

PLANNING COMMITTEE

19 MARCH 2009

Present :- Councillor Ray Gamble* (Chairman)
Councillors Mary Blandon*, Peter Chillingworth*,
Helen Chuah*, Mark Cory, John Elliott*, Stephen Ford,
Wyn Foster*, Chris Hall*, Sonia Lewis* and Nigel Offen*
Substitute Member :- Councillor Jackie Maclean
for Councillor Nigel Chapman*

(* Committee members who attended the formal site visit.
Councillor Hall was present for the site visit at minute no.
226 only and Councillors Chuah and Lewis took no part
in the site visit at minute no. 231.)

Councillor Gamble was not present for the determination of all applications agreed under the en bloc arrangements, minute nos. 228, 229 and 233-235 refer.

225. Minutes

The minutes of the meeting held on 5 March 2009 were confirmed as a correct record.

226. 082124 Essex Hall Road, Colchester

The Committee considered an application for the erection of a new care home and special needs unit with attendant gardens and car parking and the establishment of approximately 1.35 hectares of public open space. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

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.

Vincent Pearce, Planning Service Manager, and John More, Principal Planning Officer, attended to assist the Committee in its deliberations.

Mrs Stuttle addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She referred to the outline planning permission which was approved in 1988 for just 9 flats; on that site plan this particular area was marked not to be used for buildings and to be retained for open space. The reason given was that the area was important and to protect the flood plain. That area is part of this site for a care home, so rather than establish an open space this application is denying a public open space. Also negative comments were made about increased traffic flows in 1984 so that may be tenfold today. The cycleway encroaches on visitor parking. The short cut to this quiet area is the reason for CCTV provision. Photographs taken in February show a lake on the flood plain

and eradication measures for Japanese Knotweed on the site has not been successful. She asked if the change in levels would affect the flood plain and where would it drain. She considered the situation to be totally unacceptable and commented that the area should be replanted for the use of residents and for people to enjoy; regeneration does not mean all areas should be developed. Residents were not formally notified of this planning application.

Mr Wilson addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. This was a carefully considered approach suited to the site and a good start for the regeneration area. This is an up to date care home for the elderly which positively encourages the use and enjoyment of the surrounding area. The building encourages residents to continue with their interests and hobbies and from a planning point of view the proposal fits into the surrounding area. Any detrimental effect on amenity for local residents would be minimal. The proposed building will be 45 metres distant and 2.5 metres lower than the flats. The traffic generated from the home is much less than it would be from a residential development. Detailed proposals for the minimisation of any flood risk and decontamination of the site had been submitted. The cycleway had been added at the request of the Borough Council.

Councillor Barlow attended and, with the consent of the Chairman, addressed the Committee. The Environmental Agency had withdrawn their objections on flooding grounds but he asked why this application was satisfactory in this respect when previous applications were not. The application should have been informed by an ecological survey and this still needs to be undertaken. Parking was insufficient for this proposal; there are already parking problems in the area with the station being so close and more areas may be concreted over for parking. The cyclepath represented a new connection from the station to Westway which opens up this area for crime; Claremont Heights already suffers from crime. He was surprised that only a few residents had received notification of this proposal, and those who had responded were not aware that the meeting was taking place.

It was explained that this was a full planning application which was not bound by the terms of the earlier outline permission. Standard consultation procedures had been followed for neighbouring dwellings to the site but the Essex Hall development would not have been consulted as a whole. This site was less susceptible to flooding than the area referred to by Mrs Stuttle. A flood risk assessment had been submitted with the application which included raised areas for a refuge and a lower area for compensatory flood storage capacity. Reports on contamination had been submitted and the contamination officer was satisfied; conditions had been added to ensure there would be no risk at a future date. Parking provision was thirty spaces, twenty-one for the care home and nine for the special care unit, plus three spaces for people with disabilities and ten spaces for cycles. This site cannot compensate for existing traffic problems in the area. The cyclelink was in the applicant's ownership. Construction techniques to avoid harm to trees would be used.

Members of the Committee were aware of the history and previous use of the site and of the traffic problems and local concerns. They were also aware that the planning policy position was clear that the proposal was satisfactory and suitable for the site.

This facility will fulfil a very serious need in the area and would make a difference to this group of the population. It would cause fewer problems and less traffic than residential units on the site and it was noted that the Highway Authority had not objected in spite of the narrowness of the road; appropriate signage was suggested. There were advantages to residents to have a well landscaped open space. Generally there was support for the use but the need for elderly people to use lifts to evacuate was not considered ideal; residential accommodation should be on the ground floor. An explanation regarding the users of the special care unit was requested. Parking was raised as an issue but it was recognised that the rail station and main bus routes were close to the site. Some concerns about flooding were expressed.

It was explained that whilst the Environment Agency do not give any reassurance that the area will not flood, they have suggested measures to mitigate the risk and had suggested suitable conditions and now appear satisfied. In response to concerns regarding staffing levels, it was explained that the planning system has no remit to control the operation of healthcare units. In respect of traffic and parking, the Council's own parking standards seek to encourage other modes of transport; this site is next to the railway station and bus stops, and within walking distance of the town centre, and could be one of the more sustainable sites in the borough. The cycleway had been required by the Planning Policy Team. The Highways Authority are satisfied. There could be management issues in terms of flat owners, and a requirement to produce a travel plan as part of Section 106 Agreement would demonstrate how the operators of the site, as employers, will encourage staff to use alternative modes of transport. If the cycleway were located more centrally it would create an area between dwellings and the cycleway where there would be less activity which might encourage antisocial behaviour.

RESOLVED (MAJORITY voted FOR) that –

(a) Consideration of the application be deferred for completion of a Legal Agreement to secure the following matters:-

- the transfer of the Open Space with an appropriate commuted sum;
- the provision of the north/south cycleway; and
- the provision of a Green Travel Plan for staff.

(b) Upon receipt of a satisfactory Legal Agreement, 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.

Councillor Peter Chillingworth (in respect of his professional association with the consultant who prepared the report for the Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7 (3)

227. 072007 Fields Farm Road, Layer de la Haye, CO2 9JN

The Committee considered an application for a proposed two bedroom residential dwelling in association with an established livery and riding school business. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

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.

Vincent Pearce, Planning Service Manager, attended to assist the Committee in its deliberations. The principal rooms of the new, modest, brick built property, would be facing out into the existing yard. In respect of new permanent agricultural dwellings, the Government guidance comprises a function test and a financial test. The functional test was to establish that a property was required because the use of the site justified 24 hour supervision and that the accommodation could not be provided elsewhere. The consultant had confirmed that this test was satisfied. The financial test was to establish that the business has been in existence for a number of years and the profits generated were sufficient to prove that the business was viable. Conditions would be imposed to ensure that the house was tied to the equestrian business. The remainder of the paddock area would be restricted to grazing and no use by the riding school would be permitted. The applicant rented fields used for grazing and the view was that it was not necessary for such land to be in the ownership of the householder. The financial test that the business is viable has also been satisfied. The applicant has lived for four to five years in a mobile home on site and it is considered unreasonable to extend that time.

Barry Pettican addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He believed that the farm with the site paddocks were not included in the permission of 2007, so there would be no option but to refuse the application as nothing has changed. Capital for the new dwelling must come from the business income, but the house will be funded by the sale of a property. He drew the Committee's attention to paragraph 9.17 of the report in respect of the impact of the letting agency on the business case for the equine use. He had already waited for three years for a planning application to be made. Permanent approval avoids future enforcement action. In May 2008 a mortgage offer was requested but never provided. Whether or not there was a mortgage, Policy CO13 requires that it is a stand alone equine business without subsidy from any other financial source.

Mrs Tootal addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. They bought Barn Stables in 2001. They provide teaching for adults and children, riding for deaf children and livery. The operation is inspected annually by the Council. In 2004 they obtained permission for the caravan, therefore the need for a dwelling on site has been established. The business has been scrutinised and considered to be viable. The new property would be accessed via the stable yard. She had already entered into a Section 106 agreement for open space.

Members of the Committee commented that approval has been given for a mobile

home and that must have satisfied the test at that time and as nothing has changed since that time the functional test still stands. Some horses belong to other people so there is an animal welfare issue; the business cannot function unless there is 24 hour on-site supervision. Most of the objector's points relate to the financial test. The accounts show that the applicant could make her living from the business and also fund the erection of a modest sized dwelling. Two additional conditions were suggested, one to enable an employee to be permitted to live in the dwelling, and the other to ensure that the mobile home should be removed within a month of the occupation of the dwelling. If it is not possible to allow an employee to live in the dwelling at this stage, the applicant can submit an application in the future to remove the relevant restrictive. The test requires the business to fund the dwelling which it can do. Most objections should include reasons which relate to a proposal being contrary to policy and there seem to be no such grounds for refusal in this case. The property will be more pleasing than the mobile caravan and it is tied; Councillors know how difficult it is to remove such a tie.

It was agreed that it was sensible to impose a condition for the removal of the mobile home. A condition to enable the dwelling to be occupied by an employee has been deliberately removed because of the tension which existed in this case. The applicant's drive, enthusiasm and dedication to the riding school fulfils part of the reason of the functional test.

RESOLVED (MAJORITY voted FOR) that consideration of the application be deferred for the following matters:-

(a) Receipt of an appropriately scaled drawing showing the area of land required to form the domestic curtilage of the proposed house and the extent and position of the new house, all to the satisfaction of the local authority.

(b) Completion of an appropriate obligation/s under Section 106 of the Town & Country Planning Act 1990 (as amended) is/are satisfactorily entered into to ensure that:-

- the occupation and ownership of the proposed house is only by persons owning and operating the associated equestrian business on the adjacent site and the equestrian business is not sold, let or otherwise disposed of independently of the permitted house once implementation of that planning permission has commenced; and
- provision is made for an appropriate contribution towards Open Space, Sport and Recreational Facilities in accordance with the Council's Supplementary Planning Document.

(c) Upon receipt of an appropriately scaled drawing and a satisfactory Legal Agreement, the Head of Environmental and Protective Services be authorised to grant consent with conditions and informatives as set out in the report together with an additional condition to ensure the removal of the mobile home once the dwelling is completed.

228. 082132 Nayland Road, Great Horkesley

The Committee considered an application for the erection of a one bedroom bungalow on a small backland site that has been created to the rear of properties fronting Tile House Lane to the north, Elstar Lane to the west and south, and adjoining the garden of a property in Tile House Lane to the east. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

RESOLVED (UNANIMOUSLY) that, subject to the deletion of the requirement for a contribution towards Open Space, Sport and Recreational Facilities, the application be approved with conditions and informatives as set out in the report, see also Amendment Sheet.

229. 082152 10 Manor Road, Wivenhoe, CO7 9LN

The Committee considered an application for the construction of a new two bedroom detached bungalow and the demolition of the existing single garage. The Committee had before it a report in which all information was set out. This application was deferred from the previous Committee meeting for an improved elevational treatment to be negotiated, see also Amendment Sheet. The Committee made a site visit prior to the last Committee meeting, see minute no. 218.

RESOLVED (UNANIMOUSLY) 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.

230. 090064 First and Second Floors of 15, 17 and 19 Head Street, Colchester, CO1 1NX

The Committee considered an application for a change of use of the first and second floor to A3/A4 use. The ground floor has A3 use approved. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

John More, Principal Planning Officer, attended to assist the Committee in its deliberations.

Mr John Egan, on behalf of the Colchester Civic Society, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He asked that the Committee reject the application. The area was not

short of drinking establishments and he mentioned a number of others which were nearby. This is not a stress area. This establishment already has A3 use on the ground floor and if this application was granted there would be A4 use upstairs. He referred to a new standard developed by the Civic Trust equivalent to the Green Flag Award and hoped that Colchester would embrace the new standard. He did not believe that another drinking establishment would contribute positively to the town centre. There are no residential properties adjacent to the site, but there are many in the vicinity. Noise does emanate from such establishments and conditions are all very well but they need to be enforced.

Councillor Barlow attended and, with the consent of the Chairman, addressed the Committee on behalf of ward Councillor Spyvee. His concerns related to residents' amenity and a change of use referred to in the report which was allowed on appeal. He regarded the A3/A4 use situation as bizarre, and there was a lack of information on how much will be devoted to A3 use. He speculated that this could be a back door route to another pub which would cause a lot of problems in the area and distress to residents. He urged the Committee to reject this application or at least the A4 part.

Members of the Committee had considerable sympathy with Councillor Barlow's comments. There were a number of concerns: the application appeared to be a request for drinking on the first and second floors and there was some confusion about how the mixed use would operate; this could be a pub by the back door; the extra space would be a threefold increase; a query regarding a requirement for a smoking area or the possibility that people would smoke out on the pavement; and residents' amenity. This was an important location and more information was requested on the Purple Flag. Members queried whether the application could be refused on the grounds of the percentage of non-retail use in the street being exceeded. Other members were concerned at the prospect of an appeal against a refusal being upheld. The licensing authority had more power to control this type of operation and the Committee wanted to convey their views to the licensing team.

It was explained that A3/A4 mixed use establishments tended to serve food in the daytime and drinks in the evening. Whether or not it was A4 by the back door, the application is for a mixed use. They were difficult to control in terms of hours of different uses. Conditions could be put in place to ensure amenity of residents. The report mentions that there are no Council tax payers in adjacent properties but is silent on whether there are any residents in the area. The High Street is in a different policy area in terms of retaining a percentage of A1 retail street frontages; this is an upper floor area and that policy is not applicable to this application. The approved hours of use were specified by the Inspector as set out on the Amendment Sheet. The planning authority and licensing authority each have control over clearly defined aspects of this type of establishment and the planning authority cannot control that which another authority controls. Reasons for refusal need to be supported by planning policy and there appear to be no planning reasons applicable to this application. Vincent Pearce, Planning Service Manager, suggested that the Committee's concerns could be passed to the licensing team but they would need to be couched in appropriate terms, for example, a lack of smoking facilities or whether people leave the premises in an orderly manner, neither of which can be controlled by the planning system.

RESOLVED (MAJORITY voted FOR) that –

- (a) The application be approved with conditions and informatives as set out in the report.
- (b) Planning officers and licensing officers liaise as suggested by Vincent Pearce, Planning Service Manager and set out above.

Councillor Helen Chuah (in respect of her former professional acquaintance with Heather Castillo, the manager of The Haven Project) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7 (3)

Councillor Ray Gamble (in respect of his former association with Mr Sven Farmer as members of the Council's Standards Committee) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7 (3)

Councillor Sonia Lewis (in respect of her property being adjacent to the application site) declared a personal interest in the following item which is also a prejudicial interest pursuant to the provisions of Meetings General Procedure Rule 7(10) and she left the meeting during the Committee's consideration and determination of the application.

231. 090078 1 Glen Avenue, Colchester, CO3 3RP

The Committee considered an application to remove Condition 06 attached to planning permission F/COL/06/0065 which restricts the permission to a temporary permission expiring on 1 March 2009. The use has been operating for 4 years under temporary planning permissions and a permanent permission was now sought. 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.

John More, Principal Planning Officer, attended to assist the Committee in its deliberations.

Sven Farmer, on behalf of local residents and an immediate neighbour of the site, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He objected strongly to the application for a permanent permission, but he would not object to a further temporary period of 3 to 4 years duration. The operation, activities and treatment of residents has introduced an extensive and intensive business use in the heart of Lexden; the land use of the site is residential. The twelve car parking spaces were fully occupied. The background noise is greater than from a normal residence. The current

management, styles, personnel and policies of the Haven Project make every effort to reduce its impact on neighbours. This proposal was well meaning but would not provide the neighbours with the safeguards and controls that the rolling programme of temporary approval does. He urged the Chairman not to approve this application, but asked the applicant to reapply for temporary approval.

Heather Castillo, the current manager of The Haven Project, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. They originally had a three year approval with a condition to assess the impact on the neighbourhood. She considered they were good neighbours; they keep in touch and invite their neighbours to sing carols with junior choristers in the church at Christmas. They feel part of the community in Lexden. They have a number of managers and firm rules and structures which will remain. There seems to be one objection from a neighbour and they have ceased to use the side of the garden which backs on to Mr Farmer's house. There are no objections from any other neighbours and she considered that objection was not valid. No other care centre in the town is subject to a temporary condition. This is the third time they have applied for planning permission involving stress and anxiety, a planning fee and renegotiation with the landlords which gives them an opportunity to do a rent review. She believed it was neither right nor fair.

Councillor Hardy attended and, with the consent of the Chairman, addressed the Committee. He had it on the best authority that the Haven Project is a good neighbour and there is agreement with all the claims made in the covering letter about the Project being model neighbours. He had two concerns in the context of business takeover and management changes. He accepted the explanations given by planning officers in the report and the neighbours will take comfort from Condition 2. He is concerned that changes in management are not satisfactorily covered and was surprised that there is no protection. He hoped that the current management team will continue in post. Mr Farmer mentioned overflow parking on Glen Avenue which does sometimes occur he considered it would be useful if the double yellow lines were extended.

Members of the Committee were encouraged to hear such good comments and considered it a pity that there was one objector on the basis that something might happen in the future. There was support for Councillor Hardy's proposal to write to the Highway Authority and ask them to review the on street parking restrictions in this area which causes congestion on the corner.

RESOLVED (UNANIMOUSLY) that –

- (a) The application be approved with conditions and informatives as set out in the report.
- (b) The Highways Authority be requested to add this part of Glen Avenue to a review of on street parking restrictions.

This application was withdrawn from consideration at this meeting by the agent/applicant.

Councillor Ray Gamble (in respect of his membership of the Governing Body at St. John's Primary School) declared a personal interest in the following item which is also a prejudicial interest pursuant to the provisions of Meetings General Procedure Rule 7(10) and he left the meeting during the Committee's consideration and determination of the application.

233. 090126 Former Caretakers Bungalow, Clay Lane Grove, Colchester, CO4 0HH

The Committee considered an application to vary Condition 04 attached to planning permission C/COL/03/1841 to extend the opening hours of a day nursery at the premises from 8pm until 4pm to 8pm until 6pm on schooldays. 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.

234. 081644 Weston Homes Community Stadium, United Way, Colchester, CO4 5UP

The Committee considered an application to vary Condition 37 attached to planning permission O/COL/01/1622 to allow the use of the stadium's internal concourses for a farmers' market on the first Thursday of each month; an annual Christmas Fayre; and betting booths for match day betting within each stand.

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 separate conditions and informatives for the farmers' market, the Christmas Fayre, and match-day betting as set out in the report.

235. 082144 104 Oak Road, Tiptree, Colchester, CO5 0NA

The Committee considered an application for a change of use and conversion of an existing car port to create two consultation offices and associated waiting room and w.c. facilities for use as a private cosmetic clinical practice, supplementary to the applicant's London based practice. The Committee had before it a report in which all information was set out.

RESOLVED (UNANIMOUSLY) that the application be approved with conditions and informatives as set out in the report.

236. Legal Agreement // 26 Hythe Quay, Colchester

This item was withdrawn from consideration at this meeting by the Head of Environmental and Protective Services.

237. Legal Agreement // St James Park Estate, Mile End, Colchester

The Head of Environmental and Protective Services submitted a report seeking authorisation to agree a Deed of Variation to an existing Section 106 Agreement in respect of the proportions of social rented units and shared ownership units. The effect of the application would be for eleven 2 bedroom flats and one 1 bedroom flat, all currently designated as shared ownership units, to be designated as rented units.

Councillor Goss attended and, with the consent of the Chairman, addressed the Committee. He was not against the proposal but had an issue regarding vandalism to homes which have only just been finished in Mile End Ward. A great deal of his case work comes from antisocial behaviour and outstanding repairs. He referred to damaged and dangerous drain covers and a fascia on the front of a building covered in graffiti. It had taken two years for a social landlord to repair a damaged front door. A bin store is full of rubbish including a tumble dryer. There are two or three residents in some of the flats who are frustrated at poor service and the conditions they have to live with. It seems that if social landlords chose not to undertake repairs there is little that can be done about it. He requested that the Planning Committee write to relevant social landlords requesting they improve their maintenance record.

It was explained that it may be possible to encourage them to improve their management, and Councillor Goss was asked to provide a list.

A member of the Committee had a similar situation on the former garrison estate in the Elmwood Avenue area. He and two residents demanded that a senior representative of the responsible company walk around the area to help them understand the situation. This action was effective in resolving the issues.

RESOLVED (UNANIMOUSLY) that –

(a) The Deed of Variation to an existing Section 106 Agreement as described in the report by the Head of Environmental and Protective Services be endorsed.

(b) Councillor Goss be invited to submit a list of repairs and a senior member of the management team of the relevant housing associations be invited to view the problems in the area.