

**COLCHESTER BOROUGH COUNCIL
PLANNING COMMITTEE
15 May 2008 at 6:00pm**

SUPPLEMENTARY AGENDA

Part A

(open to the public including the press)

Pages

13. Amendment Sheet

See Final Amendment Sheet attached.

**No Page
Numbers**

AMENDMENT SHEET

**Planning Committee
15 May 2008**

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

**LATE AMENDMENTS HAVE BEEN INCORPORATED INTO THIS
AMENDMENT SHEET AND ARE SHOWN AS EMBOLDENED**

7.1 080005 – Land at Tile House Farm, Nayland Road, Great Horkesley

**Statement received from Mersea Homes regarding Landscaped
buffer zone to west of housing site clarifying future use:**

**"The Developer confirms in principle to provide a rural access
through the Structural Landscaped Buffer Zone subject to
complying with any Restrictive Covenants that apply to the land.
The precise nature and route of the access will need to be
submitted and approved in writing by the Local Planning
Authority prior to commencing works on the Structural
Landscaped Buffer Area."**

**Following receipt of this statement your Officers recommend the
inclusion of the following informative to be added to the decision
notice, which has been agreed with the applicants:**

**The LPA expects the submitted landscape scheme for the
Structural Landscaped Buffer Zone pursuant to Condition 15 to
include details of the alignment and form of an access/footpath.
The precise nature and alignment will need to be submitted and
approved by the LPA prior to commencing works on the
Structural Landscaped Buffer Area."**

Amended condition 6:

**The condition to be varied to include reference to Nayland Road
along with the other roads named. Condition therefore to read:**

**"Where there is no existing solid fencing or no substantial
tree/hedgerow enclosure a 1.8 metre high timber fence or other
boundary treatment as agreed in writing by the Local Planning
Authority shall be erected along the southern boundary of the
proposed Public Open Space and the rears of properties fronting
Nayland Road, Coach Road and Ramparts Close within 3 months
of the permission.**

7.2 080561 – Central Park House, 5 Military Road, Colchester

Condition 2 should read “rear south facing”

Condition 6 should read “door hereby approved (not removed)”

Two letters of objection have been received saying residents have spoken to the applicant who has indicated the windows will open. Existing windows in other buildings already cause issues of noise.

Officer comment: The drawings and application description state the windows will be non-openable and Condition 5 requires this.

7.3 080586 – Shipwrights, 128 Coast Road, West Mersea

Condition 4 should refer to Condition 3.

Condition 5 should read dust and smell.

7.5 080596 – Adj. Cedarwood Cottage, London Road, Copford

Members are advised that the application as submitted was accompanied by an Arboricultural Survey and Method Statement carried out by a qualified Consultant Arboriculturalist. The comments made by the Arboricultural Officer relate to this document.

Additional condition:

Notwithstanding the detail shown on the approved drawings, the integral garage shall be inset a minimum of 100mm from the front elevation of the main building, as shown endorsed in green on the approved drawing.

Reason: To ensure a satisfactory visual appearance.

The Arboricultural Officer has advised that he requires details of the “No Dig” method. Having discussed this matter with the Agent & the retained Arboricultural Consultant, he is now satisfied that this can be secured by condition and has recommended any permission should be subject to the following condition:

No works shall start on site until an Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan in accordance with BS 5837, have been submitted to and approved in writing by the Local Planning Authority (LPA). The details shall include the retention of an Arboricultural Consultant to monitor and periodically report to the LPA, the status of all tree works, tree protection measures, and any other arboricultural issues arising during the course of development. The development shall then be carried out strictly in accordance with the approved method statement.

Reason: The proposed No Dig method needs to be submitted and approved prior to the commencement of the development in order to ensure that the development does not have an adverse impact upon the existing trees and thereby affect the continuity of the amenity afforded by these trees.

In view of these circumstances it is recommended that permission should be granted subject to conditions as set out in the Committee Report and as contained within this amendment.

7.11 071980 – Land to the rear of 11 Newbridge Road, Tiptree

The amendment sheet to the previous report included the following comment relating to Plot 7:-

“Plot 7 – Depth of rear garden is approximately 12 metres and is therefore slightly less than the 15 metres depth recommended in the Essex Design Guide (where rear face of new house is approximately parallel to the existing). However the back to back distance between the new dwelling and 3 Chapel Lane is approximately 28 metres and thus exceeds the recommended 25m back to back distance”.

This comment was inadvertently omitted from the Committee Report now before Members.

7.12 080562 – Hemps Green, Fordham

The following comment has been received from Wakes Colne Parish Council:-

“As far as Wakes Colne Parish Council is concerned our position has not changed. We object to the road having been built in contradiction to local planning policies. While we would agree that the road looks better in terms of its visual appearance, local residents have yet to see a reduction in traffic levels on the surrounding protected lanes.”

7.13 080573 – Doucecroft School, Abbots Hall, Abbots Lane, Eight Ash Green

Further to paragraph 9.5 on the report, a draft Section 106 Agreement has been prepared which includes proposed traffic management and calming measures for Abbots Lane. The measures are still to be finalised, but include:

- A ‘false’ island at the junction between the lane and the hotel access road.**
- A ‘road narrows’ sign with lighting.**
- A ‘school’ road sign with lighting.**

- **'edged carriageway' road markings for the entire length of the lane from the site to the hotel access road including the turning head (solid white line/dotted across accesses and passing bay).**

7.14 080646 – 48 North Hill, Colchester

Informative to read:-

For the avoidance of doubt as to the scope of this permission, this decision relates solely to the change of use to A3 as described in the application description and does not provide any other approval. THIS APPROVAL DOES NOT PROVIDE PERMISSION FOR ANY PHYSICAL ALTERATIONS OR ANY OTHER FORM OF DEVELOPMENT OR WORKS WHATSOEVER. The property is a Listed Building and any other works may require Listed Building Consent (as well as further planning permissions). Please contact the Local Planning Authority for advice prior to commencing any development or submitting any other applications.

7.17 080548 – Bridge House, Severalls Lane, Colchester

Arboricultural Report has been received but no comments received from Trees and Landscape Officer.

Recommendation as follows:-

Defer to await views of Trees and Landscape Officer. If those views confirm the submitted arboricultural details are satisfactory, the Head of Planning, Protection and Licensing be authorised to grant planning permission under delegated powers.

Additional Condition 6:

"A scheme for the provision of alternative car/cycle parking spaces and refuse storage facilities replacing those displaced by the proposed development shall be submitted to and agreed in writing by the Local Planning Authority before the development is commenced. The development shall be implemented strictly in accordance with the agreed details.

Reason: To ensure appropriate provision is made for car and cycle parking and refuse storage facilities within the site.

7.18 072285 – Cherry Tree Farm, London Road, Great Horkesley

Section 11 Representations of Report – should read that letters/emails have been received from 19 (not 6) interested persons

Environment Agency Comments:

- a percolation test should be taken to ensure soakaways will work adequately
- Septic Tanks should be accompanied by a report indicating that there is no alternative method of foul drainage and it will cause no environmental harm
- without either of the above the application should not be determined.

Agenda Item 8 - Cherry Tree Farm, London Road, Great Horkesley

GoEast have undertaken Screening Option and have concluded that an Environmental Impact Assessment is not required.

Agenda Item 9 – Land at Straight Road, Boxted

Item withdrawn by the Head of Planning, Protection and Licensing to allow further notifications to be carried out. To be reported at the next Committee.

Agenda Item 11 – 15 Firs Chase, West Mersea

The owner of the hedge and the neighbour have submitted information they want the Committee to be made aware of.

Mr Burr, the owner of the hedge, has submitted a letter he has written to The Planning Inspectorate – this is produced below:-

“You have a copy of Mr Dowson’s written confirmation that he delivered his signed report to the appellants. You also have a copy of his written refusal to endorse the unsigned document twice delivered to me by the Inspectorate. Your enduring blind insistence that there was and is no reason to doubt the authenticity of the unsigned document is perverse. Since September 2006 the Inspectorate has known that the copy document delivered to us was not a faithful copy of Mr Dowson’s report. The Inspectorate was negligent in not using its powers (SI 2005 No. 711, rule 10) to require any part to provide “...further necessary information relevant to the appeal...”namely a copy of Mr Dowson’s original signed report. Such omission could only act against our legitimate interests, and satisfy the appellants’ unknown motives for wishing to suppress the authenticated document.

You have chosen not to reply to my enquiry of 13 December 2007, concerning the telephone conversation described to Mr Dowson in his reply to my enquiry to him of 27th October 2006. I had expected a reflex and vigorous denial of his assertions, the absence of which is astonishing. To clarify, would you please now confirm or otherwise that around 27 October 2006, prior to the site inspection and determination of the appeal, the Inspectorate received an off-the record representation from Mr Dowson, to which your office replied by advising that the Inspectorate would not require the appellants to produce a copy of his signed and authenticated report. Would you also please confirm that

there were no other hitherto undisclosed representations to the appeal by council members or officers, written or verbal.

In the interests of transparency, I repeat my request for a copy of the elusive report which its author and the appellants have so far successfully suppressed, seemingly aided by the Inspectorate. There can be no honourable reason for non-disclosure.

The Inspector's site visit approximately 20 minutes on and inside the appellants' premises. Approximately 5 minutes on our property, outside only. No records made for later reference. No assessment of amenity or privacy value from within our bungalow.

Hedge No. 2 – Remedial requirement was arbitrary, regardless of Government/BRE guidelines for land height differentials and safe height reductions in excess of 33%. Expert advice from arboriculturalists of both CBC and the appellants were ignored.

Hedge No. 1 – Despite references to the issue in all three submissions, remedial requirement failed to take account of up to 1m land height differential between the properties, as required by government guidelines and BRE calculations. Completion of the resulting height reduction to 2m has eliminated all privacy amenity, hedge height is below the sill level of the appellants' ground floor windows, giving uninterrupted views into our lounge and sun-lounge, and across our SW elevation.

Hedge No. 3 – Calculation of the hedge height (garden) at 3.529m is for a hedge running the whole length of the 21.7m E boundary. Whereas it extends only 6.35m at which the BRE calculations produce a height of 12m. The arbitrary reduction to 3m and action height of 3.529m would provide uninterrupted visual access down and into the kitchen/diner, dining room, bedroom and sun-lounge on our S elevation, for the benefit of three dormer windows 4m above ground level in the appellants' roof. The Inspectors' report for No. 3 hedge is factually incorrect, describing the landing window above the garage as serving a bedroom. The bedroom is at the other end of the building opposite our drive where we have no planting whatsoever. Such an error could not have occurred with the benefit of contemporaneous notes, and undermines the credibility of claimed fact and opinion reliant upon the Inspector's recollections. Clearly information and calculations of CBC Planning Department were not checked.

The remedial action completed and pending would be better described as punitive and excessive, rather than balanced and proportionate, and the process absent of transparency. Either or both cases breach of our rights to privacy under Article 8 of the European Convention or Human Rights. Adjudication of this appeal demonstrates a distinct bias, consistent with the positive discrimination which the appellants appear to attract from other local government quarters.

In the absence of an early reply and positive response, I will follow your suggestion and appeal to the relevant ombudsman."

Members will note from this letter that Mr Burr has raised a number of issues. Your Officer has spoken to the Planning Inspectorate and the period for the decision to be challenged has expired. Mr Burr has been referred to the Ombudsman if he wishes to pursue a complaint against the Inspectorate. In this letter Mr Burr suggests the Council's calculation in respect of Hedge 3 is incorrect and that the Inspector should not have replied on this figure. Whilst your Officer considers the calculation is correct the Inspector did not necessarily rely on this calculation.

In respect of Hedge 3 he refers to an additional section of hedge and his requirement for Hedge 2 was different to the Council's calculation of action hedge height.

Mr. Bessey, the complainant, has submitted the following letter:-

At the request of David Whybrow we have been asked to set out the issues discussed with him on 11 May.

The report produced by Sue for the Council has been discussed with the Planning Inspectorate appointed by the Secretary for Committee and Local Government based in Bristol (the team that heard the appeal). They have advised us that the recommendations do not follow due process or comply with the Anti-Social Behaviour Act 2003 – Sections 71(1) and 71(3) (High hedges). The prime concerns are set out below:-

- (a) The decision required as stated in paragraph 1.1 is for the council to give the owner of the hedge 56 days to comply with the Remedial Notice. The Remedial Notice issued by Simon Hand MA on 21/2/07 gave Mr Burr 10 months to comply and therefore the Council has no authority to issue a revised Remedial Notice.
- (b) Section 3.1 contradicts paragraph 1.1. It states the council only has 6 months from the date that they became aware of the offence to lay the information before the court. The Council was notified of the failure to comply on 21 December 2007. Providing an additional 56 days to comply would mean 6 months would be breached. Furthermore Sue Jackson is unable to explain the basis for saying that failure to comply is a "summary only offence" or why there is a 6 month limit.
- (c) Section 3.1 provides only two options – namely do nothing or lay the information before the court. The legislation provides a way for the council to give us duty of care by entering the premises and carrying out the work themselves, yet the council has not been furnished with this option. The Council does not need a warrant and only has to give 7 days notice (as Mr Burr is a pensioner this seems a fairer approach than taking Mr Burr to court where he will incur a fine, council costs and still have to pay for the work to be done).
- (d) Section 4.12 states that no purpose will be served by issuing a prosecution regarding Hedge 1 because very little of the hedge

can be seen from the complainants' property. However, in section 5.1 it is recommended to prosecute for failure to comply with Remedial Notice in respect of Hedge 3. The recommendation concerning Hedge 1 is not within the power of Sue Jackson to give. The following is an extract from the pamphlet issued by the Office of the Deputy Prime Minister entitled High Hedges: appealing against the Council's decision. "There is no legal separate right of appeal against the Inspector's decision. The only way to challenge is by making an application for the High Court for judicial review. Such a review is about whether the Inspector has applied the law properly. Its not about the strength of arguments or the merits of the appeal decision." The only basis for not prosecuting is that it is not in the public interest, however as Mr Burr is deliberately flouting the law and persistently carries on offending I would imagine this would be a difficult position to defend if this case goes to Judicial review. This would be further compounded if the council pursued different strategies for each of the hedges.

Having set out the inaccuracies of the report I would like to take this opportunity to advise the Council that:-

1. The council took our money (fee for initial complaint) and for that is clear what their responsibility was both under guidance and legislation itself.
2. There are no "good" reasons for not taking this hedge owner to Court, such as not in the public interest, because it clearly is when Mr Burr is deliberately flouting the law and persistently carrying on offending.
3. Mr Burr is well aware of his actions and the Planning Inspectorate decision is clear and concise as to what remedial work was required and on which parts of the hedge (namely 1, 2 and 3)
4. We consider the Council has a duty of care to complete the circle under the legislation i.e. accepting the fee, finding a case to answer, requiring him to do so and now taking him to Court for failing to do so.
5. There have been in excess of 14 cases so far taken to Court in England. Fines have ranged from £50 to £3200 and the average has been £325 plus £300 costs to the Councils. There has been no CASE DISMISSED – all have been found guilty despite their pleas. All that needs to be proven is that the Remedial Notice was served on the person responsible for carrying out the works therein. The only questions then is "Did he comply with those works". There are two offences (1) failing to carry out the initial action (2) failing to carry out preventative action and a third offence of failing to take notice of a Court Order to cut the hedge – this last offence attracts a 350 penalty fee daily thereafter till the hedge comes down.

6. If the Council does take the decision “to do nothing” in respect of any parts of the Remedial Notice we will take to Judicial Review for a judge to decide if the Council’s grounds are good enough.”

Officer Comment

The neighbour’s letter has been numbered for ease of reference:

- (a) The Council is not issuing a revised Remedial Notice. Government advice suggests Local Authorities should encourage the hedge owner to comply with the Remedial Notice and during the 56 day period the hedge owner will be encouraged to comply.***
- (b) The Council secures compliance with a Remedial Notice under the Anti-Social Behaviour Act 2003. It is the provisions of this act that set out failure to comply in a ‘summary only offence’ and such offences have to be laid before the Magistrates Court within 6 months. The council has sought advice from Legal Services and the 6 month period commences from the date the Council is aware of the offence not the date they were notified of the offence.***
- (c) The Council does have the power to enter the land and carry out the works themselves if the owner fails to comply with the requirements of the Remedial Notice. The legislation indicates it is for the Council to consider whether they use these powers to carry out the works specified in the Remedial Notice; if so, when they employ them, and whether this is done instead of, or alongside a prosecution. There is no requirement or obligation for Councils to intervene. As a result, there should not be a general expectation that Councils will step in, nor that they will do so immediately after a breach of remedial notice occurs.
Your Officers do not consider Council intervention is appropriate.***
- d) The legislation states “it is for each Council to determine their policy and approach to enforcing Remedial Notices depending on available resources. It also indicates a separate action may be brought against each contravention of a Remedial Notice. It is your officer’s opinion not to prosecute in respect of Hedge 1, however, it is open for Members to take a different view.***

The numbered paragraphs 1-5 repeat the comments made on Page 160 of the agenda. However, in 6 the neighbour indicates he will take the matter to Judicial Review if the Council decides to do nothing in respect of any part of the Remedial Notice.