchester. The application had been referred to the Committee because when the outline planning permission was approved, the Committee requested that the reserved matters be referred to the Planning Committee for determination.

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.

746 191414 Former Wilkins and Sons Ltd, Factory Hill, Tiptree

The Committee considered a planning application for the erection of 49 dwellings and associated parking and landscaping (modifications and reduction in built footprint of last phase for 40 units of approved planning application 130245) at the former Wilkins and Sons Ltd, Factory Hill, Tiptree. The application had been referred to the Committee because it was a major application and material objections had been received.

The Committee had before it a report and an amendment sheet 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: -

(i) The Assistant Director Policy and Corporate be authorised to approve the planning application subject to the conditions set out in the report and the amendment sheet, agreement with the Agent/Applicant to the pre-commencement conditions under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 and delegated authority for officers to make changes to the wording of conditions as necessary and subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within six months from the date of the Committee meeting, to provide for:

- One affordable dwelling as an offsite contribution, this to be a three-bedroom unit by means of a commuted sum;

(ii) In the event that the legal agreement is not signed within six months from the date of the Planning Committee, Assistant Director Policy and Corporate be authorised, at their discretion, to refuse the application or otherwise be authorised to complete the agreement.

747 191525 Lane Farm, Lane Road, Wakes Colne, Colchester

The Committee considered a planning application for a barn conversion at Lane Farm, Lane Road, Wakes Colne, Colchester. The application had been referred to the Committee because the site was outside the adopted settlement boundaries in an area defined as countryside and related to the creation of a dwelling and, as such, was therefore a departure from the Local Plan.

The Committee had before it a report and an amendment sheet 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 subject to the conditions set out in the report and the amendment sheet.