

Planning Committee

Moot Hall, Town Hall
31 October 2013 at 6.00pm

This Committee deals with

planning applications, planning enforcement, public rights of way and certain highway matters.

If you wish to come to the meeting please arrive in good time. Attendance between 5.30pm and 5.45pm will greatly assist in noting the names of persons intending to speak to enable the meeting to start promptly.

Material Planning Considerations

The National Planning Policy Framework highlights that the planning system is plan-led and reiterates *The Planning and Compulsory Purchase Act 2004*, which requires (in law) that planning applications “*must be determined in accordance with the development plan, unless material considerations indicate otherwise*”.

The following approach should be taken:

- Identify the provisions of the Development Plan which are relevant to the decision and interpret them carefully, looking at their aims and objectives
- Identify and consider relevant material considerations for and against the proposal
- Consider whether or not the proposal accords with the Development Plan and, if not, whether material considerations warrant a departure from the Development Plan.

When applying material considerations the Committee should execute their decision making function accounting for all material matters fairly, reasonably and without bias. In court decisions (such as *R v Westminster CC ex-parte Monahan 1989*) it has been confirmed that material considerations must relate to the development and use of land, be considered against public interest, and be fairly and reasonably related to the application concerned.

Some common material planning considerations which the Planning Committee can (and must) take into consideration in reaching a decision include:-

- Planning policies, including the NPPF and Colchester’s own Local Plan documents
- Government guidance, case law, appeal decisions, planning history, “fallback” positions
- Design, scale, bulk, mass, appearance and layout
- Protection of residential amenities (light, privacy, outlook, noise or fumes)
- Highway safety and traffic issues, including parking provisions
- Heritage considerations such as archaeology, listed buildings or a conservation areas
- Environmental issues such as impacts on biodiversity, trees and landscape, flooding
- Economic issues such as regeneration, job creation, tourism
- Social issues such as affordable housing, accessibility, inclusion, education, recreation
- The ability to use planning conditions or obligations to overcome concerns

The following are among the most common issues that are **not** relevant planning issues and cannot be taken into account in reaching a decision:-

- land ownership issues including private property rights, boundary disputes and covenants
- effects on property values
- loss of a private view
- identity of the applicant, their character, previous history, or possible motives
- moral objections to a development, such as may include gambling or drinking etc
- competition between commercial uses
- matters specifically controlled through other legislation
- unless they are “exceptional”, personal circumstances, including hardship

Strong opposition to a particular proposal is a common feature of the planning process. However, in the absence of substantial evidence of harm or support from the Development Plan is unlikely to carry much weight. The same principles apply in reverse where there is strong support for a proposal that is contrary to the Development Plan and there is harm (or lack of substantially evidenced benefit).

Inspectors and Courts (see *North Wiltshire DC V SoS & Clover, 1992*) have established that precedent can be a legitimate consideration, but it is not enough to have a “general anxiety” and there has to be evidence of a real likelihood that similar applications (in all respects) will be submitted.

Human Rights, Community Safety and Equality and Diversity Implications

All applications are considered against the background and implications of the:

- Human Rights Act 1998
- Crime and Disorder Act 1998 (and in particular Section 17)
- Equality Act 2010
- Colchester Borough Council Equality Impact Assessment (EIA) Framework

In order that we provide a flexible service that recognises people's diverse needs and provides for them in a reasonable and proportional way without discrimination.

Using Planning Conditions and Considering Reasons for Refusing Applications

The Planning System is designed to manage development, facilitating (not obstructing) sustainable development of a satisfactory standard. The National Planning Policy Framework reinforces this by stating that “*Planning should operate to encourage and not act as an impediment to sustainable growth*”. Therefore, development should be considered with a positive approach. However, not all development is acceptable and almost every permission will require planning conditions in order to make them acceptable. Some will remain unacceptable and should therefore be refused. Circular 11/95 (The Use of Conditions in Planning Permissions) and Circular 03/2009 (Costs Awards In Appeals And Other Planning Proceedings) set out advice on the government’s policy regarding the appropriate use of planning conditions and when decision makers may make themselves vulnerable to costs being awarded against them at appeal due to “unreasonable” behaviour. They derive from an interpretation of court judgments over the years and, although not planning law, are important material considerations. A decision to set them aside would therefore need to be well-reasoned and justified.

In terms of the Planning Committee, Circular 03/2009 makes it clear that “*Planning authorities are not bound to accept the recommendations of their officers. However, if officers’ professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority*”.

The power to impose conditions is an important material consideration in any determination. Circular 03/2009 states that “*Whenever appropriate, planning authorities will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed*”. Therefore, before refusing any application the Planning Committee should consider whether it is possible to resolve any concerns by use of conditions before refusing permission. *The Circular adds that “A planning authority refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead.”* Advice on the need to consider whether conditions may make a proposal acceptable which would be otherwise unacceptable is also to be found in Circular 11/95.

Any planning condition imposed on a development must be necessary, relevant to planning, relevant to the development to be permitted, reasonable, precise and enforceable. Unless conditions fulfil these criteria, which are set out in Circular 11/95, they are challengeable at appeal as *ultra vires* (i.e. their imposition is beyond the powers of local authorities). If no suitable condition exists that can satisfy these tests a refusal of planning permission may then be warranted.

In considering the reasons for that refusal, Circular 03/2009 makes it clear that planning authorities must “*properly exercise their development control responsibilities, rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason*”. In all matters relating to an application it is critically important for decision makers to be aware that the courts will extend the common law principle of natural justice to any decision upon which they are called to adjudicate. The general effect of this is to seek to ensure that public authorities act fairly and reasonably in executing their decision making functions, and that it is evident to all that they so do.

**COLCHESTER BOROUGH COUNCIL
PLANNING COMMITTEE
31 October 2013 at 6:00pm**

Members

Chairman : Councillor Theresa Higgins.
Deputy Chairman : Councillor Helen Chuah.
Councillors Peter Chillingworth, Stephen Ford, Sonia Lewis, Cyril Liddy, Jackie Maclean, Jon Manning, Philip Oxford and Laura Sykes.

Substitute Members

: All members of the Council who are not members of this Committee or the Local Plan Committee and who have undertaken the required planning skills workshop. The following members meet the criteria:-
Councillors Christopher Arnold, Nick Barlow, Lyn Barton, Kevin Bentley, Mary Blandon, Mark Cable, Nigel Chapman, Barrie Cook, Nick Cope, Beverly Davies, John Elliott, Andrew Ellis, Annie Feltham, Bill Frame, Ray Gamble, Marcus Harrington, Dave Harris, Julia Havis, Jo Hayes, Pauline Hazell, Peter Higgins, Brian Jarvis, Margaret Kimberley, Michael Lilley, Sue Lissimore, Colin Mudie, Nigel Offen, Gerard Oxford, Will Quince, Lesley Scott-Boutell, Peter Sheane, Paul Smith, Terry Sutton, Colin Sykes, Anne Turrell, Dennis Willetts and Julie Young.

Agenda - Part A

(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 6 are normally brief and agenda items may be considered in a different order if appropriate.

An Amendment Sheet is available on the council's website by 4:30pm on the day before the meeting (see Planning and Building, Planning Committee, Planning Committee Latest News). Members of the public should check that there are no amendments which affect the application in which they are interested. Could members of the public please note that any further information which they wish the Committee to consider must be received by 5pm two days before the meeting in order for it to be included on the Amendment Sheet. With the exception of a petition, no written or photographic material can be presented to the Committee during the meeting.

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to silent;
- the audio-recording of meetings;
- location of toilets;
- introduction of members of the meeting.

2. Have Your Say!

The Chairman to invite members of the public to indicate if they wish to speak or present a petition on any of items included on the agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

3. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

4. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any interests they may have in the items on the agenda. Councillors should consult Meetings General Procedure Rule 7 for full guidance on the registration and declaration of interests. However Councillors may wish to note the following:-

- Where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest, whether or not such interest is registered on his/her register of Interests or if he/she has made a pending notification.
- If a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting, he/she must not participate in any discussion or vote on the matter at the meeting. The Councillor must withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.

- Where a Councillor has another pecuniary interest in a matter being considered at a meeting and where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest, the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

6. Minutes

1 - 16

To confirm as a correct record the Minutes of the meetings held on 26 September 2013 and 3 October 2013.

7. Planning Applications

In considering the planning applications listed below, the Committee may chose to take an en bloc decision to agree the recommendations made in respect of all applications for which no member of the Committee or member of the public wishes to address the Committee.

1. 130239 99 & 105 London Road, Copford
(Copford and West Stanway)

17 - 41

Erection of 7 residential units and extension to Car park to neighbouring employment.

2. 131020 The Jumbo Water Tower, Balcerne Passage, Colchester
(Castle)

42 - 99

Change of use and alterations to provide a mixed use development comprising of three apartments, (C3), restaurant (A3), office (B1a) and observatory / museum (D1) with ancillary shop / cafe and erection of ancillary building (boiler house) and associated work.

3. 131023 The Jumbo Water Tower, Balcerne Passage, Colchester
(Castle)

Listed building application for change of use and alterations to provide a mixed use development comprising three apartments, (C3), restaurant (A3), office (B1a) and observatory / museum (D1) with ancillary shop / cafe and erection of ancillary building (boiler house) and associated work.

Please see the report at agenda item 7.2.

4. 131807 Tymperleys, Trinity Street, Colchester (Castle) **100 - 109**

Change of use from garden to outdoor seated area in connection with tea room and restaurant use, plus use of garden in connection with weddings, corporate and private events and outdoor performances.

5. 131512 Seaview Holiday Park, Seaview Avenue, West Mersea (West Mersea) **110 - 124**

Variation of condition 2 attached to planning permission COL/95/1190 to allow for a 12 month year round holiday season on the static holiday caravan element.

6. 131648 Seaview Holiday Park, Seaview Avenue, West Mersea (West Mersea)

Variation of condition 3 attached to planning permission C/COL/05/2073 to allow for a 12 month year round holiday use on this element of Seaview Holiday Park.

Please see the report at agenda item 7.5.

7. 131667 Elmcroft Bungalow, Fen Lane, East Mersea (Pyefleet) **125 - 133**

Application to extend the occupancy period of Cosways Caravan Park from 1st March - 31st December to 1st March - 31st January.

8. 131622 122 Bromley Road, Colchester (St Anne's) **134 - 140**

First floor extension over garage; office and kitchen and ground floor and first floor extensions to gable end of rear elevation.

8. Amendment Sheet 141 - 148

Please the amendment sheet (attached).

9. Exclusion of the Public

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I

and Schedule 12A of the Local Government Act 1972).

PLANNING COMMITTEE

26 September 2013

Present:- Councillor T. Higgins* (Chairman)

Councillors Chillingworth*, Chuah*, Lewis*, Liddy*,
Maclean*, Manning and L. Sykes*

Substitute Members:- Councillor G. Oxford* for Councillor P. Oxford

Councillor Lilley* for Councillor Ford

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

64. Minutes

The Minutes of the meeting held on 12 September 2013 were confirmed as a correct record subject to the following amendments:

Minute Reference No. 58

- (i) "A Member of the Committee raised concern" be altered to "Members of the Committee raised concern..."
- (ii) The addition of "It was pointed out that DP4 contained no definition of community space and that the wording of the policy was so vague as to be unhelpful."

65. 121272 – North Colchester, Urban Extension, Mile End Road, Colchester

The Committee considered a major outline application for a mixed use development comprising of residential dwellings, a neighbourhood centre including commercial, residential and community uses, education uses, strategic landscaping, green infrastructure and areas for outdoor sports facilities, access related infrastructure, other works and enabling works. The Committee had before it a report and amendment sheet in which all the 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.

Ms Karen Syrett, Place Strategy Manager, and Mr Alistair Day, Principal Planning Officer, presented the report and assisted the Committee in its deliberations. The Place Strategy Manager explained the policy background behind the application. She stated that public consultation had been carried out several times before the Core Strategy went to examination and was then adopted by Full Council. Regarding the Site Allocation's DPD, three public consultations were undertaken and it had been adopted by Full Council following examination in public and receipt of a binding report from the Inspector. The National Planning Policy Framework, which came into effect in March 2012, introduced a presumption in favour of sustainable development and underlined the need to meet the needs for housing and that

proposals that accord with the development plan should be approved without delay. The affordable housing need in the Strategic Housing Market Assessment in 2008 was 1,082 dwellings per year.

The Principal Planning Officer explained the site context and that the proposed development parcels had been informed by the existing landscape structure. Full details of the proposed access arrangement had been submitted. It was explained that the main access into the development was from the diverted A134 in the north with a bus only access in the south. A full planning report had been prepared for the Planning Committee's consideration.

Have Your Say! Speakers

Mr Peter Hewitt of Myland Community Council addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He said that inclusion of the proposed land in development plans was decided at Local Development Framework Committee, however he could not find reference to such a decision in any Minutes. He suggested that the developers were relying on the Housing Trajectories to bring the site forward and evidence demand for housing, although this was not an adopted document. He suggested that there would be more than sufficient housing in the Colchester area and that there had not been sufficient evidence to bring forward the date of commencement from 2021 to 2016, further suggesting that approval of the development would be unlawful. He also highlighted the greenfield nature of the site, claiming development on the site would be contrary to Government policy and that this development should not prejudice the development of brownfield land, such as Severalls Hospital.

Mr Andy Ward of Royal Haskoning DHV addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He explained that he was a Transport Planning Consultant commissioned by Myland Community Council to review the transport documentation for the development. He commented that with the significant highways infrastructure proposed a cultural model shift was vital. He suggested that a condition was added to ensure no development was started until after the Park and Ride facility was established. He considered that provision for cyclists was deficient and that a footbridge over the A12 should be provided for in the Section 106 Legal Agreement. He suggested that the 2007 transport model should be validated and traffic counts checked to ensure the model remained valid. He questioned the use of trigger points for the Colne Bank highways works and suggested that regular payments from the start of the development would be more practical.

Ms Jean Dickinson of Myland Community Council addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She cited the National Planning Policy Framework, claiming that an application should be refused if the residual effects of transportation alterations were severe. She stated that the Core Strategy Policy required a transport strategy to be prepared but that the Council had failed to do this. Regarding money secured, she suggested that if funding for the development was not guaranteed then it should not be approved, claiming that there was £12,000,000 yet to be secured. She summarised Myland Community Council's objection to the application as non-compliance with Local Strategy, incomplete and premature development, unaccountability and inadequate funding to mitigate impact.

Mr Lawrence Revill of David Lock Associates addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He stated that the development was a result of seven year's work and supported growth in the area whilst being sustainable. He highlighted the significant provision of open space in the development, which would ensure the protection and enhancement of ecological habitats. He

drew the Committee's attention to the development's provision of affordable housing and work carried out to mitigate any effects on local traffic. He hoped the development would benefit both the future and current communities.

Mr Mark Leigh of Vectos addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He said that the development had been subject to a high level of scrutiny from the local Highway Authority (Essex County Council) and the Highways Agency, with all the technical information submitted considered to accord with best practice guidance. He specified that the proposal, although supportive of behaviour change with regard to transportation, did not rely on such a change.

Mr Stuart Cock of Mersea Homes addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He emphasised that he was accountable to the local community and understood their concerns. He reiterated the need for new homes in Colchester and explained that this development was a long term investment, which needed to be sustainable. He stated that years of gathering evidence had resulted in a carefully and well thought out proposal that he hoped Colchester could be proud of.

Councillor Goss, Mile End Ward Councillor attended the meeting and, with the consent of the Chairman, addressed the Committee. He suggested the development did not have a proper business case and that it lacked healthcare resources, education facilities and retail provision, which would result in more traffic through North Station. The reduction of the retail store size had decreased the Section 106 funding by £2,000,000. The community centre at Severalls Hospital was paying £25,000 more. No mention had been made of the existing sports pavilion, which the applicant had previously stated he would refurbish. In his opinion, the flood risk had been underplayed. He claimed that the maintenance of open spaces had not been properly considered. He suggested that the aspiration of a 15% modal shift was implausible and highlighted that the development would likely become a commuter parking hub. He suggested that train links into Colchester would not be able to handle the increase in residents. The development vision was not sustainable and was without a business case.

Councillor Hayes, Castle Ward Councillor attended the meeting and, with the consent of the Chairman, addressed the Committee. She expressed concern about the effect of the development on air quality and traffic in the surrounding Wards. As Heritage Champion she underlined the need for strict archeological conditions. She criticised the methodology used for regarding ecological surveys and the need to protect hedgerows, making reference to protected species and the site being a wildlife corridor. She stated that with the addition of 1,600 homes, wildlife would certainly be affected. She claimed that there were several brownfield developments that were struggling and if greenfield sites were to be approved this would deter further brownfield development. She said that although the Government policy on East of England growth had been revoked, Colchester was still continuing down the same route. She highlighted the need to balance development with the local economy, stating this scheme was premature.

Councillor Anne Turrell, Mile End Ward Councillor attended the meeting and, with the consent of the Chairman, addressed the Committee. She claimed that the local area had grown too fast and that the infrastructure would not be able to cope. She suggested that granting outline permission before infrastructure provisions were finalised caused problems, as conditions would be changed at a later date. She said the application provided no traffic plan and was not therefore compliant with the Core Strategy. She said the site was not sustainable. She said the development should be refused on the basis of development plan non-compliance, the priority of brownfield sites, highway safety and capacity issues, the timing of highway works, cost of funding and lack of viability. She suggested that Colchester did need housing but not at

such a cost to local residents.

Committee Consideration

The Place Strategy Manager clarified that the need for a fifteen year supply of housing land was raised as an issue when the Core Strategy was subject to examination. The fifteen years was from its adoption. At that time inspectors reports were binding, which could explain the lack of Committee Minutes. Although the Housing Trajectory is not a statutory document it forms part of the Annual Monitoring Report, which is a statutory requirement and which is adopted by Colchester Borough Council each year. The latest trajectory showed that there is a deficit in the fifteen year housing land supply. She explained that nowhere in the NPPF did it state that greenfield sites should be held back from development to allow brownfield sites to proceed.

The Principal Planning Officer explained that, in relation to transportation, the developers were only required to mitigate the effects of their proposed scheme and not resolve existing problems. The transport assessment had been considered by the Highway Authority and Highway Agency this, together with the mitigated package was considered acceptable. He highlighted that Myland Community Council had commissioned an independent review of the transport documentation and that, in the main, they had considered the transport assessment to be satisfactory.

In relation to Air Quality, assessments had been carried out on and off-site, which included the North Station Area and CBC's Environmental Control Officers had raised no objections. The flooding, ecology, Public Rights of Way and archaeology had all been considered, with no objections raised from the relevant bodies. It was also clarified that parking arrangements would be the subject of detailed applications and would be required to comply with CBC parking standards. The issue of commuter parking had been raised with the Highway Authority and there is not an objection in principle to a residents parking scheme covering this site but this would need to be controlled by highway legislation. Likewise the requirement for bus corridors would need to be subject to a Transport Regulation Order.

The viability of the development was address by the Principal Planning Officer. The NPPF states that the development proposals should not be unduly burdened by policy or Section 106 requirements. The scheme had been subject to a viability appraisal and it had been demonstrated that it could not afford all Section 106 requests. The proposed Section 106 package seeks to address the Council's strategic priorities and those identified by the local community. The viability assessment used a lower land value than that outlined in the Community Infrastructure Levy evidence based work (£500,000) and used a profit of 17.5%, as opposed to the industry standard of 20%. If the land and profit values were raised, the Section 106 funding would be considerably less.

Mr Martin Mason, Essex County Council Highways Strategic Development Engineer, explained that conditions had been included to mitigate the effect of the development and it was likely the proposed works would also be of benefit to the existing community. He clarified that the model, although based on 2007 surveys, was still considered to be robust. He explained that the highway works related to part of the network which would be significantly affected by the development. He stated that the bus strategy related to the implementation of the development and that the bus operators would see the development as a positive commercial opportunity.

The Committee recognised the need to provide more homes in the area as well as affordable homes to meet demand. It was considered that the design of the proposal was well thought out and they were pleased to note the low density of housing and open spaces throughout, as well as the retention of trees and hedgerows. It was highlighted that the Core Strategy and

Site Allocations DPD had been agreed by the, then, Local Development Framework Committee and Council.

It was clarified by Mr Vincent Pearce, the Major Developments Manager, that the Council was confident in the legality of the Officer recommendation.

Several Members of the Committee expressed concern regarding the highways ramifications of this development. A Member of the Committee commented that mitigation of the site had to include a positive impact on existing issues, otherwise it would not work. The bridge near North Station was cited as a particular area where 'funnelling' may occur. It was also emphasised that the proposal was taking into consideration the infrastructure improvement works previously agreed, including the Northern Approach Road 3, bus lanes, improvements to North Station and the Park and Ride facility, which would alleviate any 'funnelling' effect.

Uncertainty as to the sufficiency of future car parking capabilities was also raised, however Officers responded that a condition required car parking to accord with the Council's adopted parking standards.

A Member of the Committee raised concern regarding the impact of the development on Bakers Lane, which was narrow and often used as a short cut. It was explained that impact on this lane from traffic associated with this development would be minimal. It was suggested that if Councillors had concerns regarding individual roads, they should consult the Local Highways Panel at Essex County Council.

Concerns were also raised as to the provision of education relating to the development, with the current oversubscription of schools in the area mentioned as a problem. The prospect of having to move children across the town to get to school was considered unacceptable.

The Major Developments Manager commented that Colchester Borough Council was not the Education Authority. Regarding suggestions that pupils would have to travel across Colchester to get to school, he suggested that Essex County Council may be required to rethink its approach to schools in the area, possibly retaining schools in the North Colchester area.

The Committee made the point that a street light reduction policy was to be drawn up by Colchester Borough Council and that this would need to be referred to when reserved matters were considered to ensure low emission lighting was used.

RESOLVED (EIGHT voted FOR, TWO voted AGAINST) that –

- (i) The Secretary of State be advised that this Council is minded to grant a conditional planning approval subject to a) his confirmation that he does not wish to call the application in for his own determination; and b) the signing of a S106 Legal Agreement.
- (ii) The Head of Commercial Services be authorised to complete the Agreement (including authority to undertake necessary amendments to ensure conformity between the planning conditions and the legal agreement and amend the mechanism for delivery the required outcomes) to provide the following:
 - Affordable Housing
 - 15% minimum affordable housing contribution on each phase of the scheme.
 - A minimum of 10% to be provided as affordable rent unless otherwise agreed with the Local Planning Authority. A maximum of

5% to be Intermediate tenure such as Shared Equity, Shared Ownership of Shared Equity Percentage Commuted Sum. For Commuted Sums the Market value of the properties being offered will be ascertained by an RICS redbook valuation.

- Other form of rented tenure types may be acceptable if proposed by the Developer and accepted by the Local Planning Authority.
 - Viability to be tested prior to the commencement of the 455th unit and again prior to 855th and finally 1255th unit to ascertain if future reserved matter applications can support an increased affordable housing percentage up to a maximum of the 10 percent current policy target.
 - Viability test to be based on agreed model with land costs fixed and index linked and profit percentages fixed and criteria so that if the parties do not agree it can be referred to an independent expert to adjudicate.
 - The assessments shall be submitted not earlier than 355th, 755th and 1155th occupation unless otherwise agreed with the Local Planning Authority.
 - The type and size of Affordable Housing units in each phase to be guided by the Strategic Housing Market Assessment that is relevant at the time and agreed by the Council.
 - No more than 40 percent of the private dwellings on each phase to be occupied prior to contracts signed with Registered Providers for 50 percent of Affordable Housing dwellings in that phase.
 - No more than 80 percent of the private dwellings to be occupied prior to contracts signed with Registered Providers for 100 percent of Affordable Housing dwellings in that phase.
 - No future phase completions will be allowed until 100 percent of the previous phase affordable housing is delivered.
- Highway Improvements (on and off site)
 - Bus stops and upgrading of footpaths as identified.
 - The works at Essex Hall Roundabout, Station Way and Colne Bank Roundabout (shown on drawing numbers VN20059-711-B and VN20059-710-C) to be capped at £4,475,000 (index linked). In the event that the capital cost of the works exceeds £4,475,000, the developer is to work with Essex County Council to find additional funding to enable the works to proceed or identify an alternative scheme.
 - Bus Strategy
 - To pay bus subsidy to a bus operator to facilitate a bus route to run through the length of the primary street in instalments up to a maximum contribution of £330,000.

- The bus subsidy is subject to the bus route not being viable prior to any payment. Payments will cease in the event that the bus service becomes viable. Provisions will set out the frequency, timings and route the service will take.
- Developer to provide evidence to show £330,000 Index Linked has been spent on bus service. If less then any balance shall be utilised on sustainable transport initiatives agreed by the Council.
- Details to be subject to further discussion.
- Travel Plans and Travel Co-ordinator
 - Developer to pay Local Planning Authority a total of £70,000 in equal instalments at the first occupation and the [xx]th occupation. The contribution is to be used to implement the measures in the approval travel plans.
 - Details to be subject to further discussion.
 - To prepare and implement a Travel Plan.
- Land to facilitate footbridge of the A12
 - To procure that the land shown on drawing xx is set aside for 10 years after the completion of the 900th unit for the construction of a footbridge over the A12.
- Education
 - The school land is shown on drawing xx (both primary and secondary shown separately).
 - Both school sites shall be set aside for a maximum of [ten years] from commencement of development in which time Essex County Council must serve written notice within seven years that either / both part of the land are required to mitigate the primary and secondary educational impacts of development.
 - Once the notice is served and serviced land is transferred for £1.
 - Essex County Council have a further [3 years] from the date of completion of the transfer to construct the relevant school otherwise the relevant land is transferred back to the developer.
 - A community plan to be submitted setting out the arrangement for sharing the sports facilities.
 - If the school site is returned to the Developer the Developer may apply for a change of use on this part of the site but serviced land will be reserve [xxha] for indoor sports provision for the scheme and offered to the Council for £1 or pay financial contribution.
 - The requirement for the land to be appropriately serviced (including noise mitigation) and trigger points for the transfer / delivery of the schools to be subject to further discussion with the Education Authority and the Developer.

- Strategic Landscape Provision and Play Areas
 - The public realm shall be provided broadly in accordance with Landscape Framework Drawing with additional open space within the residential parcels.
 - The Developer will be able to either manage the open space via a suitable Management Company or may ask Colchester Borough Council or a 3rd party to adopt the land by paying a commuted maintenance sum of £40,000 per hectare. Colchester Borough Council will not adopt incidental open space which is less than [0.02ha] in size.
 - Sports pitches are to be laid out to an agreed specification and made available prior to [xxth unit]. Colchester Borough Council to be offered the sport pitches with a commuted sum of £87,700 per hectare. In the event Colchester Borough Council declines to adopt the sport pitches or the commuted sum offer is less than £87,700 per hectare a management company or other suitable organisation is to maintain them.
 - Allotments are to be laid out to an agreed specification and made available prior to [xxth unit]. Colchester Borough Council to be offered the sport pitches with a commuted sum of £6,700 per hectare. In the event Colchester Borough Council declines to adopt the allotments or the commuted sum offer is less than £6,700 per hectare a management company or other suitable organisation is to maintain them.
 - The developers' total obligation for the scheme with regard to equipped play area construction and their adoption is capped at £700,00. Colchester Borough Council to be offered the play areas. In the event that Colchester Borough Council declines to adopt the play areas a management company or other suitable organisation is to maintain them.
 - The public realm is to be available to all.
- Community Centre
 - By the 750th unit carry out a consultation with the local community to ascertain what type of building they would like within available parameters.
 - By the 950th unit gain reserved matters consent, construct and handover a community facility with a maximum size of [1,000m²] and a maximum all in cost of [£1,495,000].
 - Developer to provide evidence to show £1,495,000.00 Index Linked has been spent on community facility. If less then any balance shall be utilised on education or indoor sports facility as agreed by the Council.
- Employment and Training Plan
- Plaza Access and Management Plan

- Miscellaneous

- Provision within the neighbourhood centre for a doctor's surgery.
- Indexation will be applied to sums from the date of signing the S106 Agreement.
- Mechanism for review of viability (including the reasonable costs of Colchester Borough Council seeking independent advice).
- Pre-adoption management and maintenance scheme.
- Monitoring and Legal fees.

(iii) On completion of the Legal Agreement, the Head of Commercial Services be authorised to grant planning permission subject to the conditions and informatives outlined in the report and amendment sheet.

**PLANNING COMMITTEE
3 OCTOBER 2013**

Present :- Councillor Theresa Higgins* (Chairman)
Councillors Helen Chuah*, Stephen Ford, Sonia Lewis*,
Cyril Liddy*, Jackie Maclean*, Jon Manning,
Philip Oxford and Laura Sykes*

Substitute Member :- Councillor Marcus Harrington
for Councillor Peter Chillingworth*

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

66. 131287 Longview, 216 Turner Road, Colchester

The Committee considered an application for the demolition of the existing buildings and redevelopment of the site to provide a 60 bedroom care home together with associated landscape and parking provision. The Committee had before it a report in which all the 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.

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

67. 131789 Garage Block, Wheeler Close, Colchester

Councillor L. Sykes (in respect of being on the Board of Colchester Borough Homes) declared a non-pecuniary interest in this item pursuant to the provisions of Meetings General Procedure Rule 7(5).

The Committee considered an application for prior notification of the proposed demolition. The Committee had before it a report in which all the information was set out.

RESOLVED (UNANIMOUSLY) that prior notification be approved.

68. 131791 Garage Block, Dilbridge Road, Colchester

Councillor L. Sykes (in respect of being on the Board of Colchester Borough Homes) declared a non-pecuniary interest in this item pursuant to the provisions of Meetings General Procedure Rule 7(5).

The Committee considered an application for prior notification of the proposed demolition. The Committee had before it a report in which all the information was set out.

RESOLVED (UNANIMOUSLY) that prior notification be approved.

69. 122134 Land Adj North and South, Grange Road, Tiptree

Councillor Harrington (in respect of being a supporter of Colchester United Football Club) declared a non-pecuniary interest in this item pursuant to the provisions of Meetings General Procedure Rule 7(5).

The Committee considered an outline application for a proposed development to provide 103 residential dwellings, areas of public open space (including a village green and allotments), provision of a new roundabout access from Grange Road and other ancillary works including drainage provision. The Committee had before it a report in which all the 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.

Mr Mark Russell, Principal Planning Officer, presented the report and assisted the Committee in its deliberations.

Parish Councillor Steve Bays, Vice-Chairman of Tiptree Parish Council, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He drew the Committee's attention to the allocation of Section 106 monies. He welcomed refurbishment Factory Hall but believed allocation to the Warrior's Rest site was inappropriate as it was not truly open to the community. He suggested that because Warrior's Rest was only available to members it was in breach of its lease. He suggested the money go to either the Tiptree Sports Centre or the upcoming Remembrance Wall. He also commented on the ownership of Open Space, stating that a legal agreement was not strong enough to ensure community use and that ownership should be transferred to either Tiptree Parish Council or Colchester Borough Council.

Mr Lawson addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He claimed that the application had been the result of eighteen months of work with Officers and community engagement exercises. They were providing community facilities such as a new village green, allotments and children's play area. He claimed that membership at Warrior's Rest was open to all. He also suggested that access to Open Spaces could be adequately controlled by the Section 106 Agreement. He claimed the development was sustainable and added required housing and infrastructure to the area.

Councillor Elliott, Tiptree Ward, attended the meeting and, with the consent of the Chairman, addressed the Committee. He disputed the claim in the Amendment Sheet stating that Ward Councillors had not expressed their views about the allocation of Section 106 funding. He spoke of his desire to see the money allocated on a project that could be used for the community. This was not achievable with Warrior's Rest, as this was a club for which membership of a Jobserve Team was required and would not

therefore benefit the wider community. He went on to suggest the highways measures were insufficient and enquired as to how a road widening and additional footpath could work without compulsory purchase of the surrounding land. He stated that the road was a very dangerous one and needed significant consideration.

Councillor Martin, Tiptree Ward, attended the meeting and, with the consent of the Chairman, addressed the Committee. He raised the issue that it had been originally agreed that all housing would be at least 40 metres away from the football grounds. In this development they would be 20 metres away. He expressed concern about the developer retaining the Open Space on the development. He also wanted to ensure that the development would remain at 103 dwellings and not be increased before any Reserved Matters application was submitted. He agreed with previous speakers that Section 106 money should not be spent on Warrior's Rest.

The Principal Planning Officer explained that the 40 metre limitation did not apply to new developments. It was also stated that if the developer wanted to provide more than 103 dwellings a new application would have to be provided. It was confirmed that Colchester Borough Council would be happy to take ownership of the Open Space, after effects on viability had been considered. However, it was noted that if satisfactory access was provided, ownership was an academic issue.

Mr Martin Mason, Essex County Council Highways Strategic Development Engineer, clarified that the alterations to Grange Road could be provided within the current layout. He also explained that the main junction would only have a five percent increase in traffic, well below the threshold that would require works to be carried out.

Mr Bob Penny, Parks and Recreation Manager, explained that Warrior's Rest was a charitable trust and one of its objectives was community participation. He stated, however, that other projects that were appropriate, relevant and responded to community needs could be considered for the Section 106 money allocation.

The Committee noted the concerns about the allocation of Section 106 funding for the Warrior's Rest site. It was suggested that the Section 106 Heads of Terms would be agreed at this meeting, with specific detail to be included in further Reserved Matters applications. It was suggested that a meeting be set up with the applicant, Officers and Ward Councillors to agree a satisfactory allocation of Section 106 funding for public open space.

It was clarified that cycleways would serve the site only and that details on the design of the mini-roundabout would be considered at a later point.

RESOLVED (UNANIMOUSLY) that –

(i) The Head of Commercial Services is authorised to complete a Section 106 Legal Agreement to provide the following:

- 10% affordable housing, reflective of the overall site mix;
- £6,600 for provision and maintenance of two litter and two dog bins;

- Community Facilities - £106,000 for the Factory Hill site;
- £33,600 towards health-care facilities;
- Open space, sports and recreation contribution of £211,628 to be allocated; and
- A community use agreement also to be applied to the allotments and other areas of open space associated with the development.

(ii) On Completion of the Legal Agreement, the Head of Commercial Services be authorised to grant planning permission subject to the conditions set out in the report plus an additional condition limiting the Reserved Matters application to a maximum of 103 dwellings.

70. 131471 AGM House, London Road, Copford

The Committee considered an application for the demolition of the existing industrial building and erection of two new industrial buildings with associated landscaping. The Committee had before it a report in which all the 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.

Mr David Whybrow, Principal Planning Officer, presented the report and assisted the Committee in its deliberations. An extra condition relating to the maintenance of the robust screening between the development and residents was recommended.

Mrs Sager addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She suggested that the proposal was of an inappropriate scale for the residential area it was situated in. She believed the plans compromised the village envelope. The development would increase the works carried out on the site and increase the number of employees, thus also increasing traffic. She believed the applicant had introduced this application by sleight of hand after the previous, smaller application had become extant.

Mr Robert Pomery addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that upon previous approval being granted for part demolition of the current site, the applicants concluded that the whole site was in need of improvement and, as such, had submitted this application for an entirely new structure. He claimed that this development was of the same floorspace and would attract the same workforce and traffic flow as the previous application. He emphasised that AGM were a local firm, employing many local people.

Mr Whybrow explained that the new application had an increased roof height, although this was not out of step with the surrounding area and suggested the level of activity would be no greater than previously considered. He stated that the whole of the site was, indeed, outside the village envelope, however the Environmental Team and

Corporate Development Team were happy with the proposal.

The Committee was keen to stress the importance of robust screening and the inclusion of bike racks on the site.

Members of the Committee were concerned about the level of expansion of the unit, suggesting that it may not all be used by one company. The hours of operation and delivery, which were identified as 7am – 8pm were also called into question, although the Principal Planning Officer explained that these were the hours applied for and were reflective of the hours granted in the previous permission.

RESOLVED (EIGHT voted FOR, TWO voted AGAINST) that the application be approved, subject to the conditions set out in the report plus addition conditions relating to the provision of cycle parking and maintenance of the existing screening.

71. 131317 7 Seldon Road, Tiptree

The Committee considered an application for the erection of two bungalows with associated parking and landscaping. The Committee had before it a report in which all the information was set out.

Mr Simon Osborn, Planning Officer, presented the report and assisted the Committee in its deliberations.

Mr Gregory Byrne addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He suggested that noise generated from cars parking at the development would not be sufficiently disruptive as to call for a refusal. He also stated that a condition could be put in place to control the border fencing. He said that amendments had been made to ensure the scheme was suitable and no objections had been raised.

Councillor Martin attended the meeting and, with the consent of the Chairman, addressed the Committee. He suggested that the site was not a backland site, as the proposed dwellings faced onto a footpath. He considered that all necessary planning guidelines had been met. He urged the Committee to come to a sensible decision.

It was explained that the issue of noise disturbance was raised by the Planning Inspectorate when it considered the original, refused, application. The proposal was not considered to have a sense of place within the area.

RESOLVED (UNANIMOUSLY) that the application be refused, for the reasons set out in the report.

72. 131539 Trianon, Hall Road, Tiptree

The Committee considered an application for a first storey extension. The Committee

had before it a report in which all the information was set out.

Mr Simon Osborn, Planning Officer, presented the report and assisted the Committee in its deliberations.

Mr Gregory Byrne addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He believed the design to be appropriate for the size of the plot and suggested the scheme should be considered in relation to the development across the road, which was similar in nature. He claimed the proposal caused no demonstrable harm and was in no way overlooking. Viewed in context, he suggested the proposal be approved.

Councillor Martin attended the meeting and, with the consent of the Chairman, addressed the Committee. He suggested that a ribbon of development was present on both sides of the Road, not just the East side and that the development was of a similar character to other buildings being erected in the area. He suggested there would be no impact on neighbouring properties.

It was explained that the main issue with the proposal was the significant increase in the scale of the property.

Members of the Committee suggested that the design itself was not unacceptable and it was questioned whether any extension of the property would meet the same objection.

The Planning Officer clarified that, in principle, extension of the existing bungalow was acceptable although such a proposal would need to be less significant to fall in line with DP13.

RESOLVED (SIX voted FOR, FOUR voted AGAINST) that the application be refused, for the reasons set out in the report.

73. 131676 9 Little Foxburrows, Colchester

The Committee considered an application for the conversion of the existing car port and alterations. The Committee had before it a report in which all the information was set out.

Ms Nadine Calder, Planning Officer, presented the report and assisted the Committee in its deliberations.

Mr Mike Hardy addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He explained that he was representing Mrs Stones, the immediate neighbour to No. 9. He explained the original intent of the estate in providing the dwellings with car ports as opposed to garages, to remove the need for on street parking. He suggested that many houses had converted the car ports to garages and which had undermined the schemes intent. He claimed it would be in the best interests of the entire estate to uphold the original estates planning

conditions that had been applied at the same time and keep the car parking that had been provided.

Members of the Committee raised questions about the nature of the original approval and whether there had been any conditions put in place restricting the conversion of car ports on the estate.

Mr Simon Cairns, Planning Project Manager, explained that the presence of any such conditions could be investigated but given that the application met the Council's parking standards, any such conditions should not bear any relevance on this particular application.

RESOLVED (SEVEN voted FOR, THREE ABSTAINED from voting) that the application be deferred and returned to Committee for further information on previous conditions relating to parking and the use of car ports when the original application was approved.

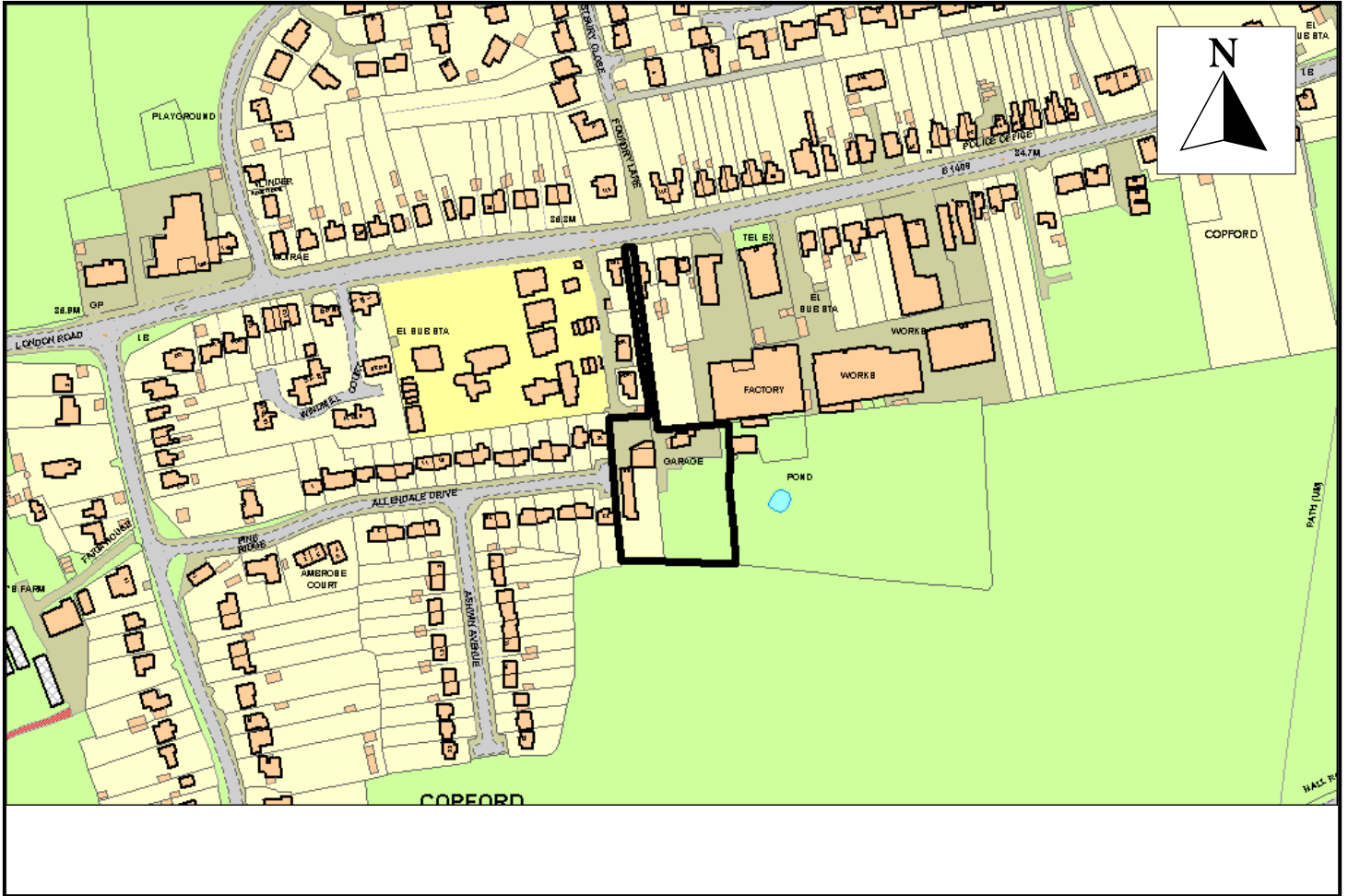
74. Appeals Made by Bovis Homes in Respect of Area J2b of the Colchester Garrison Urban Village

The Committee considered the report of the Head of Planning Services regarding the planning and conservation area consent appeals made by Bovis Homes in respect of Area J2b of the Colchester Garrison Urban Village Development.

Mr Simon Cairns, Planning Project Manager, presented the report and assisted the Committee in its deliberations. He explained that late submissions had been received from the applicant regarding the definition of 'substantial harm', although he did not believe they provided any grounds to alter the Officer recommendation.

The Committee emphasised the importance of protecting the Borough's heritage and encouraged Officers to do all they could to preserve these unique buildings.

RESOLVED (UNANIMOUSLY) to endorse the Officer recommendation to the Planning Inspectorat, that the appeals lodge by Bovis Homes in respect of applications 121612 and 121613 for the redevelopment of Area J2b of the Garrison Urban Village development are dismissed.



Application No: 130239

Location: 99 & 105, London Road, Copford, CO6 1LG

Scale (approx): 1:2500

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Committee Report

Agenda item

7

To the meeting of **Planning Committee**
on: **31 October 2013**
Report of: **Head of Professional/Commercial Services**
Title: **Planning Applications**

7.1 Case Officer: Lucy Mondon

OTHER

Site: 99 & 105, London Road, Copford, CO6 1LG

Application No: 130239

Date Received: 11 February 2013

Agent: Mr Robert Pomery

Applicant: Tocia Properties Ltd

Development: Erection of 7 Residential Units and extension to car park to neighbouring employment units.

Ward: Copford & West Stanway

Summary of Recommendation: Conditional Approval subject to the signing of a Section 106 Agreement

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it is contrary to planning policy. The application does not provide contributions towards affordable housing, open space, or community facilities, and part of the site is within the countryside outside of the Adopted Settlement Boundary for Copford.

2.0 Synopsis

2.1 The key issues explored below are: principle of development; viability of the scheme; design and impact on the character of the area; impact on residential amenity; impact on parking and highway safety; biodiversity; contamination; and flood risk.

- 2.2 The report describes the site and its setting, the proposal itself, and the consultation responses received. Material planning matters are then considered together with issues raised in representations.
- 2.3 The planning merits of the case are assessed leading to the conclusion that the proposal is acceptable and that a conditional approval is recommended.

3.0 Site Description and Context

- 3.1 The application site comprises a large detached house with swimming pool and detached outbuilding/car port, as well as an industrial building previously used as a coach garage. Both the house and the non-residential building are currently vacant and in a run-down state of repair.
- 3.2 The site is accessed via a narrow lane/driveway from London Road. The site backs onto a residential road, Allendale Drive, with the rear of the house being quite prominent as a visual stop to the end of the cul-de-sac. The industrial building appears to have had an access from Allendale Drive, but this is currently fenced and unused as the building is vacant. There is an industrial site adjacent to the north and north-east of the application site, part of which is owned by the applicant.
- 3.3 Whilst the part of the site containing the house and industrial building is within the settlement boundary for Copford, part of the existing garden is outside the settlement boundary and therefore within the countryside for planning purposes. The garden is enclosed by dense planting, separating the site from the open countryside beyond. Part of the original site has been sold to the adjacent industrial site and there is a boundary fence dividing the two areas.

4.0 Description of the Proposal

- 4.1 The application seeks outline planning permission for 7 dwellings, with all but access reserved. The development would involve the demolition of the existing buildings on site. An indicative layout drawing shows the mix of dwellings to be 4 No. houses and 3 No. bungalows. The indicative layout also shows three of the dwellings to be outside the settlement boundary of Copford. Typical elevations have also been submitted.
- 4.2 A unilateral undertaking was submitted as part of the planning application that provided for contributions towards open space, sport, and recreation facilities, and community facilities. However, this has now been withdrawn by the Applicant's Agent as the viability assessment submitted at a later stage in the application process demonstrated that the scheme would not be viable should affordable housing or monetary contributions be provided. This is discussed in more detail in section 14 of this report.

5.0 Land Use Allocation

- 5.1 N/A

6.0 Relevant Planning History

6.1 The planning history of the site is as follows:

Application Number	Development Description	Decision	Decision Date	Appeal Decision	Appeal Decision Date
<u>LEX/393/61</u>	Petrol Pump and Underground Tank.	APPROVED WITH CONDITIONS	09-10-1961		
<u>LEX/263/65</u>	Erection of 28 houses.	REFUSED	03-09-1965		
<u>LEX/556/73</u>	Erect garage for coaches.	APPROVED WITH CONDITIONS	01-11-1973		
<u>75/1242</u>	Erection of dwelling and garage.	REFUSED	03-11-1975		
<u>75/1682</u>	Erection of dwelling and garage.	REFUSED	12-01-1976		
<u>81/0041</u>	Change of use of workshops for agricultural motor light engineering to light industrial without limitation to named applicant	APPROVED WITH CONDITIONS	02-09-1981		
<u>98/0680</u>	Outline planning permission for demolition of existing building. Change of use and erection of two private dwellings and garages	APPROVED WITH CONDITIONS	22-06-1998		
<u>O/COL/05/0971</u>	Development of 10 new build four bedroom houses.	WITHDRAWN	30-08-2005		
<u>F/COL/06/0149</u>	Demolition of existing house and outbuildings and new mews development of 16no. 2, 3 and 4 bedroom houses with parking.	REFUSED	24-04-2006	APPEAL DISMISSED	08-11-2006

6.2 The most relevant planning history is the dismissed appeal (Ref: F/COL/06/0149). This will be discussed at length in the main body of the report.

6.3 Part of the original garden for the house has been sold to the adjacent industrial estate and there is planning permission for additional buildings to be erected in connection with the industrial site on this land (refs: 120856 and revised under 131471).

7.0 Principal Policies

7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Government's primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations

H1 - Housing Delivery

H2 - Housing Density

H3 - Housing Diversity

H4 - Affordable Housing

UR2 - Built Design and Character

TA1 - Accessibility and Changing Travel Behaviour

ENV1 - Environment

ENV2 - Rural Communities

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):

DP1 Design and Amenity

DP3 Planning Obligations and the Community Infrastructure Levy

DP12 Dwelling Standards

DP16 Private Amenity Space and Open Space Provision for New Residential Development

DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

DP21 Nature Conservation and Protected Lanes

7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

Backland and Infill
Community Facilities
Vehicle Parking Standards
Sustainable Construction
Open Space, Sport and Recreation
The Essex Design Guide
External Materials in New Developments
Affordable Housing

8.0 Consultations

8.1 Planning Policy:

- The residential properties that extend beyond the current built form represent inappropriate development into a countryside location, contrary to Core Strategy Policy ENV1;
- Mix of house types is supported (Core Strategy Policy H3), but there is no affordable housing on site (35% affordable housing is required under Core Strategy Policy H4);
- The footpath would improve access to services and transport on London Road.

8.2 Environmental Control: Recommended conditions should planning permission be granted.

8.3 Environmental Control (contamination): Recommended conditions should planning permission be granted.

8.4 Highway Authority: No objection subject to conditions.

[Case Officer Note: Some of the conditions have not been included in the final recommendation at section 18 of this report. This is because the requirements are duplicated in other conditions or the requirements do not meet the tests set out in Circular 11/95 Use of Conditions in Planning Permission. Where possible, these conditions have been included as informatives.]

8.5 Landscape Officer: The southern boundary should be given a green edge, with native hedge planting and a dark stained hit and miss fence behind.

[Case Officer Note: Further discussions were undertaken with the Landscape Officer on 4th April in light of the Environmental Control requirement for a sound attenuation fence alongside the boundaries with the adjacent commercial/industrial site (i.e. the southern boundary). The Landscape Officer is happy for there to be a fence with hedge planted on outer side.]

8.6 Urban Design:

The route of the footpath is not satisfactory; the necessary enclosure to protect private rear gardens will make the route a dark place with a perception of poor safety.

Plot three has very compromised amenity space, a poorly located and overly prominent garage.

Having the visitor parking arranged within private front gardens is potentially problematical from a social perspective and should be reconsidered.

I do not believe that the highway authority accept 7 units on a private drive.

Plots one and two project too far from the established building line of the existing line established from number 31.

The overly large bungalows appear out of character with the established grain and built form. Plot 5 looks especially large and of a highly contrived form.

This is a potentially acceptable layout but it requires more consideration before it becomes supportable.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

9.0 Parish Council Response

9.1 The Parish Council object to the proposal on the following grounds:

- Concerns regarding highway safety at ingress and egress;
- An overdevelopment of the site;
- Concern regarding the safety and security of the footpath;
- Development outside village envelope;
- Impact on wildlife

10.0 Representations

10.1 28 letters of objection have been received. There was a general consensus that dwellings on the site are acceptable, but the following objections were raised:

- The use of Allendale Drive as a service road is unacceptable: cars park on the road and the only way to drive down the road is if these cars are parked on the curb;
- The development should be accessed from London Road;
- Three of the properties would be outside the village envelope, which would set a precedent;
- A previous application (F/COL/06/0149) was refused and dismissed at appeal on the grounds of the development being outside the village envelope, extra traffic, parking demand, and congestion;
- Houses are not needed: there are currently houses for sale in the area and more are being built (i.e. at the nightclub site);

- Wildlife would be frightened away;
- Pollution;
- Concerns regarding the potential of anti-social use of the footpath: thieves, graffiti etc;
- Query regarding who would maintain the footpath and whether it could be used as a shortcut for cars;
- The peace and quiet of No. 97 London Road would be disrupted;
- Overlooking to No. 97 London Road;
- Extra parking for the adjacent commercial site is not needed;
- The development would cause additional parking and this would restrict access for emergency vehicles;
- Concern that more than 7 properties could be built;
- Could lead to houses being built at the end of Ashwin Avenue, making the area an estate;
- There has already been a lot of development (at Queensbury Avenue and Kings Nightclub) and there should not be any more;
- The development would make existing parking issues worse: commuters already park on the road for Marks Tey station, work vans are parked on the road, and most houses have 2-3 cars per house, with some having 5 or 6 cars. The development would lead to more parking;
- The development would encourage cold callers, passers by etc.

The full text of all of the representations received is available to view on the Council's website.

11.0 Parking Provision

- 11.1 The Vehicle Parking Standards SPD sets out that a minimum of two parking spaces are required for dwellings with two or more bedrooms, as well as 0.25 visitor spaces per dwelling (rounded up to the nearest whole number). Provision for at least one cycle space per dwelling should also be provided.
- 11.2 The indicative layout submitted shows that the development would provide in excess of two parking spaces per dwelling and that two visitor spaces could be provided within the site. Cycle parking could be accommodated in the gardens for each dwelling. The proposal therefore accords with parking standards.

12.0 Open Space Provisions

- 12.1 The proposal does not include on-site open space provision and no monetary contribution is offered in lieu of on-site provision. The reasons behind the lack of contribution are discussed in section 14 of this report.

13.0 Air Quality

- 13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Development Team and Planning Obligations

- 14.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team.
- 14.2 The proposal would be required to provide 35% affordable housing (i.e. two dwellings), as well as contributions towards open space and community facilities, in accordance with local planning policy. However, following the submission of a viability assessment, which has been independently assessed by the District Valuer Service, the development has been shown to be unviable should this be adhered to. The independent assessment concluded that, should the scheme provide the two on-site affordable units required, as well as the open space and community facilities contributions and a developer’s profit of 17.5% on the market units, there would be a deficit against the benchmark land value, meaning that the scheme is unviable. Even if no affordable housing or contributions were provided, there would still be a deficit against the benchmark value and the scheme unviable.
- 14.3 The NPPF states that pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
- 14.4 In consideration of the outcome of the viability assessment, as well as requirements for developments to be deliverable, it has been concluded to forgo the contributions, although a legal agreement would be attached to the decision that would require a revised viability assessment to be undertaken and contributions to be paid should the scheme become viable at a later date subject to change in market forces.

15.0 Report

- 15.1 The main planning considerations are: principle of development; design and impact on the character of the area; impact on residential amenity; impact on parking and highway safety; biodiversity; contamination; and flood risk.

Principle of development:

- 15.2 The main issue in terms of the principle of the proposal is that part of the site is outside the settlement boundary. Whilst development is acceptable in principle within the settlement boundary (Core Strategy Policy SD1), development outside settlement boundaries is strictly controlled in order to protect and enhance the character of the countryside, as well as safeguard the biodiversity, geology, history, and archaeology of undeveloped sites (Core Strategy Policy ENV1). It is important to note, however, that planning policy does not rule out development in the countryside altogether, but there are tighter controls to development in these locations. The main planning considerations for the principle of development in these cases are: whether the proposal represents sustainable development, having either a positive or negligible impact upon economic, social, and environmental factors; and its impact upon the character of the countryside.

15.3 The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- **an economic role** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- **a social role** – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
- **an environmental role** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

15.4 The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent: to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.

15.5 The NPPF goes on to state that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including (but not limited to):

- making it easier for jobs to be created in cities, towns and villages;
- moving from a net loss of bio-diversity to achieving net gains for nature;
- replacing poor design with better design;
- improving the conditions in which people live, work, travel and take leisure; and
- widening the choice of high quality homes.

Such sustainable development should be in accordance with the Local Plan.

15.6 Whilst the village of Copford is not specifically identified in the Adopted Core Strategy as a key settlement or development area, it is considered to be a sustainable location for development. The village has a number of facilities, including a primary school, village hall, playing fields, and pub, as well as a regular car boot sale. Many of these facilities are within walking distance of the application site. There is also a regular bus service to Colchester, Chelmsford, and Braintree, with several of the bus stops within Copford being within walking distance of the application site. Further research has identified that there is a weekly community bus to Sainsburys, Tollgate, Colchester Town Centre, and Colchester Leisure World. For travelling further afield, the Marks Tey train station is just over a mile from the site. Therefore, residents in Copford have access to a range of facilities and services that do not require the use of private

transport. The proposed residential development would support these facilities, as future occupants would be likely to increase their usage. The proposal is therefore likely to have a positive economic impact, as well as a social one, by helping to ensure the continued availability of these facilities and services. There would also be an environmental benefit as many services are within walking distance from the site and there is access to a wider range of facilities and job opportunities by means other than private car, which would reduce pollution from regular private car use.

- 15.7 Further, the loss of the industrial unit would have an environmental benefit to existing residents, particularly at Allendale Drive and No. 103a London Road. The site was previously used as a coach garage and has a permitted light industrial use, which is likely to have caused noise and disturbance to residents. Planning policy seeks to retain employment sites (Development Policy DP5). However, the loss of an employment site can be justified if there is significant planning benefit, such as removing a use that has amenity problems. In this case, the removal of a use that would cause noise and disturbance to local residents, as well as potential issues with fumes and smells, is considered a positive step and in accordance with planning policy. The loss of the industrial building is therefore justified in policy terms.
- 15.8 The context of the site is very important in determining its likely impacts upon the character of the countryside. The impact of the proposal upon the character of the area will be discussed in more detail below, but in terms of the principle of development, it is clear that the site is very secluded and not visually part of the open countryside, it being located between longstanding residential development (Allendale Drive) and an industrial site where planning permission has already been granted for further development within the countryside. The planning permission at the adjacent site is important as, should it be developed, it would further screen and separate the application site from the open countryside to the east, meaning that there would be built form to all but the southern boundary of the site (i.e. the application site would be almost completely surrounded by development). However, should the adjacent site not be developed, the application site would be more clearly read as being within the countryside, albeit more so in plan form as the site is well screened by existing boundary treatment. Planning Policy have objected to the proposal for the following reason: 'The units within the settlement boundary are acceptable in principle whilst the units outside are contrary to the adopted Local Plan and will need to be considered against policies which seek to resist development and protect undeveloped areas. The application site is bordered on two sides by residential development and to the east an extension to a commercial development has been approved. To the south is an area of open countryside which through Core Strategy Policy ENV1 the Council seeks to conserve and enhance by strictly controlling development of land outside of the settlement boundary. The approved commercial development to the east proposes new buildings in the middle of the site with improved landscaping around the edge of the site. As a result of this approved layout and landscape mitigation the impact of the commercial development has been reduced. However the residential properties subject to this application would extend beyond the current built form within this area and therefore would take inappropriate development into a countryside location which is contrary to Core Strategy Policy ENV1.'

- 15.9 It is considered that, should the adjacent site be developed, the designation of part of the application site as countryside would be a technical issue and the Agent's assertion that the planning policy objection would be one of principle rather than of identifiable harm to the character of the countryside is agreed. However, as it stands, the current planning application is premature in that the adjacent site has not been developed. In order to find a solution to this issue, it has been agreed that a legal agreement can ensure a trigger point for development outside the settlement boundary: no development shall commence outside the settlement boundary until development has commenced on the adjacent site.
- 15.10 In assessing the acceptability of the proposal, the planning history of the site has been considered. The 2006 appeal is considered to be of particular relevance, although there have been significant changes to planning policy since the appeal was determined and the context of the site was somewhat different as development had not been approved on the adjacent industrial site. The appeal considered a proposal for 16 dwellings on the site (four outside the settlement boundary). The Inspector did not rule out development on this site in principle: the conclusions of the appeal were that the site has the potential for residential development, but that the appeal scheme was simply 'too much' for the site.

Impact on the character of the area:

- 15.11 As discussed above, development on this site is not likely to have a significant visual impact on the surrounding countryside given the context of the site being surrounded by existing development to the north and west, as well as the prospect of further development to the east of the site. As an outline application, the layout and design of the scheme is indicative and detail can be considered at reserved matters stage, although the indicative layout does show that the development of this site would allow for visual improvements to the cul-de-sac of Allendale Drive: the imposing industrial unit and residential property, which currently leave a 'dead frontage' at the head of the cul-de-sac, would be removed, allowing for a crescent to be formed. The three bungalows proposed would differ in character to the remainder of Allendale Drive, but as they would be at the very end of the cul-de-sac they would not have a significant impact on the overall character of the road and would provide a variation in house type which is supported by the NPPF in offering a choice of housing.
- 15.12 The 2006 appeal criticised the design and layout of the proposal, stating that there was little or no relationship to nearby dwellings. The current proposal is significantly different to the 2006 appeal as it has a greater relationship to existing development by extending and closing off the Allendale Drive cul-de-sac. In contrast, the existing property on the site is completely isolated from Allendale Drive and appears incongruous at the end of the cul-de-sac.
- 15.13 The indicative layout is not considered to be acceptable in certain areas and this has been discussed with the Agent (verbally). The three bungalows are considered to be overly large, particularly plot five, and the visitor parking in front gardens would appear incongruous. Further, the amenity space provided for plot three is considered to be mean and its proximity to the proposed car park extension for the industrial site is considered problematic in terms of likely noise and disturbance. The footpath shown on the indicative plan would provide easy access to and from London Road, which is supported by planning policy, but would not be user friendly as it would be dark and

would not have natural surveillance. However, it is considered that these issues can be addressed and that the layout is potentially acceptable. It is therefore considered that the development can be accommodated on the site in a practical and visually acceptable manner.

- 15.14 The design of the proposed dwellings is indicative and would be considered at reserved matters stage. The height of the dwellings should not exceed that of adjacent development on Allendale Drive.
- 15.15 In terms of private amenity space, the garden sizes, with the exception of plots 3 and 5 which are larger, appear to be consistent with the predominant character of the area. Further detail would be ensured at reserved matters stage.
- 15.16 The proposal is not considered to have a detrimental impact on the visual character of the area subject to reserved matters for the layout, scale, appearance, and landscaping of the site.

Impact on residential amenity:

- 15.17 There are residential properties to the north and west of the site. The site is in close proximity to three properties: No. 103a London Road, and No's 22 and 31 Allendale Drive. The site abuts the southern boundary of No. 103a. There is a parking area for No. 103a between the site boundary and No. 103a itself. From the indicative layout, the proposed properties would be at least 20 metres from No. 103a. The distance is such that it would be unlikely for harmful levels of overlooking to occur, especially as the application site abuts a parking area for No. 103a, rather than the private garden. There are some side windows to No's 22 and 31 Allendale Drive that face the application site, but these relate to garages and, therefore, the loss of light to these windows from the development would not have a significant impact upon the amenity of the occupants. The reserved matters will determine the exact layout of the development, but the indicative layout does show that development can be sited so as not to cause any overshadowing to neighbouring properties: the proposed dwellings do not extend past the rear walls of the neighbouring properties in Allendale Drive.
- 15.18 An objection has been received from No. 97 London Road with regards to the impact upon their amenity (overlooking and peace and quiet). The application site would abut the rear boundary of No. 97. However, the proposal would not result in any harmful levels of overlooking to No. 97 as it would be over 60 metres from the property. Further, the proposal is for a bungalow to be sited to the south of No. 97 so there would not be any windows above ground floor level that would look towards No. 97. In terms of peace and quiet, there is nothing to suggest that the proposal for residential development would generate excessive noise that would be detrimental to the amenity of No. 97. The proposal does include an extension to the industrial site car park, which may increase car movements at the boundary of No. 97, but its use would only be during the working hours of the industrial site and would be over 60 metres from the property so additional noise impacts are unlikely. The location of this car park has not been considered as appropriate in terms of its proximity to plot three: it has been suggested to the Agent that the parking spaces be moved to the eastern boundary which would move the car parking further from the boundary with No. 97 thereby reducing any impacts. This would need to be established at reserved matters stage. There have been no objections from Environmental Protection in terms of noise to No. 97.

15.19 In order to mitigate noise from the existing industrial site to the proposed development, the Environmental Protection Team has recommended that an acoustic fence is erected alongside the eastern boundary. This, along with the planting strip proposed along the boundary as part of the industrial site planning approval, will satisfactorily mitigate noise impacts. Further conditions have been recommended in terms of noise and emission control during construction. Mitigation measures will be agreed via condition.

Parking and Highway Safety:

15.20 The majority of objections received from local residents relate to concerns regarding increased congestion and parking in the area, particularly along Allendale Drive. The properties on Allendale Drive have on site parking provision, which varies from one to three or four spaces (including garages). However, local comments explain that, due to extended families and visitors, this level of parking is insufficient and the road is often used for parking which can cause congestion and potential difficulties for emergency vehicle access. This is clearly frustrating for the occupants of Allendale Drive and is sympathised with, but this situation has not been caused by the proposed development: it is an existing situation as a result of the lifestyles of existing residents. In looking at the potential impacts of the proposed development, the proposal provides over and above the minimum amount of on-site parking spaces required by the Vehicle Parking Standards SPD, with each plot having at least three parking spaces, as well as visitor parking. The proposal therefore provides more than adequate parking in accordance with local plan policy so that it would not increase pressure for future occupants or visitors to park in Allendale Drive.

15.21 This assessment mirrors the conclusions of the Inspector as part of the 2006 appeal. In the appeal decision it was recognised that car ownership in Allendale Drive exceeded off-road parking provision and that access along the road would be difficult if cars were parked on road (hence, kerb parking in practice). The Inspector was concerned with congestion, but this was in respect of sixteen new dwellings and the impact that car movements associated with this level of development would have in terms of the free flow of traffic on Allendale Drive. As described above, the current proposal has a significantly lesser impact than the 2006 proposal; less than half the number of dwellings are proposed.

15.22 The Highway Authority has not objected to the proposal in highway safety terms, subject to conditions. The access from Allendale Drive is considered to be acceptable due to the low speed of road users on this road. The proposal is therefore considered to be acceptable on highway safety grounds.

15.23 So that minimal obstruction is caused in Allendale Drive during construction, it is recommended that a construction management plan is submitted and agreed as part of a condition to ensure that parking of construction vehicles and storage of materials is undertaken in an acceptable manner.

Biodiversity:

- 15.24 The application has been assessed in line with Natural England standing advice. The site is not within a nationally designated area or a local wildlife site and, apart from the indigenous southern boundary, does not have any features on site that may be a habitat for protected species. The planting on the southern boundary is likely to be strengthened as part of a landscaping scheme for the site and this would be of benefit in terms of ecology and biodiversity. The proposal is not, therefore, considered to have a significant impact upon protected species and, as protected species are protected by legislation other than planning (e.g. Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010) it is considered that a detailed advisory note regarding protected species would be appropriate to advise the developer of their responsibilities should protected species be discovered during construction.

Contamination:

- 15.25 A phase 1 contamination report has been submitted with the planning application and the Councils' Contamination Officer has been consulted. The Contamination Officer has noted that there are potential pollutant linkages on site, such as possible underground fuel tanks at the former coach depot, and that intrusive investigation and assessment is recommended. It is concluded that the site can be made suitable for development if the recommendations in the report submitted are undertaken. It is therefore considered appropriate for the investigation, assessment and possible mitigation of the site to be conditioned.

Flood Risk:

- 15.26 In terms of flood risk, Environment Agency standing advice has been taken into account. The standing advice states that, for developments (other than changes of use) less than 1 hectare in Flood Zone 1, the main flood risk issue to consider is usually the management of surface water run-off. Drainage from new development must not increase flood risk either on-site or elsewhere. Government policy strongly encourages a sustainable drainage system (SuDS) approach to achieve these objectives. It is therefore considered that, whilst the proposed development is unlikely to be susceptible to flood risk itself (being in a flood zone 1 that is unlikely to flood), the development may contribute to surface water flooding, from increased hard surfacing, without suitable mitigation. A condition requiring details of surface water drainage is therefore required.

Other matters:

- 15.27 Objections have been received from local residents that question the need for the development, as well as express concern that the proposal represents an overdevelopment of the site and would set a precedent for further development.

15.28 There is no policy requirement to assess the 'need' for residential development. It is recognised that there is a recent residential development to the west of the site, off London Road, but the existence of this development does not justify the refusal of another. In terms of precedent, planning caselaw has established that the fear of precedent creation is a material consideration to be given weight in the decision making process where it is being debated whether to grant permission contrary to established planning policy or principles. However, a distinction has to be made between cases where applications for the same type of development are likely to be made at other locations with similar circumstances which future decision makers could not resist in all fairness, and those where the site circumstances are sufficiently unique for the risk of parallel conditions to be small. In this case, the application site is rather unique in terms of its context within existing development. Taking into account the planning permission on the adjacent site, the application site would be near surrounded by development and its development would not have a marked impact on the surrounding countryside. This is very different to the land at the end of Ashwin Avenue, which has been used as an example where development could be proposed, which is much more open. It is considered to be highly unlikely that the specific context of the application site would be replicated elsewhere and the proposal is not, therefore, considered to set a precedent for similar development.

15.29 Further objections have stated that the proposed development would encourage cold callers to Allendale Drive. This is not a planning matter, but an increase in the number of dwellings accessed by Allendale Drive is not considered to necessarily lead to an increase in cold callers.

16.0 Conclusion

16.1 Whilst the proposal is contrary to planning policy in terms of part of the development being sited within the countryside and there being no contribution towards affordable housing or open space and community facilities, planning approval is justified due to particular context of the site which would enable development to occur without significant impact upon the character of the surrounding countryside and the viability assessment which demonstrates that the development would be unviable should contributions be made. A legal agreement will ensure that development is not undertaken prematurely in terms of adjacent development in the countryside and to ensure that contributions are received should market forces lead to the scheme generating surplus income. The views of local residents and the Parish Council have been taken into consideration and it has been concluded that any impacts from the development can be suitably mitigated. A conditional approval is recommended.

17.0 Recommendation

17.1 APPROVE subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Environmental and Protective Services to refuse the application, or otherwise to be authorised to complete the agreement to provide the following:

- That the development outside the settlement boundary is not commenced until such time that the development on the adjacent site has commenced; and
- That, should the development not commence within 12 months from the date of the permission, a revised viability assessment be undertaken and any surplus revenue be paid to the Council for the use of Affordable Housing Community Facilities and Open Space Sport and Recreational Facilities (to be repeated if the development is not substantially complete within 24 months from the commencement of development).

17.2 On completion of the legal agreement, the Head of Environmental and Protective Services be authorised to grant planning permission subject to the following conditions:

18.0 Conditions

1 - Non-Standard Condition/Reason

Application for approval of reserved matters must be made not later than the expiration of three years beginning with the date of this permission and the development must be begun not later than whichever is the later of the following dates: a) the expiration of five years from the date of this permission; or b) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2 - Non-Standard Condition/Reason

Before any development is commenced, approval of the details of the appearance, layout and scale of the buildings, and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority.

Reason: The application as submitted does not provide sufficient particulars for consideration of these details.

3 - Non-Standard Condition/Reason

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Site Location, received on 12th February 2013, in so far that it relates to the access from Allendale Drive only.

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

4 - Non-Standard Condition/Reason

No development shall commence until details of surface water drainage have been submitted to and approved, in writing, by the Local Planning Authority. No part of the development shall be first occupied or brought into use until the agreed method of surface water drainage has been fully installed and is available for use.

Reason: To minimise the risk of flooding.

5 - Non-Standard Condition/Reason

No development shall commence until evidence that the development is registered with an accreditation body under the Code for Sustainable Homes and a Design Stage or Interim Code Certificate demonstrating that the development will achieve Code Level 3 or higher for all dwellings has been submitted to and agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the development is designed to be sustainable and will make efficient use of energy, water and materials.

6 - Residential Code for Sustainable Homes (Part 2 of 2)

Within 3 months of the first occupation of any dwelling hereby approved, a post-construction Final Code Certificate issued by an accreditation body confirming that the dwelling has achieved a Code for Sustainable Homes rating of Code Level 3 or higher shall have been submitted to and agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the completed development is sustainable and makes efficient use of energy, water and materials.

7 -Non-Standard Condition/Reason

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

- PROPOSED FINISHED LEVELS OR CONTOURS;
- MEANS OF ENCLOSURE;
- CAR PARKING LAYOUTS;
- OTHER VEHICLE AND PEDESTRIAN ACCESS AND CIRCULATION AREAS;
- HARD SURFACING MATERIALS;
- MINOR ARTEFACTS AND STRUCTURES (E.G. FURNITURE, PLAY EQUIPMENT, REFUSE OR OTHER STORAGE UNITS, SIGNS, LIGHTING ETC.);
- PROPOSED AND EXISTING FUNCTIONAL SERVICES ABOVE AND BELOW GROUND (E.G. DRAINAGE POWER, COMMUNICATIONS CABLES, PIPELINES ETC. INDICATING LINES, MANHOLES, SUPPORTS ETC.);
- PLANTING PLANS;
- WRITTEN SPECIFICATIONS (INCLUDING CULTIVATION AND OTHER OPERATIONS ASSOCIATED WITH PLANT AND GRASS ESTABLISHMENT);
- SCHEDULES OF PLANTS, NOTING SPECIES, PLANT SIZES AND PROPOSED NUMBERS/DENSITIES WHERE APPROPRIATE; AND
- IMPLEMENTATION TIMETABLES AND MONITORING PROGRAMS.

Reason: To ensure that there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development within its surrounding context in the interest of visual amenity.

8 - Landscape Management Plan

Prior to the first occupation of the development, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas other than small, privately owned, domestic gardens shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved at all times.

Reason: To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area.

9 - Non-Standard Condition/Reason

No development shall commence until all trees, shrubs and other natural features not scheduled for removal on the approved plans have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

10 - Pedestrian Visibility Splays

Prior to the first use of the vehicular access to the development, a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the vehicular access. Such visibility splays shall thereafter be retained free of any obstruction at all times and must not form part of the vehicular surface of the access.

Reason: To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety.

11 - Non-Standard Condition/Reason

Prior to the first occupation of the development, the proposed private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres within the site, tapering on-sided over the next 6 metres to any lesser width and provided with an appropriate dropped kerb crossing to the satisfaction of the Local Planning Authority.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway in the interests of highway safety.

12 - Non-Standard Condition/Reason

Prior to the first occupation of the development, the existing access onto the site from Allendale Drive shall be suitably and permanently closed in accordance with details previously submitted to and agreed in writing by the Local Planning Authority. Such details shall include the reinstatement to full height of the kerbing.

Reason: To ensure the removal of, and to preclude the creation of, unnecessary points of traffic conflict in the highway.

13 - Non-Standard Condition/Reason

No development shall commence until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

(i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;

(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

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

14 - Non-Standard Condition/Reason

No development shall commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

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

15 - Non-Standard Condition/Reason

No development shall commence, other than that required to carry out remediation, until the approved remediation scheme has been carried out in accordance with the details approved, unless otherwise agreed, in writing, by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

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

16 - Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 13, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 14, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 15.

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

17 - *Validation Certificate

Prior to the first occupation of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the approved documents and plans.

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

18 - Construction Method Statement

Prior to the commencement of development, including any works of demolition, a Construction Method Statement shall have been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:

- the parking of vehicles of site operatives and visitors;
- hours of deliveries and hours of work;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- wheel washing facilities;
- measures to control the emission of dust and dirt during construction; and
- a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable.

19 - Non-Standard Condition/Reason

No development shall commence until a noise survey for the proposed residential properties that are adjacent to the industrial estate to the north and east of the site has been submitted to and approved, in writing, by the Local Planning Authority. The survey shall have been undertaken by a competent person, shall include periods for daytime as 0700-2300 hours and night-time as 2300-0700 hours, and identify appropriate noise mitigation measures. All residential units shall thereafter be designed so as not to exceed the noise criteria based on current figures by the World Health Authority Community Noise Guideline Values/BS8233 "good" conditions given below:

- Dwellings indoors in daytime: 35 dB LAeq,16 hours
- Outdoor living area in day time: 55 dB LAeq,16 hours
- Inside bedrooms at night-time: 30 dB LAeq,8 hours (45 dB LAm_{ax})
- Outside bedrooms at night-time: 45 dB LAeq,8 hours (60 dB LAm_{ax})

Such detail and appropriate consequential noise mitigation measures as shall have been agreed, in writing, by the Local Planning Authority shall be implemented prior to occupation of those properties adjacent to the industrial site and shall be maintained as agreed thereafter.

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

20 - *Light Pollution for Minor Development

Any lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) shall fully comply with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note E22 rural, small village or dark urban areas.

Reason: In order to safeguard the amenity of the surrounding area by preventing the undesirable, disruptive and disturbing effects of light pollution.

21 - Non-Standard Condition/Reason

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 Classes A-H of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration to the dwelling, or outbuilding, pool, or enclosure, shall be erected or carried out except in accordance with drawings showing the siting and design of such enlargement, improvement or other alteration which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

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

19.0 Informatives

(1) ZT0 – Advisory Note on Construction & Demolition

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

(2) Non Standard Informative

All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

(3) ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

(4) Non Standard Informative

PLEASE NOTE: This application is the subject of a Section 106 legal agreement and this decision should only be read in conjunction with this agreement.

(5) Non Standard Informative

No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary in order to avoid displacement of loose material onto the highway in the interests of highway safety.

(6) Non Standard Informative

Steps should be taken to ensure that the Developer provides sufficient turning and off loading facilities for delivery vehicles, within the limits of the site, together with an adequate parking area for those employed in developing the site.

(7) Non Standard Informative

The car parking provision for the development will need to be in accordance with relevant vehicle parking standards. The current parking standards state that vehicular hardstanding shall have minimum dimension of 2.9 metres x 5.5 metres for each individual parking space and any garage shall have a minimum internal dimension of 3.0 metres x 7.0 metres for each individual parking space.

(8) Non Standard Informative

In respect of condition 7, the developer is advised that the southern boundary of the site should be maintained as a green edge in order to protect the character of the countryside. It is expected that the boundary will be a native hedge and hedgerow trees, with a 'hit and miss' dark stained fence set a metre behind it (within the gardens) should additional boundary treatment be required. A two metre high acoustic fence is likely to be required along the eastern boundary of the site in order to mitigate noise disturbance from the adjacent industrial site; this fence should be set behind a native hedge.

(9) Non Standard Informative

The Developer is advised that, whilst the erection of 4 No. houses and 3 No. bungalows on the site is considered to be acceptable, the indicative site layout submitted with the application is not considered to be an acceptable form of development. In particular: the footpath would not be user-friendly, being dark and with very little natural surveillance, and should be omitted from the scheme; plots one and two are located forward of existing development which is out of character with the established grain of built form and should be revised; plot three has very compromised amenity space and has a poor relationship with the proposed car park extension which needs to be addressed; the visitor parking in front gardens would appear incongruous and should be reconsidered; and the bungalows, particularly plot five, are too large and would appear cramped within their plots. The reserved matters application will need to address these issues.

(10) Non Standard Informative

Protected species, such as bats, birds, badgers and reptiles, are protected under the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010. The Applicant and/or Developer is advised that, should any protected species be encountered during construction, work should cease immediately and further advice sought. Further advice can be sought from Natural England www.naturalengland.org.uk.

20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



Application No: 131020 & 131023

Location: The Jumbo Water Tower, Balcerne Passage, Colchester, CO1 1PA

Scale (approx): 1:1250

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7.2 Case Officer: Sue Jackson

MAJOR

Site: Jumbo Water Tower, Balkerne Passage, Colchester, CO1 1PA

Application No: 131020

Date Received: 22 May 2013

Agent: Mr Robert Pomery

Applicant: Mr George Braithwaite

Development: Change of use and alterations to provide a mixed use development comprising three apartments, (C3), restaurant (A3), office (B1a) and observatory/museum (D1) with ancillary shop/cafe and erection of ancillary building (boiler house) and associated works.

Ward: Castle

Summary of Recommendation: Conditional approval subject to signing of Section 106 Agreement

7.3 Case Officer: Libby Kirkby-Taylor

MAJOR

Site: Jumbo Water Tower, Balkerne Passage, Colchester, CO1 1PA

Application No: 131023

Date Received: 22 May 2013

Agent: Mr Robert Pomery

Applicant: Mr George Braithwaite

Development: Listed building application for change of use and alterations to provide a mixed use development comprising three apartments, (C3), restaurant (A3), office (B1a) and observatory/museum (D1) with ancillary shop/cafe and erection of ancillary building (boiler house) and associated works.

Ward: Castle

Summary of Recommendation: Conditional Approval subject to signing of Section 106 Agreement

1.0 Reason for Referral to the Planning Committee

- 1.1 These applications for planning permission and listed building consent have been referred to the Planning Committee for consideration as objection has been received from English Heritage and others and the recommendations are for approval.

2.0 Synopsis

- 2.1 There are a number of complex issues which are discussed in detail in the main report below. However the key issues are considered to be the impact on the listed building and conservation area. Whether there are any viable alternatives to the current proposal. If permission is granted the need to ensure the whole scheme is completed. Consideration of whether the scheme will be viable in the long term and to ensure public access.

3.0 Site Description and Context

- 3.1 The site lies in Colchester town centre between Balkerne Hill to the west and Head Street to the east. It comprises an area of approximately 0.05ha in area and has a frontage of approximately 28 metres to the south side of Balkerne Passage and a frontage of approximately 25 metres to the east side of Balkerne Garden. The site is almost wholly occupied by the Victorian water tower.
- 3.2 The water tower rises to a height of almost 40m and consists of a cast iron water tank measuring 16m by 16m by 4m high which is supported by a brick superstructure comprising four legs and a central brick shaft containing a spiral staircase. The water tank is covered by a copper clad pyramidal roof which is topped by a belvedere.
- 3.3 Abutting the site to the east is a brick electricity sub-station which stands in a car park. A public area laid to grass with trees and seating abuts the site to the south. To the west is the Mercury Theatre and on the opposite side of Balkerne Passage is the 3-storey Parsley House run by the Balkerne Gardens Trust. The site is close to Balkerne Gate and town wall, a Grade I structure and Ancient Monument. There are a number of listed buildings close to the site.

4.0 Description of the Proposal

- 4.1 The applications are for planning permission and listed building consent for the alteration and change of use of The Balkerne Water Tower (Jumbo), Balkerne Gardens to provide three apartments, a restaurant, offices and an observatory/museum with ancillary shop/cafe and erection of ancillary building (boiler house) and associated works.
- 4.2 The application proposes 11 floors of accommodation including the roof space and the belvedere. The following accommodation is proposed starting at ground floor and working up to the belvedere. Offices are proposed on the ground and first floors, above are 3 three bedroom flats each on a separate floor. Next are 2 floors for the restaurant then the kitchen and above this the shop and café. The museum is proposed in the tank and then finally the museum gantry and the belvedere observatory.

The Water Tower Legs

- 4.3 Seven floors of accommodation, containing the offices, flats and restaurant will be created by inserting 6 additional floors and glazing the arches between the legs of the tower. The glazing system is to be recessed from the front faces of the brickwork. At each floor level there will be an entrance lobby with a lift and means of escape staircase. The glazing is described as follows “The new accommodation is to be enclosed by a sheer glass curtain wall system installed between each leg. The curtain wall system, a “Toggle System” has been chosen because no fenestration projects beyond the glass plane, it gives an effect of a sheer wall of glass and the glass panel size designed to reduce the need for extra mullions and transoms. The glass will be a solar reflective and tinted grey, and the inside panel screen printed with graduated dots to cover the edge detail for the new floor slabs”. The floor slabs will be attached to a metal frame within the brick structure and will not affect the internal brickwork. It is proposed to remove the remaining large gate valves and pipes within the legs as the internal corner of the legs will be used to house a new 8 person disabled/fire fighting lift and mechanical ventilation ducts and service pipes.

The Tank Undercroft

- 4.4 The tank undercroft is the existing area between the top of the legs and the underside of the tank and used for maintenance. It is at this level that the tower has its first existing floor and externally there is double tier of campanile arches (machicolations). The floor, which is not an original feature, will be lowered and an additional floor inserted. This area will provide the kitchen for the restaurant use. The kitchens will be vented through the building’s existing arched openings. The floor above will contain the shop office and café. these floors will be lit by the existing campanile arches with the windows and louvered ventilation panels set back from the front facade.
- 4.5 The central core which emerges through the centre of this space is to be retained. In the shop/cafe the brick work will be left exposed; the internal brick to the walls will also be left exposed, although in the kitchen area the walls be covered for hygiene reasons.

The Tank

- 4.6 The tank space will be retained as an open space and its construction, the cast iron panels, the cast iron cruciform columns, left visible. The tank is open to the copper roof and provides a view and access via a spiral stair up to the belvedere. It is proposed to remove two of the tank panels on each side and form new windows. Each panel measures approx. 140cm x 45cm. The application states “99% of the tank panels remain in place whilst the other 1% are retained within the building”. A new spiral staircase will be introduced so that the roof gallery which leads up to the belvedere will be accessed from the tank floor level. A new lift, lobby and means of escape staircase are also proposed in this main space and direct visitor access from the ground floor. .

The Roof and the Belvedere

- 4.7 A continuous roof-light is proposed in the roof plane just above the top of the existing external catwalk to provide natural daylight into the tank area/museum space. The following explanation is provided “The copper roof is at the end of its workable life and needs completely replacing as its invisible fixings have deteriorated to such an extent that most of the roof is loose. Given this the insertion of a continuous roof-light in the roof plane is a fairly simple job as all that is required is for the timber boarding to be removed and the roof-light inserted in the top of the existing timber rafters. A new copper roof finish is then applied and flashed up to the new roof-light.” The copper roofing material is apparently an alteration as the roof was originally finished in Welsh Slate.
- 4.8 The belvedere will be retained and renovated along with the Jumbo weather vane. Members of the public will have access to the belvedere. Access will be via a lift to the museum and then via two spiral staircases, a proposed staircase from the tank floor to the roof gallery and then by the second, existing staircase, into the belvedere.

The Central Core

- 4.9 The central core or central brick shaft of the water tower contains the spiral staircase which currently the only way to access the undertank and tank. This staircase does not provide direct access to the tank floor which is accessed via a metal ladder from a wooden platform. The belvedere is accessed via an open metal spiral staircase. The central core and its staircase will be retained and renovated, but the staircase will not be used for access or means of escape, as it is too narrow and, consequently, dangerous. The central core brickwork will be left exposed in the offices apartments and restaurants. The existing opening in the core will remain and be reglazed.
- 4.10 The main entrance door to the core on the ground floor will be visible from the road, as it will form part of the new glazed two storey entrance foyer. The sandstone surround and various plaques related to this door will be visible.

Access and Means of Escape

- 4.11 As explained above, the only access is currently via the spiral staircase in the central core, whilst this staircase will be retained it will not be used. A new disabled lift is proposed which will provide public access to the belvedere and museum plus access to all the lower floors. Public access to the belvedere/observatory will be on foot via 2 spiral staircases. Access to the belvedere observatory will be limited to 10 people at any one time due to the size of the belvedere and the narrowness of the existing spiral staircase. In addition to the lift an escape staircase is proposed. The lift, lobby area and means of escape staircase are located on the north side of the tower.
- 4.12 The supporting information indicates: “The means of escape staircase allows a maximum of 60 people per floor at any one time. The staircase will also be positively pressurised and the whole of the building will be fitted with an L1 fire alarm and detection system. these measures have been agreed with ECC Fire Brigade and an Independent Building Control Assessor”.

Other Works

- 4.13 The application also proposes hard paving the external area of the building with contrast material to the entrance. A new footpath is shown adjoining the highway on the western and northern boundaries of the site. Three car parking spaces, defined by bollards, are indicated plus the erection of a small outbuilding to house services. The proposed layout retains a right of way to the sub-station and provides an emergency exit on the north elevation. The existing brick wall on the east boundary of the site is retained with the addition of an access gate to screen the waste bin storage area. A new brick wall and railings are proposed on the south boundary.
- 4.14 The application documents include a Design and Access Statement, Heritage Statement, Planning Statement, Arboricultural Report, Jumbo Development Options Report, Report on Financial Appraisal of Options, Report and Valuation. For the avoidance of doubt, the development options considered form part of the supporting information and are not options to be chosen between for this application.

The full text of all of the supporting information is available to view on the Council's web-site.

5.0 Land Use Allocation

- 5.1 The site is allocated in the Proposals Maps for cultural facilities. The Balkerne Water Tower (Jumbo) is listed Grade II*. The site is also within the Town Centre Conservation Area No. 1. The list description is produced below:-

“Water Tower. Dated 1882 and opened 1883. Charles Clegg C.E. Borough Surveyor and Engineer. Red Brick with iron water tank. Approx. 110 feet high in Romanesque Revival 'Campanile' style. Square plan. 4 corner piers with flared coursed bases and corner pilasters with coved capitals. Piers have flying buttresses and pipes to the inside. Connecting each pier is a tall rounded arch (approx. 70 feet high) with moulded architrave. Above these, a course of brackets link the pilaster capitals, above which a second course of brackets are directly below the cast iron water tank. Copper pyramid roof capped by lantern and weather vane. Decorative cast iron spiral stair in roof. Central service pier with flared coursed base.

Arched entrance to service tower with deep moulded terra cotta surround. Above this, a terra cotta plaque that reads 'WATER TOWER 1882'. Small arched openings to each storey of core tower, blind to north and south and open to east and west. Stone dedication plaque reads 'BALKAN WATER TOWER This edifice was dedicated to the public use on the 27th date of September 1883'. HISTORY: The Balkerne Water Tower, commonly known as 'Jumbo,' was built on a site adjacent to the early-C19 reservoir. In 1882 the town waterworks were taken over by the Corporation who built the Water Tower that was opened in 1883.

Construction required 1.25 million bricks and 142 tons of iron to support the tank that can hold 230,000 gallons of water. It was decommissioned in the 1980s and permission had been granted for a residential conversion scheme at the time of reassessment (2003). SOURCES: Crosby, Tony. The Public Water Supply in Essex 1850-1939. Essex County Council, 1999.

- 5.2 The building is included in the English Heritage National Buildings At Risk Register and the Essex County Council's Heritage at Risk register which lists it as being in poor condition and priority C (Slow decay; no solution agreed).

- 5.3 Heritage Assets are deemed to be 'at risk' on the basis of their condition, and in the case of buildings, occupancy. Heritage Assets capable of beneficial use are 'at risk' if they are in very bad or poor condition or in fair condition and vacant. Buildings partially occupied or about to be vacated as a result of functional redundancy, for example a hospital being run-down prior to closure, are also included. Heritage Assets not capable of beneficial use are 'at risk' if they are in very bad or poor condition, or in fair condition but lacking management to ensure their maintenance. A Heritage Assets 'at risk' will remain on the Register until the repairs are completed and its future secured.
- 5.4 The Victorian Society has recently included the building on their list of the 10 most endangered Victorian and Edwardian buildings in England and Wales.

6.0 The History of Jumbo

- 6.1 While the history of Jumbo is a material consideration and was acknowledged as such by the previous appeal inspector. The Tower was constructed by the local authority and commissioned in 1883 for the purpose of improving water supplies in Colchester. The ownership of Jumbo passed to Anglian Water Authority in 1974. In 1984 the structure ceased to function as a water tower, following which it was sold into private ownership. The salient point in this historical record is that although having served Colchester as the means of water supply for some 100 years, Jumbo is now redundant and has been so since 1984. Since this time, other than in 1988 when the structure was used as a meeting hall by a religious organisation for the occasional prayer meeting, the building has not had an active use.

7.0 Relevant Planning History

- 7.1 87/2025 - Conversion of water tower to (1) Ground Floor shop units (2) Office accommodation with G.F Foyer. (3) Penthouse suite plus demolition of centre core – Withdrawn 1988
- 7.2 89/0306 - Conversion of main water tank into place of worship – Approved 1989
- 7.3 90/1735 - Variation of Condition No. 02 of COL/89/0306 to enable use from 06.15 hours to 22.30 hours in the observation room only – Approved 1991
- 7.4 95/1077 and 95/1078 - Partial demolition and conversion into 19 dwellings and ancillary works for residential use – Refused 1996
- 7.5 97/0049 and 97/0050 - Partial demolition and conversion into 19 dwellings and ancillary works for residential use – Withdrawn 1999
- 7.6 98/1444 and 98/1445 - Alterations and change of use to form single dwelling with ancillary staff accommodation – Refused 1999
- 7.7 F/COL/00/1458 and LB/COL/00/1459 - Alterations and renovations to form single residence with limited public access to Belvedere (scheme B) – Refused 2000 – **Refused at appeal 2001**

- 7.8 F/COL/00/1460 and LB/COL/00/1461 - Alterations and renovations to form single residence with limited public access to Belvedere (scheme C) – Refused 2000 – **Approved at appeal 2001**
- 7.9 F/COL/01/0889 and LB/COL/01/0890 - Alterations and renovation to form single residence with limited public access to belvedere and B1 office use. (Scheme D) – Refused 2001
- 7.10 F/COL/01/0891 and LB/COL/01/0893 - Alterations and renovations to form single residence with limited public access to belvedere and B1 office use. (Scheme E) – Refused 2001 – **Approved at appeal 2001**
- 7.11 F/COL/01/0895 and LB/COL/01/0896 - Alterations and renovation to form single residence with limited public access to belvedere and B1 office use. (Scheme D) – Refused 2001 – **Refused at appeal 2001**
- 7.12 F/COL/01/0897 and LB/COL/01/0898 - Alterations and renovations to form single residence with limited public access to belvedere and B1 office use. (Scheme E) – Refused 2001
- 7.13 F/COL/06/1423 - Application under Section 73 to develop land without compliance with Condition 1 of Planning Permission F/COL/00/1460 in respect of alterations and renovations to form a single residence with limited public access to the Belvedere – Withdrawn 2006
- 7.14 F/COL/06/1427 – Application under Section 73 to develop land without compliance with Condition 1 of Planning Permission F/COL/01/0891 in respect of alterations and renovations to form a single residence with limited public access to the Belvedere and B1 Office Use – Withdrawn 2006
- 7.15 091035/091343 – Change of use and alterations to provide four flats, restaurants and offices and erection of ancillary building and associated works. Listed building application for change of use and alterations to provide four flats, restaurant and offices and erection of ancillary building and associated works. These applications involve replacing two sides of the tank with glazing and infilling the legs with glazed panels. Planning permission and listed building consent were refused contrary to the officer’s recommendation.

8.0 Principal Policies

- 8.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The preservation of a listed building is one such material and statutory consideration. The NPPF also sets out the Governments primary objective that there be “a presumption in favour of sustainable development”. There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

- 8.2 Planning for the Historic Environment: Historic Environment Planning Practice Guide National Planning Practice Guidance published in Beta mode for public testing and comment; the 2008 English Heritage Guidance Conservation Principles, Policies and Guidance.
- 8.3 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:
 SD1 - Sustainable Development Locations
 SD2 - Delivering Facilities and Infrastructure
 SD3 - Community Facilities
 CE2a - Town Centre
 H1 - Housing Delivery
 H2 - Housing Density
 H3 - Housing Diversity
 H4 - Affordable Housing
 UR2 - Built Design and Character
 PR2 - People-friendly Streets
 TA1 - Accessibility and Changing Travel Behaviour
 TA2 - Walking and Cycling
 TA3 - Public Transport
 TA4 - Roads and Traffic
 TA5 - Parking
 ENV1 - Environment
- 8.4 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):
 DP1 Design and Amenity
 DP3 Planning Obligations and the Community Infrastructure Levy
 DP4 Community Facilities
 DP6 Colchester Town Centre Uses
 DP10 Tourism, Leisure and Culture
 DP11 Flat Conversions
 DP12 Dwelling Standards
 DP14 Historic Environment Assets
 DP16 Private Amenity Space and Open Space Provision for New Residential Development
 DP17 Accessibility and Access
 DP19 Parking Standards
- 8.5 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:
 Community Facilities
 Vehicle Parking Standards
 Sustainable Construction
 Open Space, Sport and Recreation
 The Essex Design Guide
 External Materials in New Developments
 Colchester Town Centre Conservation Area Appraisal (draft)

9.0 Consultations

- 9.1 Historic Buildings and Areas Officer - This important response is produced in the report section under the main heading Heritage Issues. The officer has also responded to the objections raised by English Heritage and others in respect on heritage issues.
- 9.2 Environmental Protection recommend conditions should planning permission be granted.
- 9.3 Building Control has indicated they are involved in discussions with the agents, and have confirmed the alterations shown, in particular the access and means of escape have been agreed with them in principle.
- 9.4 The Highway Authority has no objection subject to conditions.
- 9.5 Planning Policy has commented on the principle of the proposed change of use, as follows:

“The water tower site is located within the defined boundary of Colchester town centre core and is designated on the Proposals Map as an area of ‘cultural facilities’, adjacent to ‘mixed use’ and ‘predominantly residential’ areas, also within the town centre core. The proposal includes a change of use to D1 for an observatory/museum which is in line with the ‘cultural facilities’ Proposals Map designation. The proposal also includes changes of use to A3 restaurant and B1a offices. While these do not fall in to the category of cultural facilities, restaurants and offices are defined as a main town centre use in the NPPF and are considered to be appropriate uses in this location. In addition, the application includes a change of use for three C3 residential apartments. While residential use is not classified as a main town centre use, the NPPF states that “residential development can play an important part in ensuring the vitality of centres”. In this case, the proposed residential development is a component of a wider proposal to bring a building, which has been vacant and disused for many years, back into use, notably - a building which is currently on the Heritage at Risk Register. Also, the site is located outside of the inner and outer core areas and is located adjacent to areas designated as ‘mixed use’ and as ‘predominantly residential’. On this basis, the C3 element of proposal is considered to be an appropriate change of use. The proposal is in accordance with policy CE2a of the Core Strategy, which states that main town centre uses, including retail, offices, leisure and cultural facilities, should take a sequential approach which gives priority to the regeneration of the Town Centre. It is considered that the proposal as a whole may also help to contribute towards the aim in policy CE2a - to achieve a more balanced night time economy.

In conclusion, there are no policy objections to the principle of the proposed change of use. However, conservation and design related comments will be critical to this application.”

9.5 Enterprise & Tourism Development Manager comments as follows:-

“Located at a strategic point in the town centre, Jumbo is an important landmark building which has fallen into disrepair in recent years. From an economic and tourism development perspective the proposal to bring a mixed use development to this site is to be welcomed on a number of counts set out below. In tourism terms the development would bring three new attractions to Colchester in the form of a 102 seat restaurant, an observatory and a museum with a shop/café.

Strategic fit:

- The plans for Jumbo matches the Council’s broad aim as set out in its ‘Strategic Plan 2012-15’ which is to make Colchester a place where people want to live, learn, work and visit. Specifically it matches the Regeneration objective ‘to help to meet significant population growth, tackle local deprivation, address economic need, enable job creation and realise Colchester’s potential’.
- The proposal to develop Jumbo also fits with the Council’s ‘Colchester Economic Development Strategy 2010 –15’, which identifies priority economic sectors which should be supported to enable the future economic growth of the Borough. Tourism is one of the priority sectors.
- It also supports the ‘Visit Essex Business Plan 2012-15’ which aims to ‘support economic growth within the tourism sector of over 10% by 2015 to £3.2bn per annum and to support tourism employment growth of over 10% by 2015 to over 60,000 jobs per annum.
- It would enhance the town centre and matches the ambitions articulated through the themes of the www.bettertowncentre.co.uk improvement programme.

The anticipated social, economic and environmental benefits of this development would be:

Social: A new visitor attraction(s) which would complement the Borough’s wider collection of attractions

- offering more choice and another reason to visit / extend visits into staying visits.
- The restaurant would be attractive to local people as well as visitors and would offer more choice of places to eat, enhancing the quality of life in Colchester.
- It would engender civic pride and understanding by helping local people (especially local children) and visitors alike to understand the history of Jumbo and its historic impact on the town
- The viewing platform would offer a truly unique perspective on the town and surrounding area which colleagues at the Visit Colchester Information Centre feel would be highly popular with visitors, local people and their visiting friends and relatives.
- It would bring a Listed building and major asset in the Borough’s architectural collection not only into use but into public use

Economic:

- It would help to manage visitors around the town. It has been estimated that some £500m is being invested in the town centre including the St Botolph’s regeneration, the Vineyard Gate retail development and the Williams & Griffin expansion. The development of Jumbo in this way balances the attractiveness of the town centre as a whole and, in doing so, would spread footfall, awareness and patronage of businesses located in the west of the town.

- Being located on the route of the emerging 'Shops on the Walls' project (Colchester's 'Lanes-style' project to support and develop independent retailers) the development of Jumbo would act as a welcome anchor attraction at the west end of the route.
- It would help contribute to the Council's objective of 500,000 additional visitor trips pa to the Borough and associated additional visitor spend.
- It would support new and existing accommodation providers by encouraging overnight stays in Colchester.
- A developed Jumbo would complement the collection of existing cultural attractions in that area such as The Mercury Theatre, The Colchester Arts Centre, the Hole in the Wall public house, the Roman Wall and Balcerne Gateway rather than detract from them which has been the case while hidden behind hoardings at ground level.
- Such a development would also bring new employment opportunities and
- Enhance Colchester's wider image and reputation as an interesting place to stay and visit.

Environmental:

- Jumbo is highly accessible by public transport and pedestrians alike. Like Firstsite and the newly developed Castle Museum, its accessibility would help to manage traffic impacts in the town centre.
- In aesthetic terms a developed Jumbo would provide a resolution to a decaying historic icon in the town centre."

9.6 Colchester & Ipswich Museum Service Museums Arts and Culture Manager comment as follows:-

" I'm afraid that our financial situation as detailed by Beverley Jones last year has not improved and CIMS is not in a position to take over the running of any additional museum spaces."

9.7 The Archaeology Officer has no comment.

9.8 Colchester Archaeological Trust comment as follows:-

"The tower stands in an archaeologically-rich and important area where there are remains of several periods of buildings. The earliest belong to the Roman legionary fortress. This was succeeded by a succession Roman houses the earliest of which were destroyed during the Boudiccan revolt. The area around the tower has been the subject of various archaeological investigations over the years. Archaeological work has taken place on various sites in its immediate vicinity including Harpers (Roman houses and Boudiccan destruction debris) and the south-east corner of Balcerne Gardens (more Roman houses including deep deposits of Boudiccan destruction debris and a small coin hoard). The area to the immediate west was part of the rectory garden before the theatre was built in the early 1970's. The ground there is still relatively undisturbed and what little has been done there revealed the presence of well-preserved remains. No doubt much was destroyed when Jumbo was built but I don't know of any archaeological records which were made at the time. This is probably because the late 19th century was a period when there wasn't much archaeological recording going on. This is because there was nobody around doing it. As I am sure you already realise, it is extremely unlikely that any archaeological remains survive under Jumbo itself. The foundation of the tower is bound to be massive and deep and any remains which were there just before the tower was built

would have been dug away during the excavation for the foundation pit. The latter will probably have been neatly done and will have had vertical sides which sliced through the surrounding archaeological remains and the natural sand and gravel under them. There may have been some localised collapsing around the sides or maybe even a ramp when they were making the foundation but otherwise any archaeological remains adjacent to the sides of the foundation will survive intact and will have been unaffected by the construction of the tower. I guess you are asking your question because there is a proposal to build at the side of the tower. I don't suppose the foundation for the tower is much bigger than its footprint so any planned new building work close to the sides of the tower should be evaluated in the usual way.

9.9 Ancient Monuments Society comment as follows:-

"The Society has commented over the years on the successive plans for the Jumbo Tower - and we continue to feel that the approach repeated here promises an imaginative combination of architectural flair and appropriate respect for a mighty Grade 11* listed building.

9.10 English Heritage comment as follows:-

"Summary

The future of the Balkerne Water Tower - "Jumbo" - has been a matter of concern and controversy for nearly thirty years. Approval is now sought for a scheme that would entail the retention of the tower's water tank and the infilling of the space between the tower's legs, among other works. It differs from previous proposals in that the tank would be preserved; but it would still radically alter the tower's architectural and historic character. English Heritage considers that it would cause considerable harm to the tower's significance, and advises that your Council should not approve the scheme unless it considers that it provides the only practical means of securing the tower's future.

English Heritage Advice

The Significance of the Tower

A monumental Romanesque composition, the Balkerne Water Tower is, with the Town Hall, one of Colchester's most conspicuous landmarks. It was built in 1882-3 under the direction of Charles Clegg, Borough Surveyor. 1.25 million bricks and 142 tonnes of iron were used to create a structure capable of supporting a tank that could hold 230,000 gallons. The Roman form of the building was presumably suggested by its proximity to the Roman Balkerne Gate.

The exceptional architectural and historic interest of the building is reflected in its listing at grade 11*. Its interest may be described as evidential, historical, aesthetic and communal, to use the language of English Heritage's *Conservation Principles*. It is a startlingly ambitious manifestation of the 19th century concern to provide good public water supplies. The colossal structure required to supply the town with water was built as a Romanesque tower of monumental character, the design of which transcends the building's utilitarian purpose. As a landmark rising above Colchester the tower has become one symbol of the town's identity.

Background to this Scheme

Since the tower became redundant in 1984 its future has been uncertain. The use of the tank as a prayer room proved transitory. Various proposals were made for the conversion of the building before the eventual approval, in 2001, of a scheme to convert the tank and the floor beneath it for residential use and to construct two stories of offices at the base of the tower. This scheme was abandoned after working drawings had been prepared, and the tower was then sold to its present owner. The present scheme follows previously submitted proposals that would have entailed the partial removal of the tank.

From this summary of the tower's recent history two conclusions may be drawn. First, it is important to resolve the uncertainty attached to the Balkeme Water Towers future. The tower has been on English Heritage's Heritage at Risk Register for several years. While it is a massive structure and remains structurally sound, repairs are needed; and continued disuse is likely to lead to problems of maintenance, and might engender a perception that the neglected tower harms the town's character. Second, a fundamental question underlies the consideration of the tower's future: is it possible to secure its future use and maintenance without radical alteration to it.

The Present Scheme and its Effect on the Tower

As with its predecessor, the essence of the present scheme is to adapt the tower so as to provide a maximum of useable space within it, thereby transforming a redundant structure which is by nature difficult to use into a building supporting a range of uses, and providing it with an economically viable future. (The nature of its viability will be considered below.) To achieve this end radical alteration is proposed. While the tank and the cupola would remain largely unaltered, the former housing a museum. the access floor below, behind the heavy brick plinth beneath the tank, would be removed and replaced with two floors of new accommodation; and seven floors would be created by the enclosure of the space between the towers' legs. The result would be a building housing two floors of offices, three floors of flats, three floors accommodating a restaurant and kitchen, and a floor accommodating an office and cafe serving a museum in the water tank - in effect the upper floor.

English Heritage considers that the proposed works would have a very considerable detrimental effect on the tower's architectural and historic character. We note the following points.

- (i) The most radical and consequential of the proposed changes would be the enclosure of the space between the tower's legs. This would fundamentally alter the architectural character of the building. Instead of comprising an open supporting structure to "carry" the tank, the tower would become a solid structure. Its essential architectural form would be compromised. This would be the inevitable consequence of enclosure, however finely conceived or accomplished the detail of the design might be. (We consider matters of detail and design below.) Added to the mere fact of enclosure, consideration should also be given to the effect of lighting and furnishings within the enclosed space on the appearance of the building. The architectural purity of the proposed designs would prove to some degree illusory, and these considerations have been underplayed in the applicants' supporting statements.

- (ii) Against this, it must be acknowledged that this scheme would allow the water tank to be retained essentially intact. The tank provides the *raison d'être* of the building; and, while it could be argued that the tank's removal would be less harmful to the architectural character of the tower than would be the infilling of the space between its legs, it is unarguably true to say that the retention of the tank would mean that the historic character of the tower as a water tower would be very significantly less affected by this scheme than by its predecessor.
- (iii) The proposals would nevertheless not leave the tank and superstructure of the tower unaltered. Two iron panels would be removed from each face to provide viewing windows. The effect of this would be modest. The lower part of the roof on all four sides would be replaced with patent glazing to light the tank. This change might not be highly conspicuous by day but could be so whenever the interior of the tank was lit.
- (iv) The architectural or historic character of the building would also be affected, albeit less dramatically, in a number of other ways. As noted above, the access floor beneath the tank - an impressive space in its own right - would be removed, and the space would become two floors. The remaining valves here would be removed, as would some - or all? - of the piping rising from the ground to the tank. These surviving elements of the fittings and machinery of the towers original use contribute to the tower's significance and are of some importance. The railings at the foot of the tower, reused from the reservoir which preceded the tower, would be removed.

The Proposals Considered with Reference to the National Planning Policy Framework

At the heart of the Government's planning policy is the presumption in favour of sustainable development, one element of which is the protection of the historic environment; and one of the principles under-pinning the planning system is the conservation of heritage assets in a manner appropriate to their significance (NPPF 14, 7, 17). In considering proposals affecting the significance of designated heritage assets, great weight should be given to their conservation, and that weight should be proportionate to their significance (NPPF 132). This echoes the statutory duty to "have special regard to the desirability of preserving the building.. or *any* features of special architectural or historic interest it possesses" set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 (section 16). It is in the context of these objectives and policies that the proposed works to the Balkeme Water Tower must be assessed.

As explained above, English Heritage considers that these proposals would harm the architectural and historic character of the tower, and in doing so it would harm the tower's significance. The NPPF requires harm to significance to be defined as either "substantial" or less than substantial'. We concluded that the previous proposals would have caused substantial harm to the significance of the Balkerne Water Tower. The assessment of the present scheme requires a finer judgement. The fact that it is now proposed to preserve the tower's water tank substantially intact does mean that the effect of what is now proposed would be less harmful than the effect of the previous scheme in an important respect. Nevertheless. the proposals' effect on the significance of the tower would remain a radical one, as described above. It might be argued that what is proposed would put in question not the designation of the tower as a listed building but the high grade attributed to it. The judgement may be a fine one, but we conclude that the implementation of these proposals would substantially

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harm the tower's significance. We understand that your Council's officers have concluded that the harm consequent on the scheme would be less than substantial.

Should it be determined that the proposals would entail substantial harm, the NPPF provides specific tests against which to assess the application, and these should be applied (NPPF 133). Should it be determined that the harm entailed would be less than substantial, however, it would be a mistake to assume that this would be harm of no consequence. The protective policies of the NPPF cited above remain applicable.

Their purpose is to provide proper protection to the significance of heritage assets, in a manner, in respect of listed buildings, consistent with the statutory duty. Given the high bar that should be set in defining 'substantial harm' it is obvious that 'less than substantial harm' may range from harm that is considerable to harm that is modest. In this case English Heritage considers that even were your Council to conclude that the harm consequent on the proposals would be less than substantial, it must conclude that it would nevertheless be considerable.

In accordance with the NPPF, in determining this application the harm that the proposed works would entail must be weighed against such public benefits to which the scheme would give rise (NPPF 134). A variety of benefits have been identified by the applicants. Of these, some fall outside our remit and field of expertise; but others, concerning the future maintenance and appreciation of the tower are matters for English Heritage.

Perhaps the public benefit to which the applicant give most weight is that of securing the repair and reuse of the tower. That this might be an appropriate public benefit to consider is acknowledged in the NPPF. The relevant policy, however, reads as follows. 'Where a development proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use' (NPPF 134). It is clear from that that the repair and reuse of a building cannot be accepted indiscriminately as being a public benefit that might justify harm: the public benefit arises from the optimum viable use of a building. This point is made in the Historic Environment Planning Practice Guide (2010), in which it is noted that "Harmful development may sometimes be justified in the interests of realising the optimum viable use of an asset, notwithstanding the loss of significance caused, provided that the harm is minimised" (paragraph 90).

It is for your Council to determine whether or not the proposals would secure the optimum viable use for the tower. The evidence available does not suggest that there is an easy answer to this question. Two radically different arguments have been put forward in this respect

The supporting documents state that the scheme is not viable in conventional terms. It would, it is estimated, result in a loss of £2,396,033 (Pomeroy - Planning Statement - May 2013 - paragraph 6.13). Despite this the supporting statements state that the applicant considers that the development would prove a profitable investment in the long term. The statements also report that it is estimated that the full repair of the building without other works would cost £834,000, and with other costs would result in a total cost or loss of £1,317,001. It should be noted that the latter figure also includes the sum paid for the tower by the applicant.

On the other hand the Balkeme Tower Trust continues to argue that an alternative approach could secure the future of the building without harm to its character. The Trust suggests that, discounting the purchase price paid by the present owner, a phased approach to the repair of the building coupled with public access to the water tank and belvedere could attract funding from bodies such as the Heritage Lottery Fund. Inevitably this is a speculative approach, given that the trust does not own the building, and it leaves open the question of the degree of access possible using only the existing staircase. Nevertheless there is precedent for the repair and maintenance of large engineering structures by small trusts.

The other public benefit relating to the architectural and historic interest of the building to which the applicant refers is that of establishing a museum within the tank and opening the cupola as an observation post. This has the potential to be a valuable public benefit but it must be said that the presentation of the idea is both ill-defined and unconvincing. No details have been provided about how or by whom such a museum would be run, and while the suggestion that there would be greater interest in the views to be obtained than in the history of the building and its function is in one way understandable it suggests - rightly or wrongly - a lack of interest in the latter on the part of the applicant or his agents. If the establishment of a museum is to be regarded as a public benefit, it must be more thoroughly defined than this, and it must be secured by legally enforceable means.

Other observations

In addition to these fundamental matters which your Council must consider, English Heritage makes the following observations on the detail of the scheme. These largely endorse points made in the Colchester and North-East Essex Building Preservation Trust's comments.

- (i) The enclosure of the open space between the tower's legs cannot be effected inconspicuously. The use of tinted glass, as proposed, might to some degree obscure the new internal structure and furnishings but would also add greatly to the opacity and weight of the new work. Clear glazing would better allow the original character of the building to be appreciated,
- (ii) The latter would also be better appreciated were the enclosure set back further. This is a point debated during pre-application discussions. The limited set back proposed has been justified as being necessary to make the scheme viable. The viability of the scheme as a whole seems a nebulous matter. Your Council should consider whether this point has been substantiated.
- (iii) The proposed removal of pipes and valves would also erode the tower's significance. It too has been justified on the grounds of viability. Your Council should consider whether this point has been substantiated.

Recommendation

There is no doubt that this is a difficult case. It should be your Council's objective to secure the future of the Balkeme Water Tower however it determines this application. English Heritage's advice may be summarised as follows.

- (i) The Balkeme Water Tower is a structure of exceptional architectural and historic interest, and is of great importance both nationally and locally. With the present applications approval is sought for a radical scheme to repair, after and reuse the tower.
- (ii) English Heritage considers that the proposed works would cause substantial harm to the building's significance. Your Council should assess the application in the light of the relevant policies in the NPPF.
- (iii) Should your Council conclude that the harm arising from the scheme would be less than substantial, it should still weigh that harm against such public benefits as would arise from the scheme, in accordance with the NPPF. Fundamental to that balancing exercise should be an assessment of whether the proposals would secure the optimum viable use for the tower. The evidence on that question is confused.
- (iv) Only if your Council concludes that the proposed scheme provides the only practical means of securing the tower's future should it approve these applications. On the other hand if it concludes that this is not the case and the applications should be refused, it should commit itself to securing the future of the tower by promoting an alternative approach.”

9.11 Victorian Society comment as follows:-

“Thank you for consulting the Victorian Society on this application. This scheme has been discussed by the Society’s Southern Buildings Committee and I write now to register our strong objection to the proposed conversion of the Jumbo Water Tower. The Jumbo Water Tower is a unique building. It is a monumental structure – the tallest Victorian water tower in the country – and is an essential element in Colchester’s townscape. Its grade II*-listing is reflective of its “more than special interest”. Much of the power of its character is derived not from its mass, but from the spatial qualities formed by its four colossal open arches. The present scheme is very similar to previous proposals for the conversion of the building. The Society objected to those, as did others, and the Council refused to grant consent. Given the similarity of the present application, and the seriously harmful impact it would have on the building, we renew our strong objections to the proposed conversion. Architecturally, the glazing-in of the arches would destroy the sense of space and depth that currently defines the building. This would amount to substantial harm to the special interest of a grade II*-listed building, contrary to both local and national policy. Paragraph 132 of the NPPF clearly states that substantial harm to a grade II*-listed building “*should be wholly exceptional*”. The conversion would be particularly intensive (the most intensive of all the options considered), and would be achieved by glazing-in the arches and inserting a number of internal floors, hosting various uses. It is an extremely ambitious proposal, one which would require enormous investment on the part of the owner. The business plan submitted in support of the application is less than convincing that the proposed uses would be economically viable. This raises the prospect of the scheme going unimplemented and the condition of the building

suffering further. It also goes against the findings of the study undertaken in 1996, which recommended that public ownership, with a limited use which generates sufficient income to maintain the fabric, would be the preferred option for the water tower. This scheme was considered unacceptable in the past and – we strongly advise – remains so now. We therefore urge you to refuse consent for this damaging application.”

9.12 Colchester and North East Essex Building Preservation Trust comments:

“General

I would advise you that we are generally in favour of the proposal but would draw your attention to several objections, concerns and details that ought to be resolved prior to the Planning Committee making a decision.

Our comments are made within the context that Jumbo is probably the most iconic historic building within the town. A comparable situation that occurs to us is the magnificent Bass maltings at Sleaford that are so massive they are impossible to ignore within the identity of the town. Perhaps on a smaller scale, the maltings at Mistley again, dominate the heritage of this village more than the sum of the rest of the parts. In all cases, loss of these buildings would be incomprehensible without irreversibly changing the very nature of the place.

Such is the importance of this proposal. Whilst loss of the building through decay is unlikely, Jumbo is nevertheless ‘lost’ to the town at present. At best, it is a symbol of the confidence we once had when building new infrastructure but for most, we suspect it is a depressing reminder of our inadequacy of care for our local heritage.

This is not to say that Colchester BC ought to be persuaded to grant planning permission for any proposal that breathes life back into the tower regardless of its impact upon the special character and interest of the historic asset. You are instead guided by the provisions of the National Planning Policy Framework and former, Planning Policy Guidance and the responsibility to ‘preserve and enhance’. These provisions are of course even more onerous on yourselves and the applicant by virtue of the Grade II* listing.

Infilling the legs

We find it reassuring that the Heritage Statement reflects a good appreciation of the design challenge. We agree that whilst it would be desirable to maintain the open legs of Jumbo, as a deliberate, original feature that was a nod to the Roman gateways around the town (and to St Botolph’s Priory) we believe it is unrealistic to expect any commercial development to achieve this. The BPT believe that infilling of the structure has always been inevitable and therefore do not object to this in principle.

The designers have chosen to execute the infilling in glass in the hope that this will create a clear distinction between the original brickwork and the modern alteration that will aid the visual interpretation of the structure. We think this is the correct approach but believe that this will be more successful if the glass screen was set back more than 125mm from the front face of the legs as presently shown. We recommend a set back of at least 225mm. This deeper reveal will accentuate the brick arching and throw a deeper shadow around the edge of the original structure. We should point out that the floor plans are at present incorrectly drawn as the masonry between the new level 2 and level 6 is of a smaller cross section yet some floor levels are drawn with a similar section as level 1. The set back of the glass screen shown on these plans is a substantial, 0.5m or greater but this is not what is proposed. However, the plans do highlight the aesthetic benefit of a substantial set back.

There appears to be a horizontal feature on the West elevation glass screen at level 1. Is this a flat, glass canopy? If so, we would not recommend it as this feature is likely to accumulate dust and debris and will soon detract from the quality of the building. The

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same feature is also shown on levels 2, 3 and 4 which is inexplicable from the submitted information. We recommend that further details be requested from the applicant.

Finally, as far as the new glass infill is concerned, we strongly recommend that the glass be as transparent as possible in order to be able to 'read' the mass brickwork of the original structure through the glass from the exterior. An opaque, coloured glass would afford a high level of privacy but would also appear very heavy and solid rather than 'lightweight' and ephemeral. Were the glass screens highly translucent, one could also illuminate the brick, stair core so that it was especially obvious at night, rather than hidden behind privacy glass. We consider this aspect of the conversion extremely important to the overall success of the scheme.

Internal features

The submitted Heritage Statement lacks some of the detail necessary to properly describe and illustrate the variety of features of Jumbo that contribute to its' interest. The importance of the tank has been rightly highlighted but the BPT consider the ancillary equipment for governing the water supply is also part of the intrinsic importance of the structure. This includes the flow and return pipes and control valves. These are of a substantial scale and help with the interpretation of the heritage asset. The BPT therefore **OBJECT** to the proposals in so far as the scheme fails to maintain the visibility of these features. We understand that the position of the control valves conflicts with the proposed floor levels but wonder if slight adjustment of the design would allow the valves to be kept in place rather than relocated to fit the conversion. In any event, we recommend the vertical pipework be exposed internally and not hidden behind new partition walls, as proposed.

In a similar vein, the internal, brick relieving arches in each corner are very significant features of the structure that the applicant proposed to hide behind new partition walls. No explanation of the design rationale for doing so is given but in most cases, new WC's and a 'dumb waiter' would unnecessarily hide these important, architectural features. Minor adjustment of the internal design would allow the relieving arches to be seen and therefore the BPT strongly **OBJECT** to this aspect of the proposal.

The Heritage Statement does not describe the impact of new, internal finishes upon the historic fabric and we regard this as a serious omission. Further to the preceding paragraph, we are the opinion that the character of the mass brickwork must be maintained on the internal walls and not plastered over or unnecessarily covered in new partitions. Treating the original structure in this way will maintain the strong visual character of the building for both users of the accommodation, visitors to the public facilities and when viewed from outside, looking through the glass screens.

The original, timber door to the base of the spiral staircase was destroyed by arson attack some time ago and the plans seem to indicate that a replica is to be reinstated. This is to be welcomed but we would prefer to see the plans notated accordingly to highlight this aspect of the proposal. The BPT would be satisfied with a planning condition on the detailed design of this door to ensure that it was an exact replica.

External features

We note that the cast iron railings between the legs are to be removed and not reused. These railings we understand, were once the perimeter fencing around the former, water supply reservoir located roughly where the Mercury Theatre is today. We believe such a link to the past should not be unnecessarily lost and recommend that they be relocated on the south boundary of the site, between Jumbo and the open space. At present, the plans show a new railing on this boundary that as... 'similar to existing'. The brick wall on the east boundary of the site appears to be owned by the applicant. If this is the case, the proposals need to clearly indicate such (drawing 06) and describe any works of repair and restoration that is desirable to secure the preservation of this (listed) curtilage feature.

The BPT believe that proposals for the hard and soft landscaping of the site should be brought forward at this stage rather than waiting for subsequent approval. This would enable the full impact of the proposal for a Grade II* building to be seen in its complete context. Such details should include better descriptive and illustrative information for: ! The paving and planting (are new trees on the west side of Jumbo desirable? Some may regard these to be a possible distraction from the magnificence of the architecture)

- The public footway
- Marking out and protection of the car parking spaces
- Marking out of a loading bay (possibly unnecessary but its location will have an impact upon the traffic management of Balcerne Gardens.
- Waste recycling and meter cupboards

Finally, we are aware that the Borough Council has produced concept design drawings for the Balcerne Gardens area that includes the space adjoining the Balcerne Tower. This was done in order to deliver a coherent strategy for public/private space enhancement and we wonder how this proposal fits with these plans? Clearly, there is little point in producing such documents if applicants ignore their existence in bringing forward landscape schemes on spaces within the plan

The museum

Our final comment is in regard to the proposed museum. The BPT welcomes this element of the scheme and we believe that such a facility could become a significant asset of the town centre for visitors and schools. However, we are concerned that little information has been provided by the applicant as to how it might look or how it might be managed. These matters will largely determine to success or otherwise of the facility and in the interests of having confidence in the sustainability of the scheme to re-use the building the BPT believe that more information is required. This could be provided prior to the decision of the Planning Committee or reserved by way of a Unilateral Undertaking and planning condition but we believe that such matters are so important they should not be left as vague as they are at present. It is plausible that the applicant will sub-let the development and management of the museum to an appropriate organisation and short of Colchester Borough Council Museums Service stepping forward, we would wholeheartedly support an arrangement between the applicant and the Balcerne Tower Trust. The BTT have the knowledge and enthusiasm to make this work but clearly, would need to be able to access funding for the fit-out and pump-priming revenue costs. To this end, the Colchester and North East Essex Building Preservation Trust would lend practical assistance to the applicant and the BTT if this were considered helpful.”

Officer comment The applicant considers that as much of the internal features as practical will remain exposed, and has agreed that the massed brickwork will remain exposed where possible. It has stated that there is no intention to plaster over internal brickwork where this is avoidable.

The applicant has also clarified that there is no intention to remove and replace the railings and that the ‘replacement with similar’ relates to the part of the railings that is currently missing.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council’s website.

10.0 Parish Council Response

10.1 N/A

11.0 Representations

11.1 Councillor Barlow comments as follows:-

“Firstly, I should clarify that these comments are solely in my role as a ward councillor for Castle Ward and not in one of my other roles. Neither the Liberal Democrat group nor the Cabinet take positions on individual planning applications, so this is purely my opinion as a ward councillor.

Along with most residents of the local area, I wish to see Jumbo brought into some form of use. It remains one of the most distinctive landmarks of Colchester, visible on the skyline on many approaches to the town, and many residents and visitors would love the opportunity to get inside the building and sample the views from the top of it. However, supporting the principle of use and development for the site does not mean that one should fall into the politician's fallacy of 'something must be done - this is something - therefore it must be done.' While the current application is an improvement on the previous one submitted by the applicant, it still raises issues that I think must be properly addressed before any planning consent can be granted. Jumbo is an important and iconic building and care must be taken to ensure that any development maintains it as such.

Infilling of the legs - As I said initially, one of the most important features of Jumbo is its iconic presence as a symbol of Colchester, visible from long distances as a welcome to the town. The simple question that has to be asked about the glazing and infilling of the legs is how much will this affect that status? The diagrams supplied as part of the application do suggest that the glazing will look sufficiently distinctive from the brickwork to enable the four legs of the tower to remain distinct and visible (though the central 'trunk' tower will be obscured), however the lack of any wider views and projections with the application make it hard to determine whether they will cause substantial harm to the iconic views of the tower, or if the basic structure will remain prominently visible above the additions. Having spoken to planning officers, I have been assured that they are seeking to obtain visualisations of how this glazing will appear, both close up and at a distance, and I would ask that those are made publicly available as soon as possible. I would ask that this element be given special consideration by officers and the Planning Committee, with consideration given to how the glazing will affect the overall view of the tower. The principle should be that, if any infilling is to be given permission, the basic four-legged structure of Jumbo should remain clear and evident in views of the tower.

Museum space - I'm concerned that aside from the suggestion of cutting sections from the tank to provide viewing portals, there is little discussion within the application of how the space within the tank will be used, aside from assigning it as a museum space. This should be the centrepiece of the development - creating a new space for the community to learn about and experience this iconic building - but it feels like an afterthought. There needs to be much greater detail on how this space will be used, and it also needs to be protected as space for a museum or public exhibition, not something that's tried half-heartedly for a few months and then closed to be replaced with a private or commercial use instead. Conditions will need to be imposed to govern both the use of the space and the opening hours of it to ensure this is the case.

On a related matter, I'm concerned that the applicant's statements regarding offering the operation of this space to the Balkerne Tower Trust do not appear to be backed up by the Trust, and would appreciate further clarification by the applicant on this.

Viability and completion - As the application states, there are issues with the viability of this proposal, and while the decision to invest should be welcomed, there are concerns as to whether these viability questions could cause problems with any development. For instance, if funding was to be withdrawn during any construction phase, then we could face the prospect of seeing Jumbo wrapped in scaffolding or with half-finished works within it for a considerable period of time.

Should approval to go ahead be given, and before any construction work takes place, the applicant should provide some form of completion bond or insurance to ensure that if funding does dry up, then the project can either be completed or the original features of the building restored so that Colchester is not left with a half-completed building.

Effect on local area - Any amendments to Jumbo will be taking place in a residential area, because of the nearby presence of the Balkerne Gardens Trust. I understand that the Trust and some residents have written to you regarding the effect this development will have on them, and minimising the problems of noise, overlooking and other disturbances caused by this development must be considered. I would ask for conditions limiting the late-night usage of the public areas of the building (restaurant, museum etc) and that a proper Travel Plan be drawn up and enacted to ensure that visitors, residents and workers within the development arrive and exit quickly, causing the minimum level of disturbance to the local area. Issues concerning light spillage from the building onto residents windows should also be addressed.

Preservation of original features - Removal of or changes to the original fixtures of the building - especially those on view to the public - should be kept to an absolute minimum to preserve the appearance of the tower and prevent it suffering from a number of minor changes that will cumulatively affect perceptions of it in its entirety. I welcome the way the current application strives to do this, but the applicant needs to agree to independent assessment of any changes beyond these plans should they declare them to be necessary to complete the works.

To reiterate, I support bringing Jumbo back into use as a public building, but care must be taken not to damage its iconic status in doing so. I raise these concerns in the hope that planning officers and members of the planning committee can address them so as to create a worthwhile development worthy of the iconic and historic building it would occupy.”

11.2 Balkerne Tower Trust comments as follows:-

1. The scheme as a whole

We make the following objections to the overall scheme:

- a. The Central Area Proposal Map, part of the current CBC Local Development Framework, clearly allocates the area inside Balkerne Gate, including the Mercury, the Arts Centre and Jumbo to 'Cultural Facilities'. The Proposal Maps are stated to be 'a key tool in the determination of Planning Applications' (<http://www.colchester.gov.uk/article/4395/LDFProposals-Maps>). Offices and flats are not cultural facilities.
- b. Putting flats and offices in this location will transform its tranquil, non-commercial character into a busy, frequently noisy, commercial one similar to other parts of the town centre. At night, the glazed area will generate substantial light spillage.
- c. We do not accept the applicant's assertion that the harm resulting from infilling of the legs would be 'less than substantial'. The open arches between Jumbo's

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legs are a critically significant feature of the building. Preserving this feature was considered important by Inspector Bingham in the Appeal Decision of 2001, when Jumbo was listed Grade II, not II* as at present.

- d. The pipework, and valves currently below the tank, are prominent original features which should be preserved in their original locations. Cutting these out and displaying them in the tank, out of their original context, is unacceptable. In the south-west corner especially it should not be difficult to keep the pipework in place and the valves could be a feature of the café area, complete with an explanatory plaque.
- e. It is unnecessary to cut windows in the tank to provide views. The place for views to be appreciated is the belvedere, the highest point in the building with 360 degree views of the surroundings. The tank should be kept entirely intact.
- f. It is disappointing that there is apparently no intention to replace the oak door at the entrance to the central stairwell, destroyed by vandals in 2007. This striking original feature could be faithfully reproduced from extant drawings and photographs.

2. The proposed museum in the tank

As our policies for an unaltered Jumbo are similar to this proposal, we take it seriously. However, from the applicant's document 'Planning Statement' by Pomery Planning Consultants, and from our own enquiries it appears that:

- a. The applicant claims to have consulted the Colchester and Ipswich Museums Service (CIMS), but there seems to be no record of such consultation. CIMS has no budget to establish and run an attraction, nor is it expected funds for this purpose would be allocated by the Borough Council in the foreseeable future.
- b. The Colchester Tourist Guides Association (Blue Badge Guides) has not been consulted.
- c. We have not been consulted. The statement 'that this space was offered to the Balcerne Tower Trust' but we 'declined to play an active role' (para 7.5) is completely untrue. We were not aware of the current proposals (apart from rumour) until they appeared in the local press on May 17th.
- d. There are no minimum opening hours given for the museum, nor days of the weeks nor times of the year. There is no guarantee that the 'museum' would not be closed after a short period.
- e. In contrast to the above, in the case of the schemes allowed on appeal in 2001 but never implemented, public access to the roof space and belvedere was tightly defined in two Unilateral Deeds. For example the public access was guaranteed; it had defined opening times and was to be administered by a charity or amenity body nominated by CBC.
- f. It is proposed that the applicant runs the museum as a private attraction. Yet most comparable attractions such as pumping stations and the few water towers open to the public, are run by charitable trusts such as ourselves, staffed by volunteers, charging modest entrance fees and raising funds from grants and donations (Source: page 3 of English Heritage Conservation Bulletin 67 at <http://www.englishheritage.org.uk/publications/conservation-bulletin-67/>)
- g. The Planning Statement says (7.8): *It is anticipated that the attraction will, for the most who visit, be about the views, rather than a thirst for knowledge of the town's public health history.* This displays no comprehension or recognition of the huge public interest in the nation's heritage – not a sound starting point for establishing an exhibition area in the tank of the largest remaining Victorian water tower in Britain.

The museum as proposed is not a 'substantial public benefit' as defined in PPS 5, para HE9.2 because it amounts to a desultory, back of an envelope proposition with no details and no guarantees. We contend that the only way to establish and successfully run this attraction is an agreement whereby the space is controlled by a charitable trust such as ourselves. We would staff it with volunteers motivated by enthusiasm and engage the public with projects to improve the attraction over time. We have been assured of advice and support from the CIMS and the CNEEBPT in this event, and we would also work with the Tourist Guides Association in establishing guided tours. A privately run attraction would run at a loss; the applicant clearly has no enthusiasm for it and the financial incentive would be to eventually close it and apply for alternative uses for the tank.

3. The Balcerne Tower Trust

Several contentious statements are made about us in the applicant's Planning Statement.

The applicant, through his agent did indeed offer to sell Jumbo to us in September 2012. (para 8.2). The price asked was £333,300 plus legal fees and a proportion of any increase in value of Jumbo following a change of use. What is not stated is that the applicant's own financial study assessed the commercial value of Jumbo as less than zero. (Report and Valuation, Savills, part of the 2009 planning applications, para 16.1). As a registered charity we would have been utterly discredited had we had attempted to raise £333,300 for a building with a negative market value. We asked for a realistic offer of sale but did not receive any. We are also accused of not having produced a business plan or funding package to secure Jumbo's conservation. We cannot raise funds or produce a definitive business plan for a building we do not currently own and is not on reasonable offer to us. According to the Architectural Heritage Fund, if given a chance charitable trusts have a good record of saving and restoring neglected heritage assets, and this was the subject of the BBC series Restoration. In addition, in early 2011 on the recommendation of the Architectural Heritage Fund, we carried out a consultation exercise with six funding charities. Although nothing could be guaranteed by hypothetical applications, the feedback was positive and encouraging.

4. Conclusion

We urge refusal of the applications as presented for the reasons given above. However if the Planning Committee is minded to approve, we would make a special plea that control of the tank space and above (levels 9, 10 & 11) be allocated by condition to an amenity body such as ourselves, the details to be negotiated and embodied in a legal agreement. The precedent for this is embodied in the Unilateral Deeds accompanying the planning applications approved on appeal in December 2001."

Officer comment: It should be noted that a replica door is, in fact, proposed as part of the scheme. The BTT has since confirmed that it would be willing to run the museum part of the building if the applications are approved.

11.3 Balcerne Gardens Trust comment:-

I am writing on behalf of Balcerne Gardens Trust and the one hundred and ten residents and tenants who live here. This is a sizeable community who will be directly affected by any plans to develop Jumbo.

The Jumbo site is unkempt and has long been a source of discontent and concern for the residents of Balcerne Gardens. In the planning application to redevelop Jumbo there is scant acknowledgement of the population living

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directly alongside it and any light spillage it will generate is only considered as part of the 'urban context of Colchester town centre.

Although we would be pleased to see Jumbo renovated and in use, we are concerned that the proposed change of use to provide a mixed development comprising three apartments, a restaurant, an office and observatory/museum with an ancillary shop and café is far too dense a proposal.

The proposed development will lead to unnecessary and unacceptable rises in traffic generation in an area which is already challenging to access, for the following two reasons. Firstly, restaurants and cafés require considerable servicing including the delivery of food and drinks and the removal of waste (and recycling). Secondly, the applications do not allow for adequate parking/loading/turning. The area is already well served by a great number of restaurants and cafés and the existing road access is inadequate for the community it currently serves. A development of the size outlined in these applications is therefore totally inappropriate from an infrastructural perspective.

The development will lead to an increase in noise and disturbance levels to local residents (both during and after construction). Noise pollution has been a source of some lengthy and difficult discussion locally involving the environmental control officer.

There has been increased disturbance recently as since the fencing was removed. more and more cars are using the area. Concern has been expressed by some tenants that a restaurant in the development would result in unpleasant cooking odours being vented from the premises.

We would refute that the extent of this development contributes positively to the public and heritage benefits; a development would do so, but not one which is as overdeveloped as outlined in these applications.

The proposal to remove two metal plates from each elevation (including the one overlooking our site) would seriously compromise the privacy of the people who live at Balcerne Gardens.

From the point of view of the Trust, it is startling, to say the least, that this development is being considered for a Grade IIⁱ listed building when our proposal to install high specification double glazing into our own Grade II listed terrace was not approved. This included an application to English Heritage to de-list the property which was turned down; one of the reasons cited for this was the 'group value' of the building when considered with (amongst others) Jumbo. In these circumstances I am sure you can understand why we view this application with considerable surprise and interest. On page 5 of the Heritage Statement, 'other designated heritage assets' are included but do not include our Grade II listed terrace as having relevance to this application although English Heritage cited Jumbo in the grounds for their refusal to allow our application for de-listing.

It is an enormous shame that one of the original proposals to form a single residence, which was allowed at appeal, was not pursued. It is difficult to understand why the current proposed over-development is being considered in the face of previous refusals, although the Heritage Statement suggests that the applicant and his team have engaged in extensive dialogue with officers of the LPA and English Heritage.

We acknowledge that it is desirable that Jumbo is restored or maintained in some form but have serious concerns that the proposed development outlined in these planning applications is neither suitable nor appropriate.”

11.4 SAVE comment as follows:-

“SAVE submitted an objection to a previous proposal for the change of use of the tower (ref: 091305). Although this application is an improvement on the one previously submitted, we continue to have concerns about the impact these proposals will have on this monumental Grade II* listed water tower.

‘Jumbo’ is the largest remaining Victorian water tower in Britain and a rare unconverted example of its kind. Ever since its construction in 1882, this massive structure has been a dominant presence on the Colchester skyline - and has become a much-loved feature. Its architectural interest and importance is reflected in its Grade II* Listed status, which puts it in the top 8% of all listed buildings, and any proposal to alter it should be given serious consideration.

The proposal seeks permission for significant changes to the character and appearance of the water tower. Most notable is the enclosure of the space between the tower’s legs, compromising the architectural quality of the building, and detracting from its significance. This is to allow for the insertion of ten floors to provide new mixed uses for the tower.

This enclosure would also see the removal of integral historic features such as original pipework and valves which are visible on the interior of the tower’s legs. Although it is proposed to reuse these features in other parts of the proposed development, they would be taken out of their original context, impacting negatively on their, and the whole structure’s, significance.

Furthermore, the removal of original fabric and the insertion of windows into the water tank, the tower’s raison d’être, appears to be an unnecessary measure. The applicant cites that this is to allow visiting members of the public the chance to enjoy the impressive views from the tank. However, this application also seeks to create a dedicated viewing area at the top of the tower in the belvedere, and consequently removes the justification given for the removal of original panels.

SAVE wants to see a secure future for ‘Jumbo’. However, whilst we commend the innovative approach of the applicant in seeking a variety of uses for the tower, we feel that the insertion of ten floors and the enclosure of the central space is overly intensive and will cause damage to the listed building. ‘Jumbo’ was built, used, and listed as a water tower, and any proposal for its reuse should take this into account, especially in light of its GII* listing.

As such, we suggest a compromise could be reached, where a reduced number of floors could be inserted only above the arches. This would remove the need to enclose the external space, retaining the external integrity of the building, whilst providing the opportunity for the applicant to create some commercial space within the tower.

In light of these concerns we request your council refuse this application.”

11.5 In addition 8 objections and 16 letters of support have been received.

11.6 Two letters are from residents of Balkerne Gardens who object to the restaurant due to noise and comment there are 30 flats overlooking the tower and they are already surrounded by clubs, pubs and restaurants. These residents also comment that the access is poor and inadequate for delivery vehicles.

11.7 Six other letters raise the following objections:

- The cost of development is too high and likely to leave Jumbo at risk. If the conversion failed financially the town would be left with an empty building with no real relevance to its original historical structure. Jumbo would be no longer recognisable as a listed building and the whole aspect of its special structure would be lost, as would its interest to the public.
- Because of the tower's symbolic relationship with Colchester and the fact that it is an outstanding example of the contribution made by Victorian water engineers to improvement of public health it should be preserved intact. The proposals for the museum are too vague and should not be taken seriously.
- Infilling the tower's legs will be harmful to its character because it will remove the intervisibility of the four legs. The installation of floors and glazed curtain walling will harm the structure of the grade II* example of industrial archaeology. Removing the pipes and valves, and cutting holes in the tank is pure vandalism. The building is too important to be desecrated.
- Renovation and reuse of the building would be welcomed but this proposal constitutes overdevelopment.
- the fabric should remain intact
- the scheme is flawed as it infills the legs, insets floors, removes original pipework and valves and cuts windows in the tank
- there are only sketch details of the museum
- although the tower is structurally monumental in nature it has a look of lightness and elegance
- light pollution which will be visible from the high Street and North Station. the proposed blinds will only enhance the proposed infilling of the legs. there will be views of the mezzanine floors, office furniture and people
- windows in the tank are unnecessary and disfiguring
- should be given to the Balkerne Tower Trust or another charity
- It would be easy to approve the application and for the Borough to wash its hands of a problem and get on with other things. If you fill in the legs, they are not legs any more and what you finish up with is a big square block with a conical roof, and a decorative arch surface feature. It will not look like a Victorian engineered water tank on the skyline any more It will look like Colchester's existing Post office tower, which is by common consent, a major blot. The pipes and valves are all of Colchester's engineering past we have left. Replacement of the roof could result in structural problems, and modern fabric might be used in place of the cast iron panels. As a grade II* building it should not be altered.

11.8 16 letters of support

- the proposal will attract visitors and revenue to Colchester
- fantastic idea exciting development
- well overdue building is rusting away
- heritage will continue to be enjoyed by everyone and will give something back to the town
- it will be a destination restaurant with fantastic views
- there will be a museum and viewing area at no public cost
- glazing infill of the legs is required to make the project viable
- support but the glazing will require careful consideration
- site will never be used as a water tower again
- The project will revitalise the town centre and provide much needed new housing.

- The development simply must go ahead. It will give Jumbo a new purpose, bring about jobs and create a restaurant in the sky
- It would be an utter travesty to let Jumbo rot and this development will breathe much new life and vibrancy into the area.
- Leaving the building unused was a missed opportunity. There is great economic potential for Colchester from maximising its architectural beauty. The design looks sensitive and creative and is likely to be completed with the utmost care and attention to detail.
- It would be lovely to see the building put to good use
- This will improve an important landmark, encourage development and remove an eyesore. I hope it's approved accordingly.
- We need to do something with it.
- Very complimentary, you won't lose the original shape and will be befitting to the 21st century town centre. If you're worried about old and modern well just visit the louvre museum...Be confident bite the bullet go for it
- I think it is a well thought out proposal which allows some public access. It is all very well wanting to keep things as they are but, if there is no money available to facilitate this, it's condition will continue to deteriorate.
- This would create a stunning piece of architecture in the centre of the town; it's never going to succeed as a museum - it is a big tank on legs! Surely there cannot be enough people interested in visiting to fund the ongoing maintenance required for such a large building?
- Jumbo is an iconic building in Colchester and it would be a huge mistake to deny giving it a 21st century lease of life, reflecting modern society as well as retaining its status within the local community

The full text of all of the representations received is available to view on the Council's website.

12.0 Parking Provision

- 12.1 The application proposes three vehicle parking spaces for use of the flats, 1 space per flat. This is the maximum number of spaces that the site can satisfactorily accommodate.
- 12.2 The parking standard requires a minimum of 2 spaces per residential unit plus a visitor space; cycle parking is also required and can be secured by condition. The parking standard for all the other uses is a maximum, the standards also require that in all cases adequate provision shall be made for the parking and turning of service vehicles serving the site, off the highway. The application information states: "Due to the limitations of the site and the desirability of enhancing the setting of the tower, no provision is made for operational parking, although short term parking of delivery vehicles would be possible within the existing access drive"
- 12.3 However the adopted standards do allow for a lower provision of vehicle parking in urban areas , including town centre locations, where there is good access to alternative forms of transport and existing car parking facilities.

13.0 Open Space Provisions

- 13.1 The proposal does not make any open space provision due to the limited site area. After consideration of the viability appraisal no contributions towards open space, sports and recreation facilities are required.

14.0 Air Quality

- 14.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

15.0 Development Team and Planning Obligations

- 15.1 This application is classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. On the advise of the Councils Senior Economic Development Officer, who considered the Viability Report, the team accepted that no contributions would be required.

16.0 Report

- 16.1 The main issues are discussed under the following headings policy principles, land use, heritage issues, public access, securing the completion of the proposed works, securing a bond and impact on residential amenity.

PART 1 POLICY PRINCIPLES

- 16.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises: the Core Strategy (adopted Dec 2008); the Site Allocations (adopted October 2010); Proposals Map (adopted October 2010); and Development Policies (adopted October 2010). Other material considerations which the Local Planning Authority has taken into account in this case include the NPPF and PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide. The Heritage Issues section of the report sets out the policy context for determining applications for listed building consent and those affecting a conservation area.

PART 2 LAND USE

- 16.3 Jumbo is located within the historic core of Colchester’s Town Centre within an area allocated for Culture, Leisure and Tourism purposes. Policies CE2 and UR2 in the adopted Core Strategy seeks to ensure that all development protects and enhances this important historic character. Policy CE2 further states that retail and cultural developments will be focussed on the Town Centre core, together with developments that create safe and attractive public spaces and a more balanced night-time economy. Policy CE2a indicates the borough will encourage economic development and regeneration in the town centre.

- 16.4 Whilst the restaurant, office and residential uses proposed are not specifically culture, leisure or tourist related it is considered they will not prejudice these uses. It is noted the Policy Team has raised no objection to the proposed uses. The proposal also has the support of the Enterprise & Tourism Development Manager who considers it satisfies the broad aims of the Strategic Plan and Economic Development Strategy
- 16.5 The site is within a highly accessible location and the proposed mix of uses is considered acceptable, in land use terms, for this location.

PART 3 HERITAGE ISSUES

The Heritage Asset

- 16.6 The application affects two designated heritage assets. These are the grade II* water tower itself and the Colchester Town Centre Conservation Area. The Balkerne Water Tower, colloquially known as 'Jumbo', is one of the most prominent and widely recognised buildings within it, alongside others such as the Town Hall and the Castle. The listed building designation is afforded greater weight as a national designation in the hierarchy of considerations.

Context

- 16.7 Jumbo became redundant almost thirty years ago and its future has remained unresolved since that time. This may be attributed in part to.., its lack of obvious scope for alternative uses and its sheer size, which makes preservation for its own sake as a monument an ambitious undertaking. The difficulties presented by a search for an alternative use are primarily owing to its lack of usable floor area in relation to its size and the functional form of its intended use, which did not necessarily require the usual features of buildings such as walls and fenestration. These challenges make it necessary to permit significant alterations to facilitate the viable reuse of the building,. This necessity is reflected in its long and controversial planning history and the extended time of its redundancy.
- 16.8 While largely wind- and weather-tight, The Balkerne water tower is unused and vulnerable and this is reflected by its inclusion on English Heritage's Heritage at Risk Register. It is categorised as category C: Slow decay, no solution agreed and noted as being in poor condition. English Heritage, in their consultation response, state It is important to resolve the uncertainty attached to the Balkerne Water Tower's future. ... While it is a massive structure and remains structurally sound, repairs are needed; and continued disuse is likely to lead to problems of maintenance, and might engender a perception that the neglected tower harms the town's character.

Summary of the proposed works

- 16.9 The application seeks to convert the water tower to a variety of uses, including offices, residential apartments, restaurant and museum with an ancillary café and shop. In order to facilitate this scheme the applicant proposes to infill the open arches or 'legs' of the tower with glazed curtain walling and to insert floors (both between the legs and within the water tank) to create useable spaces. A lift is proposed to serve all the floors up to the museum space in the tower together with a new staircase to supplement the historic spiral staircase. Most of the pipework and remaining valves (those at ground level were removed by Anglian Water when the building was

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decommissioned) would be removed to accommodate the new use, and new ductwork inserted within the legs. Alongside these alterations the applicant proposes repairs to the building including a new copper roof, incorporating glazed panels to allow natural light into the tank without removing the walls of the tank.

Policy context for heritage assets

- 16.10 In assessing the proposals at issue, the decision-maker must take account of the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires that the local planning authority shall have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses (Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990).
- 16.11 In addition when considering whether to grant planning permission with respect to any buildings or other land in a conservation area the Act requires the local planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of that area (Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990).
- 16.12 Colchester Borough Council's local plan policies relating to heritage are Core Strategy policy ENV1 – Environment and Development Plan policy DP14. They have the following requirements that reflect the statutory duties
- 16.13 Core Strategy ENV1 – Environment –
- The Borough Council will conserve and enhance Colchester's natural and historic environment.
- 16.14 Development Plan Policy DP14: Historic Environment Assets
...Development will not be permitted that will adversely affects a listed building, a conservation area, historic park or garden or important archaeological remains. Development affecting the historic environment should seek to preserve or enhance the heritage asset and any features of specific historic, archaeological, architectural or artistic interest. Support will be given to the provision of creative and accessible interpretations of heritage assets.
- 16.15 National policy on conserving and enhancing the historic environment is contained in the National Planning Policy Framework (NPPF). Paragraph 17 sets out the core planning principles that underpin both plan-making and decision-taking and planning should “conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations”. More specifically section 12 of the Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance.

- 16.6 The NPPF deals with determining planning applications that affect heritage assets in paragraphs 128 to 135. Paragraph 132 sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. It goes on to note that significance can be harmed or lost through alteration or destruction of the heritage asset, or development within its setting, and notes that substantial harm to, or loss of, designated heritage assets of the highest significance, like Grade II* listed buildings, should be wholly exceptional.
- 16.17 Paragraph 133 of the NPPF goes on to note that where a proposed development would lead to substantial harm to or total loss of significance of a designated heritage asset, consent should be refused unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss. Paragraph 134 says that where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 16.18 PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide remains an extant guidance document. The document provides additional policy principles guiding the consideration of applications for consent relating to designated heritage assets and advice on substantial harm between paragraphs 91 and 95.
- 16.19 National Planning Practice Guidance has been published in "Beta mode" (live consultation draft) . Its status is described on the website as follows:
The Government considers that where the planning practice guidance published in draft on this web-based resource during Beta is a material consideration, it is likely to have limited weight. However, it is for the decision taker to determine the weight of this guidance in any individual decisions.
- 16.20 The 2008 English Heritage (EH) guidance document titled "Conservation Principles, Policies and Guidance" is useful when considering significance, describing a range of 'heritage values' that may be attached to places and arranged into four groups; evidential value, historical value, aesthetic value, and communal value. Value judgements involve an element of subjectivity, but these values are an attempt to formalise this as far as possible

The Significance of Jumbo

Jumbo's significance is reflected in its grade II* listing, placing it in the top 8% of listed buildings in the country. English Heritage states on its website (<http://www.english-heritage.org.uk/caring/listing/listed-buildings>) that:

"Listing is not a preservation order, preventing change. Listing is an identification stage where buildings are marked and celebrated as having exceptional architectural or historic special interest, before any planning stage which may decide a building's future.

Listing does not freeze a building in time, it simply means that listed building consent must be applied for in order to make any changes to that building which might affect its special interest. Listed buildings can be altered, extended and sometimes even demolished within government planning guidance. The local authority uses listed building consent to make decisions that balance the site's historic significance against other issues such as its function, condition or viability.

(<http://www.english-heritage.org.uk/caring/listing/listed-buildings/>, accessed 17 October 2013)

Jumbo is an enormously prominent landmark in Colchester, visible from viewpoints across the town. It is one of the largest water towers ever built in the country and its importance is reflected in its Grade II* listing. Its design, with four legs connected by open arches is most unusual, reminiscent of a triumphal arch, suggestive of high civic confidence at the time of construction. The architectural language is Romanesque and it has been suggested that this was intended to reflect the Roman history of the town, and possibly the nearby Balkerne Gate. The confident architecture, scarcity and significance to Colchester's history all justify its high listing. The tower is described by English Heritage, using its Conservation Principles guidance (2008) as being of evidential, historic, aesthetic and communal significance because of its exceptional design and its importance to Colchester's history and the history of municipal public health and water supply. This assessment is considered accurate. English Heritage rightly describes it as:

...a startlingly ambitious manifestation of the 19th century concern to provide good public water supplies. The colossal structure required to supply the town with water was built as a Romanesque tower of monumental character, the design of which transcends the building's utilitarian purpose. As a landmark rising above Colchester the tower has become one symbol of the town's identity."

Using the four criteria set out within English Heritage's Conservation Principles, the tower's significance has been assessed thus:

Evidential – The tower contains evidence of the way municipal water supplies were managed by Victorian Engineers, most specifically within Colchester but also of the sorts of technology employed (while some of the valves at ground level were removed by Anglian Water when the tower was decommissioned the remaining machinery contains evidential value within the context of the tower) and of the importance placed on the supply of water by society.

Historic - The tower's historic significance is great both in terms of the history of Colchester and the history of municipal water supply.

Aesthetic – Apart from the water tank the proportions of the tower conform to the classical ideals of architecture as laid out by Vitruvius. The powerful brickwork combined with the decorative work combine to create an awe-inspiring and soberly beautiful monument.

Communal - Jumbo has considerable communal significance. It is well-known by residents of the town and forms part of the town's identity. It is held in considerable affection as a huge, rather anthropomorphised landmark in the town

A water tower is by definition a utilitarian structure of engineering and it is typical of the Victorian approach to new types of buildings, particularly engineer-led structures. It is common in such situations for the architecture to transcend this utilitarian necessity to become a thing of beauty. The Balkerne Water Tower in this way is related to other Victorian building types such as railways, large bridges and sewage management facilities, which also frequently have a quality, refinement and beauty demanded not by their use but by a desire to create elegance and distinction beyond mere utility. This reflects the desire of Victorian society to be a great age, akin to the Ancient Greeks, Romans and Egyptians, as well as a confidence that derives from success, ambition and wealth. The tower's significance can be viewed in this context as reflective of society at the time of its construction and of the importance placed on municipal structures of this type by those that created them."

The Impact on the Listed Building

- 16.22 The current application proposes that the massive brickwork superstructure would remain intact including the legs and the spiral staircase. The staircase would not be clearly visible externally but would be visible on all floors to occupiers of and visitors to the building. The legs would be clearly discernible with the glazing recessed behind the face of the masonry. The water tank would remain almost complete and both legs and tank would be viewed together. The structure would still be readily identifiable as a massive and iconic water tower. An inevitable loss of significance would result from the change to its character as a monumental structure and the removal of some historic fabric, most significantly the pipework and valves running up the inside of two of the structure's legs. In long views the roof would appear changed and in closer views it would no longer be possible to view through the structure, although the legs would remain obvious. However the view through the legs is already restricted in extent owing to the original stair core that rises centrally through the structure. In short the proposal is generally additive, not subtractive, and for the most part theoretically reversible; although the remaining pipework would have been mostly removed and could not be reinstated. The original intended use would remain obvious and for the most part the historic fabric would remain. Perhaps a parallel can be drawn between this proposal and the roof over the courtyard at the British Museum (Grade I), in that the museum and the library are still both clearly understood, even though the courtyard has now changed its character to an internal space. The introduction of a glazed screen within the giant arched opening of the porte cochere of the Albert Hall (Grade I) was also allowed as a means of facilitating the more effective use of the former carriage porch as an atrium. This resulted in a change to the architectural character of this element of the nationally cherished listed building.
- 16.23 Perhaps the most controversial aspect of the proposed conversion is the infilling between the 'legs' of the tower. At the public inquiry in 2001 the inspector concluded that it was preferable for the water tank to be compromised by removing two of its sides than for the legs to be infilled to create useable floor space. This conclusion must be taken seriously as a material consideration. However, in the intervening time, the circumstances have changed somewhat. The possibility of glazing the roof proposed in this application, not previously envisaged, would enable the tank to remain substantially complete, enabling the tank to be used without the great harm being caused to this highly significant part of the structure that was proposed at the time. With the water tank able to be used without such great loss of significance as was previously envisaged the harm of glazing the legs is slightly reduced. In addition the proposal now under consideration proposes potentially greater public benefits

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such as repair, greatly increased public access owing to the proposals for the lift enabling access to the restaurant, café and museum, all of which facilitate, and indeed require public access, enhancements to the conservation area and others defined below. These features would also assist in creating funds to enable long-term maintenance and care of the building. The increased public benefits of the current proposal, along with the retention of a substantially complete water tank needs to be weighed against the harm of infilling the legs indicated by the Inspector in 2001.

Assessment of the degree of harm

- 16.24 The National Planning Policy Framework requires that the harm caused by the proposals should be defined as either substantial harm or less than substantial harm. The proposal under consideration must be tested to establish whether or not the harm is justified. However it offers no explanation of how harm that is substantial, and harm that is less than substantial, should be calibrated.
- 16.25 The extant PPS5 Practice Guide provides clarification with substantial harm, demolition or destruction being dealt with under the same heading in paragraphs 91 to 95. These paragraphs deal almost exclusively with demolition and if substantial harm is something very far removed from that, it seems reasonable to expect that there would have been some explanation. In the light of the advice in the PPS5 Practice Guide, substantial harm, while not equating to demolition or destruction, is a degree of harm that falls not very far short of it. This approach is consistent with the way the term 'substantial' has been used in Appendix D to Circular 01/01
- 16.26 The National Planning Policy Framework practice guidance, currently operating in Beta mode, provides guidance on substantial harm. It states that "a key factor in determining whether the works constitute substantial (i.e. serious) harm is if the adverse impact goes to the heart of why the place is worthy of designation – why it is important enough to justify special protection".
- 16.27 Jumbo's evidential, historic, aesthetic and communal significance would each be affected differently by the proposal.

(i) Evidential

Its evidential significance is likely to be most at risk of harm by the application. Removal of the remaining pipework and valves would remove evidence of exactly how the water tower operated. This is mitigated by the retention of the vast majority of the water tank. The recording of the element of the building that would be lost would serve to preserve by record and, in part, to mitigate the loss of this fabric. While the importance of historic evidence remaining in situ should not be underestimated the NPPF, in paragraph 141, recognises that in some cases it is justifiable for this evidence to be recorded and made publicly available where it cannot be retained. The application also indicates an intention to retain a representative sample of these features within the building in the museum space. It would be necessary for this to be carefully interpreted within the museum space for their relevance to be made clear as without proper interpretation this may be difficult for laypeople without an understanding of the subject to understand once the pipes and valves have been removed from their original locations.

(ii) Historic

The tower's historic significance is great both in terms of the history of Colchester and the history of municipal water supply. The tower would be retained and would still be clearly recognisable as a water tower. It is considered that its historic significance would not be harmed by the proposal.

(iii) Aesthetic

The tower's appearance would be changed. While the monumental brickwork tower, steel water tank, roof and belvedere would remain evident this would be accompanied by glazing to the walls and part of the roof. The building would be occupied, resulting in lighting and furnishings occupying previously empty space. While its monumental character would remain it would be altered inevitably by these changes. It would no longer appear as a pure structure of engineering but would take on the character of an occupied building. The aesthetic qualities of the building would change through the introduction of glazing and human activity but these changes in character are not necessarily harmful.

(iv) Communal

Jumbo has considerable communal significance. It is well-known by residents of the town and forms part of the town's identity. It is held in considerable affection as a huge, rather anthropomorphised landmark in the town. It is unlikely that this would be harmed by the proposal, indeed it is possible that this would be enhanced by the opportunity to visit the building's public areas including the museum, café and restaurant. The consultation response from the Council's Enterprise and Tourism Development Manager states "It would engender civic pride and understanding by helping local people (especially local children) and visitors alike to understand the history of Jumbo and its historic impact on the town".

- 16.29 While the evidential significance of the building would be harmed by removal of the pipework and valves from their original location, and the aesthetic significance altered by compromising its appearance as a pure structure of brickwork, steel and metal roof, the greatest harm would be the change to the character of the building from a monumental piece of engineering to an occupied building.

The Magnitude of harm associated with the scheme

- 16.30 It must be considered whether this harm is substantial in terms of magnitude. The proposal is additive, in that for the most part features are being added, rather than removed, apart from the items already considered. The scheme retains nearly all of the structure in place and would technically be reversible. It would remain a brickwork tower with a water tank. These and its architectural merit, along with its significance to the historic development of the town are its primary significance. Substantial harm is defined within the NPPF practice guidance as harm where the adverse impact goes to the heart of why the place is worthy of designation.
- 16.31 The application does contain measures to mitigate the harm caused by the development. These include relocation of a large proportion of pipework and valves into the museum space so that they are retained within the building; retention, on view, of internal features, including the brickwork, as far as possible; provision of blinds for the glazing to avoid the visual clutter of a variety of window dressings and frameless glazing to ensure the glass remains as simple and unobtrusive as possible.

- 16.32 Against the background of the impacts described above and using the definitions of substantial harm within the guidance available it can be seen that the scheme would retain the overwhelming proportion of the important fabric and does not impact the reasons why the tower is worthy of designation. For these reasons it is concluded that the proposal would not constitute substantial harm as defined either within the PPS5 Practice Guidance or the NPPF practice guidance. The application therefore needs to be assessed using the policy contained within NPPF paragraph 134 and the harm “weighed against the public benefits of the proposal, including securing its optimum viable use”.
- 16.33 The harm caused by the proposal is, however, not negligible and as the consultation response from English Heritage states it would be a mistake to assume that the harm is of no significance. It should be noted though that the NPPF guidance states that “Harmful development may sometimes be justified in the interests of realising the optimum viable use of an asset, notwithstanding the loss of significance caused”. In the English Heritage consultation response it is questioned whether it is indeed possible to secure the tower’s future use and maintenance without radical alteration to it.

Public Benefit

- 16.34 The NPPF guidance currently in Beta defines public benefit as follows:
What is meant by the term public benefits?
- 16.35 Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework (Paragraph 7). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits.
- 16.36 Public benefits may include heritage benefits, such as:
- sustaining or enhancing the significance of a heritage asset and the contribution of its setting
 - reducing or removing risks to a heritage asset
 - securing the optimum viable use of a heritage asset
- 16.37 The public benefits proposed within the application are wide-ranging. Most obviously the tower’s roof, tank and masonry would be repaired. The building would be occupied, presenting an inherent incentive to maintain it and keep it in good repair in the long-term. The proposal would provide unprecedented public access to the building, with the provision of a lift, enabling all to visit, and a museum, café and restaurant to facilitate visits and give an incentive for repeat visits to the building. The museum could provide a new opportunity for people to learn about the tower, its history and its context in the national history of Victorian engineering, provision of urban water supplies and public health. The Council’s Enterprise and Tourism Development Manager suggests that other public benefits would be social, economic and environmental. However it will be necessary for the proposals for museum opening, the repairs and the interpretation of the building to be properly controlled in order to ensure that these core benefits are secured.

- 16.38 The Council's Enterprise and Tourism Development Manager furthermore suggests that the development would be attractive to local people and to visitors, enhancing the quality of life in Colchester and offering more choice and another reason to visit / extend visits into staying visits; would help manage visitors around the town and would spread footfall, awareness and patronage of businesses in the west of the town and support the 'Shops on the Walls' project; would bring new employment opportunities and would "complement the collection of existing cultural attractions in that area such as the Mercury Theatre, the Colchester Arts Centre, the Hole in the Wall public house, the Roman Wall and the Balkerne Gateway rather than detract from them, which has been the case". Finally she states that "in aesthetic terms a developed Jumbo would provide a resolution to a decaying historic icon in the town centre.
- 16.39 In its undeveloped state, this prominent site is an environmental detractor, and it is important for the sake of the regeneration of the town centre, and the Borough, that it is developed as soon as possible

Are there viable alternatives?

- 16.40 While no application for planning permission or listed building consent has been made to the Council an alternative proposal has been promoted by the Balkerne Tower Trust. The English Heritage consultation response advised that "only if your Council concludes that the proposed scheme provides the only practical means of securing the tower's future should it approve these applications". It continues that should the application be refused the Council should commit itself to securing the future of the tower by promoting an alternative approach. The presence of this alternative proposal is therefore a material consideration.
- 16.41 In very simple terms, the trust proposes to operate the building as a tourist attraction. This proposal was informed by an Option Appraisal document by Purcell Miller Tritton (2009) commissioned by the Balkerne Tower Trust. The option appraisal document suggested a range of three approaches to operation of the building but in each case the tower would be repaired either incrementally or wholesale funded by a combination of grant funding and public tours, and improved lighting installed. Visitors in groups of about eight (the maximum permitted by the fire officer) would be taken on guided tours around the tower led by volunteer Blue Badge Guides.
- 16.42 A number of issues about the feasibility of the trust's proposals exist. To progress their proposals, the Trust would have to source a significant amount of capital funding and while funds for the full scheme could be raised from a variety of sources including the Heritage Lottery Fund it is not clear that the amount that could be raised would come close to the funds required for repair of the building. Once repairs had been carried out it would be necessary for maintenance to be financed using the revenue from visitors to the building and the rent raised from six car-parking spaces proposed at the base of the tower. The latter part of the proposal would in itself not enhance either the setting of the listed building nor the conservation area. Other issues include those of ownership of the building, the complexities of compulsory purchase and the need for a compelling case in the public interest to be demonstrated and issues around compensation may lead to complexities too. It is fair to say that any compulsory purchase of the building would take a long time. Consequently, the current schemes and the benefits they would bring to the building, and the town centre, could be brought to fruition much more speedily than the Balkerne Tower Trust proposal.

- 16.43 The option appraisal document outlines three options that each involve considerable expense, perhaps most significantly the very substantial cost of scaffolding, estimated in 2009 at a minimum of £55,000 - £70,000 and in all likelihood more: for full repairs the cost envisaged in 2009 was £112,000. It is challenging to envisage how tours, however popular, to visit the unconverted tower, climbing 132 stairs to the access platform within the tank and then on to the Belvedere, could raise sufficient funds for ongoing cyclical maintenance of the building. It is still more difficult to imagine the likelihood of repeat visits, which would be necessary to facilitate regular maintenance work. It appears doubtful that this option would be viable, even though the retention of the building in its current unconverted form would clearly avoid the harm to the building described above.
- 16.44 There is no evidence that preservation of the tower as a monument would be a practical option given the evidence available at present and it appears unlikely that a more practical scheme for its preservation in an unchanged state will emerge. The risk is clear: the continued absence of a viable scheme for the tower's preservation will result in continued neglect of the building and consequent deterioration in condition. Already the repairs required will be expensive and even the current proposal for conversion will be unviable in the short term. Continued redundancy will result in escalating repair costs, so unless a scheme is approved in the near future it is possible that no future for the building might ever be found, leaving the Borough with what could be described as a 'million pound aviary' for the local pigeons.

Viability Issues

- 16.45 Paragraph 134 of the NPPF requires that harm should also be balanced against securing the optimum viable use of the heritage asset. The two alternatives for the resolution of Jumbo's redundancy have been suggested as described above, one is the proposal currently under consideration, the other the preservation of the tower as a monument as suggested by the Balkerne Tower Trust. The model for preservation and incremental repair has been assessed by Jill Britton of Britton McGrath Associates, an independent strategic management consultancy specialising in the leisure and tourism markets, with experience of the heritage sector and of working with Trusts. She concluded "even with volunteers it would be extremely difficult to get this to be viable". The PPS5 Practice Guide states that the optimum viable use is not always the most profitable, and in this instance the more profitable use entails the most harm while the low-key use entails vastly less intervention but does not, under scrutiny and with the limited information available, appear to be a practical one.
- 16.46 The proposal now under consideration is also clearly unviable in the short term. However an analysis of the financial viability of the scheme by Mr Riches of Morley, Riches and Ablewhite Chartered Surveyors, dated 30 August 2013 states that "while the payback period on the cost to convert the tower is longer than the commercial norm, if the developer is willing to accept this situation, the proceeds from the development are adequate to safeguard its future".
- 16.47 It is clear that the proposal currently under consideration would have a very considerable impact on the historic building's appearance and character, as well as an impact on its historic fabric in the form of the valves and pipework contributed to the operation of the tower. The glazed curtain walling would infill the open legs of the tower and the floors would obscure the views through the legs that now exist. The building would be used and would contain the paraphernalia of these uses. It would

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be occupied during the day and at night, meaning it would be lit internally. All these would radically change its appearance and its character as a monumental structure of utility. The water tank is arguably one of the most significant parts of the building, as its *raison d'être* and this would remain almost complete with two small panels removed from each side for viewing and its access floor removed and replaced with a full floor. However its external character would be little changed apart from the partial glazing of the roof. It is undeniable that a glazed structure with floors, occupied and lit will appear very different from the tower's present character. However it is difficult to see how the building can be protected in the long-term without these measures. It must be concluded that this is the only practical solution to the building's future.

- 16.48 It is acknowledged in the draft National Planning Policy Framework Practice Guidance that in some cases "by their nature, some heritage assets have limited or even no economic end use", explaining that "in a small number of cases a heritage asset may be capable of beneficial use in theory but be so important and sensitive to change that alterations to accommodate a viable use would lead to an unacceptable loss of significance". Analysis of the impact of the proposal on the building's special interest indicates that this does not apply to Jumbo.

Impact on the Conservation Area

- 16.49 This part of the conservation area is a quiet one, with the feeling of a backwater, despite its proximity to the Mercury Theatre, the Colchester Arts Centre and the Hole in the Wall pub. The access roads are narrow and few vehicles pass. At night while the theatre, arts centre and surrounding pubs are busy, the tower sits in a pool of darkness that can at times be somewhat threatening. Occupation of Jumbo would remove the dark area, but it is readily accessible on foot and the restaurant, museum and offices would not cause such increased activity that the character of this part of the conservation area would be harmed. The condition of the building is depressing, and this does not enhance the character or the appearance of the conservation area. With the building repaired and converted it is likely to contribute positively to the character of the immediate surroundings of this part of the conservation area and to the vitality of the wider town centre. The tower can be seen from a variety of locations within the conservation area. In long views its appearance will change, with the introduction of patent on the roof and curtain glazing between the arches. But the form on the skyline will remain unchanged and from a distance the changes will be more subtle; as one is not so aware of the arches when the building is viewed from a distance. The key view point from the High Street westwards to Jumbo will remain substantially unchanged as only a very limited peripheral vista through the legs is visible over the roof tops of the Head Street/North Hill frontage.
- 16.50 In my opinion, this proposal preserves the special character of the conservation area when compared with the previous scheme. In this design the water tank will remain almost completely intact and the large unsightly ventilation grilles serving the kitchen that blighted the middle of the glazed curtain wall are now omitted (they will now be hidden by the brick arches high in the building). With these revisions, whilst the impact on the wider conservation area will be discernible, the associated alterations will not be harmful. With these improvements the wider scheme's impact associated with infilling the legs of the tower will be less harmful because the visible historic fabric of the brickwork, water tank and roof will remain complete, leaving the tower's historic form clearly understandable and legible, notwithstanding the glazed infill.

Conclusion

- 16.51 While the development entails harm to the listed building, its continued decay also harms the historic environment and threatens the integrity of a grade II* listed building at risk. Jumbo is currently a sad feature of the streetscape as well as harming the vitality of the conservation area.. The lack of a beneficial use for the building makes its slow erosion more likely, an unacceptable eventuality for such a significant landmark in such an historic town. As part of this proposal the building would be repaired and maintained in the long term, and the most significant parts of the building would be retained and would remain clearly identifiable. Much of it would be accessible to the public to an unprecedented degree with a lift to the top, a restaurant, museum, café and shop.
- 16.52 In my opinion, the application is approved because it presents the most practical and achievable future for the building with a wide range of overriding public benefits. I consider that these public benefits outweigh the harm that would be caused by the building's conversion and occupation.

PART 4 ALTERNATIVE OPTIONS FOR SECURING THE WATER TOWER

- 16.53 In subsection (iv) of their recommendation English Heritage state;
(iv)Only, if your Council concludes that the proposed scheme provides the only practical means of securing the tower's future should it approve these applications. On the other hand if it concludes that this is not the case and the applications should be refused, it should commit itself to securing the future of the tower by promoting an alternative approach.

The Council has expressed no interest in acquiring the building. The only alternative proposal is that put forward by the Balkerne Tower Trust (BTT). The Trust is a limited company and registered charity which was set up in February 1996 in an attempt to bid for Jumbo at the auction. Their proposals therefore require careful consideration.

The BTT has been contacted to give them an opportunity to clarify whether they have a business plan, to provide details of their assets, to explain their proposals for public access for Jumbo, to provide clarification on grant applications, whether the information in the 2009 Options Appraisal has been updated and to explain their vision for Jumbo.

- 16.54 The following response was received summarized

'We are also accused of not having produced a business plan or funding package to secure Jumbo's conservation. We cannot raise funds or produce a definitive business plan for a building we do not currently own and is not on reasonable offer to us. According to the Architectural Heritage Fund, if given a chance charitable trusts have a good record of saving and restoring neglected heritage assets, and this was the subject of the BBC series Restoration.

In addition, in early 2011 on the recommendation of the Architectural Heritage Fund, we carried out a consultation exercise with six funding charities. Although nothing could be guaranteed by hypothetical applications, the feedback was positive and encouraging.'

Each option for Jumbo consists of a combination of essential and desirable repairs together with improvements to provide public access and to enhance the visitors understanding of the structure.

Option 1

Relatively short term repairs to the building; alterations necessary for safe public access. The total cost for this option is given as £299,595.

Option 2

Comprehensive repairs carried out in three phases; alterations necessary for safe public access including provision for a display space in the tank. The total cost for this option is given as £710,243 (in three phases).

Option 3

Comprehensive repairs carried out in a single contract; alterations necessary for safe public access including provision for a display space in the tank; additional single storey accommodation at ground level for a tour waiting area, toilets, a small office and retail space; a lift to the tank platform level. The total cost for this option is given as £1,192,184.

All options provide for public tours of Jumbo to the tank platform level and the cupola, escorted by Colchester Blue Badge Guides, and the provision of six car parking spaces to the west of the building. The latter is needed to provide a modest income for Balcerne Tower Trust to contribute to ongoing costs; it would not obstruct the entrance to Jumbo.

Our vision for Jumbo is described in detail on our website, in particular the Objects of our charity, our Manifesto and short video 'Saving Jumbo'

Objects "To preserve for the benefit of the people of Colchester and its surrounding district and of the nation, the historical, architectural and constructional heritage associated with the water supply that may exist in and around Colchester in buildings (including any structure or erection, and any part of a building as so defined) of particular beauty or historical, architectural or constructional interest, particularly the Balcerne Water Tower AND

To advance education of the public in the history of the supply of water in Colchester, including the role of the buildings or structures and in particular the Balcerne Water Tower".

As far as I am aware no organisations anywhere, including government departments let alone small charities such as ours, regularly update major studies simply in order to update costs. In the case of the Options Appraisal an easily calculated increment is surely all that is required, especially for a time lag of less than four years.

As I tried to explain below, it would be irresponsible for a registered charity to attempt to raise funds for a building not currently on reasonable offer to it. Therefore I cannot understand the significance you seem to attach to BTT's current funds. What matters, surely, is our ability to raise funds were we to own Jumbo (a building with a negative market value according to Savills).

An additional obstacle to the production of a business plan is our need for access to Jumbo. This has so far been denied (requests for access by Simon Marks of PMT for the Options Appraisal were unfortunately ignored).

However, as a general guide the following would be fundraising options for BTT:

- The establishment of six car parking bays on the west side of Jumbo, earning appx £9,000 per year rental (see the Options Appraisal, Appendix A, 013A/014)*
- The organisation of numerous and ongoing publicity and fundraising events; the involvement of schools and other civic associations (I would remind you of the success of the Roman Circus project in this respect).*
- The sale of a book about Jumbo (already prepared but not published).*
- Applications for grants from multiple sources including the HLF, with the support of expert advice (eg from the AHF and the NEEBPT).*

16.55 It appears the Trust has no assets and no proven track record in repairing historic buildings. Jumbo would be a unique and challenging project for the Trust to undertake. The costs involved would not only be cost of the repairs works required to allow public access but ongoing maintenance costs and insurance. It is questionable whether the public access described in their options would have sufficient public interest to generate any significant income. Their proposals rely on being gifted the building and land at no cost together with no legal costs, and income from grants and fund raising. The correspondence on grants does not provide any commitment from the organizations and several of the letters set out a maximum grant for example; Association of British Archaeology maximum grant 15,000, Essex Environment Trust maximum £10,000, Essex Heritage Trust maximum £5000, Architectural Heritage Fund AHF of up to £20,000, and a low-interest working capital loan of up to £500,000 and Essex Community Foundation our average grant is £3,500.

16.56 While the aims of BTT are highly laudable it is not considered that their proposal is realistically achievable to secure the long term future of the building. It is therefore concluded that the BTT proposal is not a practical means of securing the towers future

16.57 The applicant has submitted a Report on the Financial Appraisal of Options prepared by Chartered Quantity Surveyors, Burr and Neve. This document considers a number of different development options including the current application proposal. Whilst these options are not alternative proposals for consideration it provides a useful exercise in considering the viability of alternative proposals and a variety of uses. The options considered include a “do nothing” plus a combination of different uses; residential, offices, café, restaurant, hotel, museum and shop. All the options resulted in a deficit and negative profit.

16.58 The planning agent states “It can be seen from the data submitted that the present application is the most viable option or the option that makes the least percentage loss. There are no schemes or mix of uses that would turn a short-term developers profit. The applicant accepts that it will be some time before the rental income from the uses delivers him a return. The applicant is a very successful and experienced developer and he is embarking on this development with his eyes wide open; cognisant of the financial commitment and viability challenges the scheme faces. However, he is passionate about restoring this iconic and unique structure and is prepared to wait longer than usual for the development to produce a return”.

16.59 The Councils Senior Economic Development Officer has considered the information and agrees with this conclusion. The planning inspector who considered the appeals in 2001 also agreed that “it seems unlikely that any proposal to convert this building, either with or without public funding, would attain viability.”

PART 5 WOULD THE DEVELOPMENT BE VIABLE IN THE LONG TERM?

16.60 As it has been concluded the application proposal would not be viable the question of whether once completed the proposal would generate sufficient income to cover ongoing maintenance costs has to be considered. The applicant has been asked to clarify this and a report submitted by Morley Riches & Ablewhite. The following is an extract from the report;

“You have asked me to comment on how in the future the structure of the tower will be maintained.

Jumbo will always be an expensive structure to maintain and in my appraisal I have separated the cost of maintaining the historic structure from the day to day running costs for the building. Any occupier of a multi-let building expects to contribute to the normal costs of structural maintenance. If those costs are abnormally high this will lead to a reduction in the price that will be paid for the accommodation. In our viability study we took these costs into account and assumed they would be borne by the developer/owner of the tower i.e. they would be funded from the proceeds of sales and lettings, rather than by the occupiers.

Burr and Neve (Quantity Surveyors) suggest a budget of £130,000 (£26,000 per annum) would be required to implement a 5 year rolling programme to maintain those elements of the building that the tenants and occupiers would consider too expensive and specialised to be maintained under a service charge.

In other schemes where there is a future maintenance burden an agreement under s.106 has been used so that on the sale of the final unit in the scheme the area to be maintained (in this case the structural fabric of the tower) is transferred into a management company together with a sum to cover the liability. The sum required to effect this 5 year programme for 50 years (assuming inflation at 2½%) is £0.5m. I would expect the developer to put these funds into the management company from the sale proceeds. This is the assumption in each of my earlier viability studies.

Conclusion

The projected proceeds of the development are

- 1) Sales revenue from 3 flats at £275,000 = £825,000*
- 2) Rental income from museum, restaurant, café, gift shop and offices - £100,000 per annum*

The developer is able to forward fund the extraordinary maintenance liability by transferring £500,000 from the sales of the three flats. Alternatively the rental income from the other elements of the property greatly exceeds and could therefore fund the current annual equivalent cost of £26,000.

It is my conclusion that whilst the payback period on the cost to convert the tower is longer than the commercial norm, if the developer is willing to accept this situation, the proceeds from the development are adequate to safeguard its future.

PART 6 PUBLIC ACCESS

- 16.61 The applicant has stated that he is willing to operate the museum as a private attraction, if there is no other group willing to take it on. It would be available to the public once works are complete, it is also likely there would be a charge for access to the belvedere. It is stated that If a charge is levied, it will be affordable to all and is likely to be nominal in nature. The application states “The museum space under the applicant’s control, will have a Colchester centric theme, but include particular information relating to the building’s history and function. Any valves, piping or other material of interest, which may need to be relocated as part of the development, could form part of the museum display. It is anticipated that the attraction will, for the most who visit, be about the views, rather than a thirst for knowledge of the town’s public health history”
- 16.62 A Business Plan for the museum has been submitted. It looks at 3 options depending on visitor numbers. The “break even” option would rely on 23,000 – 24,000 visitors a year. Option 2 27,000 visitors would result in a net profit over a five year period of £61,646.73 and option 3 27,000 – 30,000 visitors a net profit over a five year period of £132,446.73.
- 16.63 As public access is one of the key benefits of the proposal it is essential that access is provided and secured on a continuing basis.
- 16.64 A unilateral undertaking in respect of the 2001 application secured public access and access for the disabled as follows
- Access for the public, including access for the disabled, to be provided a minimum of 90 days a year to the area indicated on the application drawings as museum space via the new disabled lift (para 4.10. of the DAS suggest the disabled lift provides access to the belvedere but I assume this is incorrect if not then this clause should be amended to include the belvedere)
 - Access for the public to be provided for a minimum of 90 days a year to the area indicated on the application drawings as Observatory Gallery and Observatory Belvedere / via the circular staircases
 - Access for the Public and access for the disabled to be permitted between the hours of 9.00 -16.00
 - The applicant to be responsible for all costs relating to public access
 - Access for the public and access for the disabled to be managed by the applicant, a charity nominated by the Council, an amenity body nominated by the Council or a third party agreed by the Council.
- 16.65 It is considered the above requirements should be secured as a minimum via a legal agreement.

PART 7 COMPLETION OF DEVELOPMENT & BOND

- 16.66 Whilst planning permissions have a 3 year limit in which they have to be commenced there is normally no time limit for the completion of the approved work. However in this case it is important for the integrity of the building that if work commenced it is completed. The council also has to ensure that before work commences the applicant has sufficient funds to complete the works also if for whatever reason the applicant does not complete the works there is a bond in place for the council to appoint contractors to complete the works. This bond could be in the form of a sliding scale as the work progressed.
- 16.67 The applicant's financial appraisal indicates the construction costs would be just over £3 million. These costs have been independently verified and confirmed to be appropriate if on the slightly high side.
- 16.68 The applicant has confirmed his willingness to enter into a unilateral undertaking that requires a bond to be in place to the local planning authority's satisfaction prior to any works commencing. "The applicant indicates this is more likely to be in the form of a financial guarantee, rather than a bond and would work in a similar fashion to an insurance policy. We would need to discuss the exact terms under, which it might be triggered, before an actual financial product can be obtained".

PART 8 IMPACTS ON NEIGHBOURING PROPERTIES

- 16.69 In terms of impact on neighbouring properties, the main issues are: additional noise and disturbance, during and post construction, smells from cooking and refuse waste, overlooking/loss of privacy and an increase in traffic movements.
- 16.70 The nearest residents to be affected are in Parsley House opposite the site to the north. There would be the potential for overlooking from any accommodation within the in-filled legs from the north elevation of the tower. However the internal layout indicates the staircase and lift on each floor of this elevation.
- 16.71 With regards to additional noise and disturbance, the proposal would inevitable generate additional footfall and some vehicle movements to the site. However, this is a town centre location and a busy pedestrian through route leading to the Mercury Theatre, the restaurant adjoining the Mercury Theatre, The Hole in the Wall public house and the foot bridge across Balkerne Hill leading to St Mary's multi-storey car park and the residential properties to the west of the town centre. It is not considered that the additional pedestrian activity generated by the proposed use would be so harmful to the amenity of the area and the neighbouring residential flats to warrant refusal of the applications.
- 16.72 Some noise and disturbance during construction work is inevitable. However, the disturbance caused by this can be minimised by considerate contractors, controlling hours of working and construction management by condition.
- 16.73 The extract units for the proposed kitchen are at a high level on the 7th floor. Environmental Protection has not raised any objection to the proposal with regards to odour or noise from extraction equipment. They do suggest appropriate conditions covering site boundary noise levels and the control of fumes and odours.

17.0 Conclusion

- 17.1 While the development entails harm to the listed building, its continued decay also harms the historic environment and detracts from streetscape as well as harming the listed building itself. The lack of a use for the building makes its slow erosion more likely, an unacceptable eventuality for such a significant landmark in such an historic town. As part of this proposal the building would be repaired and maintained in the long term, and the most significant parts of the building would be retained and would remain clearly identifiable. Much of it would be accessible to the public to an unprecedented degree with a lift to the top, a restaurant, museum, café and shop.
- 17.2 Whilst there would be some impact on residents amenity this is not so harmful to justify refusal.
- 17.3 It is recommended the application is approved, subject to a legal agreement and conditions, because it presents the most practical and achievable future for the building with a wide range of overriding public benefits that outweigh the harm that would be caused by the building's conversion and occupation.

18.0 Recommendation

- 18.1 APPROVE subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Environmental and Protective Services to refuse the application, or otherwise to be authorised to complete the agreement to provide the following:
- to secure a bond or other suitable financial arrangement to ensure the applicant, or any successors in title have sufficient funds to complete the approved development. the bond to be sufficient to include the costs the council would be liable for should they have to take on responsibility for the completion of the permitted works
 - to secure a minimum level of access for the public and access for the disabled to the museum , the belvedere and the viewing area
 - to secure the exhibition and displays in the museum
 - to secure the prior approval of the local planning authority to a detailed programme of works
 - at an agreed time a management company to be formed for the maintenance of the building together with a sum to be agreed to cover these works for a 5 year period
 - no work to commence until full engineering report has been carried out and submitted to and agreed with the LPA
- 18.2 On completion of the legal agreement, the Head of Environmental and Protective Services be authorised to grant planning permission subject to the following conditions:

19.0 Conditions for 131020

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 2619/loc01, J02 REVB, J03 REVB, J04, J05, J06, J07 & J10 unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

3 - Non-Standard Condition/Reason

Prior to the first occupation of the development hereby permitted, refuse and recycling storage facilities shall be provided in accordance with a scheme which shall have been previously submitted to and agreed, in writing, by the Local Planning Authority. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times.

Reason: The application contains insufficient information to ensure that adequate facilities are provided for refuse and recycling storage and collection.

4 - Non-Standard Condition/Reason

Prior to commencement of the development hereby approved full details of the surfacing materials to be used for all private, non-adoptable accessways, driveways, footpaths, courtyards, parking areas and forecourts shall be submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason: There is insufficient information within the submitted application to ensure that these details are satisfactory in relation to their context and where such details are considered important to the character of the area.

5 - Non-Standard Condition/Reason

Prior to the commencement of development, there shall have been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard and soft landscaping works for all the external areas of the site which shall include any proposed changes in ground levels and also accurately identify positions, spread and species of all existing and proposed trees, shrubs and hedgerows on the site, as well as details of any hard surface finishes and external works, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission.

Reason: In order to ensure that there is a sufficient landscaping scheme for the relatively small scale of this development but there is insufficient detail within the submitted application.

6 - Tree and Natural Feature Protection: Entire Site

No burning or storage of materials shall take place where damage could be caused to any tree, shrub or other natural feature to be retained on the site or on adjoining land (see BS 5837).

Reason: To protect the health of trees, shrubs and other natural features to be retained in the interest of amenity.

7 –Non-Standard Condition/Reason

All existing trees and hedgerows shall be retained, unless shown to be removed on the approved drawing. All trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site, to the satisfaction of the Local Planning Authority in accordance with its guidance notes and the relevant British Standard. All existing trees shall be monitored and recorded for at least five years following contractual practical completion of the approved development. In the event that any trees and/or hedgerows (or their replacements) die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, by the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

Reason: To safeguard the continuity of amenity afforded by existing trees and hedgerows.

8 - Contaminated Land Part 1 of 4 (Site Characterisation)

No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

(i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;

(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

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

9 - Limits to Hours of Work

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

Weekdays: 08:00-18:00, with no vehicles arriving before 07:30

Saturdays: 08:00-13:00, with no vehicles arriving before

07:30 Sundays and Bank Holidays: No working

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

10 - *Light Pollution for Major Development

Prior to the first occupation of the development hereby permitted, a validation report undertaken by competent persons that demonstrates that all lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) fully complies with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ3 SMALL TOWN CENTRES OR URBAN LOCATIONS shall be submitted to, and agreed in writing by, the Local Planning Authority. Any installation shall thereafter be retained and maintained as agreed therein.

Reason: In order to allow a more detailed technical consideration of the lighting at the site, as there is insufficient information submitted within the application to ensure adequate safeguarding of the amenity of nearby properties and prevent the undesirable, disruptive and disturbing effects of light pollution.

11 - *Restricted Hours of Delivery

No deliveries shall be received at, or despatched from, the site outside of the following times:

Weekdays: 07:00-19:00

Saturdays: 07:00-19:00

Sundays and Public Holidays: No deliveries.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from delivery vehicles entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

12 - *External Noise

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

- Dwellings indoors in daytime: 35 dB LAeq,16 hours
- Outdoor living area in day time: 55 dB LAeq,16 hours
- Inside bedrooms at night-time: 30 dB LAeq,8 hours (45 dB LAmax)
- Outside bedrooms at night-time: 45 dB LAeq,8 hours (60 dB LAmax) Such detail and appropriate consequential noise mitigation measures as shall have been agreed, in writing, by the Local Planning Authority shall be implemented prior to occupation of any building on the site and shall be maintained as agreed thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the

amenity of the future residents by reason of undue external noise where there is insufficient information within the submitted application.

13 - Site Boundary Noise Levels

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

14 - *Restriction of Hours of Operation

The restaurant, shop and café uses hereby permitted shall not open to customers outside of the following times:

Weekdays: 09:00-23:00

Saturdays: 09:00-23:00

Sundays and Public Holidays: 11:00-23:00

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

15 - Site Boundary Noise Levels

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

16 - Food Premises (Control of Fumes and Odours)

Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed shall thereafter be retained and maintained to the agreed specification and working order.

Reason: To ensure that there is a scheme for the control of fumes and odours in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

17 - Grease Traps Required

Prior to the first use of the development hereby permitted, any foul water drains serving the kitchen shall be fitted with grease traps that shall at all times thereafter be retained and maintained in good working order in accordance with the manufacturer's instructions.

Reason: To prevent unnecessary pollution of the groundwater environment quality in the area and/or blocking of the drainage system.

18 - Site Boundary Noise Levels

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

19 - Food Premises (Control of Fumes and Odours)

Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed shall thereafter be retained and maintained to the agreed specification and working order.

Reason: To ensure that there is a scheme for the control of fumes and odours in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

20 - Grease Traps Required

Prior to the first use of the development hereby permitted, any foul water drains serving the kitchen shall be fitted with grease traps that shall at all times thereafter be retained and maintained in good working order in accordance with the manufacturer's instructions.

Reason: To prevent unnecessary pollution of the groundwater environment quality in the area and/or blocking of the drainage system.

21 - Non-Standard Condition/Reason

Prior to the first occupation of any part of the development hereby permitted the footpath indicated along the site frontage shall be provided and thereafter maintained to the satisfaction of the local Planning Authority.

Reason: In the interests of proper planning.

22 - Non-Standard Condition/Reason

No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety.

23 - Non-Standard Condition/Reason

The vehicular hardstandings shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space. These spaces shall be provided prior to the occupation of any of the residential units and shall thereafter be retained in perpetuity.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety.

Informatives

(1) ZT0 – Advisory Note on Construction & Demolition The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

(3) ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

20.0 Conditions for 121023

1 - Time Limit for LBCs

The works hereby permitted shall begin before the expiration of 3 years from the date of this consent.

Reason: To comply with the requirements of Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 2619/loc01, J02 REVB, J03 REVB, J04, J05, J06, J07 & J10 unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

3 – Non Standard Condition/Reason

Prior to the commencement of any works, a programme of building recording both, prior to and during the construction work, and analysis shall have been undertaken and a detailed record of the fixtures to be removed shall have been made by a person or body approved by the Local Planning Authority and in accordance with a written scheme which first shall have been submitted to and approved, in writing, by the Local Planning Authority. The details of the report shall be made available for the benefit of the public within the museum in accordance with details submitted to and approved in writing by the local planning authority.

Reason: To secure provision for inspection and recording of features of historical importance associated with the site, which will be lost as a consequence of the works.

4 – Non Standard Condition/Reason

Prior to the commencement of works a schedule of all mechanical fixtures to be removed from their original positions, along with details of their intended final positions shall be submitted to and approved in writing by the local planning authority. A representative sample of pipework and valves shall be put on display within the museum. Proposals for their display and interpretation shall be submitted to and agreed in writing by the LPA before work begins.

Reason: To secure provision for inspection and recording of features of historical importance associated with the site, which will be lost as a consequence of the works.

5 - Extent of Removed Historic Fabric

Prior to the commencement of any works, the extent of any removal or demolition of original fabric shall have previously be fully recorded by scaled drawings and photographs that shall be submitted to and agreed, in writing, by the Local Planning Authority.

Reason: For the avoidance of doubt as to the scope of these works and to ensure that the amount of historic fabric disturbed by the development is necessary and appropriate.

6 - Non-Standard Condition/Reason

Prior to the commencement of any works, a full schedule and specification of works to repair the tower shall be submitted to and approved, in writing, by the Local Planning Authority. The works shall thereafter be carried out in full accordance with the approved details.

Reason: In the interests of preserving the character and appearance of the listed building and its setting.

7 -Non-Standard Condition/Reason

Prior to the commencement of any works, detailed drawings of at the proposed roof glazing shall have been submitted to and approved, in writing, by the Local Planning Authority. The new glazing shall be tonally sympathetic with the general roof surface. The works shall be carried out in accordance with the approved details.

Reason: To ensure that the approved works are carried out without detriment to the architectural character and appearance of the building where there is insufficient information within the submitted application.

8 - Minor additions and new services

Prior to any new services being installed or any existing services being relocated (in each case including communications and telecommunications services) details thereof (including any related fixtures, associated visible ducts or other means of concealment) shall have been submitted to and approved, in writing, by the Local Planning Authority and the works shall be carried out in complete accordance with the approved specification.

Reason: To protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

9 - Schedule of Finishes and Decoration

Prior to the commencement of any works, a schedule of all new internal surface materials including walls, ceilings and floors, and a schedule of all internal and external joinery specifying the proposed finish and decoration to be used shall have been submitted to and approved, in writing, by the Local Planning Authority in writing prior to the commencement of any works. The development shall thereafter be implemented in accordance with agreed details.

Reason: To protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990

10 - Archaeological Watching Brief TBA

Prior to commencement of development, details of a watching brief to be carried out by a suitably qualified archaeologist (during construction works) shall be submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in strict accordance with these agreed details. In the event that any significant archaeological features or remains are discovered which are beyond the scope of the watching brief (and require fuller rescue excavation) the construction work shall cease immediately and shall not recommence until a revised programme of archaeological work including a scheme of investigation has been submitted to, and approved in writing, by the Local Planning Authority.

Reason: To enable the inspection and recording of any items of archaeological importance.

11 - Non-Standard Condition/Reason

Prior to commencement of any works detailed drawings of the proposed method to be used for fixing the floors, new windows and the glazed curtain walling shall be submitted to and agreed in writing by the local planning authority. The development shall thereafter be implemented in accordance with agreed details.

Reason: To protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

12 - Non-Standard Condition/Reason

Prior to the commencement of any works, additional drawings that show details of the new windows in the Belvedere and the replacement oak door to be used, by section and elevation, at scales between 1:20 and 1:1, as appropriate, shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved additional drawings.

Reason: There is insufficient detail with regard to this to protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

13 - Listed Building Materials

No works shall take place until samples of the materials (including colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the works hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in strict accordance with the approved details.

Reason: In order to preserve the historic character of the listed building.

14 - Sample Panel

Prior to the commencement of any works a sample panel of all new facing brickwork shall be constructed on site showing the proposed brick types, colours and textures, face bond and pointing, mortar mix and finish profile and shall be made available for inspection by the Local Planning Authority and the materials and methods demonstrated in the sample panel shall have been approved, in writing, by the Local Planning Authority. The approved sample panel shall then be retained on site until the work is completed and all brickwork shall be constructed in all respects in accordance with the approved details.

Reason: In order to ensure that the brickwork can be satisfactorily considered on site with regard to preserving the character of the listed building.

15 - Additional Detail on Windows & Doors etc

Prior to the commencement of any works, additional drawings that show details of any proposed new windows, doors, eaves, verges, cills and arches to be used, by section and elevation, at scales between 1:20 and 1:1, as appropriate, shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved additional drawings.

Reason: There is insufficient detail with regard to this to protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

16 - Non-Standard Condition/Reason

The new section of railings shall match the adjoining historic railings in all respects including design, materials and finish. The historic railings shall be retained in place and only sections of missing railings shall be replaced as part of the works.

Reason: To protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990

17 - Non-Standard Condition/Reason

Prior to the commencement of development details, including design and location, of kitchen windows and ventilation panels shall be submitted to the local planning authority for approval. The development shall be implemented in accordance with the approved details.

Reason: There is insufficient detail with regard to this to protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

18 - Non-Standard Condition/Reason

Prior to the commencement of development details, including method of installation, of the recessed blinds behind the glazing shall be submitted to the local planning authority for approval. The development shall be implemented in accordance with the approved details.

Reason: There is insufficient detail with regard to this to protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

19 - Non-Standard Condition/Reason

Prior to the commencement of development details of the proposed repairs to the catwalk shall be submitted to the local planning authority for approval. The development shall be implemented in accordance with the approved details.

Reason: There is insufficient detail with regard to this to protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

20 - Non-Standard Condition/Reason

Prior to the commencement of development details of the proposed pigeon guards shall be submitted to the local planning authority for approval. The development shall be implemented in accordance with the approved details.

Reason: There is insufficient detail with regard to this to protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

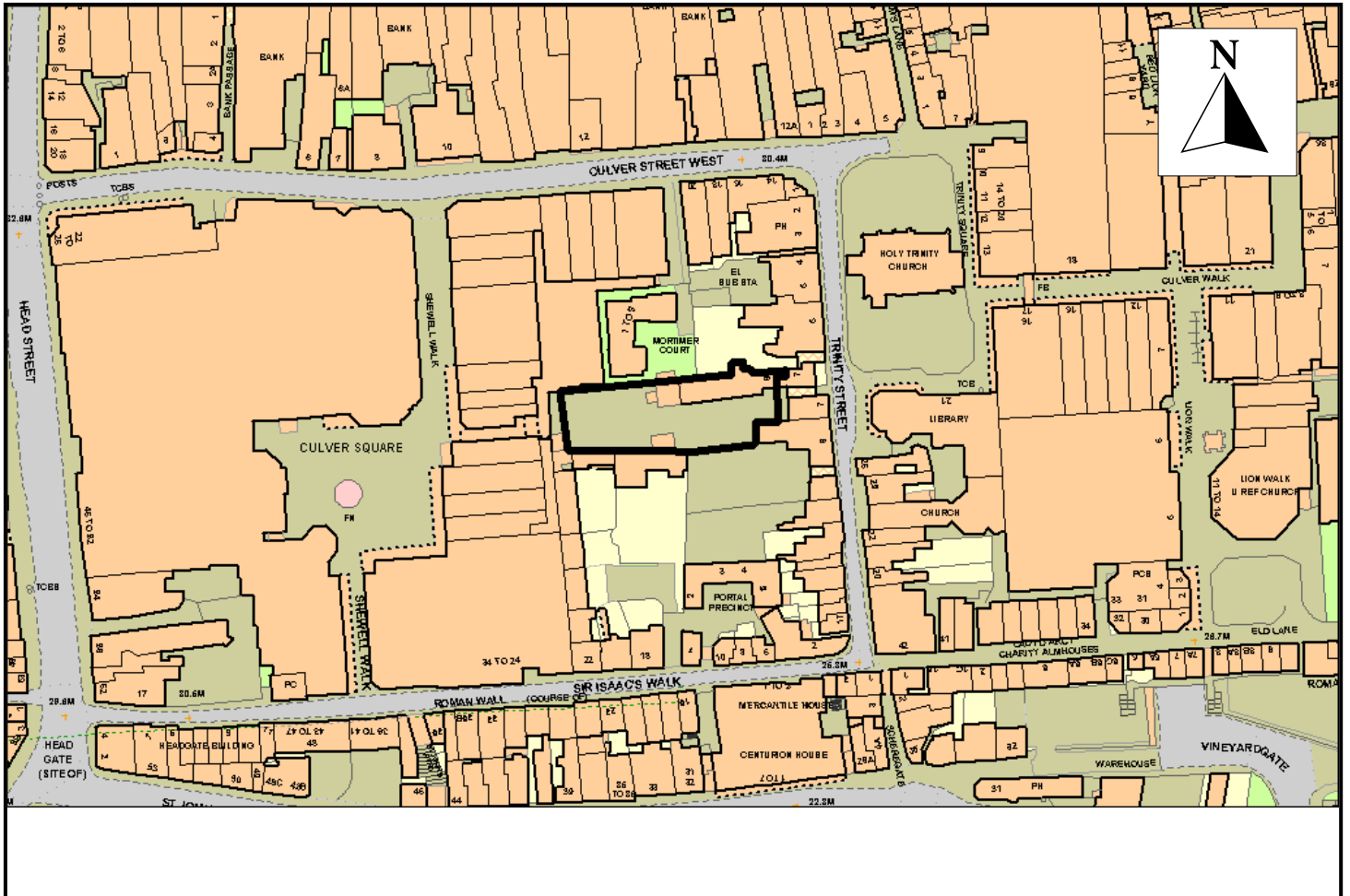
21 - Non-Standard Condition/Reason

No external lighting fixtures shall be constructed, installed or illuminated until details of all external lighting proposals have been submitted to and approved, in writing, by the Local Planning Authority. Thereafter, no lighting shall be constructed or installed other than in accordance with those approved details.

Reason: There is insufficient detail with regard to this to protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

21.0 Positivity Statement

21.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



Application No: 131807

Location: Tymperleys, Trinity Street, Colchester, CO1 1JN

Scale (approx): 1:1250

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7.4 Case Officer: Sue Jackson

Due Date: 06/11/2013

OTHER

Site: Timperleys, Trinity Street, Colchester, CO1 1JN

Application No: 131807

Date Received: 11 September 2013

Agent: Mallinson Architects

Applicant: Mr & Mrs Nicholas And Sheila Charrington

Development: Change of use from garden to outdoor seated area in connection with tea room and restaurant use, plus use of garden in connection with weddings, corporate and private events and outdoor performances.

Ward: Castle

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because of the Council's interest in the building and because objection has been received.

2.0 Synopsis

2.1 The key issues explored below are the suitability of the use of the garden and the impact on residential amenity.

3.0 Site Description and Context

3.1 This application relates to the garden of Tymperleys. The garden is accessed through an arch off Trinity Street and is located behind buildings that front the street. The garden contains a tall timber and brick store building built into the south boundary. The garden comprises a mixture of hard surface, lawn, shrubs and trees, part of the garden is at a lower level. Part of the north boundary of the garden is next to Tymperleys, the remainder of this boundary is enclosed by a high boundary wall the other side of which are flats and the rear of premises in Culver Street West. The east boundary abuts buildings fronting Trinity Street. Part of the south boundary is formed by a brick wall where it abuts the garden of a dwelling in Trinity Street, the store is built into this boundary and joins the rear wall of residential properties 1-5 Sir Isaac's Walk a listed building, the rear wall of this building forms the boundary. The west boundary is also enclosed by a high wall next to the rear of retail properties in Culver Square. Tymperleys is a grade 11* listed building .

4.0 Description of the Proposal

- 4.1 The proposal is for a change of use from garden to outdoor seated area in connection with tea room and restaurant use, plus use of garden in connection with weddings, corporate and private events and outdoor performances. An area of paving will be relaid. Modifications to the paving are also proposed to include adjustment for disabled access to tea room and house and to create disabled access to sunken garden.
- 4.2 The following explanation is provided:-

Proposed Hours of Opening:

Residential users
24 hours access.

Tea Room/Restaurant

We are presently planning to close the tea room on most days at 5pm, but would like this to be as flexible as possible to allow for future needs. The early morning openings are for Breakfast club and setting up time.

Weddings

We expect that our weddings will be mainly older couples and “second (or third or fourth) timers”. We anticipate most couples and their friends having a drinks reception and canapés in the garden and then a meal inside. The outdoor reception will probably finish around 7.30 to 8.00pm.

Corporate and private events

We are anticipating that individuals and companies will use Tymperleys Gardens for events ranging from drinks receptions to dinners to both. A summer evening drinks reception without a meal will probably conclude by 9pm.

Outdoor performances

We would like to have outdoor plays and performances in the garden, and anticipate that these would be finished by 10.30pm. These would be on weekends primarily.

Conclusion

In the light of the above I suggest that residential use be allowed all the time, outdoor performances (say a max of 10 per year) be allowed until 10.30pm and other use be allowed until 9pm.

We are looking to find levels of use for the garden that are fair to both neighbours and ourselves.

Noise Levels

- A) During Primary events the Gardens will be used for smoking.
- B) During Evening events while the garden is being used we would like to allow music in the gardens from string quartets, harpists etc – ie no amplified music.

5.0 Land Use Allocation

- 5.1 Inner core in the Colchester Central Area Inset
Conservation Area – Colchester no 1
Areas of High Archaeological Potential

6.0 Relevant Planning History

- 6.1 131433 & 131434 - Planning permission and listed building consent granted for “Demolition of modern extension to Grade II* Listed Building, and creation of new extension with oak columns and metal roof for use as kitchen to tea rooms. Internal alterations and fire proofing to create change of use from residence and museum to residence, museum, exhibition and community events, wedding venue, corporate events, conference centre, tea room and restaurant.” – Approved subject to conditions.

7.0 Principal Policies

- 7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Governments primary objective that there be “a presumption in favour of sustainable development”. There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:
SD1 - Sustainable Development Locations
CE1 - Centres and Employment Classification and Hierarchy
CE2a - Town Centre
UR2 - Built Design and Character
- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):
DP1 Design and Amenity
DP3 Planning Obligations and the Community Infrastructure Levy
DP6 Colchester Town Centre Uses
DP10 Tourism, Leisure and Culture
DP14 Historic Environment Assets
- 7.4 Adopted Borough Site Allocations Policies (October 2010)
- 7.5 SA TC1 Appropriate Uses within the Town Centre and North Station Regeneration Area
- 7.6 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

External Materials in New Developments

8.0 Consultations

8.1 Historic Buildings & Areas Officer has commented:

“The proposal includes an area of paving which would have an impact on the setting of the listed building. The exact proposal is not absolutely clear but the specification of sandstone indicates an intention for a high quality finish. It would be useful to understand whether the pattern of the existing paving is to be retained or if a new design is to be used, as this would clarify the extent of impact the proposal would have on the setting of the building.

The opening hours of the garden do not affect historic fabric but the importance of keeping the building in beneficial use to avoid redundancy should be recognised by the council. For this reason it would be desirable to minimise restrictions on hours of use as far as possible to support the proposed uses for the building, as accepted in principle by the council.

The proposed pattern of the surfacing needs to be clarified but subject to agreement of this the application can be approved.”

8.2 Environmental Protection has commented:

“Should planning permission be granted wish to make the following comments:

Hours of operation

In striking a reasonable balance between the requirements of the applicant and protecting the amenity of nearby residential properties, we recommend the following opening hours:-

Sunday to Wednesday: 07:30-19:00

Thursday to Saturday: 07:30-21:00

In addition to the above hours, we suggest that 10 outdoor events per year finishing no later than 22:30 are permitted.

Smoking area

Smoke has the potential to cause a nuisance where the garden is in close proximity to residential properties. We therefore recommend that a designated smoking area is located near the entrance to the garden, away from residential properties.

Amplified sound

Being in such close proximity to residential properties we do not feel this is a suitable location for events involving amplified sound.”

8.3 The Archaeological Officer has no observations to make on this proposal.

8.4 English Heritage has been consulted and has no comment to make on the application.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council’s website.

9.0 Parish Council Response

9.1 N/A

10.0 Representations

10.1 The five households of 11 Sir Isaac's Walk, are extremely concerned to hear that Tymperleys garden may become an area for weddings, corporate events and outdoor performances. The events proposed are likely to be noisy affairs, involving music and alcohol; and going on until late in the evening. This is absolutely unacceptable in the centre of a residential area. We are aware of the concerns of the Environmental Control Officer Guy Milham, who says that the garden shouldn't be used after 9pm, but we don't think it's at all realistic to believe that a wedding will finish that early.

We are also aware that the suggestion of '10 events a year that will go on until 10.30pm' inevitably means noise and disturbance until at least midnight. We know from experience that noise and disturbance go on until much later than the proposed hours and this will create considerable extra work for Colchester Borough Council in terms of dealing with complaints and attempting to enforce the allocated hours.

Our homes are all listed buildings and have only single-glazed windows and very thin walls (some are just 4cm of lathe and plaster). The same is true of Trinity House which is also right next to Tymperleys, and the family there would also suffer from the noise of revellers coming and going.

There is also a block of flats on Culver Street West right next to the garden. Making Tymperleys garden into a venue for outdoor drinking and parties would simply make life miserable for all of us, especially all the children, for whom being kept awake until 10.30 is completely inappropriate.

The noise and disturbance will adversely affect the character of this neighbourhood, not to mention the setting of Tymperleys, which as a Listed Building in a Conservation Area is not designed to cope with the activities of inebriated wedding guests or the audiences of outdoor performances.

We have no objection to the garden being used as part of the cafe in the summer months, as long as it is closed in the evenings, but we object in the strongest possible terms to a business in this location serving alcohol or being open after 6pm.

Having granted planning permission for the buildings at 11 Sir Isaac's Walk to be converted into residential properties, and collecting council tax from those properties, it is now incumbent on Colchester Borough Council to protect the residential nature of this area, not to mention the rights of the existing residents.

10.2 An individual letter has also been received from one of these residents raising similar objections and in addition

- access issues experienced by residents of 11 Sir Isaac's Walk due to the bollards in Culver Street and market stalls
- any marquees in the garden will be quickly stained
- existing noise issues

10.3 A resident of Trinity Street indicates they shares many of the comments made of Sir Isaacs Walk Residents Association the suggested restrictions to opening hours from your officers must be adhered to. Amplified music cannot be allowed. Noise and opening hours is the issue which has to strike the right balance between commercial gain and local residents' rights. I would personally want no evening opening at all but I am sure that will not be commercially viable given the applicants proposals.

The full text of all of the representations received is available to view on the Council's website.

11.0 Parking Provision

11.1 There is no on site parking provision but this is not required for a town centre use

12.0 Open Space Provisions

12.1 The garden will also be used for domestic purposes by the residential unit in Tymperleys.

13.0 Air Quality

13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Development Team and Planning Obligations

14.1 This application is not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

Background

15.1 In September this year planning permission and listed building consent was granted for the change of use of Tymperleys building from residence and museum to residence, museum, exhibition and community events, wedding venue, corporate events, conference centre, tea room and restaurant." the applications also included the demolition of a modern extension and the creation of a new extension with oak columns and metal roof for use as kitchen to tea rooms and internal alterations and fire proofing. No objections were received to the applications which were determined under powers delegated to the Head of Service. Following consultation and discussion with Environmental Protection a number of conditions were imposed including a restriction on hours of use.

Condition 8 The uses hereby permitted shall not operate/be open to customers outside of the following times:

Weekdays: 07:30-23:00

Saturdays: 07:30-23:00

Sundays and Public Holidays: 07:30-22:00

Whilst some of the application drawings suggested use of the garden this area was not included in the red line of the application site and was therefore not included in these consents. Hence this application seeks to use the garden in connection with the approved uses for the building.

Policy Considerations

- 15.2 The garden is within the inner core area of the town centre and the uses proposed accord with policy and the principle is therefore acceptable.

Impact on Heritage Assets

- 15.3 Tymperleys is a grade II* listed building with planning permission and listed building consent for residential, museum, exhibition and community events, wedding venue, corporate events, conference centre, tea room and restaurant use” the use of the garden for purposes in association with the use of the building will not have a detrimental impact on the listed building or the conservation area. Adjacent buildings are also listed but the proposal will not have an adverse impact on these heritage assets and the impact on the residents of these buildings and others is considered below.

Impacts on Neighbouring Properties

- 15.4 As the site description makes clear there are buildings in residential use next to the garden. The closest properties are 1-5 Sir Isaacs Walk this is a listed building recently converted to residential use set back behind the Sir Isaacs Walk frontage. The rear wall of these dwellings form the boundary with the garden, there are no windows in this elevation and part is joined to a store within the garden. There are several trees close to this boundary. Other residential properties include a recent flat building behind Culver Street West which is close to the north boundary. In addition properties in Trinity Street next to the garden are in residential use.
- 15.5 Environmental Protection has been consulted on the application and their response is set out above. Environmental Protection was re-consulted following the receipt of the neighbour objections to see if they wished to revise their comments they have responded that they consider their recommended hours of use are a reasonable balance between the protections of residents’ amenity and a business use in the town centre.

16.0 Conclusion

- 16.1 Environmental Protection has been closely involved with suggesting appropriate hours of use. They have visited the site and are aware of the location of the residential properties. The suggested hours are considered to be an acceptable compromise between the requirements of the business and the amenity of residents.

17.0 Recommendation

- 17.1 APPROVE subject to the following conditions

18.0 Conditions

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers T01G.Rev G and TX01B.Rev B, unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

3 - Non-Standard Condition/Reason

Prior to commencement of the development hereby approved full details of the pattern of the new and resurfaced areas shall be submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason: There is insufficient information within the submitted application to ensure that these details are satisfactory in relation to their impact on the setting of the listed building.

4 - Non-Standard Condition/Reason

The site shall only be used for non-residential purposes during the following times Sunday to Wednesday: 07:30-19:00 Thursday to Saturday: 07:30-21:00 In addition to the above hours a maximum of 10 outdoor events per year are permitted on the site to finish no later than 22:30.

Reason: To safeguard the amenities of nearby residential properties.

5 - Non-Standard Condition/Reason

Prior to the commencement of development details of a designated smoking area shall be submitted to the local planning authority for approval. The approved area shall be provided and thereafter reserved for smokers.

Reason: To safeguard the amenities of nearby residential properties

6 - Non-Standard Condition/Reason

There shall be no amplified sound in the site at any time.

Reason: To safeguard the amenities of nearby residential properties.

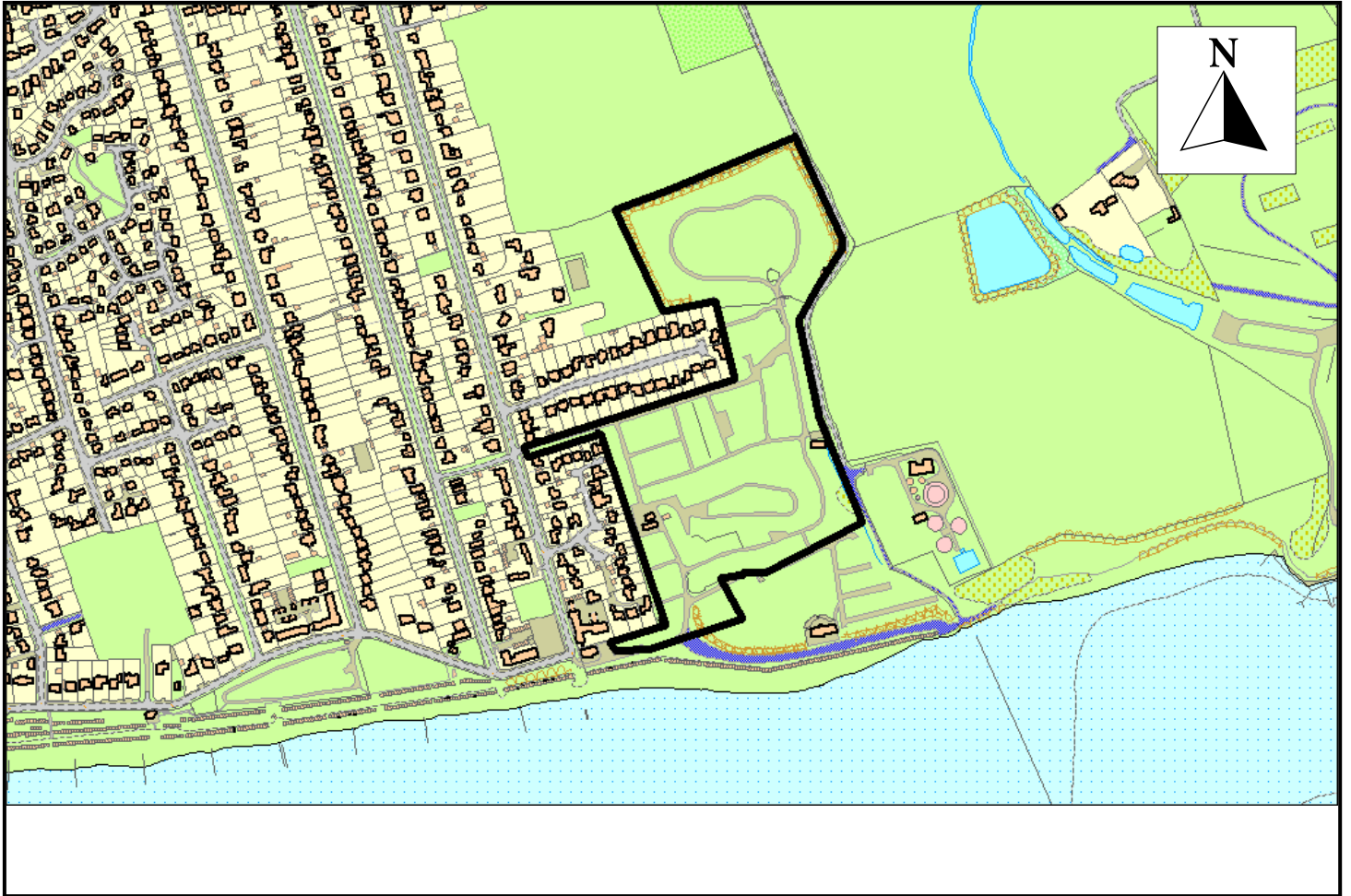
7 -Non-Standard Condition/Reason

Prior to the commencement of development, details of all proposed tree and/or shrub planting and an implementation timetable shall be submitted to and approved, in writing, by the Local Planning Authority. This planting shall be maintained for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

Reason: To ensure an appropriate planting scheme in the curtilage of the listed building.

19.0 Positivity Statement

19.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



Application No: 131512 & 131648

Location: Seaview Holiday Park, Sea View Avenue, West Mersea, Colchester, Colchester, CO5 8DA

Scale (approx): 1:1250

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7.5 Case Officer: Sue Jackson

Due Date: 12/11/2013

MAJOR

Site: Seaview Holiday Park, Sea View Avenue, West Mersea, Colchester, CO5 8DA

Application No: 131512

Date Received: 13 August 2013

Agent: Mr David Middleton

Applicant: Seaview Holiday Park Ltd

Development: Variation of condition 2 attached to planning permission COL/95/1190 to allow for a 12 month year round holiday season on the static holiday caravan element

Ward: West Mersea

Summary of Recommendation: Conditional Approval subject to no objections being raised by Emergency Planning Officer

7.6 Case Officer: Sue Jackson

Due Date: 12/11/2013

MAJOR

Site: Seaview Holiday Park, Seaview Avenue, West Mersea Colchester, CO5 8DA

Application No: 131648

Date Received: 13 August 2013

Agent: Charles F Jones & Son

Applicant: Seaview Holiday Park Ltd

Development: Variation of Condition 3 attached to planning permission C/COL/05/2073 to allow for a 12 month, year round, holiday use on this element of Seaview Holiday Park

Ward: West Mersea

Summary of Recommendation: Conditional Approval

1.0 Introduction

1.1 Over time the Seaview Holiday Park has increased in size and the two planning applications referred in the development described above each restrict the occupancy of the static caravans and chalets on part of the site. The two applications propose to vary the occupancy conditions on each part of the site to allow the whole site to have a 12 month occupancy. One report has been prepared which relates to both applications

2.0 Reason for Referral to the Planning Committee

2.1 These applications are referred to the planning committee because they have been called in by Councillor Sheane for the following reason. The adverse impact on the infrastructure of Mersea Island. The infrastructure struggles to cope in the summer months with the influx of visitors. If Seaview caravan park is given permission for a 12 month occupancy period, I doubt whether the Island's facilities would be able to cope. A 12 month occupancy period could open the door to other Authorities to utilise the holiday caravan site for housing purposes thereby altering the whole dynamic of the caravan park.

3.0 Synopsis

3.1 The key issues explored below are whether 12 month occupancy complies with policy and government advice and if it does what conditions should be imposed to prevent the site changing from holiday to residential use.

4.0 Site Description and Context

4.1 The site is next to the eastern edge of the built up area of West Mersea. Its west boundary abuts the rear gardens of properties in Estuary Park Road, and Westwood Park Drive. Vehicular access is at the bottom of Seaview Avenue. In addition to the static caravans and chalets the holiday park also includes an area for touring caravans and a clubhouse, these are located on part of the site near the seafront and do not form part of this application.

5.0 Description of the Proposal

5.1 The proposal is for 12 month holiday use for the static caravans and chalets.

6.0 Land Use Allocation

6.1 The site is identified as a caravan park.

7.0 Relevant Planning History

7.1 The site has an extensive history which has involved changes to the occupancy period and extension of the site.

7.2 Application 122077 Variation of condition 1 of planning permission COL/93/0583 in order to allow the clubhouse to be used by members of the public as well as patrons (holidaymakers) of Seaview Holiday Park. Approved subject to conditions

- 7.3 Application 130327 application to extend the occupancy period for the touring caravans so it is in line with the occupancy period for the static caravans 15th March to 14th January. Approved subject to conditions

8.0 Principal Policies

- 8.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be Determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Governments primary objective that there be “a presumption in favour of sustainable development”. There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.
- 8.2 Department for Communities and Local Government Good Practice Guide on Tourism 2006. Government advice in this document is discussed in the report below.
- 8.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:
SD1 - Sustainable Development Locations
SD2 - Delivering Facilities and Infrastructure
TA5 - Parking
ENV1 - Environment
ENV2 - Rural Communities
- 8.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):
DP1 Design and Amenity
DP3 Planning Obligations and the Community Infrastructure
DP10 Tourism, Leisure and Culture
DP19 Parking Standards
DP20 Flood Risk and Management of Surface Water Drainage
DP21 Nature Conservation and Protected Lanes
DP23 Coastal Areas

9.0 Consultations

- 9.1 Highway Authority raises no objection to the application
- 9.2 Environmental Protection has no comment

9.3 Spatial Policy comments as follows:-

“Seaview Caravan Park is located to the east of Seaview Avenue and is allocated as a Caravan Park Paragraph 28 of the NPPF is relevant to this application as it is supportive of sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors and which respect the character of the countryside.

Approval of the above proposal would remove the 8 week occupancy restriction (15 February – 11 March) currently in operation enabling Seaview Caravan Park to operate all year round. Mersea Island is a year round tourist destination. Extending the season is likely to increase the number of people visiting West Mersea in the winter season which could be beneficial for local businesses and the local economy. This would accord with the objective ofdp10 and paragraph 28 of the NPPF in relation to planning supporting appropriate rural businesses.

The proposal has the potential to increase tourism related traffic in West Mersea raising a potential conflict with policy DP1 and ENV2. However as the occupancy restriction currently only applies to the winter months, its removal is unlikely to have a significant impact locally on the Mersea road network as overall visitor numbers are likely to be lower in the winter months than the summer period. It is therefore not considered to conflict with ENV2 re adverse traffic impacts.

The request to remove the occupancy restriction on this part of the site which is used for static caravans does not accord with policy DP10. Occupancy periods are imposed at caravan parks during certain time periods to ensure that visitor accommodation developments in areas not usually suitable for residential development cannot be used for permanent or long term occupation. The removal of the occupancy restriction could increase the risk and opportunities for people to use the caravan parks as permanent residences. To avoid this, a condition should be attached if planning permission is granted, stating that the caravans are to be used for holiday purposes only and cannot be occupied as a persons sole residence or main place of residence.

The site lies within 0.4km of the Essex Estuaries Special Area of Conservation (SAC) and 1km of the mid Essex Special Protection Area (SPA) and Essex Estuary SSSI. The removal of the occupancy restriction would mean that the caravan park is open all year. This could potentially increase the number of visitors at Mersea into the mid-late winter period, a sensitive time for over wintering and migratory birds. The proposal is however unlikely to adversely affect the SAC or the birds using it. This is because this part of the SAC is already heavily used by local people and visitors for a variety of leisure activities and consequently is likely to attract lower bird numbers. The proposal is therefore not considered to conflict with policy ENV1 in terms of impact on an internationally designated site.

The key concern with the above proposal relates is flood risk. The application site lies in Flood Zone 3. Static caravans are classed as “more vulnerable” in the Flood Risk Vulnerability Classification Table 2 in the Technical Guidance in the NPPF. Table 2 also recommends the preparation of a flood warning and evacuation plan. A Flood Management Plan and a site specific flood risk assessment have been submitted with the proposal thereby satisfying the objectives of paragraph 103 of the NPPF and the supporting technical guidance. The preparation of a Flood Management Plan complies with good practice being promoted by the Environment Agency. This includes signing up to the Environment Agency’s Flood Warning Direct and the preparation of a Flood Evacuation Plan and an information leaflet by caravan park owners to ensure that all caravan users are clear about what to do in the event of a flood at the site.

The FRA included peak still water levels for the 1 in 200 year (2012), the 1 in 1000 year (2012) and the 1 in 200 year (2113) tidal flood events. These were

- 1 in 200 year (2012): 4.28m AOD
- 1 in 1000 year (2012): 4.64m AOD
- 1 in 200 year (2113): 5.34m AOD

The FRA concluded that flooding might be expected during the above events given that site levels of the touring caravan section were in the region of 3.15 to 3.45m AOD. The FRA also identified some risk from pluvial flooding and a propensity for sewer flooding in the vicinity of the site. The risk of flooding from all other sources was considered to be low.

Surprisingly the FRA did not propose any drainage improvements or use of sustainable drainage systems to help manage flood risk or mitigate the impact of flooding on this site or site users. This does not accord with Core Strategy or policies DP1 or DP 20.

Considering the propensity of this site to flood and its intended use of the site the Spatial Policy team recommend that the application is refused.

If planning permission is granted the Spatial Policy team strongly recommend that the owners of Seaview Caravan Park implement all the measures proposed in the Flood Management Plan. A condition should be attached requesting that these measures are implemented to ensure the safety of caravan site users particularly during the winter months when the risk of flooding is likely to be greater.

A SUDS scheme should also be implemented at the site at the site to further help reduce and manage the impacts of any flooding.”

9.4 Environment Agency comments as follows:-

“Thank you for consulting us on planning application 131512. We have reviewed the information, as submitted, and comment as follows:

Flood Risk

The planning application proposes a variation of condition 2 of planning permission COL/95/1190 in order to allow for a 12 month year round holiday season on the static holiday caravan element.

Our Flood Map shows the caravan site to be located within Flood Zone 3, classed as high probability risk, as defined in table 1 of the Technical Guidance to the National Planning Policy Framework (NPPF). All developments in this zone should be accompanied by a Flood Risk Assessment (FRA).

In making the following comments we have assumed, as inferred by the planning Application description, that the caravan will not change from being short let/ holiday occupancy which is classified as ‘More Vulnerable’ in the NPPF. If this was not the case and the caravan was intended for permanent occupation, then under the NPPF it would be classified as ‘Highly Vulnerable’ and would therefore be inappropriate in this flood zone (as per Table 3 of the Technical Guidance to the NPPF).

A FRA, prepared by Weetwood, Final Report v1.1, dated February 2013, and Flood Management Plan, prepared by Weetwood, dated April 2013, has been submitted in support of the planning application.

Further Explanation

The developer has demonstrated in section 3.2.1 that we had provided the following design peak still water levels for the 1 in 200 year (2012), the 1 in 1000 year (2012) and the 1 in 200 year (2113) tidal flood events:

- 1 in 200 year (2012): 4.28maod
- 1 in 1000 year (2012): 4.64maod

- 1 in 200 year (2113): 5.34maod

In section 3.2.1 it has also been stated that site levels of the touring caravan section are in the region of 3.15 to 3.45maod. Therefore flooding on site can be expected during the above events.

The NPPF Technical Guidance confirms that sites used for holiday or short term let caravans and camping within Flood Zone 3 are only appropriate if subject to a specific warning and evacuation plan.

Advice to LPA: We do not normally comment on or approve the adequacy of flood emergency response procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement with this development during an emergency will be limited to delivering flood warnings to occupants/users covered by our flood warning network.

The Technical Guide to the National Planning Policy Framework (paragraph 9) states that those proposing developments should take advice from the emergency services when producing an evacuation plan for the development as part of the flood risk assessment.

In all circumstances where warning and emergency response is fundamental to Managing flood risk, we advise local planning authorities to formally consider the Emergency planning and rescue implications of new development in making their Decisions.

Environment Agency position

We consider the Flood Risk Assessment complies with the requirements of the NPPF.

We have no objection to the proposed variation of condition 2, subject to your planning authority being satisfied, through consultation with your emergency planner, that the emergency evacuation procedures proposed for the site are adequate.”

9.5 Natural England comment as follows:-

“Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

From the information provided with this application, it does not appear to fall within the scope of the consultations that Natural England would routinely comment on. The lack of specific comment from Natural England should not be interpreted as a statement that there are no impacts on the natural environment, but only that the application is not likely to result in significant impacts on statutory designated sites, landscapes or species. It is for the local Authority to determine whether or not this application is consistent with national or local policies on biodiversity and landscape and other bodies and individuals may be able to help the Local Planning Authority (LPA) to fully take account of the environmental value of this site in the decision making process, lpas should seek the views of their own ecologists when determining the environmental impacts of this development.

If the LPA is aware of, or representations from other parties highlight the possible presence of a protected or Biodiversity Action Plan (BAP) species on the site, the authority should request survey information from the applicant before determining the application. The Government has provided advice on BAP and protected species and their consideration in the planning system.”

9.6 Food and Safety Team: “The officer responsible for caravan site licences has made the following comments:

“If the occupancy restrictions on Seaview (or any other site) are relaxed, we would ensure that the management at that site has at least a robust system in place before the licence is amended and that they are fully aware of the consequences of breaching the licence conditions”.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council’s website.

10.0 Parish Council Response

10.1 West Mersea Town Council views this application for 12 months holiday lets with alarm and scepticism. There is no evidence that the applicant could guarantee to supervise and police the occupation and as a result the site would rapidly become a housing estate not subject to Council Tax. Nevertheless occupants will require the same services as those paid for by householders in West Mersea.

We already have evidence of residents in West Mersea selling up and moving in to holiday vans here whilst retaining a postal address with relations on the island.

It is a dangerous precedent that could easily double the population of West Mersea whilst producing zero council tax or ?106? Type building tax.

11.0 Representations

11.1 12 objections have been received (2 from the same resident) the issues raised are set out below

- The site will become permanent residences how can the site be managed to prevent this?
- The original permission included a period when the site would be closed to coincide with that of wildfowl migrating to prevent disturbance
- Some areas of the site have history of flooding
- The site will be impossible to monitor and enforce owners should already be required to show evidence of a primary address elsewhere where council tax is being paid
- Since the opening of footpath 24 and the removal of the boundary hedge many gardens in estuary park road have no secure boundary with the caravan park 12 month occupancy increases security risk and produces more noise and vehicle movement.
- Increase in traffic on an already busy road
- Impact on migrant birds the proposal could lead to more activity on the river speed boats, jet skis and people walking dogs on the mud flats
- Impact on facilities doctors and school
- This could result in a Dale Farm situation
- What section 106 is payable?
- Loss of income from tourism plus no council tax contributions
- Restrictions should be placed on subletting

- A similar application considered by Dover Council had a condition attached which allowed the council to review its permission after 6 months to ensure conditions re occupancy were effective

The full text of all of the representations received is available to view on the Council's website.

12.0 Parking Provision

- 12.1 The site has ample parking space for the caravan/chalet users.

13.0 Open Space Provisions

- 13.1 there is adequate open space within the site

14.0 Air Quality

- 14.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

15.0 Development Team and Planning Obligations

- 15.1 This application is classed as a "Major" application and therefore there was a requirement for it to be considered by the Development Team. It was considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990. The development team considered that contributions would only be appropriate if the site were to have planning permission for residential use not holiday use

16.0 Report

(A) National and Local Policy

- 16.1 Government advice in paragraph 28 of the NPPF is supportive of sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors and which respect the character of the countryside
- 16.2 The DCLG Good Practice Guide on Tourism 2006 ANNEX B considers Seasonal and Holiday Occupancy Conditions and states:

"The nature of holidays in this country has become increasingly diverse, in location, in season and in duration. Many people go away several times a year, often for short breaks and not exclusively in the summer months. Much of this demand is for self-catering accommodation – whether in new or converted buildings or in caravan holiday homes. This spread of demand improves the use that is made of this accommodation and so is advantageous to the businesses which provide it and to those host communities which are supported by the spending that it generates. It can help to reduce the disadvantages of seasonal employment, including the difficulties of retaining trained and experienced staff.

Whilst extension of the season has these advantages, the demand for this accommodation may occur in areas in which the provision of permanent housing would be contrary to national or local policies which seek to restrict development, for example in order to safeguard the countryside. The planning system can reconcile these two objectives through the use of occupancy conditions designed to ensure that holiday accommodation is used for its intended purpose.

One type of condition frequently used for holiday accommodation, particularly in holiday areas, is known generically as a 'holiday occupancy condition'. The aim of such conditions is generally to ensure that the premises are only used by visitors and do not become part of the local housing stock. There are three principal reasons why a planning authority might seek to do this:

- In order that national or local policies on development of the countryside are not compromised.
- To avoid occupation by permanent households which would in turn put pressure upon local services. Permanent households may place demands for local schools and social and health services that would not normally arise from visitors. Moreover, in remote locations the cost of providing these services is greater. And

To strengthen tourism in a particular area by ensuring that there is a wide range of properties available to encourage visitors to come there on holiday.

Planning authorities will frame these conditions according to local circumstances, and in accordance with general Government advice that conditions should be reasonable and fair. They will also need to frame them so that they can be readily enforced by the authority but in a way that is not unduly intrusive for either owners or occupants.

16.3 The guidance cites the following as an example of appropriate planning conditions

"Controlling use of holiday caravan and other holiday park accommodation
East Riding of Yorkshire Council established a joint working group to establish the best approach to secure holiday use of caravan parks. This group comprised councillors and council officers; representatives from the British Holiday and Homes Parks Association Ltd; the park operators and their agents; and the caravan manufacturers. It concluded that planning conditions needed to be stronger, requiring documentary evidence of occupiers maintaining a primary residency elsewhere to be provided."

16.4 As a result the planning committee agreed that future planning permissions for holiday caravan parks, holiday log cabins and holiday chalets shall normally be subject to the following conditions:

- (i) the caravans (or cabins/chalets) are occupied for holiday purposes only;
- (ii) the caravans (or cabins/chalets) shall not be occupied as a person's sole, or main Place of residence;
- (iii) the owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans/log cabins/chalets on the site, and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.

The reason for these conditions is to ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation. The register required in

(iii) above shall normally be collected by the caravan site licence holder or his/her nominated person”.

16.5 CBC Development Policy DP10: Tourism, Leisure and Culture states

“Development for new and extended visitor attractions, leisure and cultural facilities, along with visitor accommodation (including hotels, bed & breakfast accommodation, self-catering accommodation, holiday lodges, static and touring caravans and tenting fields) will be supported in suitable locations. Proposals for tourism, leisure and culture development should promote accessibility by a choice of means of transport and must not cause significant harm to the amenity of people living and working nearby.

In rural areas, locations suitable for tourism, leisure and culture development should help to support existing local community services and facilities. The proposals must be compatible with the rural character of the surrounding area and avoid causing undue harm to the open nature of the countryside or designated sites. It is recognised that not all rural locations are readily accessible by public transport. Where accessibility is poor, proposals should be small scale and/or comprise the conversion of suitable existing rural buildings or limited extension to existing visitor accommodation. In locations where residential uses would be inappropriate, developments of visitor accommodation will be limited to holiday use only and/or certain periods of the year in order to prevent permanent or long-term occupation.

Urban areas of Colchester will be the focus for larger scale tourist, leisure and culture facilities and accommodation in line with the need to concentrate development at the most sustainable and accessible locations. The Council will also support proposals for a youth hostel, the preferred location being within Colchester Town Centre in line with the sequential approach, although proposals elsewhere will also be supported where appropriate”.

- 16.6 Government advice supports the principle of 12 month occupancy and this is not precluded by our development plan policy. Further evidence of the governments support for such proposals is provided in appeal decisions. Tendring District Council lost an appeal in January this year for 12 month holiday occupancy of a caravan site in Clacton-on-Sea.
- 16.7 The Inspector identified one of the main issues was “whether the proposed development would lead to the caravans being occupied as full-time residential accommodation”.
- 16.8 He stated “The Council has misgivings in respect of the efficacy of the condition in addressing the issue of permanent occupancy but no compelling evidence has been put forward to substantiate this fear. From the Guide and other appeal decisions submitted by the appellants it seems to me that use of the condition is not unusual and I have no reason to doubt that it could be effective. I conclude that subject to imposition and execution of the condition the proposed change of use would not lead to the caravans being used as full-time residential accommodation”.
- 16.9 In allowing the appeal the Inspector refers to the 2006 The Guide which records that tourism is increasingly a year-round activity and that such a spread of demand for self catering accommodation is advantageous to local economies but recognises that occupancy conditions are reasonable to preclude permanent residential use.

- 16.10 The appeal was allowed and the following condition imposed “caravans shall be occupied for holiday purposes only and shall not be occupied as a person’s sole or main place of residence. The operators of the caravan park shall maintain an up-to-date register of the names of all owners of caravans on the site and of their main home addresses and shall make this information available at all reasonable times to the local planning authority”.
- 16.11 A similarly worded condition has been imposed on other appeals for 12 month occupancy in other parts of the country.

(B) Control over Holiday Use

- 16.12 The principle objection raised by Councillor Sheane, the town council and by residents is how 12 month holiday occupancy can be prevented from becoming residential use. This concern is shared by your officers. It is clear from the above the Government considers this issue can be dealt with by planning condition and wording of such conditions is set out above.
- 16.13 These model conditions are referred to in the submitted supporting information. The agent has been asked to clarify how his client will ensure holiday occupancy and in reply has submitted a copy of the following documents
- holiday enforcement document (sales customers)
 - park rules document
 - caravan/lodge annual written agreement
- 16.14 He States “you will see from the enclosed documents that the continued holiday occupancy of static caravans is strictly enforced at Seaview Holiday Park and that there is absolutely no residential occupancy allowed. If any holiday caravan owners are found in breach of their written agreement and/or the park rules then they can be immediately removed from the park. Extracts from the documents are produced below:

“Holiday enforcement document (sales customers)

On first contact we point out that this is a holiday park which means

- 1) you cannot live on the park
- 2) you cannot go to work from the park
- 3) you have to have a main residence and seaview can only be a holiday home for yourself and immediate family
- 4) you are not allowed to sublet your caravan

At the point of sale documentation is completed whereby

- a) the buyer produces a current utility bill and driving licence showing their home address and signs to confirm.
- b) they sign a contract which clearly shows that the caravan at seaview cannot ever be used as a main residence.
- c) they also sign a copy of the park rules which again shows that the caravan is a holiday home.

At no time are the customers allowed to think that the caravan is anything other than a holiday home.

Park rules document

Your Leisure home may NOT be used as your main residence and on reasonable notice from us, we may ask you to provide your main residential address and evidence of your residence there”.

- 16.15 Concern has been expressed the site could be used by other councils for other housing purposes. The agent has also confirmed his client does not own any of the caravans, with the exception of the one occupied by the site manager, and that sub-letting is not permitted. In any event if caravans were used for other housing purposes such as short term lets this would not be classed as holiday use.

(C) Impacts on Neighbouring Properties

- 16.16 The occupancy of the caravans for an additional 8 weeks is unlikely to have any additional impact on residents amenity

(D) Flood Risk Issues

- 16.17 A small part of the site for application 131512 is within the flood risk zone. A flood risk assessment has been submitted and considered by the Environment Agency who has no objection to the application subject to the planning authority being satisfied, through consultation with the emergency planner, that the emergency evacuation procedures proposed for the site are adequate. The emergency planner officer considered and agreed the sites emergency evacuation procedures earlier this year in connection with another application on the site. He has been asked to confirm the procedures are appropriate for this proposal. As he is on leave until after the committee date members will note the recommendation for this application (131512) is to defer until he has commented on the application and if no objection is raised a delegated decision to be issued.

(E) Impact on the Natural Environment

- 16.18 Members will note natural England has commented it does not appear to fall within the scope of the consultations that Natural England would routinely comment on. There are is no indication of protected species on site, it should be remembered this is not a new development but 12 month occupancy instead of 10 month. Whilst the site is close to a Local Wildlife Site, Special Protection Area, SSSI and cSAC access to the beach and PROW is available to members of the public at all times of the year the caravans are already on site throughout the year so there will be no change in their visual impact. What will change is the level of human activity but it is unlikely all the caravans will be occupied throughout the 8 week period so the impact on the landscape and natural environment will be limited

(F) Highway issues

- 16.19 The Highway Authority has raised no objection to the application. Generally visitors to Mersea island will be less during the 8 week period so it is difficult to see how the road system or traffic would be affected.

(G) Section 106 and Council Tax Issues

16.20 As the application is for holiday use and this is the basis on which permission is granted it would be inappropriate to ask for any s106 obligations or council tax payment. To do so would mean the Local Planning Authority was accepting a residential use.

17.0 Conclusion

17.1 Your officer appreciates and shares the concerns raised regarding residential use however the advice from government is that this can be prevented by conditions and model conditions are set out in the 2006 good practice guide. The LPA has no evidence these conditions would not address the issue of permanent occupancy. As it is noted the applicant requires caravan owners to provide evidence of a main residence, driver's license and a utility bill. Sub letting is not permitted. Permission is recommended with conditions.

18.0 Recommendation

18.1 **131512** - That subject to no objections being raised by the Emergency Planning Officer the Head of Environmental and Protective Services be authorised under delegated powers to grant planning permission subject to the same conditions as 131649 plus any conditions required by the Emergency Planning Officer.

18.2 **131648** – Conditional Approval

19.0 Conditions

Conditions for 131512

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Site Location Plan unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

3 - Non-Standard Condition/Reason

The caravans/chalets shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The caravans/chalets shall not be sublet. The operators of the caravan park shall maintain an up-to-date register of the names of all owners of caravans/chalets on the site and of their main home addresses and shall make this information, together with details of drivers licences and utility bills as appropriate, available at all reasonable times to the local planning authority.

Reason: To ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation.

Conditions for 131648

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Site Location Plan unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

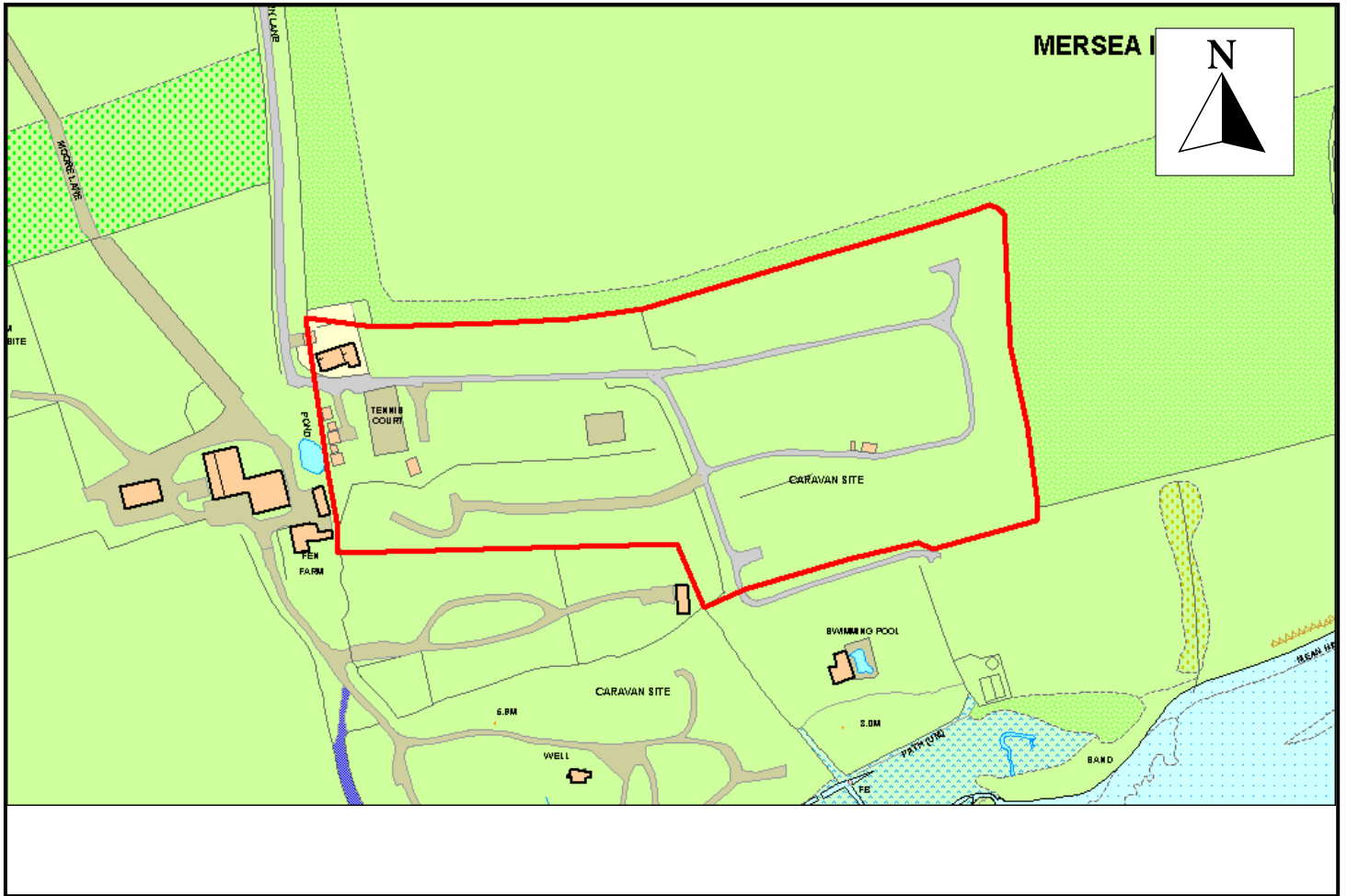
3 - Non-Standard Condition/Reason

The caravans/chalets shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The caravans/chalets shall not be sublet. The operators of the caravan park shall maintain an up-to-date register of the names of all owners of caravans/chalets on the site and of their main home addresses and shall make this information, together with details of drivers licences and utility bills as appropriate, available at all reasonable times to the local planning authority.

Reason: To ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation.

20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



Application No: 131667

Location: Elmcroft Bungalow, Fen Lane, East Mersea, Colchester CO5 8UA

Scale (approx): 1:2500

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7.8 Case Officer: Sue Jackson

Due Date: 04/12/2013

MAJOR

Site: Elmcroft Bungalow, Fen Lane, East Mersea, Colchester CO5 8UA

Application No: 131667

Date Received: 4 September 2013

Agent: Mr Ian Butter Bsc FRICS MRTPI

Applicant: Cosways Holiday Park Ltd

Development: Application to extend occupancy period of Cosways Caravan Park from 1st March- 31st December to 1st March - 31st January.

Ward: Pyefleet

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee it has been called in by Councillor Sutton as "This proposal is against our own local plan"

2.0 Synopsis

2.1 The key issues explored below are whether 11 month occupancy complies with policy and government advice and if it does what conditions should be imposed to prevent the site changing from holiday use to residential use.

3.0 Site Description and Context

3.1 The holiday caravan park is situated at the eastern end of Mersea Island. It is accessed off the East Mersea Road close to the access to East Mersea Country Park. The site adjoins the Fen Farm Holiday Park. The application site extends to approximately 4.99ha.

4.0 Description of the Proposal

4.1 The proposal is for 11 month holiday use for the static caravans. The site currently has permission for occupancy from 1st March to 31st December in any year. The application seeks a modified holiday occupancy period as follows: Variation of holiday occupancy period from 1st March - 31st December to 1st March - 31st January

4.2 Applicant's background information

"The use of seasonal occupancy conditions on caravan and chalet parks reflected public health considerations concerning the poor overwintering qualities of these types of accommodation. As the quality of caravan and chalets accommodation began to improve, holiday occupancy conditions began to "belt and brace" seasonal occupancy conditions in order to ensure they were not used as permanent accommodation contrary to national policies, particularly with regard to development in the countryside. With economic improvement in the mid to late 1980s providing the means for holiday taking over a longer seasonal period and significant advancements in caravan and chalets construction, there was increasing pressure for longer seasonal use than the traditional March to October period. Encouraged by successive governments seeking to extend the tourist season the holiday parks industry began to request seasonal extensions.

What Distinguishes a Holiday from a Residential Use?

There are a number of potential differentiations between a holiday and residential use of a caravan or chalet, but the principle distinguishing feature is that the holiday accommodation should not be that persons' only or main residence. For example, a persons' residential property will attract Council Tax, whereas a caravan or chalet within a holiday park will attract Uniform Business Rates as part of the commercial enterprise in which the property is situated.

The caravan or chalet should not be a registered postal address and should not be used as an address for registering, claiming or receipt of any state benefit. For those who suggest that they might move out of their caravan or chalet during the closed season to temporary accommodation and then return, this clearly does not satisfy the "only or main residence" test. This would simply be moving from one temporary/holiday accommodation to another of the same kind".

5.0 Land Use Allocation

5.1 The site is identified as a caravan park

6.0 Relevant Planning History

6.1 There is extensive planning history relating to an increase in the occupancy period and size of the site.

7.0 Principal Policies

7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Governments primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

- 7.2 Department for Communities and Local Government Good Practice Guide on Tourism 2006 Government advice in this document is discussed in the report below.
- 7.3 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:
SD1 - Sustainable Development Locations
SD2 - Delivering Facilities and Infrastructure
TA5 - Parking
ENV1 - Environment
ENV2 - Rural Communities
- 7.4 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):
DP1 Design and Amenity
DP3 Planning Obligations and the Community Infrastructure
DP10 Tourism, Leisure and Culture
DP19 Parking Standards
DP20 Flood Risk and Management of Surface Water Drainage
DP21 Nature Conservation and Protected Lanes
DP23 Coastal Areas

8.0 Consultations

- 8.1 Food and Safety Team: “The officer responsible for caravan site licences has made the following comments:
“If the occupancy restrictions on Seaview (or any other site) are relaxed, we would ensure that the management at that site has at least a robust system in place before the licence is amended and that they are fully aware of the consequences of breaching the licence conditions

9.0 Parish Council Response

- 9.1 The Parish Council have stated that East Mersea Parish Council objects to this application and would like to add that the application is not at all clear.

10.0 Representations

- 10.1 None received

The full text of all of the representations received is available to view on the Council's website.

11.0 Parking Provision

- 11.1 The site has ample parking space for the caravan users.

12.0 Open Space Provisions

- 12.1 There is adequate open space within the site.

13.0 Air Quality

- 13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Development Team and Planning Obligations

- 14.1 This application is classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. It was considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990. The development team considered that contributions would only be appropriate if the site were to have planning permission for residential use not holiday use

15.0 Report

A) National and Local Policy

- 15.1 Government advice in paragraph 28 of the NPPF is supportive of sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors and which respect the character of the countryside
- 15.2 The DCLG Good Practice Guide on Tourism 2006 ANNEX B considers Seasonal and Holiday Occupancy Conditions and states:-

“The nature of holidays in this country has become increasingly diverse, in location, in season and in duration. Many people go away several times a year, often for short breaks and not exclusively in the summer months. Much of this demand is for self-catering accommodation – whether in new or converted buildings or in caravan holiday homes. This spread of demand improves the use that is made of this accommodation and so is advantageous to the businesses which provide it and to those host communities which are supported by the spending that it generates. It can help to reduce the disadvantages of seasonal employment, including the difficulties of retaining trained and experienced staff.

Whilst extension of the season has these advantages, the demand for this accommodation may occur in areas in which the provision of permanent housing would be contrary to national or local policies which seek to restrict development, for example in order to safeguard the countryside. The planning system can reconcile these two objectives through the use of occupancy conditions designed to ensure that holiday accommodation is used for its intended purpose.

One type of condition frequently used for holiday accommodation, particularly in holiday areas, is known generically as a ‘holiday occupancy condition’. The aim of such conditions is generally to ensure that the premises are only used by visitors and do not become part of the local housing stock. There are three principal reasons why a planning authority might seek to do this:

- In order that national or local policies on development of the countryside are not compromised.
- To avoid occupation by permanent households which would in turn put pressure upon local services. Permanent households may place demands for local schools and social and health services that would not normally arise from

visitors. Moreover, in remote locations the cost of providing these services is greater. And

To strengthen tourism in a particular area by ensuring that there is a wide range of properties available to encourage visitors to come there on holiday.

Planning authorities will frame these conditions according to local circumstances, and in accordance with general Government advice that conditions should be reasonable and fair. They will also need to frame them so that they can be readily enforced by the authority but in a way that is not unduly intrusive for either owners or occupants.

15.3 The guidance cites the following as an example of appropriate planning conditions

“Controlling use of holiday caravan and other holiday park accommodation
East Riding of Yorkshire Council established a joint working group to establish the best approach to secure holiday use of caravan parks. This group comprised councillors and council officers; representatives from the British Holiday and Homes Parks Association Ltd; the park operators and their agents; and the caravan manufacturers. It concluded that planning conditions needed to be stronger, requiring documentary evidence of occupiers maintaining a primary residency elsewhere to be provided.”

15.4 As a result the planning committee agreed that future planning permissions for holiday caravan parks, holiday log cabins and holiday chalets shall normally be subject to the following conditions:

- (i) the caravans (or cabins/chalets) are occupied for holiday purposes only;
- (ii) the caravans (or cabins/chalets) shall not be occupied as a person’s sole, or main Place of residence;
- (iii) the owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans/log cabins/chalets on the site, and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.

The reason for these conditions is to ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation. The register required in (iii) above shall normally be collected by the caravan site licence holder or his/her nominated person”.

15.5 CBC Development Policy DP10: Tourism, Leisure and Culture states

“Development for new and extended visitor attractions, leisure and cultural facilities, along with visitor accommodation (including hotels, bed & breakfast accommodation, self-catering accommodation, holiday lodges, static and touring caravans and tenting fields) will be supported in suitable locations. Proposals for tourism, leisure and culture development should promote accessibility by a choice of means of transport and must not cause significant harm to the amenity of people living and working nearby.

In rural areas, locations suitable for tourism, leisure and culture development should help to support existing local community services and facilities. The proposals must be compatible with the rural character of the surrounding area and avoid causing undue harm to the open nature of the countryside or designated sites. It is recognised that not all rural locations are readily accessible by public transport. Where accessibility is poor, proposals should be small scale and/or comprise the conversion of suitable existing rural buildings or limited extension to existing visitor accommodation. In locations where residential uses would be inappropriate, developments of visitor

accommodation will be limited to holiday use only and/or certain periods of the year in order to prevent permanent or long-term occupation.

Urban areas of Colchester will be the focus for larger scale tourist, leisure and culture facilities and accommodation in line with the need to concentrate development at the most sustainable and accessible locations. The Council will also support proposals for a youth hostel, the preferred location being within Colchester Town Centre in line with the sequential approach, although proposals elsewhere will also be supported where appropriate”.

- 15.6 Government advice supports the principle of 11 month occupancy and this is not precluded by our development plan policy. Further evidence of the governments support for such proposals is provided in appeal decisions. Tendring District Council lost an appeal in January this year for 12 month holiday occupancy of a caravan site in Clacton-on-Sea.
- 15.7 The Inspector identified one of the main issues was “whether the proposed development would lead to the caravans being occupied as full-time residential accommodation”.
- 15.8 He stated “The Council has misgivings in respect of the efficacy of the condition in addressing the issue of permanent occupancy but no compelling evidence has been put forward to substantiate this fear. From the Guide and other appeal decisions submitted by the appellants it seems to me that use of the condition is not unusual and I have no reason to doubt that it could be effective. I conclude that subject to imposition and execution of the condition the proposed change of use would not lead to the caravans being used as full-time residential accommodation”.
- 15.9 In allowing the appeal the Inspector refers to the 2006 The Guide which records that tourism is increasingly a year-round activity and that such a spread of demand for self catering accommodation is advantageous to local economies but recognises that occupancy conditions are reasonable to preclude permanent residential use.
- 15.10 The appeal was allowed and the following condition imposed “caravans shall be occupied for holiday purposes only and shall not be occupied as a person’s sole or main place of residence. The operators of the caravan park shall maintain an up-to-date register of the names of all owners of caravans on the site and of their main home addresses and shall make this information available at all reasonable times to the local planning authority”.
- 15.11 A similarly worded condition has been imposed on other appeals for 12 month occupancy in other parts of the country.

(B) Control over Holiday Use

- 15.12 The principle objection raised is how 11 month holiday occupancy can be prevented from becoming residential use. This concern is shared by your officers. It is clear from the above the Government considers this issue can be dealt with by planning condition and wording of such conditions is set out above.

- 15.13 These model conditions are referred to in the submitted supporting information. The agent has been asked to clarify how his client will ensure holiday occupancy and in reply has submitted a copy of the licence agreement and states: "On purchasing a holiday caravan proof of main residence is requested and a copy is held on file. All correspondence is sent to the owners' permanent address as provided. No post is sent to or accepted for individual caravan owners on the park."
- 15.14 Clause 4.2 of the agreement requires signatories to acknowledge and agree, "to use the caravan only for holiday and recreational purposes (and not as your only or main permanent residence). You agree to produce to us in response to a written request satisfactory proof that your main residence is at the address registered with us (set out in Part 1 of this Licence Agreement), such as a council tax bill, utility bill or driving licence in your name. You agree to inform us in writing of any change in your permanent address".
- 15.15 "If the occupancy period or mode of occupation is abused by the caravan owner this would constitute a breach of the agreement. The caravan owner would be advised accordingly and, if occupying the van outside of the stated period, asked to leave the park. Equally if no satisfactory proof of a permanent address could be provided (and/or such address could not be satisfactorily verified) the licence agreement would be terminated. The company has introduced an annual check on permanent addresses which takes place in December. Each owner must confirm their address and all contact details. If the address has changed from the address originally registered under the agreement the operator will request sight of one of the documents stated in the licence agreement as proof of residence. The company has also introduced a monthly Council Tax check to ensure that none of the owners on the park have registered with the local council for Council Tax. If owners sublease their holiday home they are required to advise the park and give the name and period of stay. The company owns 10 static caravans on Cosways which are hired out for holidays and short breaks".

16.0 Conclusion

- 16.1 Your officer appreciates and shares the concerns raised regarding residential use however the advice from government is that this can be prevented by conditions and model conditions are set out in the 2006 good practise guide and the LPA has no evidence these conditions would not address the issue of permanent occupancy. As it noted the applicant requires caravan owners to provide evidence of a main residence, driver's license and a utility bill. Permission is recommended with conditions.

17.0 Recommendation

- 17.1 APPROVE subject to the following conditions

18.0 Conditions

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Site Location Plan unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

3 – Non standard Condition/Reason

The caravans shall be occupied from 1st March in any one year to 31st January in the following year.

Reason: For the avoidance of doubt as to the extent of the consent hereby granted and because this is the basis on which the application was submitted and determined.

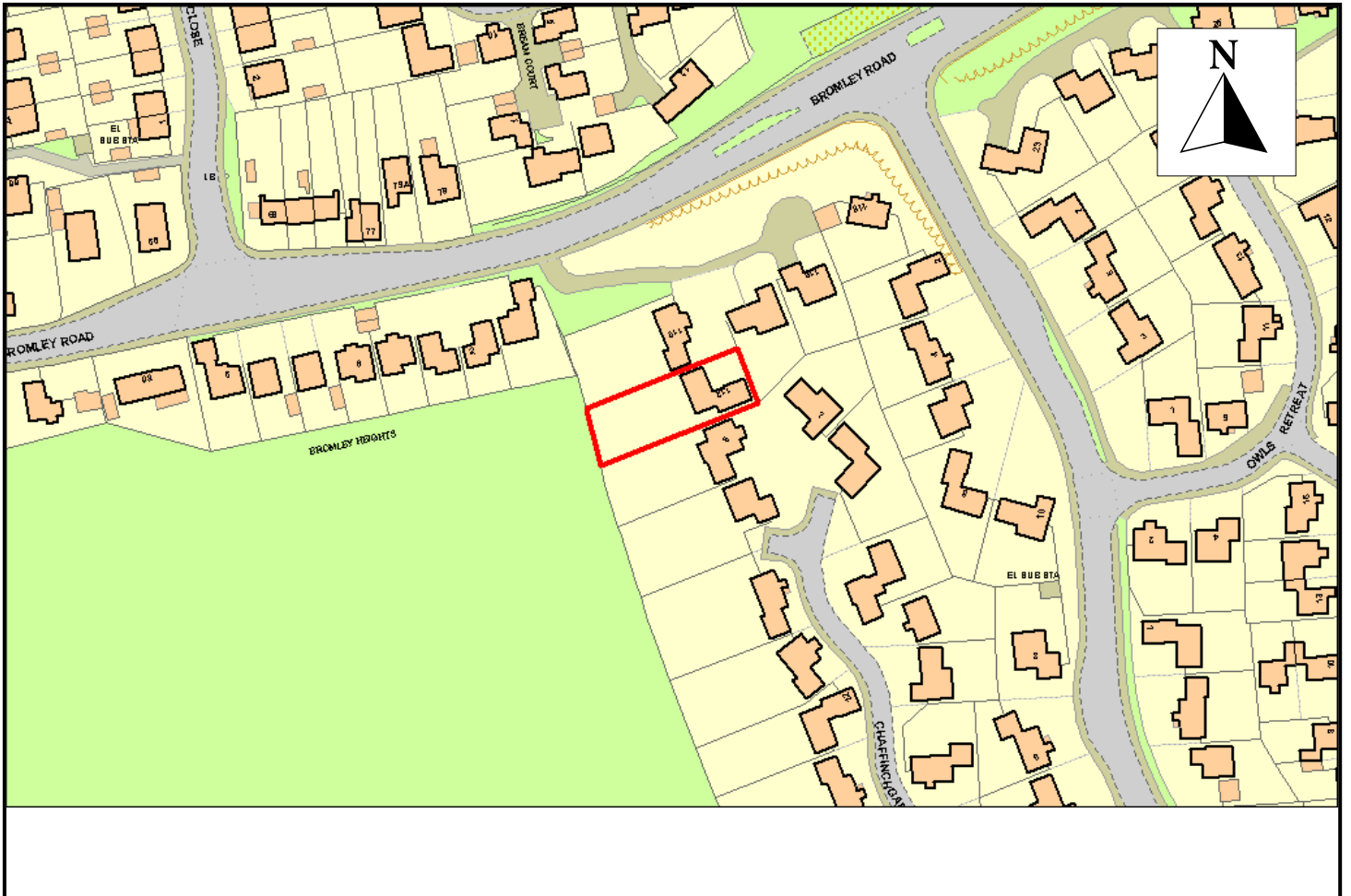
4 - Non-Standard Condition/Reason

The caravans shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The operators of the caravan park shall maintain an up-to-date register of the names of all owners of caravans on the site and of their main home addresses and shall make this information, together with details of drivers licences and a utility bill, as appropriate, available at all reasonable times to the local planning authority. All sub letting shall be subject to these requirements.

Reason: To ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation.

19.0 Positivity Statement

19.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



Application No: 131622

Location: 112 Bromley Road, Colchester, CO4 3JF

Scale (approx): 1:1250

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7.8 Case Officer: Nadine Calder

HOUSEHOLDER

Site: 112 Bromley Road, Colchester, CO4 3JF

Application No: 131622

Date Received: 13 August 2013

Agent: Mr Andrew Whaley

Applicant: Mr Iain Swaine

Development: First floor extension over garage, office and kitchen and ground and first floor extensions to gable end of rear elevation

Ward: St Annes

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee following a call-in by Councillor Mike Hogg due to the proposal potentially representing an overbearing development upon the occupier of the neighbouring property at No. 8 Chaffinch Gardens.

2.0 Synopsis

2.1 The key issues explored below are the design of the proposed development as well as its impact on neighbouring amenity and the character and appearance of the surrounding area. It is considered that the proposal would not result in any design and limited amenity issues and, on balance, accords with national and local policy requirements. The application is therefore recommended for approval subject to conditions.

3.0 Site Description and Context

3.1 The application site relates to one of 5 detached houses within a small cul-de-sac to the south of Bromley Road from where access is gained to the site. The dwelling on the application site is a 4 bedroom detached property which has an existing single storey element projecting forward of the dwelling serving as a kitchen, office and garage. The dwelling therefore has the approximate appearance of an L-shaped dwelling. The property is located approximately 40 metres off Bromley Road and due to its location behind its neighbouring property to the north it is partly screened when viewed from Bromley Road. To the south the site adjoins No. 8 Chaffinch Gardens, a detached property located at the end of the cul-de-sac at Chaffinch Gardens. A brick wall of approximately 1.8 metres in height with some soft landscaping separates the front element of the property on the application site from its neighbouring dwelling and the cul-de-sac at Chaffinch Gardens. Additionally, there are a few mature trees located

at the end of Chaffinch Gardens partly screening the existing garage from the end of the cul-de-sac.

4.0 Description of the Proposal

4.1 Planning permission is sought for a two storey extension to the gable end to the side of the dwelling and a first floor extension over the existing kitchen/office/garage element to the front of the dwelling. While the two storey extension to the side of the dwelling would simply enlarge the existing living space at both ground and first floor level the proposed first floor extension to the front would create an additional bedroom with en-suite and dressing area, increasing the number of bedrooms in this property from four to five.

5.0 Land Use Allocation

5.1 The site is located within the defined settlement limits and within a predominantly residential area.

6.0 Relevant Planning History

6.1 There is no site history that is particularly relevant to the decision regarding this proposed development.

7.0 Principal Policies

7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Government's primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and an environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:
SD1 - Sustainable Development Locations
UR2 - Built Design and Character

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):
DP1 Design and Amenity
DP13 Dwelling Alterations, Extensions and Replacement Dwellings

8.0 Consultations

8.1 The Arboricultural Officer requests a condition for the provision of a methodology for how the development will be built in a manner that won't result in the loss of the trees situated outside of the applicant's control.

9.0 Parish Council Response

9.1 N/A.

10.0 Representations

10.1 Three letters of objection have been received, the main concerns of which are summarised below:

- The proposed development would result in a loss of light to and loss of outlook from our property.
- The design and appearance of the proposal will create a detrimental effect on the existing street scene.
- The proposed construction would overshadow and severely restrict light into our dining room to which there is no other source of natural light.
- The proposal would create an overbearing visual effect to the boundary within our property.

10.2 Councillor Barry Cook has no comment to make on this application.

10.3 The agent has addressed these concerns by providing revised drawings which reduced the overall height of the first floor front extension as well as the height of the eaves of that element. In response to the revised drawings, one additional letter of representation has been received from one of the previous objectors, reiterating the following concerns:

- The proposed extension would constitute an overbearing intrusion to the environment at the end of Chaffinch Gardens.

10.4 Where the above are planning matters, these are addressed within the assessment below.

The full text of all of the representations received is available to view on the Council's website.

11.0 Parking Provision

11.1 The proposed development would not result in any changes to the parking provision on site which is in compliance with current parking standards.

12.0 Open Space Provisions

12.1 N/A

13.0 Air Quality

13.1 The site is outside of an Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Development Team and Planning Obligations

- 14.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

- 15.1 Core Strategy Policy UR2 states that the Borough Council will promote and secure high quality and inclusive design in all developments to make better places for both residents and visitors. Developments that are discordant with their context and fail to enhance the character, quality and function of an area will not be supported while Development Policy DP1 requires all development to be designed to a high standard, avoid unacceptable impacts on amenity, and demonstrate social, economic and environmental sustainability.
- 15.2 Furthermore, within the Borough’s settlement boundaries, Policy DP13 encourages extensions that accord with the Council's adopted SPD including ‘Extending Your House’. This document indicates that in considering planning applications for house extensions and outbuildings, the Council seeks to make sure that proposals are well designed and in keeping with the main house and surrounding development, and would not result in a cramped form of development.
- 15.3 In addition to the local policies, national guidance in the form of the NPPF attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.
- 15.4 There is no objection to the two storey extension to the side of the property as due to its location to the rear of the property this element would not result in any design or amenity issues, whereas, due to its orientation, the proposed first floor extension to the front of the dwelling is somewhat more complicated. The existing front element on top of which it is proposed to build the first floor extension projects 8.5 metres forward of the original dwelling. This element is located approximately 4 metres to the west of No. 8 Chaffinch Gardens and projects approximately 7 metres forward of the front wall this property. The existing element has a dual pitched roof with a maximum height of approximately 4.9 metres and an eaves height of approximately 2.4 metres. The proposed first floor extension would raise the roof by 1.7 metres to a maximum height of 6.6 metres with the height of the eaves being increased to 3.4 metres. The dwelling is located within a small cul-de-sac which serves 5 dwellings off Bromley Road and is barely noticeable from the main road as it is located behind its neighbouring dwelling to the north. As such, it is unlikely that the proposed extension would have a negative impact upon the character of the area or the wider street scene. However, located to the south of the application site is No. 8 Chaffinch Gardens which is situated at the end of the cul-de-sac at Chaffinch Gardens from where there are views available towards the property on the application site. It is therefore important that the proposal would not only be acceptable in terms of the street scene when viewed from Bromley Road but also when viewed from Chaffinch Gardens.

15.5 The occupiers of the neighbouring property at No. 8 Chaffinch Gardens object to this proposal as they consider the first floor extension to represent an overbearing form of development. During the course of the application the agent has addressed this concern by lowering the roof of the proposed first floor extension as much as possible to retain a viable extension thus reducing the visual impact of the extension and any perception of it being overbearing. Given that the eaves are proposed to be increased by 1 metre while the overall height of the front element would be increased by 1.9 metres, the development would have a considerably steeper roof pitch than the roof pitch of the existing single storey projection. It is considered that this would aid the development in limiting its impact upon the neighbouring amenities in terms of overbearing or overshadowing. Furthermore, with the dwelling being located to the north of No. 8 Chaffinch Gardens it is therefore concluded that the proposed development would not have a negative impact upon the residential amenities of the neighbouring property to the south in terms of loss of light. Additionally, in terms of outlook, the orientation of the existing front element is such that it is at a 90 degree angle to No. 8 Chaffinch Gardens. Overall, it protrudes approximately 7 metres forward of the neighbouring property's main building line. Council policy sets out that a 45 degree angle of outlook from the mid-point of the nearest neighbouring windows should be preserved. It is acknowledged that the proposed development does not fully pass this test. However, it is concluded that it only just falls short of this test by having less than the last third of the front element within that angle of outlook. There is currently mature landscaping in the form of a couple of trees adjacent to the garage but outside of the applicant's control. These provide the area with a somewhat softening impact and would aid in reducing the potential impact of the proposed development upon the street scene and the outlook of the neighbouring property. Consequently, it is concluded that, on balance, the impact of the proposed first floor extension would not be significant enough to warrant a refusal and is therefore considered acceptable in this instance.

15.6 Reference has been made to several applications for which planning permission has been granted for additional living accommodation above existing garages within the immediate vicinity of the application site. However, none of these proposals are directly comparable to the current proposal as they either pre-date current policies or are of a different nature to the current proposal. Furthermore, every application is dealt with on its own merits and therefore limited consideration has been given to these permissions.

16.0 Conclusion

16.1 In summary, the proposal is considered to be in accordance with national and local planning policies. The proposed development is acceptable in terms of its design as it would not adversely affect the character of the host dwelling or that of the surrounding area and street scene and would not have limited impact upon neighbouring amenities. Consideration has been given to the amenities of the neighbouring property at No. 8 Chaffinch Gardens, but it is concluded that the development, on balance, would have limited impact upon the residential amenities of this property and is therefore acceptable in this instance.

17.0 Recommendation

17.1 APPROVE subject to conditions and informative.

18.0 Conditions

1 – Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawings 1401a and 1401b Rev B unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

3 - Non-Standard Condition/Reason

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings, unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that materials are of an acceptable quality appropriate to the area.

4 - Non-Standard Condition/Reason

No works or development shall be carried out until an Arboricultural Method Statement in accordance with BS 5837, have been submitted to and approved, in writing, by the Local Planning Authority (LPA). Unless otherwise agreed, the details shall include a methodology for how the development will be built in a manner that will not result in the loss of the trees situated outside of the Applicant's control. The development shall then be carried out strictly in accordance with the approved method statement.

Reason: To adequately safeguard the continuity of amenity afforded by existing trees.

19.0 Informatives

(1) ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

21.0 Positivity Statement

21.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

AMENDMENT SHEET

**Planning Committee
31 October 2011**

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

7.1 130239 – 99 & 105 London Road, Copford

Please supersede paragraph 15.24 with the following:

A Phase 1 Habitat Survey was submitted as part of the application. The survey identifies that there are potential bat roosts within the roof of the existing house and recommended that, prior to demolition, a further survey is carried out to determine whether any bats are present. The survey confirms that, if bats are found, a licence from Natural England would be required before any demolition takes place. The survey also confirms that the boundaries of the site are a suitable habitat for reptiles and recommends that further surveys are undertaken before any vegetation clearance. It is recommended that vegetation and building clearance is undertaken during the period October to February (inclusive), after further surveys have been undertaken, to avoid the bird nesting season. The survey report does not advise that bats currently use the house as a roost nor does not advise against development on this site.

Natural England Standing Advice states that ‘measures to address potential effects on protected species should firstly aim to avoid those impacts. If there are unavoidable impacts then mitigation should be designed to reduce those impacts. If following this, there are still impacts on the species then compensation measures will need to be designed to off-set the impacts.’

The Phase 1 Habitat Survey has identified that the existing house has the potential for roosting bats. If the existing house is used as a bat roost, the proposal to demolish the building will have an impact upon bats. In such circumstances, mitigation and/or compensatory measures could be put in place. For example, bat ‘lofts’ could be created in new buildings or bat boxes could be included within the scheme. With regards to reptiles, the landscaping of the site would be established at reserved matters stage and it is anticipated that the boundary planting would be strengthened which would be an enhancement of the habitat. The main issue here would be to ensure that any reptile population is protected during construction works and this could be established as part of a report that includes a scheme of mitigation. The strengthening

of the boundary planting would be an ecological enhancement which is supported.

It is concluded that, if bats and reptiles are identified within the site, mitigation and/or compensatory measures would be required in accordance with Natural England Standing Advice. It is therefore recommended that the following condition be included to make it clear that the recommendations of the survey should be carried out and that the required surveys, and mitigation and/or compensatory measures as required, should be submitted and approved prior to any works (including demolition) and any reserved matters application.

22 Non-Standard Condition: Protected Species

No works shall commence, including any works of demolition, until the recommendations set out in section 5.0 of the Phase 1 Habitat Survey Ref P2425, dated 17th January 2013, have been carried out. The recommended surveys, along with any mitigation and/or compensatory measures as necessary, shall be submitted to and approved, in writing, by the Local Planning Authority prior to the submission of any Reserved Matters application. The development shall then be implemented in accordance with the approved details.

Reason: In order to address potential effects on protected species.

It is also considered that an informative regarding protected species would be appropriate to advise the developer of their responsibilities should protected species be discovered during construction

[Case Officer Note: this informative is already included at Paragraph 19.0 of the Report].

7.2/7.3 – The Jumbo Water Tower, Balkerne Passage, Colchester

Since the report was drafted an additional letter of objection and 5 letters of support have been received no new issues.

A further letter has been received making the following comments:-

- The viewing platform should make a nominal charge and be given to a private charity such as the Balkerne Trust to run. This would then be managed completely independently and in the interests of the people of Colchester and outside of public sector or commercial control
- Is there enough business to substantiate the restaurant and which demographics and market would it be aimed at? It would also be interesting to know who would run this restaurant and how it stacks up financially. I am sure there will be answers to this point. Residents do make comment that Colchester has too many restaurants but the economy does appear to support many of our

establishments. Can business case figures be provided to help support this idea

- The flats I don't have a particular concern about as these would be required to make the financial investment of some £3,000,000 viable. However, the financial viability of the whole project does need to be looked at with some depth. Does a 10 year pay back stack up for the £3,000,000 investment? Can business case figures be provided which includes how future maintenance of the building will be funded?
- English Heritage and the Victorian Society appear to have concern about aspects of the scheme and feel elements of it would harm the original character and nature of the Water Tower. Clearly these concerns need to be looked at but a balance does need to be found in order to remove the deadlock for the future of this building. Can the design be amended slightly to take these concerns into account so all stakeholders are satisfied? For instance, putting windows in the side of the metal casing appears to be one of their concerns - is there another architectural solution which would meet with a warmer agreement from these organisations?
- If for whatever reason the planning committee see fit to reject this application, then action does need to be taken to ensure the owner does make the required repairs under listed building status and therefore UK planning law. The council must take action to get the owner to make the statutory repairs which they are obligated to undertake.
- If this gets the go-ahead, safeguards need to be put in place to ensure the commercial and business case aspects of this application work. What I wouldn't want to see is a further application coming back if this gets approved to remove the viewing platform, offices and restaurant in favour of more flats, simply because the applicant believes it will be more commercial viable in future once work commences. The business case and future long-term income model for repairs is key to understand and should be provided.

The following revisions to the legal agreement and conditions are suggested to strengthen the conditions and provide further clarity to the agreement

Agreement

Bullet point one to be worded to make it clear the bond to be available to the Council should the work be commenced but not completed.

Bullet point three to be worded to make it clear the details of the exhibits and displays to be agreed with the local planning authority and to be on permanent display.

Conditions listed building application

Additional condition

ZLA - Only Works Shown Within Application

This approval is limited to the works shown on the approved drawings and does not indicate approval for associated or enabling works that may be necessary to carry out the scheme. Any further works must be submitted to and approved, in writing, by the Local Planning Authority prior to any works commencing.

Reason: For the avoidance of doubt as to the scope of the permission and to ensure that the historic building is preserved from any other potentially harmful works.

Revised wording for condition 3

Non Standard condition – Building recording

Prior to the commencement of any works, a programme of building recording, prior to and during the construction work, and analysis, including fixtures and fittings, shall have been undertaken shall have been made by a person or body approved by the Local Planning Authority and in accordance with a written scheme which first shall have been submitted to and approved, in writing, by the Local Planning Authority. The details of the report shall be made available for the benefit of the public within the museum and a copy of the report deposited with the Essex County Council Historic Environment Record.

Reason: To secure provision for inspection and recording of features of historical importance associated with the site, which will be lost as a consequence of the works.

Revised wording condition 4

Non standard condition – Schedule of fixtures to be removed

Prior to the commencement of works a schedule of all mechanical fixtures and fittings to be removed from their original positions, along with details of their intended final positions shall be submitted to and approved in writing by the local planning authority. A representative sample of pipework and valves shall be put on display within the museum. Proposals for their display and interpretation shall be submitted to and agreed in writing by the Local Planning Authority before work begins, and implemented and retained in perpetuity strictly in accordance with the agreed details prior to the occupation of the buildings

Reason: To secure provision for inspection and recording of matters of historical importance associated with the site, which may be lost in the course of works.

New condition

ZLP - Hitherto unknown

If hitherto unknown evidence of historic character that would be affected by the works hereby permitted is discovered, an appropriate record together with recommendations for dealing with it in context of the approved scheme shall be submitted for written approval by the Local Planning Authority

Reason: To secure the proper recording of the listed building.

Revised wording condition 6

Non standard condition – Schedule of repairs

Prior to the commencement of any works, a full schedule of repair and specification of works shall be submitted to and approved, in writing, by the Local Planning Authority. The works shall thereafter be carried out strictly in accordance with the approved details prior to the first occupation of the development.

Reason: In the interests of preserving the character and appearance of the listed building and its setting.

Revised wording condition 7

Non standard condition – Details of roof glazing

Prior to the commencement of any works, detailed section and elevation drawings of the proposed roof glazing at scales between 1:20 and 1:1 as appropriate shall have been submitted to and approved, in writing, by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

Reason: To ensure that the approved works are carried out without detriment to the architectural character and appearance of the building where there is insufficient information within the submitted application.

New condition

Non standard condition

Prior to the commencement of any works a sample panel of repaired brickwork shall be constructed on site showing the pointing, mortar mix and finish profile. The panel shall be made available for inspection by the Local Planning Authority and the materials and methods demonstrated in the sample panel shall have been approved, in writing, by the Local Planning Authority. The approved sample panel shall then be retained on site until the work is completed and all brickwork shall be repaired in all respects in accordance with the approved details.

Reason: In order to ensure that the brickwork can be satisfactorily considered on site with regard to preserving the character of the listed building.

Revised wording condition 16

Non standard condition - railings

Notwithstanding the details shown on drawing 2619|J|02 Revision B the existing historic railings around the perimeter of the base of the historic building shall be retained in place and shall not be removed or replaced. Only sections of missing railings shall be replaced as part of the works. The new section of railings shall match the adjoining historic railings in all respects including design, materials and finish. The missing section of railings shall be reinstated prior to first occupation of the development.

Reason: To protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

New condition

ZNA - No New Minor Fixtures

No new grilles, security alarms, lighting, cameras or other appurtenances shall be fixed on the external faces of the building other than those shown on the drawings hereby approved unless otherwise first agreed, in writing, by the Local Planning Authority.

Reason: To protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

New condition

ZNB - Fixtures

No cables, wires, aerials, pipework (except rainwater downpipes as shown on the approved plans), meter boxes or flues shall be fixed to any elevation fronting a highway.

Reason: To protect the special character and architectural interest and integrity of the building in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

7.4 131807 – Tymperleys, Trinity Street, Colchester

A further drawing has been received identifying the extent of the paving to be replaced and cobbles areas to be replaced. Whilst this work is acceptable in principle red brick is shown to replace the cobbles and this is not considered appropriate. The wording of Condition 3 needs to be revised so the red brick shown on the drawing is excluded from the permission and details of the paving material to be submitted and agreed.

- 7.5 131512 – Seaview Holiday Camp, Seaview Avenue, West Mersea
- 7.6 131648 – Seaview Holiday Camp, Seaview Avenue, West Mersea
- 7.7 131667 – Elmcroft Bungalow, Fen Lane, East Mersea

A resident has written on a range of issues regarding Holiday Parks on Mersea Island and the Seaview Caravan Park in particular. The following issues are raised:

- Holiday Parks on Mersea Island – Is a wider review required? . I am concerned the planning process of considering individual applications alone does not take into account the wider ie over-all impact of applications made so far and others under preparation taken together reflecting the concerns raised by many residents and the local Council in objections put forward. . The 1,750 or so caravans and chalets here could increase the effective resident population by about 5,000 people while local infrastructure already appears under strain with 7,500 residents.

Officer comment: The impending full Core Strategy Review / Local Plan Review will provide a useful arena to explore the issues that arise from holiday park development. However whilst that process is due to commence in 2014 it is unlikely to be completed until 2017. In the meantime applications have been submitted and each has to be judged on its own merits in the light of all material planning considerations.

- Such changes without increased revenue from precepts made by a planning officers' decision appears inappropriate in this context and a wider review of the over-all impact must take place. The sites currently pay Business Rates on their commercial activities such as restaurants, shops, bars, units on short term let, offices but no Council Tax is paid by chalet owners themselves. In East Mersea, with just 120 households, the Parish Plan was adopted by Colchester BC not envisaging in effect a further 650 households, how can a planning officer alone over-ride this ?

Officer comment: In recommending approval subject to the conditions included in the Committee report officers are not permitting permanent residency. Council tax is not a planning issue. If s106 contributions were sought then the Council would in effect be agreeing to permanent residential use.

- This must include a review of emergency planning if a new nuclear plant is to be built at Bradwell. The emergency plan for Sizewell requires the immediate evacuation of those without the shelter of permanent buildings eg in chalets, caravans before those in houses. Is it realistic in practice to expect 7,500 residents here to wait in their homes until 5,000 others are evacuated?

Officer comment: The caravans can already be occupied for 10 months so the application will not affect the current situation

Conditions 3/4 to be amended to include Council tax bills.



Colchester Borough Council Development Control

Advisory Note on Parking Standards

The following information is intended as guidance for applicants/developers.

A parking space should measure 2.9 metres by 5.5 metres. A smaller size of 2.5 metres by 5 metres is acceptable in special circumstances.

A garage should have an internal space of 7 metres by 3 metres. Smaller garages do not count towards the parking allocation.

The residential parking standard for two bedroom flats and houses is two spaces per unit. The residential parking standard for one bedroom units is one space per unit. One visitor space must be provided for every four units.

Residential parking standards can be relaxed in areas suitable for higher density development.



Colchester Borough Council Environmental Control

Advisory Notes for the Control of Pollution during Construction & Demolition Works

The following information is intended as guidance for applicants/developers and construction firms. In order to minimise potential nuisance to nearby existing residents caused by construction and demolition works, Environmental Control recommends that the following guidelines are followed. Adherence to this advisory note will significantly reduce the likelihood of public complaint and potential enforcement action by Environmental Control.

Best Practice for Construction Sites

Although the following notes are set out in the style of planning conditions, they are designed to represent the best practice techniques for the site. Therefore, failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).

Noise Control

1. No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holiday days.
2. The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:1984.
3. Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
4. Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

Emission Control

1. All waste arising from the ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
2. No fires to be lit on site at any time.
3. On large scale construction sites, a wheel-wash facility shall be provided for the duration of the works to ensure levels of soil on roadways near the site are minimised.
4. All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Best Practice for Demolition Sites

Prior to the commencement of any demolition works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Planning & Protection Department. In addition to the guidance on working hours, plant specification, and emission controls given above, the following additional notes should be considered when drafting this document: -

Noise Control

If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Planning & Protection prior to the commencement of works.

The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.

Emission Control

All waste arising from the demolition process to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.

The Town and Country Planning (Use Classes) Order 1987 (as amended)

Class A1. Shops

Use for all or any of the following purposes—

- (a) for the retail sale of goods other than hot food,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other cold food for consumption off the premises,
- (e) for hairdressing,
- (f) for the direction of funerals,
- (g) for the display of goods for sale,
- (h) for the hiring out of domestic or personal goods or articles,
- (i) for the washing or cleaning of clothes or fabrics on the premises,
- (j) for the reception of goods to be washed, cleaned or repaired,
- (k) as an internet café; where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet where the sale, display or service is to visiting members of the public.

Class A2. Financial and professional services

Use for the provision of —

- (a) financial services, or
 - (b) professional services (other than health or medical services), or
 - (c) any other services (including use as a betting office)
- which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

Class A3. Restaurants and cafes

Use for the sale of food and drink for consumption on the premises.

Class A4. Drinking establishments

Use as a public house, wine-bar or other drinking establishment

Class A5. Hot food takeaways

Use for the sale of hot food for consumption off the premises.

Class B1. Business

Use for all or any of the following purposes—

- (a) as an office other than a use within class A2 (financial and professional services),
 - (b) for research and development of products or processes, or
 - (c) for any industrial process,
- being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2. General industrial

Use for the carrying on of an industrial process other than one falling within class B1 above

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.

Class C2. Residential institutions

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.

Class C3. Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by—

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.

Class D1. Non-residential institutions

Any use not including a residential use —

(a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,

(b) as a crèche, day nursery or day centre,

(c) for the provision of education,

(d) for the display of works of art (otherwise than for sale or hire),

(e) as a museum,

(f) as a public library or public reading room,

(g) as a public hall or exhibition hall,

(h) for, or in connection with, public worship or religious instruction, (i) as a law court.

Class D2. Assembly and leisure

Use as —

(a) a cinema,

(b) a concert hall, (c) a bingo hall or casino,

(d) a dance hall,

(e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

Sui Generis Uses

Examples of sui generis uses include (but are not exclusive to):

theatres, amusement arcades or centres, funfairs, launderettes, sale of fuel for motor vehicles, sale or display for sale of motor vehicles, taxi businesses or a business for the hire of motor vehicles, a scrapyards or the breaking of motor vehicles, hostels, retail warehouse clubs (where goods are sold, or displayed for sale, only to persons who are members of that club), night-clubs, or casinos.

Interpretation of Class C3

For the purposes of Class C3(a) “single household” shall be construed in accordance with section 258 of the Housing Act 2004.

Interpretation of Class C4

For the purposes of Class C4 a “house in multiple occupation” does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004.