

**PLANNING COMMITTEE
5 FEBRUARY 2009**

Present :- Councillor Ray Gamble* (Chairman)
Councillors Mary Blandon*, Nigel Chapman*,
Peter Chillingworth*, Helen Chuah*, Mark Cory,
John Elliott*, Stephen Ford, Wyn Foster* and Chris Hall

Substitute Members :- Councillor Richard Martin for Councillor Sonia Lewis
Councillor Peter Higgins for Councillor Nigel Offen

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

197. Minutes

The minutes of the meeting held on 22 January 2009 were confirmed as a correct record.

Councillor Richard Martin (in respect of his professional relationship with the applicant's agent) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

198. 082101 Park Farm, Coopers Lane, Dedham, CO7 6AX

The Committee considered an application for the provision of a manege on part of grassland to the north-west of existing stables and other associated buildings. The area of the parcel of land is given as 0.08 hectares and would be enclosed by a timber post and rail fence with a surface comprising rubber strip over sand, gravel and stone. 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.

199. 082064 Stanway Green Lodge, Stanway Green, Stanway, CO3 0RA

The Committee considered an application for an extension and alterations to upgrade existing facilities of the care home for elderly residents to current standards and to increase the number of residents from 27 to 30. This application was a resubmission of application 081655. The Committee had before it a report in which all information was set out.

The Committee had made a site visit prior to the meeting on 22 January 2009 in order to assess the impact of the proposal upon the locality and the suitability of the proposal for the site. However, the application had been withdrawn from

consideration at that meeting as it had not been possible to inform all objectors that the application was being considered.

Bradly Heffer, Principal Planning Officer, attended to assist the Committee in its deliberations. It was explained that the key issue was the impact on amenity at the property known as Tabors. It was proposed that a replacement hedge would be planted along the boundary with Tabors at two metres high with the capacity to grow to three metres. In respect of noise nuisance, any incidents could be controlled by Environmental Control.

Ms Conner addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. The footprint of the building had increased by 36%. She quoted planning policy UEA 11, 12 and 13 which applied to this development in respect of its overbearing effect on neighbouring properties; the scale not being in harmony with its setting and a cramped appearance. There was an unacceptable reduction of the garden area and the building would sit uncomfortably in its surroundings. The parish council strongly objected on the grounds of the lack of privacy, undue overlooking and overshadowing. There would not be 35 metres between inhabitable rooms. She strongly disagreed that the screening would be adequate; it would have a negative effect on neighbours property in summer months. The trees make a contribution and should be protected, and some of the trees had been planted as a result of previous consents. In summary, the hedge screen would be inadequate; the proposal was cramped, the site was over developed; there was harm to the neighbours caused by the negative outlook and loss of privacy; the proposal was unreasonable; and she urged that it be refused.

Ms Morehen addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. Key areas have been important in the past 5 years and the facility had been graded as 'good' for 2007. When older people live in a residential home there can be a loss of independence and choice. However the provision of someone to promote events and provide activities encourages social activities with friends and relatives when they visit. Currently activities have to take place in the dining room and not in a purpose built dayroom; which is not ideal. These activities give residents the opportunity to achieve social aspirations, and take part in hairdressing, music, etc. in a purpose built space. The atmosphere can be relaxed and allow residents time to enjoy the activities, in contrast to having to clear the area for mealtimes.

Councillor Scott-Boutell attended and, with the consent of the Chairman, addressed the Committee. She had called in the application because she wanted the decision to be open and transparent and give all parties the opportunity to hear both sides.

It was explained that the development would enable each resident to have their own bedroom rather than a sharing arrangement. There were no standards in planning terms in respect of amenity and overdevelopment of residential homes, but there may be standards required by Social Services. The authority had to consider each of these applications on its own merits. The key issue was the acceptability of the proposal and how appropriate was the method of mitigating its impact on neighbours.

In this case the mitigation was considered appropriate and the proposal therefore acceptable. There would be places where trees were removed but it was considered that the new hedge would be sufficient to prevent overlooking and loss of amenity, bearing in mind the proximity of gardens and the fall in land levels. The previous appeal had been lost because the majority of the additions were two storeys.

Some members of the Committee considered this to be an essential facility for the community. It was a well managed, long established home which lacked some facilities and this application would improve those facilities. The Committee had made a site visit which included the garden and first floor of Tabors. The new hedge would improve the protection throughout the year; currently the boundary was bare because of the time of year. It was recognised that the loss of trees was always a problem, but the loss has to be balanced against the provision of a new hedge and the amenity of residents. The residents in Tabors were the most seriously affected by the removal of the trees which would be most noticeable in the outlook from the first floor. It was expected that the outlook for residents in Tabors from the living areas would be improved when the new hedge was established.

Other members of the Committee had concerns regarding the cumulative effect of a succession of extensions to the current position where the residential home was now out of proportion to all the surrounding private properties. In respect of planning policy DC1, there were concerns whether a property like this could have regard to the local area. It should be acceptable in terms of its design. Care in the community was important and appropriate facilities need to be provided. It was believed this was a good residential home where people were happy. However, some members considered the home to be in the wrong place. It should have been developed in a more appropriate place but the facility was established in its current location and the most should be made of it. There would be an increase in visitor numbers and there should be a proportionate increase in parking spaces. In regard to particular existing difficulties, smells and noise from the residential home have built up over the years, in particular problems with night time noise, e.g. cleaning at night and a note should be added to express the Committee's concern in this respect.

It was explained that there was an increase of two parking spaces from nine to eleven. Parking standards required twelve spaces, a shortfall of one space. In terms of incremental growth, as a residential home it does not fall within the rules for dwelling houses. At the rear there were only single storey extensions. Undoubtedly the building has a greater impact now than when it was a single dwelling house. The officer view was that this scheme was satisfactory. There had been a proposal to infill with a second storey on both sides which had been considered by the Planning Inspector to be inappropriate. As there were no Permitted Development Rights it was not possible to withdraw them; neither would it be possible to prevent further applications being made in the future. If and when they were submitted, they would need to be determined on their own merits as is the case with this proposal. A similar situation had arisen elsewhere and in that case it had been decided that the site had reached its capacity and no further development should be permitted. A note could be added to any permission to indicate that further proposals were unlikely to be regarded favourably.

RESOLVED (MAJORITY voted FOR) that the application be approved with conditions and informative as set out in the report, also see Amendment Sheet. Informative notes be added to indicate that the Planning Committee note the incremental expansion of this site and consider that further additions to this building are unlikely to be acceptable. Also suggestions of noise from the premises at unsocial hours are noted and the applicants are required to take steps to reduce this problem as appropriate.

200. 081947 143 Coast Road, West Mersea, CO5 8NX

The Committee considered an application for the removal of a wall and its replacement with posts and chain. The Committee had before it a report in which all information was set out, also see Amendment Sheet.

Bradly Heffer, Principal Planning Officer, attended to assist the Committee in its deliberations. It was explained that whilst objections regarding encroachment onto the village green and rights of access were important legal issues, they were not matters which were of concern in planning terms. Compliance with any relevant legislation would be necessary but was not a matter of concern for the Committee.

Councillor Steve Vince, West Mersea Town Council, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. The Town Council preferred the posts to be rounded and made of wood without a chain linking them. Such an arrangement would prevent vehicle access whereas a chain would infringe on other relevant legislation and be dangerous for pedestrians as there was no footpath to enable them to avoid traffic. In addition the area is sometimes flooded and if the chain was submerged it could be a hazard. The Town Council preferred a post-only scheme.

Members of the Committee were aware that they needed only to consider the effect of the scheme on the Conservation Area. The Town Council's views were noted and the comment was made that if the loop of the chain was no higher than the existing wall, then no improvement would have been achieved. There was no information available on whether this area was subject to flooding.

It was explained that the post and chain was a traditional treatment on a boundary and whilst the proposal as submitted was appropriate, it would also be possible to consult with the applicant to achieve a robust boundary which could take account of the views of West Mersea Town Council. Members of the Committee suggested that a post-only barrier as suggested by the Town Council be pursued.

RESOLVED (UNANIMOUSLY) that –

(a) Consideration of the application be deferred for negotiation on an amended scheme comprising white timber posts set closer together without chains.

(b) Upon agreement of a satisfactory scheme, the Head of Environmental and Protective Services be authorised to grant consent with conditions and informatives

determined by the Head of Environmental and Protective Services.

(c) In the event that there is no agreement of a satisfactory scheme the application be brought back to the Committee for determination.

201. 081997 Dawes Lane and East Mersea Road, West Mersea

The Committee considered an application for the construction of a new access to an allotment site. The Committee had before it a report in which all information was set out, also see Amendment Sheet.

RESOLVED (UNANIMOUSLY) that –

(a) Subject to the Highway Authority having no objections, the Head of Environmental and Protective Services be authorised to grant planning permission with conditions and informatives as set out in the report.

(b) In the event that objections are received from the Highway Authority, the Head of Environmental and Protective Services be authorised to refuse the application for reasons identified by the Highway Authority.

202. 082102 Turkey Cock Lane, Eight Ash Green

The Committee considered an application to regularise the current use. The extant permissions restrict retail activity in the barn to antiques, pine and used furniture and in the other building to the sale of antique and secondhand furniture. There was also a personal condition for the use of the barn but not on the other building. The Committee had before it a report in which all information was set out, also see Amendment Sheet.

Bradly Heffer, Principal Planning Officer, attended to assist the Committee in its deliberations. He explained that the sale of new furniture was carried out in both buildings and that it was appropriate to take into consideration the previous planning history of the site. It was confirmed that the building was not a listed Essex barn.

Mr Franklin addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. There were doubts as to the intended use. The business was advertised as a wholesale furniture trader on the internet and advertised elsewhere as suppliers to the trade. There has been an investigation of activity on the site. This application is for full retail use of the site. Despite planning conditions being imposed, if this application was granted the planning conditions could be challenged. He asked for a refusal of the application on the basis of a retail use in the countryside being contrary to planning policy. New furniture sales could be carried out at the applicant's new retail outlet at Stanway.

Mr Gittins, agent, addressed the Committee pursuant to the provisions of Planning

Committee Procedure Rule 8 in support of the application. This was an ideal site for retail; old furniture in one barn and new furniture in the other building. This was not a hobby use; it has been a full time business for at least 10 years or more comprising an eclectic mix of furniture. It was extremely low key relative to the neighbouring business which generates far more traffic. There was never more than two delivery vehicles per month which was reduced to one per month because of more lightweight vans visiting more frequently. This small family business is well established and as far as legal aspects are concerned the age of the furniture is not a material planning consideration. There is no intention to operate a large retail furniture store in this location.

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

203. 082110 and 082111 342 London Road, Stanway, CO3 8LT

The Committee considered an application for advertisement consent, 082110, and an application for listed building consent, 082111. The Committee had before it a report in which all information was set out, also see Amendment Sheet.

RESOLVED (UNANIMOUSLY) that, both applications 082110 and 082111 be approved with conditions and informatives as set out in the report.

204. 081848 Halstead Road, Eight Ash Green, Colchester

The application was withdrawn from consideration at this Planning Committee meeting by the Head of Environmental and Protective Services to enable the applicant to provide further information regarding their rights of access to Blind Lane and an amendment to the application site boundary.

205. 081938 3 Priory Street, Colchester, CO1 2PY

The Committee considered an application for the continued use of the building and rear amenity area for worship. The former garden of 3a Priory Street also forms part of this application. The Committee had before it a report in which all information was set out, also see Amendment Sheet.

Alistair Day, Principal Planning Officer, attended to assist the Committee in its deliberations.

Ms Whiting addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She invited the Committee to visit the site which was in a predominantly residential area. The application sought to change the nature and character of the area. The site was used for open air worship and funerals with up to 150 people present. This will have an

overbearing effect on neighbours particularly at no. 4 Priory Street. which was visible from all windows at the rear of properties. Activities of people in gardens may be considered disrespectful to mourners. The area of concrete should not be there. The area is steeped in history and this activity does not improve the area in any way. It will cause detriment rather than improvement. The Committee was requested to reject the application.

Councillor Barlow attended and, with the consent of the Chairman, addressed the Committee. His main concern was that it would set a precedent. It is a predominantly residential area and it is within the Conservation Area. Removing the hard surface would be a positive move because it is an eyesore. There were not enough details to comment on, for example the separating wall and planting. There were positive aspects in the extra conditions but he would like to see more detail.

It was explained that there would be a change in the character of the Conservation Area. There are no external changes to the building at all and its appearance remains as a traditional Victorian dwelling. It was proposed that a low wall be erected between nos. 3 and 4 Priory Street. The applicant is proposing to put a wall around the site with planting. There have been no major problems in terms of impact on the neighbour because of the use of the site.

Members of the Committee expressed a view that this site started as a small activity and has now increased in use. Members of the Committee wanted the opportunity to visit the site. Reference was made to the Catholic Church which had its own car park and after services people congregate outside.

RESOLVED (UNANIMOUSLY) that the application be deferred for a site visit and for additional information to be provided in respect of boundary treatments, levels and the numbers of persons using the buildings.

206. 082051 Chapel Road, Tiptree, CO5 0RA

The Committee considered an application for a new 15 metre mini macro telecommunications column with a small headframe with six antennae and four new Flexi BTS units on a pole mounted support column on the existing tower base to replace the existing 15 metre telecommunications column and three spine mounted antennae. The development is required to improve the network coverage and the use of the existing site is seen as the best environmental solution with no requirement for a new separate stand-alone structure.

The Committee had before it a report in which all information was set out, also see Amendment Sheet.

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

Councillor Ray Gamble (in respect of having patronised the establishment) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

207. Injunctive Action // Roxis, 118 High Street, Colchester, CO1 1SZ

The Head of Environmental and Protective Services submitted a report seeking authorisation to take out an injunction to restrain the continued use of the ground floor of 118 High Street, Colchester as a restaurant/café in breach of a planning condition. The premises was trading as Roxi. In 2002 the premises had been given planning permission for the change of use of the basement to A3 use, Restaurant; the first floor to B1 use, Office; and the second floor to residential use. One of the conditions imposed required the use of the ground floor to be for A1 use, Retail, purposes only, however, this condition had not been complied with. The Committee had before it a report in which all information was set out.

The report set out the actions taken since January 2006 to effect compliance with the condition. The owners have been prosecuted twice for non-compliance with the requirements of the Breach of Condition Notice (BCN) and the unauthorised use is continuing. The only action which may realistically restrain the breach of the BCN is to obtain an injunction.

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

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

Mrs El-Sayed addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the proposal to take out an injunction. Prior to the planning application a discussion was held with the planning office and they were told that a coffee shop was what was wanted to create a café culture. It is a small family business and they have lived in Colchester since 1983 and supported the local economy. They were trying to work with the Council to rectify the planning situation. The rules have changed. They have tried a takeaway, a café, sandwiches and pictures. They were now trying to have an internet café, but circumstances prevent them from doing this fully; they have four laptops, and a wi-fi connection. Their intention is to comply fully and they have written to the Member of Parliament who supports them. They have gone to appeal and both times lost and could not appeal properly. There was an issue with the appeal and what the Council considered the frontage and she suggested that it be looked at again along the High Street.

Members of the Committee supported the proprietors of the business to the extent that some members wanted to allow them more time to bring the proposed internet café into operation to prevent the business from failing. However it was explained that considerably more time than six months had been available to bring about compliance with the planning conditions. All attempts to effect compliance had been unsuccessful, and the situation was considered a clear breach of policy; an injunction

was now considered the best course of action.

There had been no overall change in the usage of shop fronts along the street which might change the decision. The entire High Street frontage should comprise no more than 70% non-retail frontage, but the current situation is that this figure is already exceeded and so the circumstances have not changed. In contrast to an internet café on St. John's Street, there was no visible evidence from photographs, observations on the site visit, or any sign of advertising or of any computers present, to demonstrate that the proposal to turn the ground floor into an internet café was being implemented.

Members considered that this was a good independent business offering an attractive facility in the High Street, but it had occurred without planning permission. Some members considered that the proprietors had had ample warnings and opportunity to take action. Whilst they understood the motives of those members who wanted to allow more time for compliance, the time had been reached when action had to be taken. The Council had attempted to enforce the conditions twice and the proprietors had appealed twice and the Planning Inspector had supported the Council. The Council was proposing to apply for an injunction which was conducted by means of a hearing in front of a judge giving both sides the opportunity to put their points of view following which the judge would make a decision. An injunction would buy time and members hoped the internet café would materialise.

RESOLVED (MAJORITY voted FOR) that an application be made for an injunction to restrain the use of the ground floor of 118 High Street, Colchester, being used as a restaurant/café.

208. Enforcement Action // Wine Me Up, 35 North Hill, Colchester, CO1 1QR

The Head of Environmental and Protective Services submitted a report seeking authorisation to take enforcement action requiring the removal of external shutters across the frontage of the premises with a proposed compliance period of three months. The Committee had before it a report in which all information was set out.

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

Mr Yamak addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the proposal to take enforcement action. There was alcohol and tobacco on the premises and the shutters were required to protect the premises from breaking and entering and theft. It also gave protection to the glass window and afforded some safety to the general public. If the shutters were not in place the premises would be vulnerable to break in. The entranceway is at an angle making it very difficult to install the shutters inside without an unacceptable loss of space within the shop.

Members of the Committee considered that the appearance of the shutters was unacceptable. No planning application for the retention of the shutters has been

sought and neither had any preliminary planning application discussion been held. There was some sympathy with the proprietor because some security measures and protection was required. However the area needs a more sympathetic solution to the situation. The business appears to be well run, but advice regarding the type of shutters which would be acceptable should have been sought at an earlier stage. This was a well lit, well used thoroughfare and not the most vulnerable location. It was suggested that a letter be sent to the proprietor to assist in identifying an alternative solution.

RESOLVED (MAJORITY voted FOR) that –

- (a) An enforcement notice be served with a compliance period of three months requiring the removal of external shutters across the frontage of the premises.
- (b) A letter be sent to the owner inviting him to negotiate appropriate alternative security measures.

209. Enforcement Action // 25 Barrack Street, Colchester, CO1 2LJ

The Head of Environmental and Protective Services submitted a report seeking authorisation to take enforcement action requiring the removal of external shutters to reveal the original shopfront with a proposed compliance period of two months. The Committee had before it a report in which all information was set out.

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

RESOLVED (UNANIMOUSLY) that an enforcement notice be served with a compliance period of three months requiring the removal of external shutters to reveal the original shopfront.

Councillor Stephen Ford (in respect of having previously made his views known on the application) 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 left the meeting during its consideration and determination.

210. Minor Amendments to Planning Permission 080879 // 13 Stanley Road, Wivenhoe, CO7 9LP

The Head of Environmental and Protective Services submitted a report seeking the Committee's agreement to two minor amendments to permission 080879. The first comprised an external full height chimney on the southern elevation to replace an existing chimney which was found to be structurally unsafe and non-compliant with Building Regulations. The second amendment comprised changes to external materials to render finish to the side and front elevations and black weatherboarding

to the front garage and rear single storey extension to avoid a mismatch of existing and new brickwork. These changes were considered to be genuinely "non-material" in nature and therefore did not warrant the requirement of a fresh planning application. The Committee had before it a report in which all information was set out.

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

Mrs Emms addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the proposal to take enforcement action. The chimney will increase the impact on the skyline. The chimney has been moved towards no. 11 Stanley Road. The weatherboarding increases the overbearing effect and is out of keeping with other houses and bungalows. She did not have professional representation or advice.

Some members of the Committee were sympathetic towards the residents who were of the opinion that it was not a minor change and should be the subject of a retrospective planning application. However, it was explained that this was a relatively minor change.

RESOLVED (MAJORITY voted FOR) that the two minor amendments to permission 080879 be approved as set out in the report by the Head of Environmental and Protective Services be approved.