

**PLANNING COMMITTEE  
5 MARCH 2009**

*Present :-* Councillor Ray Gamble\* (Chairman)  
Councillors Mary Blandon\*, Helen Chuah\*, Mark Cory,  
John Elliott\*, Stephen Ford, Wyn Foster\*, Chris Hall and  
Sonia Lewis\*

*Substitute Members :-* Councillor Richard Martin for Councillor Nigel Chapman  
Councillor Andrew Ellis  
for Councillor Peter Chillingworth\*  
Councillor Laura Sykes for Councillor Nigel Offen

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

**216. Minutes**

The minutes of the meeting held on 19 February 2009 were confirmed as a correct record, subject to the name of the public speaker in minute no. 214 being corrected to read Theresa Whiting.

**Councillor Ray Gamble (in respect of his acquaintance with a close relative of one of the objectors) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)**

**Councillor Chris Hall (in respect of his acquaintance with the public speaker, Sheila Warren) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)**

**217. 081879 25 Green Acres Road, Layer de la Haye**

The Committee considered an application for the construction of a detached two bedroom dwelling of one and a half storeys, with off street parking for two vehicles. The Committee had before it a report in which all information was set out, see also Amendment Sheet. The proposed garden area was 100 square metres which exceeded the Essex Design Guide standard and the two parking spaces proposed were considered acceptable in this location.

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

Sue Jackson, Principal Planning Officer, attended to assist the Committee in its deliberations.

Richard Shultz addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. Residents in the cul de

sac were concerned. Mr Shultz had plans to extend his daughter's bedroom and was concerned that there might be a loss of privacy. There were currently seven vehicles connected with the existing property at no. 25 but the proposal would leave no. 25 with just two parking spaces and he was concerned at the lack of off-street parking for the remaining vehicles. The driveway to the new property would be difficult to access off the private drive. A previous proposal for a garage at no. 25 was approved in 1995 with an attached condition that no trees or shrubs be removed. He was also concerned about light.

Sheila Warren addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. They currently have a number of vehicles but the number would decrease in the not too distant future when family members move on. There would not be any encroaching on any neighbouring properties as the two parking spaces for each property would be ample for their needs. The access for emergency vehicles would be kept clear. The private drive serves only nos. 23 and 25, not no. 21. The new dwelling was 1 ½ storeys and its design had been carefully considered so that there would be no overshadowing or loss of privacy. The two upstairs windows would be frosted glass to prevent overlooking to no. 27. The siting of the new property had been angled to prevent loss of privacy and to protect trees. Some trees had been lost, one from a lightning strike because it had been deemed unsafe, and another which their tree surgeon had recommended it be removed. Landscaping will be included.

Councillor Bentley attended and, with the consent of the Chairman, addressed the Committee. There were parking issues in the cul de sac. The design of the dwelling was satisfactory but there were concerns about the impact on the neighbourhood. Great crested newts were present in the village pond and at two properties on this estate. He urged the Committee to look at advice from the parish council. He recognised the need for homes but was concerned at the impact on village life.

Members of the Committee reiterated concerns regarding parking and it was suggested that a condition be imposed to prevent the start of construction until the current vehicles in excess of the parking provision for no. 25 be removed. Although the proposed design was considered attractive there were questions about whether it was in keeping with the surrounding development. There are other extensions nearby with dormer windows which may mitigate this proposal. A condition to ensure the storage of construction vehicles and materials on site was requested. Great crested newts were known to exist in surrounding gardens and an environmental impact study was considered appropriate because they were an endangered species. The need for more housing in villages was recognised. A query was raised regarding the construction of new dwellings in front of existing dwellings and whether there were any restrictions. The possibility of a covenant had been raised but the Committee were aware that this was an issue that residents had to raise with their own solicitors.

It was explained that the parking proposal for two spaces exceeded the standard which required a minimum of one space for two bedroomed properties. The Highway Authority raised no objection. It was not possible to impose a condition prohibiting construction until excess vehicles were removed. It was possible for a condition to require additional parking spaces to be provided and for a condition requiring

construction materials and vehicles to be parked on site. In respect of trees, the previous permission had not been implemented so the conditions had not come into effect. There were protected trees but these were not within the site. Whilst it was known that there were great crested newts present adjacent to the village pond, there was no evidence of their presence on this site. If this were an undeveloped piece of land there may be more of a case for an environmental impact study. A planning permission exists for a small extension at the front of a neighbouring property and for two storeys at the rear, but the presence of that extension does not affect consideration of this application. On the rear boundary both windows are shown with obscured glazing.

*RESOLVED* (MAJORITY voted FOR) that –

(a) Consideration of the application be deferred for completion of a Unilateral Undertaking to provide for a contribution towards Open Space, Sport and Recreational Facilities in accordance with the Council's Supplementary Planning Document.

(b) Upon receipt of a satisfactory Unilateral Undertaking, the Head of Environmental and Protective Services be authorised to grant consent with conditions and informatives as set out in the report, see also Amendment Sheet, and an additional condition requiring the storage of materials and contractors' vehicles to be parked on site or at no. 25 Green Acres Road, Layer de la Haye.

## **218. 082152 10 Manor Road, Wivenhoe, CO7 9LN**

The Committee considered an application for the construction of a detached two bedroom bungalow and the demolition of an existing single garage. 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 proposal upon the locality and the suitability of the proposal for the site.

David Whybrow, Development Manager, attended to assist the Committee in its deliberations.

David Tournay addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He lived opposite the application site. The road comprised well spaced bungalows and houses and terraced houses. He was concerned that the demand for on-street parking was already high because of the twenty four terraced houses opposite the site which did not have off-street parking and the change in demographics meant there were more families. The street was narrow and manoeuvring into existing drives was difficult. The proposed development did not allow sufficient space to turn within the drive. He wanted a more attractive design not this bland one.

There was some support from members of the Committee for the objector's views, particularly in regard to the bland design, and there were suggestions that the

applicant be asked to improve the design by the inclusion of detailing.

It was explained that there were a variety of plot widths. This was not the only plot of this size and it was considered that the size of the garden being adequate, the size of the plot being able to accommodate all of the parking and the lack of adverse effect on neighbours were all indicators that this was not an overdeveloped plot. It is a modest bungalow between two properties of similar character. It could be difficult to argue that it did not fit in that area. It was difficult to see how the design could be amended. The footprint, design and rhythm fitted within the street and there was not much that could be done to any elevation, windows or roof. There was not enough space to adjust or accommodate parking.

However members did not like the design, were unable to see any detail in the drawings and considered that it could be improved.

*RESOLVED* (MAJORITY voted FOR) that consideration of the application be deferred for an improved elevational treatment. The application to come back to the Committee for determination.

#### **219. 090032 Lorkin Daniel Playing Field, Lexden Road, West Bergholt**

The Committee considered an application for a variation of condition 09 attached to planning permission F/COL/00/1277 to vary the hours of use in such a way to allow West Bergholt Parish Council to determine the type of sport or recreational function that can be carried out and ensure the hours of use are reasonable; also permitted would be casual and one-off uses as well as regular supervised club use. The recommendation was for a temporary approval for one year. The Committee had before it a report in which all information was set out.

Sue Jackson, Principal Planning Officer, attended to assist the Committee in its deliberations.

Patricia McSweeney addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She was principally concerned that there would be no restriction on the hours that the facility would be in use. Unfortunately, not having complained has been interpreted as having nothing to complain about. Her house is 25 metres from this site and she was concerned about the noise from the site which had the potential to disturb her at any time, day or night. She considered that her amenity and that of her neighbours would be impaired. The facility already benefits a number of users and other similar facilities do not have unrestricted hours of use. She considered the proposal to be ill conceived and unacceptable.

John Gili-Ross, Chairman of West Bergholt Parish Council, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. Last year a policy plan was put in place and a driver of that initiative was to increase the facilities available for the village which included the MUGA facility. The needs of the community had changed over the years and condition 9 was

restricting how they wanted to use the facility. The parish council had managed other facilities in the area since 2004 which demonstrated their ability to manage this facility in a similar way.

Councillor Willetts attended and, with the consent of the Chairman, addressed the Committee. The current planning conditions on the MUGA effectively make the Tennis Club an exclusive user. The Policy Plan states clearly demonstrated that in the village there is a need for a wider range of games and facilities amongst younger people and this is well documented as evidence of this demand, but it has to be addressed within the context of its location and the reason for the condition being imposed in the first place. He is of the opinion that it is time to consider how this area is used because the current conditions are too inflexible. He supports the recommendation that the wider use be for a trial period for one year. There would be a need for a sensible management plan by the parish council which has managed other facilities well, but there is a need to demonstrate to residents that it can also manage this facility in such a way that it does not further detract from their quality of life. He asked that consideration be given to the matter of screening and noise prevention to protect neighbouring houses.

Members of the Committee supported the move to make more facilities available for young people, but there was a need to protect the neighbours amenity against any noise and flood lighting in their gardens. The parish council did not have a track record of managing this site with the new conditions and the temporary condition would allow time for the new level of use to be assessed. In other areas with a MUGA there has been an improvement in behaviour generally.

It was explained that the parish council were seeking to address the changing needs of the village for sporting activities. Impact on amenity is a separate issue which the Committee can rightfully consider. Condition 9 concerns fees and times of use; its removal allows unrestricted use in terms of times. Flood lighting could be dealt with separately from the application by consulting with Environmental Control. In respect of screening, there is a hedge along one side but a condition for additional screening can be included to reduce noise nuisance.

*RESOLVED* that the application to permit the management/use of the MUGA to be controlled by West Bergholt Parish Council as set out in their letter of 29 January 2009 be approved for a temporary period of 12 months together with a condition requiring a natural screen to provide sound attenuation to residents in Lexden Road along the front boundary.

## **220. 090079 Pond Cottage, Waldegraves Lane, West Mersea, CO5 8SE**

The Committee considered an application for a single storey extension to the south of Pond Cottage, a two storey extension connected to the north of the Pond Cottage via a glass link, and an outbuilding to the northern end of the property. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

*RESOLVED* (UNANIMOUSLY) that the application be approved with conditions and informatives as set out in the report, see also Amendment Sheet.

**221. Withdrawal of Reasons for Refusal // Application 081300, Former Cherry Tree Garage, Blackheath, Colchester**

The Head of Environmental and Protective Services submitted a report on the proposed withdrawal of reasons 3, 4 and 5 for the refusal of planning permission for the above mentioned development prior to a scheduled appeal against the refusal. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

David Whybrow, Development Manager, attended to assist the Committee in its deliberations.

*RESOLVED* (UNANIMOUSLY) that reasons 3, 4 and 5 for the refusal of planning permission for the above mentioned development be withdrawn prior to the scheduled appeal against the refusal.

**222. Legal Action // Land at Turnpike Close, Old Ipswich Road, Colchester**

The Head of Environmental and Protective Services submitted a report seeking authorisation to take legal action against the owners of a parcel of land, identified as Site B at the above location, to secure the removal of unauthorised vehicles and structures thereon in accordance with the terms of a Unilateral Agreement dated 8 November 2006 connected with application F/COL/06/1054. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

David Whybrow, Development Manager, attended to assist the Committee in its deliberations.

*RESOLVED* (UNANIMOUSLY) that legal action be authorised against the owners of a parcel of land, identified as Site B at the above location, to secure the removal of unauthorised vehicles and structures thereon in accordance with the terms of a Unilateral Agreement dated 8 November 2006 connected with application F/COL/06/1054.

**223. Enforcement Action // 56 Firs Road, West Mersea**

The Head of Environmental and Protective Services submitted a report seeking authorisation to take enforcement action against the owners of the above property to secure the cessation of the storage and sale of items from 56 Firs Road, West Mersea. The Committee had before it a report in which all information was set out.

Sue Jackson, Principal Planning Officer, attended to assist the Committee in its

deliberations. It was explained that the sale of items, mostly bicycles but also other items, was taking place in the front garden. Complaints have been received about this use which has been occurring since the summer of last year. The current use is more than an occasional use incidental to the enjoyment of a dwelling.

Paul Tucker addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the request for enforcement action. The occupant has received warnings about the sale of cycles, but it has now got out of hand. The occupant is constantly bringing cycles and other items into his front garden. The view from the speaker's house was akin to a scrap yard. In addition the occupant parks his cars on the grass verge in front of the garden as the driveway is blocked. The occupant is breaking the law by running a business from his garden.; this is a residential area. This action is a last resort.

*RESOLVED* (UNANIMOUSLY) that enforcement action be authorised for the cessation of the storage and sale of items from 56 Firs Road, West Mersea, with a compliance period of 2 months.

**Councillor Ray Gamble (in respect of his acquaintance with the public speaker, David Priest) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)**

**Councillor Andrew Ellis (in respect of his part ownership of a property 100 yards from the site) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)**

#### **224. Telecommunications Mast // Corner of Norman Way and Lexden Road, Colchester**

The Committee had considered the above application at its meeting on 22 January 2009 and resolved that prior approval was required and was refused. In addition the applicant was to be advised that the Local Planning Authority was willing to negotiate to secure a suitable alternative site in the locality. Prior Notification applications give the Local Planning Authority 56 days to consider the siting and appearance of telecommunications equipment. If the Local Planning Authority does not make a decision within that period, the development is considered to be approved and can be implemented.

Vincent Pearce, Planning Service Manager, attended to provide the Committee with details of events leading to the failure to respond to this Prior Notification application as required within the 56 days which had led to the granting of approval by default.

He offered his personal and unreserved apology to the Planning Committee, and his personal and unreserved apology to all the objectors who believed that on 22 January the Committee took a decision to refuse the mast. This Committee believed they had time in which to formally resist the mast but unfortunately an error made by the

Planning Service meant that the Committee was out of time in which to resist the mast. That fault sits with the Planning Service and not the Committee. He also wanted to extend an apology to ward Councillors Lewis and Hardy and the Portfolio Holder, Lyn Barton, because there has been a great deal of anger locally, some of which had been directed towards the Committee and ward members, but should rightfully be directed towards the Planning Service.

He had carried out his own investigation and the Audit Section of the Council has also carried out a separate investigation, both of which are now complete and a written report will be sent to the Head of the Service next week. There was a clear process error and a human error, which had compounded the situation with the result that the 56 days was miscalculated. The report goes into details, but effectively the errors deprived the opportunity to the Council to refuse the mast proposal. This appears to be the third occasion that the Council has made an error in respect of masts and this is the third occasion where a mast application has caused difficulty. The previous errors will be explained in the investigation report. It is not satisfactory that the will of the Committee and the views of the people of Lexden have been subverted. He is grateful to O2 and their agents who are willing to find an alternative site for the mast. They are under no compulsion to do so but they accept the feeling locally and wish to find a site that everyone finds satisfactory. He has provided a number of suggested sites which are currently undergoing technical analysis and expects a response within the next fortnight. During this time they will not install the mast and will review that position in the light of negotiations.

In response, the Chairman commented that the whole Committee and everyone who was involved was shocked, saddened and also very sorry about what has occurred. Vincent Pearce and his colleagues were working hard to find a solution.

Mr David Priest addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8. Residents and parents were relieved that common sense and local democracy had prevailed. They had been outraged at the receipt of letters informing them that the mast was approved by default and incredulous at the miscalculation of the dates. Now their focus is to prevent the installation of the mast from going ahead. He was grateful to the Council at senior level for the negotiations with O2 and the inquiry, but in regard to the process failures, he wanted an investigation into the decision by planning officers to recommend the application for approval in the light of the proximity of the site to the conservation area as one of the reasons for refusal. He believed it was usual for there to be a fence around the pole and the cabinet and he was concerned that a fence could be an eyesore; there was no mention of one in the officer report on the application. The immediate area around the cabinet is an emission danger zone which would raise further health concerns as hundreds of students pass daily. The footprint of the beam of maximum intensity had not been provided for this application, and yet it had been provided for the site at the Garrison Church. If the beam of maximum intensity extended to 200 metres this would flood two thirds of the St. Mary's site. He requested that the gathering of evidence leading to the officer's recommendation for approval be scrutinised. Residents were frustrated that there was little chance of a local challenge if negotiations fail; they will be relying on the Council to find another location but they also wanted to prevent any future applications for this site.



Councillor Hardy attended and, with the consent of the Chairman, addressed the Committee. He was grateful to Vincent Pearce for his apology and for the corrective action that has been taken. However, neither he nor Councillor Lewis had been involved in the investigation and there were aspects which involved ward councillors. He had asked the planning officer to inform him when the application had been received, but he had only been made aware of its receipt by a reporter in December. Although the objectors had been informed that the application had been approved by default, he had not. He considered that ward councillors should not be marginalised in this way and left unable to answer residents' questions. He asked that ward councillors be consulted before the remedial action was completed.

Councillor Willetts attended and, with the consent of the Chairman, addressed the Committee. He was of the opinion that there should be confidence in the planning process and in view of the number of occasions when there had been a process failure in this area he called for the resignation of the portfolio holder with responsibility for planning. He also considered it essential that both ward councillors be involved in any follow up from the investigation.

Vincent Pearce responded that he was more than happy to involve both ward councillors in any follow up from the investigation which will be reported early next week. There was no reason why the outcome of the investigation should not be put into the public domain as early as possible to make sure the process is transparent. In terms of the comments from Mr Priest, he accepted the comment that what had happened was not satisfactory. Whilst the error was entirely unintentional and could be fixed, nonetheless he recognised that residents were angry. On the question of the area of greatest intensity, there was information on this matter and it may be discussed in the course of a future application. There was no objection to extending the investigation to include all the points raised by David Priest.

Councillor Lewis thanked Vincent Pearce, David Whybrow and the Chairman for including her in discussions during the past week. She also wanted to reassure the residents of Lexden that she and Councillor Hardy had been in daily contact since the situation came to light. She welcomed the search for suitable alternative sites and understood and respected confidentiality in this respect. If any sites were deemed suitable by O2 they would have to go through the 56 day procedure but before that happened she wanted a meeting for herself and Councillor Hardy with Vincent Pearce to go through the process because in the event of another application they wanted to be aware of all the facts. She considered the previous decision was a good one and was extremely disappointed at the current situation. She hoped that work would continue to find an acceptable site. She asked whether two smaller masts would be a suitable alternative to one large one. On behalf of herself and Councillor Hardy she thanked the planning team, the Chairman and the Deputy Chairman.

Vincent Pearce explained that he would raise the matter with O2 but he suspected that there would be a loss of cover with smaller masts.

The Chairman commented that Councillors Lewis and Hardy had represented Lexden residents extremely well and a number of residents in turn did a good job in

presenting their case through Mr Priest. He stated that whilst it was not possible to guarantee that a suitable alternative site would be found, planning officers were working to try and resolve the situation. He thanked all those who had attended and especially David Priest and visiting councillors.

*RESOLVED* that the information conveyed by Vincent Pearce, Planning Service Manager, be noted and the views expressed by David Priest, Councillors Hardy and Willetts and the Committee be taken into consideration in the Council's efforts to resolve the matter.