

# Planning Committee

Town Hall, Colchester  
8 September 2011 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.

# Information for Members of the Public

## Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at [www.colchester.gov.uk](http://www.colchester.gov.uk) or from Democratic Services.

## Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please pick up the leaflet called "Have Your Say" at Council offices and at [www.colchester.gov.uk](http://www.colchester.gov.uk)

## Private Sessions

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## **Material Planning Considerations**

The following are among the most common issues which the Planning Committee can take into consideration in reaching a decision:-

- planning policy such as adopted Local Development Framework documents, for example the Core Strategy, Development Plan Documents (DPDs) and the Site Allocations DPD, Government guidance, case law, previous decisions of the Council
- design, appearance and layout
- impact on visual or residential amenity including potential loss of daylight or sunlight or overshadowing, loss of privacy, noise disturbance, smell or nuisance
- impact on trees, listed buildings or a conservation area
- highway safety and traffic
- health and safety
- crime and fear of crime
- economic impact – job creation, employment market and prosperity

The following are among the most common issues that are **not** relevant planning issues and the Planning Committee cannot take these issues into account in reaching a decision:-

- land ownership issues including private property rights, boundary or access disputes
- effects on property values
- restrictive covenants
- loss of a private view
- identity of the applicant, their personality or previous history, or a developer's motives
- competition
- the possibility of a "better" site or "better" use
- anything covered by other legislation

## **Human Rights Implications**

All applications are considered against a background of the Human Rights Act 1998 and in accordance with Article 22(1) of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003 there is a requirement to give reasons for the grant of planning permission. Reasons always have to be given where planning permission is refused. These reasons are always set out on the decision notice. Unless any report specifically indicates otherwise all decisions of this Committee will accord with the requirements of the above Act and Order.

## **Community Safety Implications**

All applications are considered against a background of the implications of the Crime and Disorder Act 1998 and in particular Section 17. Where necessary, consultations have taken place with the Crime Prevention Officer and any comments received are referred to in the reports under the heading Consultations.

## **Equality and Diversity Implications**

All applications are considered against a background of the Council's 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. The legal context for this framework is for the most part set out in the Equality Act 2010.

# COLCHESTER BOROUGH COUNCIL PLANNING COMMITTEE 8 September 2011 at 6:00pm

## Members

Chairman : Councillor Ray Gamble.  
Deputy Chairman : Councillor Theresa Higgins.  
Councillors Christopher Arnold, Peter Chillingworth,  
John Elliott, Stephen Ford, Peter Higgins, Sonia Lewis,  
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 Development Framework Committee and who have undertaken the required planning skills workshop. The following members meet the criteria:-  
Councillors Nick Barlow, Lyn Barton, Mary Blandon,  
John Bouckley, Nigel Chapman, Barrie Cook, Nick Cope,  
Annie Feltham, Bill Frame, Mike Hardy, Marcus Harrington,  
Pauline Hazell, Michael Lilley, Sue Lissimore, Nigel Offen,  
Ann Quarrie, Will Quince, Paul Smith, Terry Sutton,  
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 circulated at the meeting and is available on the council's website by 4.30pm on the day of the meeting (see Planning and Building, Planning Committee, Latest News). Members of the public should check that there are no amendments which affect the applications 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 on the day 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 off or to silent;

- 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 personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the

public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

## **6. Minutes**

The minutes of the meeting held on 25 August 2011 will be submitted to the next meeting.

## **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. 091305 The Jumbo Water Tower, Balkerne Passage, Colchester, CO1 1PA (Castle) **1 - 31**

Change of use and alterations to provide four flats, restaurant and offices and erection of ancillary building and associated works.

2. 091343 The Jumbo Water Tower, Balkerne Passage, Colchester, CO1 1PA (Castle)

Listed building application for change of use and alterations to provide four flats, restaurant and offices and erection of ancillary building and associated works.

3. 111170 Land adjacent to 47 Belle Vue Road, Wivenhoe, CO5 8PA (Wivenhoe Quay) **32 - 39**

Reserved matters conditions 1, 2, 3, 5, 8, 9, 10, 11, 15, 17, 18, 20 for permission 090822 (new three bedroom dwelling).

## **8. Compliance with Condition 17 of Application 071786 // The Old Oyster Sheds, Coast Road, West Mersea 40 - 46**

See report by the Head of Environmental and Protective Services.

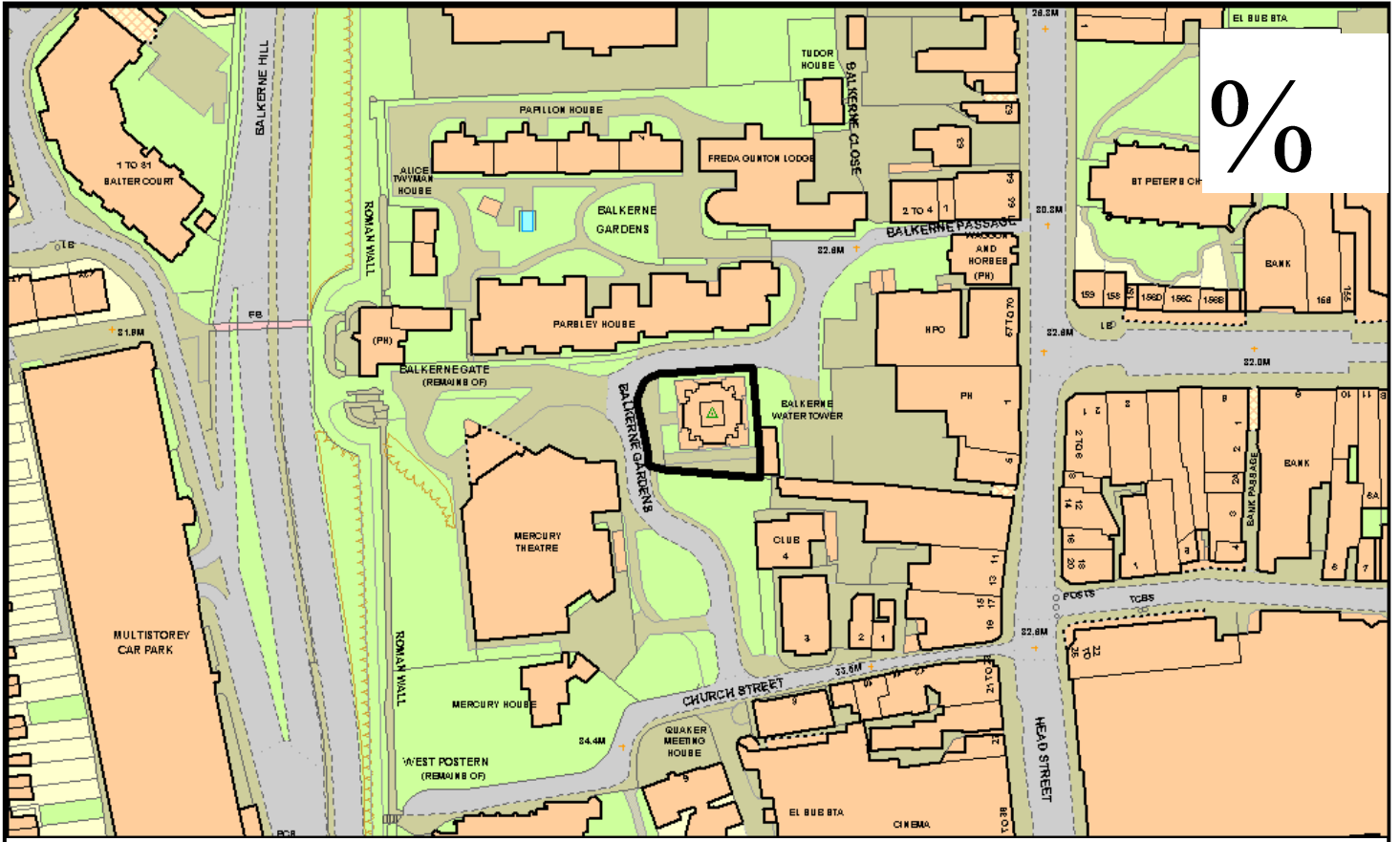
## **9. Exclusion of the Public**

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).







**Application No:** 091305 & 091343

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

**Scale (approx):** 1:1250

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# Committee Report

Agenda item

**7**

To the meeting of **Planning Committee**  
on: **8 September 2011**  
Report of: **Head of Environmental and Protective Services**  
Title: **Planning Applications**

Relevant planning policy documents and all representations at the time this report was printed are recorded as BACKGROUND PAPERS within each item. An index to the codes is provided at the end of the Schedule.

**7.1 Case Officer: Mr John More**

**MAJOR**

**Site:** **Balkerne Passage, Colchester, CO1 1PA**

**Application No:** **091305**

**Date Received:** 15 October 2009

**Agent:** Mr Neil Ward

**Applicant:** Mr George Braithwaite

**Development:** Change of use and alterations to provide four flats, restaurant and offices and erection of ancillary building and associated works.

**Ward:** Castle

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

## 7.2 Case Officer: Mr John More

**MAJOR**

**Site:** Balkerne Passage, Colchester, CO1 1PA

**Application No:** 091343

**Date Received:** 15 October 2009

**Agent:** Mr Neil Ward

**Applicant:** Mr George Braithwaite

**Development:** Listed building application for change of use and alterations to provide four flats, restaurant and offices and erection of ancillary building and associated works.

**Ward:** Castle

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

### 1.0 Introduction

1.1 These planning and listed building applications have been referred to the Planning Committee for consideration as both letters of objection and support have been received and the application was received under the old scheme of delegation.

### 2.0 Synopsis

2.1 The decision has been taken not to prepare a synopsis for this report. This is due to the complexity of issues raised by this application, and in order not to oversimplify the factors for and against this development. The main body of the report (Section 12) discusses the key considerations under separate headings and a conclusion is provided in Section 13.

### 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 presents a frontage of approximately 28m to the south side of Balkerne Passage and a frontage of approximately 25m to the east side of Balkerne Gardens. There were formally a number of parking bays on the Balkerne Gardens frontage. The site is almost wholly occupied by the Victorian water tower.

3.2 The water tower rises to a height of almost 80m 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. Public gardens abut the site to the south. To the west is the Mercury Theatre and across Balkerne Passage is the 3-storey Parsley House run by the Balkerne Gardens Trust.

#### **4.0 Description of the Proposal**

4.1 The application proposes the alteration and change of use of The Balkerne Water Tower (Jumbo) to provide four flats, a restaurant and offices, along with the erection of a small ancillary building at the base of the tower.

4.2 The application proposes inserting ten floors of accommodation in the building made up as follows. Offices are proposed on ground and first floor, a flat on each floor on the second and third floors, a restaurant would be accommodated on the fourth, fifth and sixth floors, and two penthouse flats on the seventh, eighth and ninth floors. No accommodation is proposed within the roof space of the building. The development involves the glazed enclosure of the arches between the supporting piers, the insertion of five additional floors at the lower level and the removal of two walls of the water tank and their replacement with glass.

4.3 The application also proposes the hard and soft landscaping of the area around the base of the tower and the erection of a small ancillary outbuilding to house services.

4.4 The application was accompanied by a detailed suite of documents including plans and elevations, a Design and Access Statement, Planning and Heritage Statement, Arboricultural Report, Jumbo Development Options Report, Report on Financial Appraisal of Options, Report and Valuation.

4.5 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 number 1.

5.2 The building is included in 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.

## 6.0 The History of Jumbo

6.1 While the history of Jumbo is of interest, it is also 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

## 8.0 Principal Policies

- 8.1 The following national policies are relevant to this application:
  - Planning Policy Statement 1 (PPS1): Delivering Sustainable Development
  - Planning Policy Statement 3 (PPS3): Housing
  - Planning Policy Statement 4 (PPS4): Planning for Sustainable Economic Growth
  - Planning Policy Statement 5 (PPS5): Planning for the Historic Environment
  - Planning Policy Guidance 13 (PPG13): Transport
- 8.2 In addition to the above national policies, the following policies from the adopted Colchester Borough Core Strategy (December 2008) are relevant:
  - SD1 - Sustainable Development Locations
  - CE1 - Centres and Employment Classification and Hierarchy
  - CE2 - Mixed Use Centres
  - CE2a - Town Centre
  - H1 - Housing Delivery
  - H2 - Housing Density
  - H3 - Housing Diversity
  - H4 - Affordable Housing
  - UR2 - Built Design and Character
  - TA5 - Parking
  - ER1 - Energy, Resources, Waste, Water and Recycling
- 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 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

- 8.4 In addition, the following are relevant adopted Colchester Borough Site Allocations Policies (October 2010):  
TC1 – Appropriate Uses within the Town Centre and North Station Regeneration Area
- 8.5 Regard should also be given to the following Supplementary Planning Guidance/Documents:  
Community Facilities  
Vehicle Parking Standards  
Open Space, Sport and Recreation  
The Essex Design Guide  
Colchester Town Centre Conservation Area Appraisal

## 9.0 Consultations

The consultation exercise undertaken has resulted in the following responses.

### Conservation Officer

- 9.1 Conservation Officer's comments are set out in full below:

*“The Balkerne Water Tower (Jumbo) is designed in a monumental Romanesque style and along with the tower of the town hall forms one of Colchester's most important landmarks. The building is listed grade II\* (star) for its special architectural and historic interest and is located within the town centre conservation area.*

*The current application seeks consent for the change of use and alterations of the water tower to form 4 flats, a restaurant and offices. The principle changes are the replacement of two sides of the metal water tank with glazed screens and the enclosure of the super-structure below the water tank.*

*The main conservation issue raised by this application is the effect that the proposed development would have on the special interest of this grade II\* listed building and the character and appearance of this part of the conservation area.*

*The proposal to replace two sides of the metal tank with glazing will profoundly affect (compromise) the character of the water tower as a functional structure providing a public utility. The supporting statement notes (make great play of the fact) that the removal of three sides of the water tank had been previously permitted by the appeal Inspector and that this consent is a material consideration. However, subsequent to the grant of this permission Jumbo was up-graded from grade II to II\* and this also forms a material consideration when assessing the current proposal. The submitted application provides little analysis of the importance of the tank in terms of the special interest of Jumbo; instead the justification is heavily reliant on the previous (lapsed) planning decision. PPG*

*15 notes that buildings can be re-graded following a revaluation after alteration works: it would be interesting to seek a view from English Heritage whether the loss of the two side of the water tank would be considered to have such a detrimental impact on the character of Jumbo that the building would warrant down grading.*

*The infilling of the space between the brick arches would add a significant new phase of development to this important structure. The glazing would affect the visual appearance of the tower, however, the detailing of the glazing system (including window openings), its location in relation to external face of the brickwork and the type of glass will all serve to lessen its impact and allow the monumental brick arches to be read (remain) as the dominant feature of the brick element of Jumbo. Subject to satisfactory design detailing (which still needs to be resolved) the infilling of the space between the brick arches would not only cause minimal disturbance to the historic fabric of Jumbo but would also be read as a clear modern addition to this building. Moreover these works would be fully reversible (unlike the loss of the water tank) and, as such, could be removed in the future without causing significant damage to the historic fabric of this structure.*

*The proposed alteration works to the tower would be most evident in close views from the surrounding streets and would clearly affect the existing appearance / character of Jumbo. In long distant views, the proposed alteration of the tower will not affect the silhouette of Jumbo and therefore, during the day light hours at least, the impact of that proposed works would be minimal. What is not clear from the submitted information is what the impact the internal illumination (associated with the new uses) would have on the character of the tower (particularly in long distant views) during the hours of darkness. Further assessment of this issue is required.*

*(It should be noted that the current application provides few design details and, as a consequence of this, it is unclear whether proposed alteration works can be implemented without having a significant adverse impact to the character of the building. For example, the detailing of window openings, glazing systems (particularly where it is juxtaposed against retained fabric), ventilation and extraction to both residential and commercial uses, compliance with building regulations requirements etc all need to be agreed in advance; it is not considered appropriate to condition such details as they can have a profound impact on the character and appearance of the building).*

*PPG15 notes that the best way of securing the up-keep of an historic building is to keep it in an active use and that the best use will often be the one for which the building was originally designed. PPG 15 does however note that not all original uses will necessarily be appropriate and, in such circumstances, the LPA (and other bodies involved in conservation) will need to balance the viability of possible new uses against the effect that the proposed changes would have on the special interest of the building. In principle, the aim should be to identify the optimum viable use that is compatible with the historic fabric and setting of the building. PPG 15 also notes that some buildings may be deemed so sensitive that they can not sustain any alteration to keep them in a viable use and goes on to state that the future use of these buildings can secured via charity or community ownership.*



*In the case of Jumbo, it is clear that the building will not revert to its original use as the building was declared surplus to requirement more than 25 years ago. Consideration has previously been given to an application for the conversion of Jumbo which would have involved creating a flat within the water tank and the floors below with two floor of accommodation at the base of the tower. In my view, while this left the bulk of the space beneath the superstructure open, it did nevertheless result in an unsatisfactory (compromise) solution in terms of the alteration of the tank.*

*In support of the current application, seven development options have been considered together with illustrative drawings and cost appraisals. None of the suggested options are viable and therefore the issues associated with viability (as described above) must surely have slightly less weight, particularly as the applicant is selecting the scheme (Option F) that does not attract the least negative value. (It is understood that the rationale for selecting Option F is justified on the basis that it would spread the risk of the investment cost).*

*The preservation of the building unaltered (Option A) is considered and it is estimated that the repair of the water tower would cost in the region of £881,000; unsurprisingly this option would cost the least to implement. This option has been dismissed by the applicant on basis that the inspector noted at the planning appeal that there was no prospect of the building being restored out of the public purse. While I would agree that there is still little prospect of the Council being able to fund the repair of Jumbo, no consideration has been given to the possibility of a charitable organisation taking on these works. Not to consider this, particularly as a Balkeerne Tower Trust has been formed with an express aim of securing the preservation of the tower, significantly weakens the argument for the radical alteration of this building.*

*As stated above, the water tank forms an integral part of the character of this important building and, given this and the peculiar circumstances of the tower (i.e. that all of the proposals are unviable), an option that would merit further consideration is a scheme whereby the water tank is left unaffected, with the brick supporting structure converted to smaller apartments and the space within the brick arches in-filled to create alternative uses. This solution would have the advantage of leaving the water tank (a key feature of the building) unaffected and, where alterations works are proposed, they would be both reversible and would not involve a significant loss of historic fabric.*

**Conclusion:**

*Given that the two above options have not been explored (and these options would involve less damage to the character of the building), it would be premature to agree to the principle of the scheme currently being proposed by the applicant. In addition to this, further information needs to be provided regarding the design detailing of this scheme in order to demonstrate that the proposed works will not cause material harm to the overall character and appearance of this important structure.”*

More recently the Conservation Officer has updated his comments in light of changes to government policy. These comments are summarised below.

*“During the currency of the above planning / listed building application new guidance / policies have been published and the application should be determined in accordance with these up-to-date planning policies and guidance. To avoid criticism being levelled at the LPA, the policy tests set out in PPS 5 must be complied with.*

*English Heritage has stated that the proposal will have a significant effect on the architectural and historic character of this building and, as such, the tests set out in policies HE9.2 & HE9.3 must be met before favourable consideration can be given to this development proposal. While I am aware that there has been discussion around the viability of the Balkerne’s Trusts proposals I am not aware that the applicant has provided evidence that other potential owners or users of the site have been sought through appropriate marketing. To approve this application without the appropriate marketing of this building would conflict with national planning policy.*

*Policy 10.1 of PPS 5 states when considering applications for development that affect the setting of a heritage asset, local planning authorities should treat favourably applications that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset. When considering applications that do not do this, local planning authorities should weigh any such harm against the wider benefits of the application. The greater the negative impact on the significance of the heritage asset, the greater the benefits that will be needed to justify approval. The draft English Heritage Guidance on the setting of heritage assets would assist in these deliberations and it is recommended that the applicant’s heritage assessment is updated in the light of the advice set out in this document.*

*Finally you will be aware that I have previously raised a number of issues regarding the detailing of this scheme. Given the architectural / historic importance of this building the LPA needs to be satisfied that the proposed interventions can be appropriately detailed; I would strongly advise that a precautionary approach is taken (given the status of this building) and these details are agreed prior to the determination of this application.*

*An updated response from the DHU is required in the light of the new / updated planning policies / guidance – however – in the light of the above it would be difficult based on the current information submitted to support this application from a conservation perspective.*

### Spatial Policy

- 9.2 Spatial Policy state that *Jumbo Water Tower is within the historic core of Colchester Town Centre. 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.*

*The site is within an area allocated for Culture, Leisure and Tourism purposes. Whilst the uses proposed are not specifically culture/leisure/tourist related, they do not specifically prejudice this allocation. The proposed uses are also consistent with PPS6 which identifies retail, leisure, offices and culture as main town centre uses and housing within mixed-use, multi-storey developments.*

*The site is within a highly accessible location and the proposed mix of uses is considered acceptable for this location. The extent to which the physical alterations protect and enhance the character and setting of: firstly, the listed building itself and secondly, views of the building from the Conservation Area, will be critical to the determination of this application.*

#### Environmental Control

- 9.3 Environmental Control recommends the inclusion of a number of conditions and informatives to be inserted on any approval granted. The conditions cover the following: sound insulation both internal and external, site boundary noise levels, light pollution, the control of fumes and odours, and the submission of a risk assessment to cover the removal of pigeon guano. Further the Contaminated Land Officer comments that the report submitted concludes that there are potential pollutant linkages that require further intrusive investigation. The report was also drawn up without access to the building. Consequently, contaminated land conditions are likely to be required for any permission granted. The applicant should also be advised that the further risk assessment should also include reference to those areas not previously accessed inside the building.

#### Cultural Services Manager

- 9.4 The Cultural Services Manager considers the proposals to be a complementary offer to the Mercury Theatre and enquires as to the possibility of obtaining a contribution towards the lighting proposals for the Mercury/Arts Centre quarter and the involvement of an artist. It is noted that the Mercury Theatre will need to get access to their site to get stage equipment in and out, along with technical staff parking, wheel chair access and general pedestrian access and customer experience during construction.

#### Building Control

- 9.5 Building Control comment that the proposal will require further consideration from a means of escape point of view and the agreement of the fire authority.

#### Essex County Council as the Highway Authority

- 9.6 The Highway Authority recommends the application be refused for the following reasons:
- The proposed parking provision is not in accordance with the current parking standards and will lead to indiscriminate parking in the adjacent highway contrary to the safety and efficiency of the highway.
  - The proposal would lead to loading, off-loading and servicing within and from the adjacent street causing danger and obstruction to road users contrary to highway safety and efficiency.

The Highway Authority adds a note stating a favourable recommendation would be given to an amended proposal showing four parking spaces and provision of a service bay.

### English Heritage

- 9.7 English Heritage have made two lengthy advisory comments on the proposals, these are set out below in an abbreviated form.

English Heritage initially recommended the Council defer determination of this application in order to explore the viability both of the proposed scheme and of the alternative of preserving the tower as a monument more fully. They stated that your Council should approve this scheme only if, first, the alternative of preserving the tower as a monument is judged to be unrealistic, and, second, the applicants are able to provide assurances that their scheme would be implemented, perhaps by providing a bond to ensure the repair of the tower.

They stated that the works would have a significant effect on the architectural and historic character of this important 19<sup>th</sup> century building, and raise fundamental questions about how best to preserve the building and its special interest. A monumental Romanesque composition, the Balkerne Water Tower - "Jumbo" - is, with the tower of the Town Hall, one of Colchester's most conspicuous landmarks. The exceptional architectural and historic interest of the building is reflected in its listing at grade II\*. Its interest may be described as evidential, historical, aesthetic and communal, to use the language of English Heritage's *Conservation Principles*.

There is no doubt that what is proposed would radically alter the character of the building. The principal changes can be summarised as follows.

- (i) The chief alteration to the existing fabric of the tower would be the removal of the north and south walls of the cast iron tank the presence of which forms the building's historical *raison d'être*.
- (ii) These sides would be replaced by glass screens, tinted grey, that would provide light to the two penthouse apartments that it is proposed to create in the tank and in the two floors of accommodation within the brick structure beneath the tank.
- (iii) The space within the arches that support the superstructure would be enclosed by the construction of glazed walls within each arch, and six floors of accommodation, and a mezzanine, provided within the enclosed area.

The effect of these works on the special interest of the tower would be substantial. In effect the works would both compromise the water tank and add a substantial phase of new work, overlaying this on the historic tower. The character of the tower as a historic functional building constructed to provide a public utility would be impaired. The character of the tower as a monumental Romanesque composition would also be impaired by the infilling of the four arches upon which the superstructure rests.

At the same time much of the tower's special interest would survive. It would still serve as a monument to 19<sup>th</sup> century "improvement" in general and to the improvement of the public water supply in particular. The Romanesque composition would still exist, albeit married to the new work. The dramatic changes to the building would be most evident in close views - particularly those from the streets immediately adjacent, but in longer views their effect - at least by day - would be limited, and the tower would remain one of Colchester's most conspicuous landmarks.

However nuanced the assessment of the effect of what is proposed may be, it remains clear that the building's character and its presence in the townscape (and therefore the conservation area) would be radically changed. For this reason it is incumbent upon the Council to determine this application with close reference to the advice set out by the Government in paragraphs 3.8 to 3.11 of PPG 15, which relate to the use of listed buildings. (*Officer comment: PPG15 has now been replaced by PPS5*)

In this case it is clear that the building cannot revert to its original use, which ceased in 1984 (25 years ago). Consideration has previously been given to one form of new use, and approval was previously granted for a scheme of residential conversion that would have entailed the conversion of the water tank and floors below and the creation of two floors of accommodation in the base of the tower, but which would have left the bulk of the space beneath the superstructure open. The present scheme entails far more than what was previously approved. Indeed its effect on the special architectural and historic interest of the tower would be so pronounced that consideration should be given to whether the tower might be preserved in charitable or community ownership, notwithstanding the fact that the tower is not so sensitive that it could not sustain *any* alteration.

With regards to the options appraisal, it is striking that none of the options appraised would be viable. Option F, the scheme for which approval has been submitted, is valued as having a negative market value of - £1,850,000. Interestingly Option B, the scheme previously approved, would have a negative market value of - £1,785,000. In other words the approved scheme would be slightly less uneconomic than what is approved. It would also, of course, have significantly less effect on the character of the building.

The applicants have considered the preservation of the building unaltered and without active use - their Option A. For this it is suggested that £881,000 would be required to fund essential repairs and ongoing maintenance over the following ten years. The applicants note that this was considered at the public inquiry at which the previously approved scheme of conversion was assessed and was decided to be impractical. The latter argument is significantly weakened by the applicants' failure to communicate with the Balcerne Tower Trust, a charitable body whose object is to secure the preservation of the tower as a monument with public access. To argue against the practicability of preserving the tower as a monument without reference to the one body dedicated to this end seems mistaken.

On the basis of the applicants own submission this application poses a peculiar problem. The proposed works would radically alter the tower. The applicants' own analysis of viability shows the scheme to be unviable. Proper consideration has not been given to the alternative of preserving the tower as a monument. The justification for what is proposed seems incomplete.

English Heritage does not rule out the possibility that a scheme such as that proposed may be the best means of securing the future of the Balkerne Water Tower. Certainly such a scheme would have the advantage of providing the building with an economic use - or indeed a variety of such uses, provided that the initial obstacle of viability could be overcome. At present, however, the proposed scheme does not appear to be viable and the alternative of preserving the tower as a monument has not been fully explored. The latter cannot easily be dismissed as being impractical if the economic alternative is itself uneconomic.

In the light of this quandary, English Heritage recommends that determination of this application is deferred to allow your Council to arrange meetings with both the applicants and the Balkerne Tower Trust to explore these matters further. It would seem mistaken to approve the present scheme if there is an alternative that would preserve the building's special interest without such radical alteration, unless, first, the latter approach is considered unrealistic in significant respects and, second, the applicants are able to demonstrate that they would implement their scheme, were it to be approved. The latter is an important point, as the only justification for approval would be the prospect of securing the repair and reuse of the tower. It may be that it would be appropriate to tie any approval to the submission of a bond by the applicant to secure at least the repair of the existing structure.

Following discussions with the Balkerne Tower Trust and the applicants agents and the information which was submitted subsequent to this English Heritage made further comments which are set out below.

When the application is assessed in light of the new policy statement the proposed works should be considered to cause substantial harm to the significance of the Tower, therefore the application should be tested against policy HE9.2 of PPS5. In this case the proposals would not meet the first test and the second must therefore be considered. Is the conservation of the Tower by a charitable trust possible? If it is, the present application should be refused. If it is not, and the present scheme is considered to be viable, then consent should be given, as the harm entailed would be outweighed by the benefit of securing the Tower's future.

The further submissions by the applicant's agent and by the Balkerne Tower Trust do not provide wholly satisfactory answers to the question of whether the Trust could reasonably be expected to secure the future of the Tower. This question may be divided into two parts: first, could the Trust expect to acquire the building: and, second, could it expect to repair and maintain the Tower thereafter?

Contrary to the applicant's agents' submission, there is no reason to believe that the Trust could not acquire the Tower at a sensible price. The Trust argues that the Tower has only a minimal value. This appears to be borne out by the information submitted by the applicant, which suggested that none of the options explored were viable. Mr Ward's suggestions that other options might be explored that might change the viability of conversion are bewildering, as it seems to contradict the applicant's own submission. His further suggestion that the value of the Tower might increase on the assumption that listed building consent would be granted for unspecified works of alteration or extension is speculative; and it ignores both the fact that all options considered to date are said not to be viable and the need to assess any proposals against the policies of PPS5.

How the transfer of ownership might be affected is open to question. The Trust has offered to discuss the future of the Tower with the owner, but there is no indication in the documents that any discussions have taken place, nor would it seem that the owner would be willing to sell the property. The Trust raise the prospect of a repairs notice being served upon the owner by the Council. This would be legitimate if it were clear that the owner declined to repair the Tower and allowed its condition to deteriorate to the point at which such action was warranted. The owner acquired it at his own risk, and ought to have been aware of the implications of its listed status when acquiring it. It is not clear whether the Trust offered to buy the Tower when it was last sold, but this may be a relevant consideration.

The second question as to the ability of the Trust to repair and maintain the Tower were it to acquire the building remains uncertain. Although the Trust obtained a feasibility study, it does not appear to have prepared a plan demonstrating how it might give effect to the options identified were it to acquire the Tower. The trust argues that it would be unrealistic to do this as it does not own the building. While the position is a difficult one it is hard to consider the Trusts proposals to be substantial ones in their present state. They combine essential repairs with a modest and seemingly informal approach to the provision of public access to the building. It is not at all clear what this would amount to and it is not at all clear to what extent it would appeal to potential funders. It is not clear whether the trust has explored the probability of obtaining funding with any potential sources of grant aid. The Trust's submission in response to the application makes no case for the feasibility of its own proposals.

The dilemma posed by the Trust's position is that only if the Trust were to demonstrate that it could provide for the repair and future maintenance of the Tower would it seem reasonable to conclude that the conservation of the Tower through charitable ownership as described in policy HE9.2 (ii) (c) provides a realistic alternative to the proposals for which approval is now sought. The council should determine this application in light of the advice contained in point (ii) of the final section of my letter of 18 November 2010, namely, the Council should approve this scheme only if, first, the alternative of preserving the tower as a monument is judged to be unrealistic, and, second, the applicants are able to provide assurances that their scheme would be implemented, perhaps by providing a bond to ensure the repair of the tower.

### The Victorian Society

- 9.8 The Victorian Society states their strongest objection to the proposals and recommends the council refuse consent. They note the building is grade 2\* listed placing it among the top 8% of listed buildings in the country and that it is an imposing and important landmark in the town centre conservation area. The open arches allow light to penetrate through the structure, highlighting the free standing character of the supports and creating a strong familiar silhouette. These are important characteristics of the listed building and every effort should be made to respect them. The application involves a significant amount of physical change which we believe will have a considerable detrimental impact on the special interest of this grade 2\* listed building. Of particular concern to the Society is the loss of original fabric from the water tank, the glazing in of the arches and the insertion of floor plates. These changes will alter the character and appearance of the water tower to an unacceptable degree. Your Council has refused consent for a number of applications for conversion that have involved glazing in the arches. On those occasions the building was grade II-listed. Since that time the Water Tower has been upgraded to II\*. The viability of the

proposals places in doubt the ability of the proposed uses to provide for the repair and long term maintenance of the building. The plans of the Balkerne Tower Trust demonstrate that it would be possible to repair and maintain the tower without the need for such damaging alterations as those proposed. We understand that a report commissioned by your Council in 1996 and produced by Purcell Miller Tritton did in fact recommend that public ownership with a limited use which generates sufficient income to maintain the fabric would be the preferred option for the water tower (para. 7.5). In summary, we believe that the current proposal will have a considerable detrimental impact on the special interest of the grade II\*-listed building, contrary to local and national planning policy. We urge your Council to refuse consent. We would urge you and the owner of the Water Tower to consider working with the Balkerne Tower Trust in order to find a better solution that involves minimum alteration to the building and allows for its repair and long term care.

#### The Council for British Archaeology

- 9.9 The Council for British Archaeology cannot support the proposal and agree with English Heritage that the proposal should be deferred to explore the viability of the scheme and the alternative of preserving the building as a monument. Jumbo is a famous local landmark and it's grade II\* designation recognises its wider national significance. The current scheme would be detrimental to the listed structure. A previous scheme met with approval some time ago and we wonder what has happened to this.

#### The Ancient Monuments Society

- 9.10 The Ancient Monuments Society object to the current proposals as we believe that creating floors between the legs of the tower would damage the special interest of this extraordinary building which is a notable landmark. This is an objection to listed building consent application 091343 which means that, if your authority is minded to grant consent, the application must be notified to the appropriate government office in accordance with Annex A of Circular 08/2009.

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 Representations**

- 10.1 The consultation exercise undertaken has resulted in 1 response in support of the application and 27 against.

- 10.2 The following issues were raised by the objectors:

- Do not allow this iconic building to be reduced to a block of flats or commercial outlets;
- Harm to the quality of life of the residents of the neighbouring retirement flats (Parsley House) by reason of overlooking/loss of privacy, loss of light/overshadowing, inadequate parking, rise in traffic movements, additional noise and disturbance during and post construction, smells from cooking and refuse waste;



- Unsympathetic alterations to the building including infilling the legs and removing two walls of the water tank will harm the character and special interest of the building;
- Loss of heritage;
- Loss of important character and historical fabric;
- Harm to the listed building and the conservation area;
- The silhouette would be permanently altered with the infilling of the legs;
- The alterations proposed are totally at odds with the grade 2\* listing;
- Contrary to PPG15 and local conservation policies;
- There is no need for more offices, flats or another restaurant in Colchester;
- Jumbo is so important that only minimal alterations should be allowed;
- The Balkerne Tower Trusts proposals are more sympathetic;
- Inadequate parking/loading/turning leading to harm to highway safety;
- Hazardous materials present during construction;
- Road access to the site is inadequate and inappropriate for a development of this size;
- Despite yellow line restrictions in the area parking is not enforced;
- Unacceptable rise in traffic generation;
- Pavements in the area are narrow and cannot cope with the pedestrian foot fall at present;
- Pedestrian numbers have increased greatly with a higher mix of elderly people;
- Local policies not taken into account;
- The level of development is excessive for the size of the plot and the location;
- None of the schemes put forward are viable;
- There is a risk that work would commence without sufficient resources to complete the development. The Council should enter into a legal obligation to ensure that a bond is put in place by the developer to ensure there are sufficient funds to complete the development were the developer to go bust.
- The area already has activity and vitality due to the shops, restaurants and the theatre, it does not need more;
- Where will contractors vehicles park;
- Trees next to the site could be damaged or felled;
- Jumbo should be turned into a museum or at least have a dual use;
- The harm to the building would harm the tourist draw of the town;
- This largest surviving water tower is arguably the only capable of conversion for public access with the potential for educational visits and tourism the most desirable and sustainable option for long term preservation;
- The neglect of the building should not be used to justify this harmful change;

10.3 The following comments were made by the supporter:

- The plans are innovative and would enhance the building which is a run down mess;
- The plans of the Balkerne Tower Trust are not what the tower needs;
- Lets not loose this opportunity.

10.4 One letter was received while not objection to the current proposals, objecting to the existing light on the side of the structure which shines into a neighbouring flat and requesting whether this could this be moved.

10.5 Bob Russell MP notes that over the years different members of the planning committee have concluded on EVERY occasion that various proposals to alter and disfigure Jumbo should be refused. On one occasion an appeal was allowed for partial re-development but crucially required the retention of the open feature of the legs on which the water tank sits. At that time Jumbo was listed as grade 2. Since this appeal decision the status of the building has been upgraded to grade 2\*. With the status upgraded there should be no further reduction on what was agreed by the inspector. Consequently, these applications should be refused on the grounds that they are inferior to that which was approved at appeal and fail to recognize the upgraded status of the building. I find it hard to accept that Jumbo's current condition puts it at risk, however, I recognize that the roof and viewing area need attention but this should not be used as an excuse to say the whole building is at risk. Colchester Borough council should serve a Repairs Notice on the owners to make good these areas. A better future would be brought about by the imaginative and sensitive proposals put forward by Purcell Miller Tritton on behalf of the Balkerne Tower Trust.

#### The Balkerne Tower Trust (BTT)

- 10.6 BTT object to the current proposals. They have submitted a number of letters setting out their reasons for objecting and putting forward their alternative proposals for Jumbo. They state the proposals contravene planning policy whereas their proposals fully satisfy them. Introducing flats and offices in an historic building would prejudice the importance of the town centre as the main leisure, tourism and cultural centre of the Borough.
- 10.7 In response to English Heritages comments they made the following additional comments. BTT was formed in a hurry in Feb 2006 in an attempt to bid for Jumbo at the auction, for which only three weeks notice was given. BTT have written to the applicant in the past but have not been approach subsequent to this.
- 10.8 In response to comments from English Heritage, that in order to be considered a realistic alternative to the current proposal BTT needs to demonstrate that it could provide for the repair and future maintenance of the tower, BTT has submitted responses from potential funders as to the probable success of grant applications and the amount of any such grant, were BTT to acquire Jumbo.
- 10.9 Updated comments were received more recently referring to the Local Development Framework Proposals Map noting its allocation for Cultural Facilities, considering this excludes residential or commercial. BTT's proposals for Jumbo would contribute to the Core Strategy's vision of Colchester as an iconic destination for culture and learning, the current proposal would not. The letter lists relevant local and national planning policies stating how the BBT's proposals would comply with the policies and the current proposals would not. They also state that the grade 2\* building is simply treated as a shell to be redeveloped as if it were unlisted and of no particular merit. The proposals cannot be said to be substantial public benefits. No evidence has been provided that other potential owners or users of the site have been sought or that appropriate marketing has been carried out. BTT have made several attempts to communicate with the applicant but to date has only received a simple acknowledgement. At the time of the previous appeal in 2001, Jumbo was grade 2 listed, it is now grade 2\*, therefore it cannot be assumed that the removal of any of the tank walls is acceptable. The appeal inspector acknowledged that the history of the site is of great interest and a material consideration.

- 10.10 As a charitable trust interested in the preservation of Jumbo, BTT have also submitted information regarding their ability to purchase, repair and ensure the long term preservation of Jumbo.

### Save Britain's Heritage

- 10.11 Save Britain's Heritage express serious concerns over these proposals and urges the council to refuse the application. They state that Jumbo is the largest remaining Victorian water tower in Britain and a rare unconverted example, noting its dominant presence and architectural importance reflected by its grade 2\* status. The proposal involves radical changes, most importantly to the water tank (the towers key feature and raison d'être) which will suffer the replacement of two of its walls with glass panels. These changes will have a major impact and be visible for miles. A more sensitive approach is required taking into account the aims of the Balcerne Tower Trust including the provision of public access and the preservation of the architectural integrity of the tower.

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

## **11.0 Parking Provision**

- 11.1 The application proposes two vehicle parking spaces for use of the penthouse flats, 1 space per flat.
- 11.2 If the adopted parking standards are applied, the proposal would generate a need for the following. A minimum of 9 vehicle parking spaces and 5 bicycle spaces for the residential units. A maximum of 9 vehicle parking spaces, 3 bicycle parking spaces and 1 powered two wheeler space for the office use. A maximum of 57 vehicle parking spaces, 6 bicycle parking spaces and 1 powered two wheeler space for the restaurant. The adopted standards do require that in all cases adequate provision shall be made for the parking and turning of service vehicles serving the site, off the highway.
- 11.3 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.
- 11.4 In their submission the applicants state that "*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 access drive.*" They further state that "*the provision of two parking spaces is considered to be the minimum necessary in order to successfully market the high value penthouse flats.*"
- 11.5 The Highway Authority recommends refusal on the grounds that proposed parking provision is not in accordance with the current parking standards and will lead to indiscriminate parking in the adjacent highway contrary to the safety and efficiency of the highway. Further that the proposal would lead to loading, off-loading and servicing within and from the adjacent street causing danger and obstruction to road users contrary to highway safety and efficiency.

- 11.6 Core Strategy Policy TA5 states that development should be managed to accord with the accessibility of the location and that within centres and other accessible locations, car parking should be minimised. It goes on to say that car free and low car development will be encouraged in the Town Centre. Development Policy DP19 states that a lower standard may be acceptable or required where it can be clearly demonstrated that there is a high level of access to services, such as a town centre location.
- 11.7 There is no doubt that the parking provision is well below the adopted standards before taking account of the central sustainable location of the site. We would not expect town centre offices or restaurants to provide on site vehicle parking for staff or customers. We would expect staff and customers to use public transport, walk or cycle, or if they did drive to use the public car parking across the bridge in St Mary's car park or one of the other town centre car parks. Similarly for town centre residential flats adopted policies indicate that car free and low car development will be encouraged in the Town Centre.
- 11.8 The roads surrounding the site are double yellow lined which would restrict most on-street parking in the adjacent roads.
- 11.9 In terms of the setting of the listed building we would not want to see the site surrounded by parking as this would harm the setting of the listed building and the character of the conservation area.
- 11.10 No cycle parking is proposed however this can be controlled by condition.
- 11.11 In terms of parking for delivery vehicles the applicants indicate that short term parking would be possible within the access drive.
- 11.12 It is not considered that an objection to the proposal on parking and servicing could be sustained in this central location.

## **12.0 Open Space Provisions**

- 12.1 The proposal does not make any open space provision due to the limited site area. Further no contributions have been offered towards open space, sports and recreation facilities as required by the SPD of that name. This is discussed further in the report section below.

## **13.0 Report**

### Policy Principles

- 13.1 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 East of England Plan (RSS); 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 Planning Policy Statements PPS1, PPS4, PPS5 and Planning Policy Guidance PPG13.

- 13.2 In respect of decisions concerning listed buildings and conservation areas, there are also legal provisions that impinge upon decision-making that must be taken into account and which therefore overlap with the decision-making policies listed above:
- (i) in considering whether to grant planning permission for development that affects a listed building or its setting or whether to grant listed building consent, 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); and,
  - (ii) in considering whether to grant planning permission with respect to any buildings or other land in a conservation area, the local planning authority shall 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).
- 13.3 Planning Policy Statement 5 (PPS5) 'Planning for the Historic Environment' is the key policy consideration in this case.

#### Land Use

- 13.4 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, with main town centre uses, including retail, offices, leisure and cultural facilities, should take a sequential approach that gives priority
- 13.5 Whilst the uses proposed are not specifically culture/leisure/tourist related, they do not specifically prejudice this allocation.
- 13.6 The proposed uses are also consistent with PPS4 which identifies retail, leisure, offices and culture as main town centre uses and housing within mixed-use, multi-storey developments.
- 13.7 The site is within a highly accessible location and the proposed mix of uses is considered acceptable for this location.

### Alteration to the building

13.8 The principal changes proposed to the building can be summarised as follows:

- The removal of the north and south walls of the cast iron tank and their replacement with tinted grey glazed screens to provide light to the two penthouse apartments, and
- Inserting glazed walls within the arches that support the superstructure, together with six floors of accommodation and a mezzanine within the enclosed area.

13.9 The effect of these works on the special interest of the tower would be significant. The works would compromise the integrity of the original water tank by the removal of two of the walls together with adding a substantial phase on new work infilling the area between the legs.

13.10 English Heritage consider that the character of the tower as a historic functional building constructed to provide a public utility would be impaired, as would the character of the tower as a monumental Romanesque composition, by the filling in of the four arches upon which the superstructure rests. However, they acknowledge that much of the towers special interest would survive. It would still serve as a monument to 19<sup>th</sup> Century improvement in general and to the improvement of the public water supply in particular. The Romanesque composition would still exist, albeit married to the new work infilling the legs. Jumbo would remain as one of Colchester's most conspicuous landmarks and would retain its symbolic silhouette, but undoubtedly the buildings character and its presence in the townscape would radically change.

13.11 The comments of the English Heritage, the Conservation Officer and the other consultees are noted. There is no dispute the proposal would radically alter the appearance of the Tower. The proposed works should be considered to cause substantial harm to the significance of the Tower and the application should therefore be tested against policy HE9.2 of PPS5. This is considered below.

### PPS5

13.12 Policy HE7.2 of PPS5 requires local planning authorities to take into account the particular nature of the significance of the heritage asset and the value that it holds for this and future generations.

13.13 Jumbo is one of Colchester's most conspicuous landmarks. The tower rising above the town centre has become a symbol of the town's identity. The exceptional architectural and historic interest of the building is reflected in its listing at grade II\*. English Heritage describes its interest as evidential, historical, aesthetic and communal stating it is a startlingly ambitious manifestation of the 19<sup>th</sup> 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 the most monumental character, the design of which transcends the building's utilitarian purpose.

13.14 Policy HE9.1 of PPS5 states that there should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Jumbo is listed as grade II\*. Grade II\* buildings are particularly important buildings of more than special interest with only 5.5% of listed buildings being Grade II\*. Policy HE9.1 goes on to say that loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of designated heritage assets of the highest significance, including grade I and II\* listed buildings should be wholly exceptional.

13.15 English Heritage state that the proposed works should be considered to cause substantial harm to the significance of the Tower and the application should therefore be tested against policy HE9.2 of PPS5.

13.16 Policy HE9.2 states that where the application will lead to substantial harm to significance local planning authorities should refuse consent unless it can be demonstrated that:

- (i) the substantial harm to or loss of significance is necessary in order to deliver substantial public benefits that outweigh that harm or loss; or
- (ii)
  - a) the nature of the heritage asset prevents all reasonable uses of the site; and
  - b) no viable use of the heritage asset itself can be found in the medium term that will enable its conservation and
  - c) conservation through grant-funding or some form of charitable or public ownership is not possible; and
  - d) the harm to or loss of the heritage asset is outweighed by the benefits of bringing the site back into use.

13.17 The applicant considers there are substantial public benefits arising from the proposals which should lead to a conclusion that the public benefits outweigh the harm to the significance of the building. They give four reasons for this conclusion:

- 1) the scheme will bring the building back into active use which the government recognises at paragraph 93 of the PPS5 Planning Practice Guide is a public benefit;
- 2) the development proposed and the improvement to its setting will result in a significant enhancement to the visual character of the immediate environs of the tower which is within the Conservation Area;
- 3) the proposal would also ensure the long term future of the tower as an iconic feature of the wider townscape;
- 4) the proposal will, for the first time in 20 years, allow public access to all levels below the tank level within the building enabling public appreciation of the internal structure and features of the tower and facilitating public views of the wider townscape from the high level restaurant.

- 13.18 Keeping land in an active use is considered to be a public benefit by the Planning Practice Guide. It is considered the proposed hard and soft landscape works around the tower would improve the immediate setting of the tower and it is considered the proposal would ensure the long term future of the tower. However, regarding public access, the ground and first floors would be private offices, the second and third floors private dwellings and the fourth floor kitchen to the restaurant. The public would be able to gain access to the ground floor lobby and the fifth and sixth floor restaurant as diners. While the proposal would undoubtedly deliver public benefits, it is not considered these would amount to substantial public benefits that would outweigh the substantial harm to the significance of the Tower.
- 13.19 English Heritage does not consider that the proposal will meet the first test of policy HE9.2, therefore the second test must be considered. They summarise the main issues as follows: is the conservation of the Tower by a charitable trust possible? If it is, the present application should be refused. If it is not, and the present scheme is considered to be viable, then consent should be given, as the harm entailed would be outweighed by the benefit of securing the Tower's future. They state the Council should approve this scheme only if, first, the alternative of preserving the tower as a monument is judged to be unrealistic, and, second, the applicants are able to provide assurances that their scheme would be implemented, perhaps by providing a bond to ensure the repair of the tower.
- 13.20 HE9.2, ii, a) the nature of the heritage asset prevents all reasonable uses of the site.
- 13.21 It is clear that the building cannot revert to its original use which ceased in 1984. The design and nature of the building means that it is not suited to reuse without conversion of some sort. Reports commissioned by the Council beginning in 1996 identified no alternative uses for the building. Moreover, the reports revealed that funding for any proposals for Jumbo is unlikely to be realised from any public source.
- 13.22 HE9.2, ii, b) no viable use of the heritage asset itself can be found in the medium term that will enable its conservation.
- 13.23 The history of the site is an important consideration here. The original use ceased in 1984, following which the site was sold into private ownership. Other than for the occasional prayer meeting the building has been unused since being taken out of service. This is the primary reason the building is on the heritage at risk register. The reports commissioned by the Council beginning in 1996 identified no alternative uses for the building. The appeal Inspector in 2001 considered it seems unlikely that any proposal to convert this building, either with or without public funding, would attain viability, considering that this was a matter of prime importance that the Council had not considered.
- 13.24 The applicants have provided an analysis of seven development options, none of which attain viability.
- 13.25 Given the cost of repairs to the building, it is not considered that a viable use of the heritage asset itself could be found in the medium term that would enable its conservation.
- 13.26 HE9.2, ii, c) conservation through grant-funding or some form of charitable or public ownership is not possible.



- 13.27 The Council has expressed no interest in acquiring the building. The obvious source of charitable ownership is the Balcerne 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 representations were summarised earlier in the report. The Trust has gone to great lengths to try to demonstrate that their proposals to conserve the building and provide public access are sound and viable. The acknowledged dilemma posed by the Trusts position is that only if the Trust are able to demonstrate that it could provide for the repair and future maintenance of the Tower would it be reasonable to conclude that the conservation of the tower through charitable ownership provides a realistic and achievable alternative to the current proposals. The intention of government advice is to secure the long-term conservation of protected buildings and this is not achieved merely by the ownership by a public body or charitable trust.
- 13.28 While the aims of the trust are highly laudable, on balance, it is not considered that their proposals can be considered realistically achievable to secure the long term future of the building. While they have identified potential grant funders, not being the owners of the building they cannot apply for grants. There is no reasonable certainty that they could acquire the building or fund the repairs, ongoing maintenance, and insurance and public liability costs. It is therefore considered that it would not be reasonable to refuse permission on the ground that conservation through grant funding or public or public ownership is possible.
- 13.29 HE9.2, ii, d) the harm to or loss of the heritage asset is outweighed by the benefits of bringing the site back into use.
- 13.30 English Heritage considers that if the conservation of the Tower by a charitable trust is not possible, and the present scheme is considered to be viable, then consent should be given, as the harm entailed would be outweighed by the benefit of securing the Tower's future.

#### Viability

- 13.31 The next significant issue is that of viability. The Historic Environment Planning Practice Guide associated with PPS5 indicates that it is important that any use is viable, not just for the owner but also for the future conservation of the asset. Viable uses will fund future maintenance.
- 13.32 The difficulty here is that none of the options put forward by the applicant or even BTT can be considered viable. The costs of repair and maintenance of the building are so great that it would seem unlikely that any proposals to convert the building would attain viability. This was the opinion expressed by the appeal inspector in 2001 and I see no reason to disagree with this assessment.
- 13.33 Regarding viability the applicant suggests that this should be considered in two stages:
- a) the viability of the implementation, and
  - b) the viability of the proposed uses.

13.34 They indicate that the applicant proposes to fund the initial deficit himself so the Council and English Heritage should only be concerned with the potential adverse consequence of the building work commencing but not being completed. The applicant indicates that they would be willing to consider a bond, as suggested by English Heritage, to ensure the repair of the tower in the event that works stopped, notwithstanding that there is no suggestion in government advice that bonds should be required. The applicant also puts forward the alternative approach of imposing a condition precluding commencement of works until evidence for funding and implementation of the complete scheme of works or repair has been submitted to and approved in writing by the Council.

#### Marketing to demonstrate redundancy

13.35 Policy HE9.3 of PPS5 states that to be confident that no appropriate and viable use of the heritage asset can be found under policy HE9.2 (ii) local planning authorities should require the applicant to provide evidence that other potential owners or users of the site have been sought through appropriate marketing and that reasonable endeavours have been made to seek grant funding for the heritage asset's conservation and to find charitable or public authorities willing to take on the heritage asset.

13.36 The applicant has not provided evidence that other potential owners or users of the site have been sought through appropriate marketing as they consider the proposal would fall squarely within part (i) of Policy HE9.2 of PPS5. They also note that although English Heritage identified certain matters it considered needed to be resolved, it did not identify any need to conduct a marketing campaign.

13.37 With regards to marketing the Historic Environment Planning Practice Guide confirms that no-one is obliged to sell their property. The purpose of marketing is to demonstrate that no viable use for the asset can be found.

13.38 The issue of viability and other potential users of the site this has been discussed above. The future of the site has been in the public eye for some time now with previous applications and the auction of the building. These applications have been in the public domain for two years and the only person or group to express an interest in taking the building on has been the Balkerne Tower Trust and their proposals have been considered above. The applicants have submitted thorough options appraisals and viability analysis of these options. It is not considered that there is any realistic opportunity of unforeseen commercial alternatives being advanced by any unknown third party who would be less harmful to the heritage asset and viable.

13.39 On balance, for the reasons above it is not considered that it would be appropriate in this case to require the applicant to undertake a marketing campaign.

#### Impact on the Conservation Area

13.40 The Town Centre Conservation Area Character Appraisal identifies Jumbo as the dominating feature of the Balkerne passage area rising to approximately 110 feet high in a Roman 'campanile' style, with echoes of a triumphal arch. It notes that it was decommissioned in the 1980's, but has become one of the most familiar images of Colchester and is rightly listed Grade II\*.

- 13.41 The main impacts on the Conservation Area would be the impacts of the alteration of the listed building itself which have already been discussed above. The matter which has not been discussed is the impact of the development at night and issues of light spillage.
- 13.42 While internal lighting of the development would be visible during the hours of darkness, there is no suggestion that it would beam into the night sky like a lighthouse. The initial lighting scheme could be controlled by a condition requiring the submission of a lighting scheme which considered the external impact during the hours of darkness, however, subsequent changes to internal lighting to any private residential properties could not reasonable be controlled.
- 13.43 It is not considered that light spillage would necessarily result in harm to the character of the Conservation Area but would represent an honest expression of any conversion undertaken, a view previously expressed by the Planning Inspector in 2001. The inspector also opinioned that any light emission might be seen as a small price to pay for the reoccupation and on-going preservation of this listed building.

#### Impacts on Neighbouring Properties

- 13.44 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, rise in traffic movements.
- 13.45 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 on the north elevation of the tower. The internal layout of the proposed development places the emergency stairs behind the glazed wall within the legs on the north elevation. To avoid undue overlooking from this area it would be possible to put a glazing system in place to prevent loss of privacy from this area. There are a number of ways this can be achieved from traditional obscured glass to more hi-tech systems. This is an area where additional details should be submitted along with the glazing system and which can be controlled in perpetuity via condition. Due to the height of the tower, it is not considered that undue overlooking would occur from the penthouse tower elements due to the distances and angles involved.
- 13.46 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 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.
- 13.47 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.

13.48 The extract units for the proposed kitchen are at a high level on the fourth floor and face out to the east in the direction of the High Street. Environmental control has not raise 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.

#### Amenity Provisions

13.49 No usable amenity space would be provided within the application site for the proposed residential properties. The proposal relies on its location within the town centre and the open spaces therein for the amenity of the residents.

#### Highway Issues

13.50 Vehicular access and egress to the site is either via Church Street or Balkerne Passage. While both of these roads are rather narrow, the Highway Authority do not raise any objections regarding access to the site.

13.51 The Highway Authority objects to the proposals on the grounds that parking provision is not in accordance with the current parking standards and will lead to indiscriminate parking in the adjacent highway contrary to the safety and efficiency of the highway. Further that the proposal would lead to loading, off-loading and servicing within and from the adjacent street causing danger and obstruction to road users contrary to highway safety and efficiency. These matters were discussed in the parking section above and will not be repeated here.

#### Planning Obligation

13.52 With regard to the adopted SPD's for Open Space and Community Facilities, the proposal would generate the requirement for a contribution of £27,320.22.

13.53 The applicant considers that in view of the negative market value which would result from the proposed development and the wider public benefits which would accrue and having regards to Governments advice in Circular 05/05 'Planning Obligations', that it would not be reasonable for the Council to require developer contributions towards public open space and community facilities as set out in the adopted SPD's.

13.54 Circular O5/05 indicates that planning obligations may only be sought where they meet *all* of the following tests.

13.55 A planning obligation must be:

- (i) relevant to planning;
- (ii) necessary to make the proposed development acceptable in planning terms;
- (iii) directly related to the proposed development;
- (iv) fairly and reasonably related in scale and kind to the proposed development; and
- (v) reasonable in all other respects.

13.56 Regulation 122 of the Communities Infrastructure Levy Regulations 2010, has made three of the five tests set out in Circular 05/05 Planning Obligations, Statutory.

13.57 Regulation 122 of the CIL Regulations 2010 states that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

13.58 Bearing in mind the negative market value of the proposed scheme and the benefits which would result from the development in respect of the repair and long term maintenance of the listed building, it is not considered that it would be reasonable for the Council to require the SPD contributions in this case.

#### Other Matters

13.59 English Heritage raise the possibility of the applicants commencing the development but being unable to complete, for whatever reason, leaving the building in a compromised condition. To avoid this situation English Heritage suggests that the applicants be required to provide a bond to ensure for the repair of the tower in the event the developer is unable to complete the scheme. The applicant puts forward the alternative approach of imposing a condition precluding commencement of works until evidence for funding and implementation of the complete scheme of works or repair has been submitted to and approved in writing by the Council. While a condition would go some way to allay the concerns expressed by EH this approach would not guarantee that work would not cease. It is therefore considered that a bond to secure the repair of the building would be the best way of securing the repair or completion of the works in the event the developer being unable to complete the works.

13.60 A condition requiring the provision and implementation of a management and maintenance plan for the building should be attached to any permission granted, to ensure the future maintenance of the building and the external spaces.

16.61 This is not the first such proposal for a listed water tower in the Borough. Members attention is drawn to the conversion that has occurred to the Wivenhoe water tower, also a listed building. In this case the tank was completely removed and replaced with glazing to all four sides. The building is located within a residential area and issues of privacy and overlooking were overcome through good design. This is brought to Member's attention for information, all applications must be dealt with in the merits of each case. There are clearly many differences between the proposals and the original water towers, the Wivenhoe tower does not have open legs and is not of the scale of Jumbo. However, the Wivenhoe water tower has been successfully converted and it remains an iconic landmark in the area but now has an active use that will ensure its long term preservation.

## **14.0 Conclusion**

- 14.1 The proposals are considered to result in substantial harm to the special interest of the heritage asset but not total loss of significance. Bringing the site back into active use is considered to be a public benefit and the proposal has the potential to secure the long-term repair and future maintenance of the heritage asset. The PPS5 Planning Practice Guide indicates that local planning authorities may need to apply other development control policies flexibly and imaginatively to achieve long term conservation, acknowledging it may be necessary to make an exception to policy to bring a redundant listed building back into use. On balance, it is considered that the benefits of bringing the site back into use, namely the repair of the building and its future economic use, would outweigh the harm to the heritage assets affected.
- 14.2 While it may not be a popular conclusion, on balance, it is considered that the alternative of preserving the tower as a monument in public or charitable ownership is rather unrealistic and it is not considered that a refusal could be sustained on these grounds.

## **15.0 Background Papers**

- 15.1 PPS, Core Strategy; CBDP; SPG, Conservation Officer; EH; PP; HH; Cultural Services; BC; HA; VS; Council for British Archaeology; Ancient Monument Society, NLR; CBC; BTT; Save Britain's Heritage

### **Recommendation for both 091305 & 091343**

Authority be given to the Head of Environmental and Protective Services to approve the application subject to the following:

- 1) The submission of more detailed drawings showing glazing systems including the location of window openings and areas of obscuration and the mechanisms to achieve this, details of any mechanical ventilation systems to both residential and commercial elements, details of cycle parking, further details of bin storage arrangements for both residential and commercial elements, confirmation of compliance with Building and Fire Regulations to avoid later requests for changes to the proposals.
- 2) The completion of a S106 agreement to secure a bond to cover the cost of the completion of building works or the repair of the building in the event of the developer commencing the development but being unable to complete, for whatever reason, leaving the building in a compromised condition.
- 3) Subject to the receipt of satisfactory details listed above the application be notified to the Government Office in accordance with Annex A of Circular 08/2009.
- 4) Subject to the application not being called in by the Government Office and the completion of a S106 agreement detailed above, the application be approved subject to conditions to cover the following:

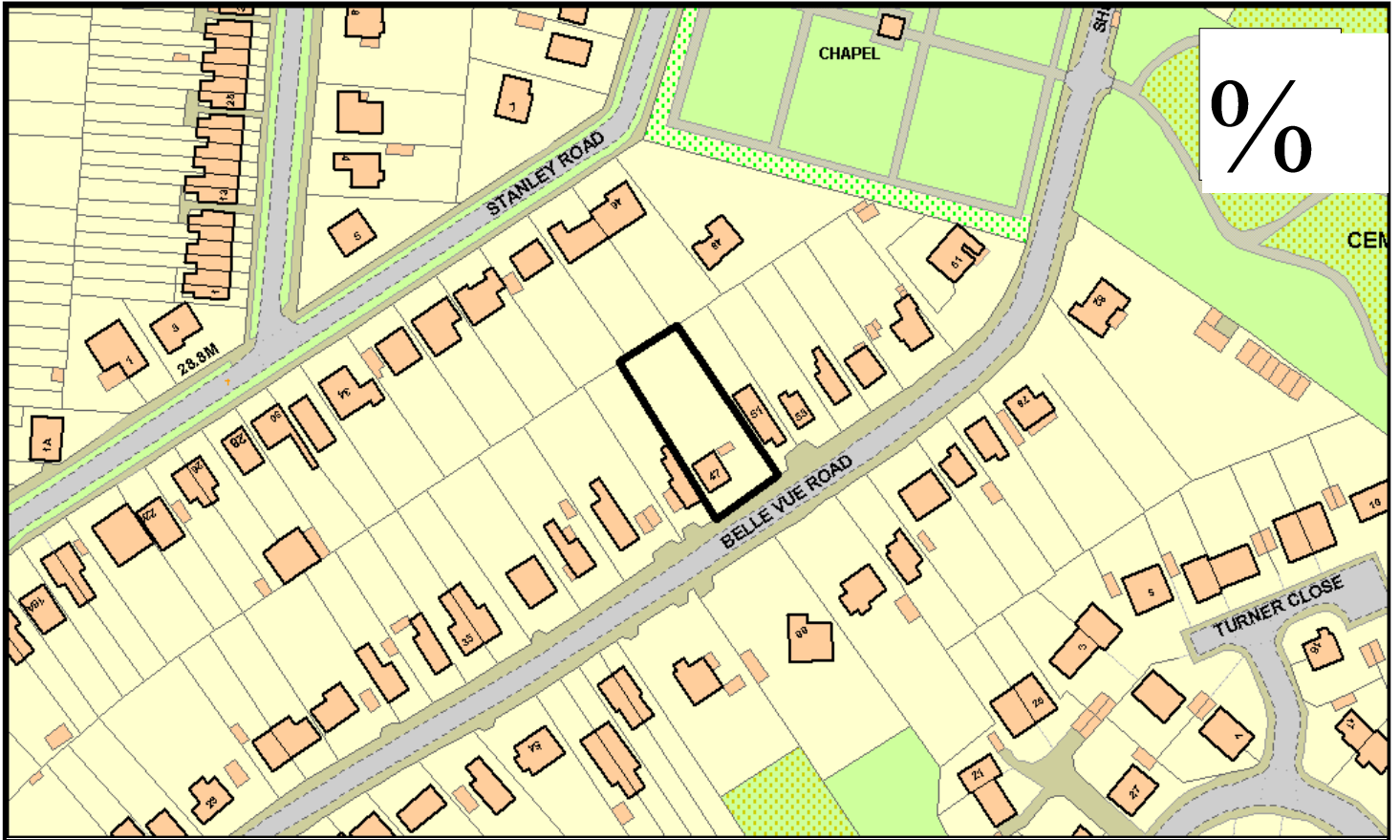
## Conditions:

- Time limit for commencement
- Approved drawings
- Use of building
- Materials and detailing
- Submission of a construction method statement
- Hours of working on site
- Sound insulation against internal and external generated noise
- Site boundary noise levels
- Light Pollution
- Control of fumes and odours
- Submission of a risk assessment for the removal of Pigeon guano
- Contaminated land conditions
- Tree protection
- Hard and soft landscaping submission
- A management company to be made responsible for all communal areas
- Provision of cycle parking
- Provision of refuse and recycling storage
- Obscure glazing

## Informatives

(1) 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 01206 838600.



**Application No:** 111170

**Location:** Land Adjacent To, 47 Belle Vue Road, Wivenhoe, Colchester, Colchester

**Scale (approx):** 1:1250

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### 7.3 Case Officer: Nick McKeever

**OTHER**

**Site:** 47 Belle Vue Road, Wivenhoe, Colchester, Colchester

**Application No:** 111170

**Date Received:** 21 June 2011

**Applicant:** Mr And Mrs D Dykes

**Development:** Reserved matters conditions 1,2,3,5,8,9,10,11,15,17,18,20 for permission 090822 (new three bedroom dwelling)

**Ward:** Wivenhoe Quay

**Summary of Recommendation:** Conditional Approval

#### 1.0 Introduction

1.1 This application is referred to the Planning Committee because the parking provision does not fully accord with policy and there is an objection from Wivenhoe Town Council relating to the parking issue.

#### 2.0 Synopsis

2.1 The application seeks approval of reserved matters following a previous outline consent. The design of the new dwelling and its relationship to the street scene and the adjoining dwellings are all considered to be acceptable. The scheme provides for a double garage with a turning area in front of the garage doors. The garage will provide one parking space for the existing dwelling and the new dwelling. The report will consider this issue and conclude that, given the particular circumstances, this parking provision is acceptable.

#### 3.0 Site Description and Context

3.1 The site contains one existing dwelling with a wide plot, with amenity area to the side of the dwelling as well as to the rear. The plot is relatively deep, similar to others in the street but appears wider because of the amenity area to the side of the property.

3.2 Belle Vue Road is a road of varying styles, with bungalows and chalets cheek-by-jowl with two-storey houses. The principle of an infill is thus not controversial and the proposal benefits from outline planning permission. Other side gardens have already been infilled as set out in Relevant Planning History.

#### **4.0 Description of the Proposal**

- 4.1 The application seeks approval of the appearance, landscaping, layout and scale; these being matters reserved by the original outline permission 090822 dated the 11<sup>th</sup> August 2009. The access was considered as part of this outline permission.
- 4.2 The proposal is for a detached, three bedroom, two storey dwelling. The layout plan shows the building as following the building line of No. 47 Belle Vue Road, but forward of No.51 belle Vue Road.
- 4.3 The dwelling itself is a detached, two-storey, three bedroom house with a side pitch gable roof. A bay window is provided on the front elevation, with the main entrance being provided within the east facing side elevation. There are windows placed within all of the elevations at ground floor and first floor levels. A single storey garden room is provided on the rear elevation.
- 4.4 There is a single shared access off belle Vue Road leading to a detached garage with a fully hipped, slate covered roof, located to the rear of the existing and the proposed dwellings.

#### **5.0 Land Use Allocation**

- 5.1 The Land is allocated residential land and is currently garden land to 47 Belle Vue Road.

#### **6.0 Relevant Planning History**

- 6.1 Applications O/COL/04/1872 (Outline) and RM/COL/05/0741 (Reserved Matters) gave permission for a similar infill development at 21 Belle Vue Road. The Outline was granted by the Planning Committee on 14 December 2004. The Reserved Matters were approved at the 5 August 2005 Planning Committee. This dwelling has been implemented.
- 6.2 Application 090822 – Granted outline planning permission for a 3-bedroomed dwelling.

#### **7.0 Principal Policies**

- 7.1 The following national policies are relevant to this application:  
Planning Policy Statement 1: Delivering Sustainable Development  
Planning Policy Statement 3: Housing  
Planning Policy Statement 4: Planning for Sustainable Economic Growth
- 7.2 In addition to the above national policies, the following policies from the adopted Colchester Borough Core Strategy (December 2008) are relevant:  
SD1 - Sustainable Development Locations  
SD2 - Delivering Facilities and Infrastructure  
SD3 - Community Facilities  
H1 - Housing Delivery  
H2 - Housing Density  
H3 - Housing Diversity  
UR2 - Built Design and Character

PR1 - Open Space  
TA4 - Roads and Traffic  
TA5 - Parking

- 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  
DP4 Community Facilities  
DP12 Dwelling Standards  
DP13 Dwelling Alterations, Extensions and Replacement Dwellings  
DP16 Private Amenity Space and Open Space Provision for New Residential Development  
DP17 Accessibility and Access  
DP18 Transport Infrastructure Proposals  
DP19 Parking Standards
- 7.4 Regard should also be given to the following Supplementary Planning Guidance/Documents:  
Backland and Infill  
Community Facilities  
Vehicle Parking Standards  
Sustainable Construction Open Space, Sport and Recreation  
Extending your House  
The Essex Design Guide  
External Materials in New Developments

## **8.0 Consultations**

- 8.1 The Highway Authority has no objection subject to conditions.
- 8.2 Environmental Control comment that Planning Police Statement 23 (PPS23) states that where contamination is known or suspected the local planning authority should require the applicant to provide with the application such information as is necessary to determine whether the proposed development can proceed. This minimum information should be the report of a desk study and site walkover, also known as a phase 1 investigation. It is important to inform the Planning Officer of this in a consultation where this is appropriate. Any permission should be subject to appropriate conditions.  
*Officer Comment; This is an application for the approval of reserved matters and it is not appropriate to impose these conditions.*
- 8.3 The Landscape Officer comments:-

“The landscape proposal needs to be cross checked against the council’s standard requirements available on our website at [http://www.colchester.gov.uk/Info\\_page\\_two\\_pic\\_2\\_det.asp?art\\_id=956&sec\\_id=506](http://www.colchester.gov.uk/Info_page_two_pic_2_det.asp?art_id=956&sec_id=506) under ‘Submitting Landscape Proposals’ and ‘Guidance Notes A (LIS/B)’ and where applicable amended accordingly to fully accord with them. In essence clauses 4.4 points 1 & 2 of LIS/B need to be adhered to (in practice it would be sufficient to simply add these as notes to the proposal drawing).”

8.4 The Council's Arboricultural Officer comments that the proposal appears to show a tree to be retained. A tree survey and arboricultural implication assessment should be provided.

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 Town Council Response**

9.1 Wivenhoe Town Council raise the following concerns:-

- Inadequate on-site parking, which could encourage parking within this busy main road;
- Implications of a shared drive, which may at times be blocked thereby resulting in parking within the road;
- Disturbance caused by engine noise within this rear garden area

## **10.0 Representations**

10.1 An objection has been received from a local resident raising the following concerns:-

- (i) The scale of the proposed building. The site is narrow (previously containing a single garage attached to No. 47 and a strip of garden) and we have concerns that a three-bedroom dwelling plus double garage to the rear constitutes a large amount of land in-fill in that space.
- (ii) Access. Vehicular access to the garage appears tight with limited room for manoeuvre and space for only one car per house (47 and the new dwelling). Any additional cars would add to parking on the street.

## **11.0 Parking Provision**

11.1 The submitted drawings show the provision of a double garage located to the rear of the existing and the proposed dwellings, served by a shared access off Belle Vue Road. This garage is of brick construction with a hipped, slate roof. The dimensions of 7.64m x 6.74m are slightly in excess of the minimum dimensions of 7m x 6m recommended in the adopted parking standards.

11.2 In front of the garage is a vehicular turning area of 7m x 7m.

11.3 In order to fully comply with the adopted standards two spaces would need to be provided for each dwelling, together with one visitor parking space. The visitor space can be provided within the public highway in a situation such as in this location where there are no parking restrictions.

11.4 An outline scheme previously submitted showed parking and turning being provided within the site frontage. This car dominated development was deemed to be unsatisfactory and was refused permission. The scheme was subsequently amended to show parking to the rear as per the current proposal.

11.5 In terms of the current plans, an additional parking space can be accommodated in the turning area. In this context the previous application was reported to the Planning Committee as follows:-

“It should be noted that nearby properties do not have any turning areas. This means that existing residents are already reversing out of the site as a common pattern in this street. This would be a materials consideration in any appeal. Thus, the importance of the urban character of the area has been given comparably greater weight to highway arrangement in this context than in most other application circumstances”.

11.6 On this basis, and in the absence of any objection by the Highway Authority to the parking provision shown on the submitted drawings, the development is considered to be acceptable.

## **12.0 Open Space Provisions**

12.1 The outline application included a Unilateral Undertaking which secured an “Open Space, Sport and Recreational Facilities” contribution.

## **13.0 Report**

13.1 The principle of this infill development has been accepted by the previous outline permission. The current application only seeks approval for reserved matters. In this case these matters are the appearance, landscaping, layout and scale.

13.2 The footprint and form of the proposed building is dictated by the narrow width of the plot and the need to provide an access to the detached garage. The design is considered to be acceptable and will not appear out of character with its particular context. In this respect the Design and Heritage Unit has been consulted and no objections have been raised.

13.3 The only design aspect that needed to be addressed was the rather bulky roof form. The pitch of this roof has since been reduced and is now considered to be acceptable.

13.4 The application proposes the use of external materials drawn from the vernacular palette (i.e. red facing brick, natural slate and feature concrete/stone cills and lintels and vertical sliding sash windows). As such the development complies with the Council’s adopted SPD on the use of external materials.

13.5 Whilst the concerns of Wivenhoe Town Council and the local resident are acknowledge, the principle of the shared access and the location of the garage were accepted through negotiations during the determination of the outline application. It is also noted that the Highway Authority has not raised any objection to this particular access and parking arrangement.

- 13.6 In terms of the impact upon residential amenity, the Committee report in respect of the 2009 permission stated that the proposed two storey infill development would not have an adverse impact on neighbouring properties subject to the details of windows. The current scheme shows a building of a similar size and location to that shown on the outline scheme. Whilst there are windows within the flank walls above ground floor level, these are all serving non-habitable rooms (landing, bathroom and en-suite) and as such are not considered to prejudice the amenity of the neighbouring dwelling. These windows can also be obscure glazed as an additional safeguard.
- 13.7 There is a tree on the site frontage, adjacent to the eastern boundary. Whilst the outline permission did not include any arboricultural impact assessment, there are conditions relating to the protection and retention of trees within the site. A previous application was supported by an Arboricultural Impact Assessment. This report concluded that there was only one Category B tree (Norway Maple), which is located on the front garden of No.47 Belle Vue Road adjacent to the south eastern corner. The submitted scheme showed the provision of a parking area in the vicinity of this tree, but the development was not considered to be constrained by this tree. The current scheme shows that the south eastern part of the remodelled access (i.e. part of the 1.5m visibility splay) will encroach within the tree canopy. In view of the previous Arboricultural Assessment, it is considered that this very minor encroachment is acceptable provided that appropriate tree protection measures are undertaken.
- 13.11 The Applicant has been advised of the recommendations made by in respect of the landfill site, the need to protect the existing tree as well as the comments made by the Landscape Officer.

## **14.0 Conclusion**

- 14.1 The proposed development is acceptable in terms of the design and layout of the new dwelling. There is no significant impact upon residential amenity. In view of the previous outline consent, and the reported comments relating to the provision of on-site car parking/ vehicular turning facilities, it is considered that the scheme is acceptable in respect of the proposed parking provision.

## **15.0 Background Papers**

- 15.1 PPS; Core Strategy; CBDP; SPG; HA; HH; AO; PTC; NLR

## **15.0 Recommendation - Conditional Approval**

### **Conditions**

#### **1 - Non-Standard Condition**

This permission is granted pursuant to the outline planning permission reference 090822 and is subject to the conditions and informatives contained within the outline permission.

Reason: For the avoidance of doubt as to the scope of this permission.

## 2 - Non-Standard Condition

The development shall be carried out in accordance with the approved drawings numbers 2011-20 01, 02, 03, 04A, 05 and 06 unless otherwise agreed in writing by the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning.

## 3 - Non-Standard Condition

Notwithstanding the detail shown on drawing number 2011-20 01, the detached garage shall be constructed in accordance with the amended drawing 2011-20 04A.

Reason: For the avoidance of doubt as to the scope of this permission and to ensure a satisfactory visual appearance to the roof of the detached garage.

## 4 - Non-Standard Condition

The external materials and finishes shall be in accordance with the details shown on the approved drawings unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure a satisfactory visual appearance.

## 5 - Non-Standard Condition

The screen walls and fences shall be erected in accordance with the details shown on the approved drawings prior to the occupation of the new dwelling hereby approved and shall be retained as such thereafter.

Reason: In order to provide a satisfactory form of development and in order to safeguard the amenity of the neighbouring dwellings.

## 6 – B4.2 (Windows to be Obscure Glazed)

The first floor windows in the side elevation of the hereby approved scheme shall be glazed in obscure glass with an obscuration level equivalent to scale 4 or 5 of the Pilkington Texture Glass scale of obscuration and shall be retained as such at all times thereafter.

Reason: In order to provide a satisfactory form of development and in order to safeguard the amenity of the neighbouring dwellings.

## **Informatives**

(1) 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 01206 838600.



**Application No:** 071786

**Location:** The Old Oyster Sheds, Coast Road, West Mersea, Colchester, CO5 8PA

**Scale (approx):** 1:1250

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## Planning Committee

Item

8

8 September 2011

<b>Report of</b>	<b>Head of Environmental &amp; Protective Services</b>	<b>Author</b>	<b>David Whybrow</b> ☎ 01206 282444
<b>Title</b>	<b>Application No. 071786 – Change of use of previously approved private dining/corporate venue to restaurant A3 (Use) Class, together with additional car parking – The Old Oyster Sheds, Coast Road, West Mersea</b>		
<b>Wards affected</b>	<b>West Mersea</b>		

**This report concerns Condition 17 as attached to Approval Ref: 071786 and considers the question of whether the works as currently being carried out are in compliance with that condition**

### 1.0 Decision(s) Required

- 1.1 Members are asked to consider their view as to whether or not the works currently being carried out at this site in pursuance of application 071786 are in compliance with Condition 17 of the planning permission which states:-

“The renovation/refurbishment of the building shall be carried out substantially in accordance with the details contained in the submitted application documents and the Engineer’s Methodology Statement.”

### 2.0 Background

- 2.1 The planning permission was approved on 3 June 2010. There is some debate as to whether or not the development currently being implemented is in accordance with the submitted details because the building was described as a renovation/refurbishment but has since been removed from site and stored elsewhere. A second application for variation of the approval in terms of alteration of a slipway on the building’s east elevation to create a raised platform of reduced length to include a refuse compound, cycle parking facilities and provision for heating/ventilation equipment is currently under consideration (111285 refers).
- 2.2 Alongside this consideration, the applicant has sought agreement that the original permission condition 17 is being complied with. This is the topic that is subject of this report. The request to discharge the condition can not be fully discharged as the condition requires the building be completed, however members are asked to consider the degree of satisfaction that the requirement to carry out the works “substantially in accordance with the details contained in the submitted application documents and the Engineers Methodology Statement” is being met at present.

- 2.3 In seeking approval for details reserved by Condition 17 the applicant has submitted an amended engineer's structural appraisal and methodology statement. It should be noted that the original survey was undertaken in 2001 and there have been ten years or further erosion to the building as set out in the latest surveys. As stated, technically, this condition cannot be discharged in the terms requested but the amended report affords the opportunity for the Council to consider the implications of the amended proposal and consider whether the works as now being implemented can be regarded as being "substantially in accordance" with the original consent. If they are not then the Council needs to consider whether or not the original permission can in fact be implemented or whether a new application should be requested.
- 2.4 Both the original report (14 June 2001) and the amended report, dated July 2011, may be inspected on-line. The key points of the former are:-
- The Plan is for a remodelling of the existing building including an extension to the building width to the rear with an associated balcony.
  - The building was found to be structurally in a poor and substandard condition.
  - The building can be retained and re-used but structural repairs will be required and structural upgrading will be necessary.
  - The side and front timber wall structure can be retained but structural repairs and upgrading will be necessary. The existing rear wall is structurally very weak and will be replaced.
  - The existing timber suspended floor can be upgraded by inserting new timber floor joists and galvanised steel beams on the underside.
  - A new roof will be required to provide necessary structural strength.
  - The existing substructure is substandard and needs repair and upgrading including strengthening of timber piles by insertion of additional hollow section steel columns on concrete pad foundations.
- 2.5 Members will recall that 071786 was considered and approved in conjunction with application 072522 for conservation area consent in respect of "renewal of existing planning approval C/COL/01/0526 to take down the existing building, refurbish and renovate timber frame walls and roof and re-erect walls and extend shed."
- 2.6 The July 2011 report provides the following summary of works being undertaken:-
- General Building Frame Sequence of Construction:
- Dismantle existing building and carefully remove north, east and west elevation timber studs and dry store.
  - Introduce steel driven piles.
  - Cast reinforced concrete pile caps.
  - Construct substructure steelwork up to and including ground floor level.
  - Install pre-cast concrete floor units to ground floor and grout up.
  - Erect superstructure steel frame including frame for mezzanine floor.
  - Install roof timber members and covering along with timber panels to all elevations. Existing timber studwork to be incorporated into timber panels.
- 2.7 It has been confirmed, following inspection by the Marine Management Organisation, MMO, that the new piling works have been carried out to their satisfaction.

2.8 In respect of the main elevations, the July report indicates:-

“Due to the required floor level increase it was not practical to leave the existing timber framed panels in place. Since the inspection the front and two side elevations timber panels have been carefully removed and dry stored at a barn in Peldon. They have since been inspected by the Planning Officers.

Due to the rebuilding proposals the building super structure will take the form of a steel frame which will provide support for the proposed mezzanine floor, roof lantern, glazing and lateral stability to the building.

This will then allow for the original and new external timber panels to be incorporated back into the building. This is the procedure which will be adopted. The original timber panels will be initially de-nailed, treated for infestation and any rotten areas removed. The timber will then be reused as non load bearing studwork between the new steel frames and marked with a yellow paint to identify. This is the process which will be adopted. During construction these walls will be photographed for record purposes. We would estimate that 70% of the timber stored will be reused.”

*Officer Note: The reference here is to 70% of the timber salvaged from the site and stored. It does not indicate 70% of the original timber will be re-used and this is perhaps not surprising given the flimsy nature of the former structure and its long exposure to the coastal environment. It is not possible state what proportion of the original timber fabric has been retained but the stored timber sections as inspected by officers may be said to be the majority of that form the front and side (east) elevations.*

### 3.0 Representations

3.1 The works being carried on are of considerable concern to local residents who have made separate comments in respect of amendment application 111285. In the case of the refurbishment works, the following matters are raised by the Parish Council, Coast Road Association and 6 local residents:-

- The existing permission is only for conversion of an existing building in a Conservation Area and not for demolition and new build as now appears to be the nature of the development. I understand that argument is being put that since the original engineer's report the deterioration of the building was foreseeable and so amendments should be allowed. However, the onus was on the applicant to maintain the building in the interim or to submit a revised application and method statement before the plan was put before the original Planning Committee who issued consent on those documents. The applicant should not be allowed to benefit from any failure to maintain the building in the interim to ensure they could comply with the plan and method statement or to update the plan and method statement before it went to the original Planning Committee – i.e. a failure to do this should not enable the applicant to substitute a new build for conversion per se.
- The site to date includes concrete and steel piles (not wooden piles) and a concrete and steel floor (not a wooden floor) and a steel framework (not a wooden framework) – i.e. to date none of the original fabric has been re-used as intended and includes both a mezzanine level (not in the original plan) and an extension to one side in lieu of the slipway (not in the original plan). The developer having applied to remove Condition 17 etc has acknowledged that the works are not substantially in accordance with the original plan and method statement for conversion and is in effect a demolition and new build and a stop order should be

placed on the development pending any approval of a revised planning application. i.e. there is no risk to the Council in issuing a stop notice as the applicant have themselves acknowledged that the development, which is in a Conservation Area, is not in accordance with the original planning approval and method statement.

- In the construction of new coastal works, great importance is attached to “soft” engineering. Building new hard structures with different characteristics from what was originally approved is most irregular.
- This was thought to be a conversion but it is in fact a somewhat larger complete new building.
- The developer intends a modern building which in no way represents the character and appearance of the present building, let alone the Conservation Area.
- No attempt has been made to maintain the building since the time of the 2001 report.

#### **4.0 Alternative Options**

- 4.1 In the event that Members consider that the proposals remain in the spirit of the conditions imposed and the approval given then no further action will be taken to rectify the issue. The condition will not be discharged in full, but the Council would agree that the works to date are satisfactory.
- 4.2 However, should members feel that the building works now being constructed represents a material departure under the terms of Condition 17, it will be necessary to take appropriate enforcement action to secure compliance with the original permission in terms of the construction details. In order to do so it will be necessary to carefully consider where any significant departures from the original drawings have occurred and what can be done to resolve the concerns.
- 4.3 Alternatively, members may consider that the departure from the previous application is so significant as to render the permission effectively null and void as the condition strikes at the heart of the permission granted. In this event, a new application would be requested in the first instance and this would be considered afresh, albeit that the existing permission would remain a material consideration whereby the end product resulting from the two applications would need to be compared. The removal of the building works, whilst being deemed significant in this scenario, would have to be considered in the regard of whether or not it was a technicality or whether it caused actual harm to the degree that the committee would not have approved the application had they known (if they did not) that the building would be removed and rebuilt.

#### **5.0 Supporting Information**

- 5.1 Original application Nos. 072522, 071786 together with amendment application 111285 may all be viewed on-line, in addition to the representations received.

## **6.0 Consideration**

- 6.1 The case officer would highlight that, in their view, the original planning permission was not for a simple “conversion” of a functional building as set out in the representations, but was described in terms of a renovation/refurbishment project. There is debate as to the degree of work that would occur at the site and whether or not the committee were aware at the time of voting that the works would be, in the view of some local residents, tantamount to a completely new building. The original structural survey from 2001 did state that the materials were to be kept at the site, whilst they have since been removed. However, what goes back in the long term is still considered by the case officer to be as envisaged at the time of the decision. Further, the accompanying application for Conservation Area Consent explicitly referred to the taking down of the building in order to refurbish and renovate timber frame walls and roof before re-erection. Therefore, despite some conflicting supporting information, it should have been clear that the building was not a conversion. The degree to which the actual works and the application description as a “renovation” or “refurbishment” can be interpreted is a subjective matter and can vary from individual to individual.
- 6.2 In your officer’s opinion there is not a significant difference between the 2001 and 2011 structural surveys and methodology reports. Indeed, given the nature of the building and the fact that it has stood vacant in an exposed coastal location, it is not surprising that deterioration has taken place in the intervening years. The question is whether or not the amount and nature of the works being carried out is different to what was understood from the application information and if this makes any material difference to the committees likely vote.
- 6.3 Most importantly, it is considered that the end product – the refurbished building – will be substantially as per the approved drawings in terms of its scale, external dimensions and appearance. Officers have confirmed through measurements taken on site that the building dimensions conform with those shown on the approved drawings.
- 6.4 On this basis, where the end product has the same basic impacts as that shown on the drawings, there is a question as to what would be achieved from a new application. Regardless of whether or not the spirit of condition 17 has been breached, is it likely to affect the final outcome of any subsequent application that was described as a “new build” if the finished details remain the same. Consideration as to this aspect should also be given in regard to the public interest test of any suggested action (i.e. is the proposed action justifiable in terms of it serving the wider public interest of the borough).

## **7.0 Conclusion**

- 7.1 The case officer would offer the opinion that the proposals remain substantially in accordance with the original planning permission and there is no further action for the Local Planning Authority to take in the matter. However, it is appropriate that the matter be given further consideration by the committee.

## **8.0 Financial Implications**

- 8.1 None

**9.0 Strategic Plan References**

9.1 N/A

**10.0 Risk Management**

10.1 N/A

**11.0 Publicity Considerations**

11.1 None

**12.0 Human Rights Implications**

12.1 None

**13.0 Community Safety Implications**

13.1 None

**14.0 Health and Safety Implications**

14.1 None



## **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.