

**COLCHESTER BOROUGH COUNCIL  
PLANNING COMMITTEE  
5 March 2009 at 6:00pm**

**SUPPLEMENTARY AGENDA**

**Part A**

(open to the public including the press)

**Pages**

**. Amendment Sheet**

See Final Amendment Sheet.

**No Page  
Numbers**



# **AMENDMENT SHEET**

**Planning Committee  
5 March 2009**

## **AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED**

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

#### 7.1 081879 – 25 Green Acres Road, Layer de la Haye

The Council's Arboriculturalist has considered the submitted tree report and does not object to the proposal subject to the imposition of conditions.

The following conditions (incorporating those of the Arboriculturalist) are recommended for inclusion, should Members agree with the officer recommendation of approval:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: In order to comply with Section 91 (1) and (2) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004
2. Before the development hereby permitted commences, the external materials and finishes to be used, shall be agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with agreed details.  
Reason: In the interests of visual amenity and to ensure a satisfactory form of development.
3. No work shall commence on site until all trees, shrubs and other natural features not scheduled for removal on the approved plans, are safeguarded behind protective fencing to a standard to be agreed by the Local Planning Authority (see BS 5837). All agreed protective fencing shall be maintained during the course of all works on site. No access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.  
Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

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

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

5. The construction works necessary to implement the permission hereby granted shall take place solely in accordance with the terms of the Methodology Statement received, which forms part of this permission, and no other excavation shall take place that would affect the trees unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to protect the amenity value of trees in the vicinity of the application site.

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

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

7. No works or development shall take place until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority (see BS 1192: part 4).

These details shall include, as appropriate:

Existing and proposed finished contours and levels.

Means of enclosure.

Car parking layout.

Other vehicle and pedestrian access and circulation areas. Hard surfacing materials.

Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signage, lighting).

Proposed and existing functional services above and below ground (e.g. drainage, power, communication cables, pipelines, etc. indicating lines, manholes, supports etc.).

Retained historic landscape features and proposals for restoration.

Soft landscape details shall include:

Planting plans.

Written specifications (including cultivation and other operations associated with plant and grass establishment). Schedules of plants, noting species, plant size and proposed numbers/densities.

Planting area protection or decompaction proposals.

Implementation timetables.

Reason: To safeguard the provision of amenity afforded by appropriate landscape design.

8. Prior to the commencement of the development details of [screen walls/fences/railings /means of enclosure etc] shall be submitted to and approved in writing by the Local Planning Authority. The details shall include [the position/height/design and materials] to be used. The [fences/walls] shall be provided as approved prior to the [occupation of any building/commencement of the use hereby approved] and shall be retained thereafter.

Reason: In the interests of visual amenity and to ensure a satisfactory form of development.

9. No unbound materials shall be used in the surface finish of the proposed vehicular parking facility within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material on to the highway in the interests of highway safety and in accordance with Essex Transport Plan 2006/2011 Appendix G : Development Control Policy 1.1

10. Prior to the occupation of the proposed dwelling, turning facilities shall be provided within the site as shown on the returned plan, and shall be maintained free from obstruction at all times for that sole purpose in perpetuity.

Reason: To ensure that vehicles can enter and exit Green Acres Road in a forward gear, in the interests of highway safety in accordance with Essex Local Transport Plan 2006/2001 Appendix G: Development Control Policy 7 Vehicle Parking Standards.

#### Informative

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

#### 7.4 090079 – Pond Cottage, Waldegraves Lane, West Mersea

The following conditions are recommended for inclusion, should Members agree with the officer recommendation of approval:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: In order to comply with Section 91 (1) and (2) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
2. Samples of the materials to be used on the external finishes shall be submitted to and approved in writing by the Local Planning Authority before the development commences. The development shall only be carried out using the approved materials.  
Reason: To ensure the use of an appropriate choice of materials having regard to the importance of this scheme in the countryside landscape and to ensure that the choice of materials will harmonise with the character and appearance of other buildings and development in the area.
3. No work shall commence on site until all trees, shrubs and other natural features not scheduled for removal on the approved plans, are safeguarded behind protective fencing to a standard to be agreed by the Local Planning Authority (see BS 5837). All agreed protective fencing shall be maintained during the course of all works on site. No access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.  
Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.
4. No burning or storage of materials shall take place where damage could be caused to any tree, shrub or other natural feature to be retained on the site or on adjoining land (see BS 5837).  
Reason: To protect the health of trees, shrubs and other natural features to be retained in the interest of amenity.

#### **Agenda Item 8 – Former Cherry Tree Garage, Blackheath, Colchester**

**With reference to Condition 04 (Noise), the following have been agreed between Environmental Control and the noise consultant acting on behalf of Tesco Stores Ltd:-**

**Deliveries – 0700 to 1900 hours – 7 days a week**

**Trading – 0700 to 2300 hours Mondays to Saturdays; 0700 hours to 2200 hours Sundays (including Bank Holidays).**

**Conditions:**

**Plant Noise:**

A competent person shall ensure that the rating level of noise emitted from the site [plant, equipment, machinery] shall not exceed 3 dBA above the background noise level prior to [the use hereby permitted commencing/the building hereby approved coming into beneficial use]. The assessment shall be made in accordance with the current version of British Standard 4142. The noise levels shall be determined by measurement or calculation at the nearest existing noise sensitive residential premise. Confirmation of the findings of the assessment shall be provided in writing to the local planning authority prior to the use hereby permitted commencing/the building hereby approved coming into beneficial use. All subsequent conditions shall comply with this standard.

The use hereby approved shall not commence until the building has been constructed/modified to provide sound insulation against internally generated noise in accordance with a scheme devised by a competent person and approved in writing by the local planning authority. This shall comply with the initial condition.

Any plant, equipment or machinery on the premise shall be constructed, installed and maintained so as to comply with the initial noise condition. The noise generated by such equipment shall not have any one 1/3 octave band which exceeds the two adjacent bands by more than 5 dB as determined by measurement or calculation at the nearest existing noise sensitive residential premise.

***INFORMATIVE***

A competent person is defined as someone who holds a recognised qualification in acoustics and/or can demonstrate relevant experience.

With reference to Condition 05 – Planning Obligation. The draft Section 106 is currently with the Council’s solicitor.

After a series of revisions the Council’s Urban Designer is in a position to say that the design issues for this application have been resolved satisfactorily. All revised drawings, apart from a Blackheath elevation to which some minor changes are required have been received. Your Officers are satisfied that the scheme has now been achieved to a satisfactory standard as far as the design/layout are concerned.

## **Agenda Item 9 – Land at Turnpike Close, Old Ipswich Road, Colchester**

**Further to the deferral of this item at the last Committee, Officers have received a further letter, dated 4 March 2009 from Holmes and Hills Solicitors on behalf of the owners making the following comments. The contents of the letter is reproduced in full as follows followed by Officer comments in response:**

**“We write further to our letter of the 18<sup>th</sup> February. Thank you for allowing our client additional time for making representations.**

**We are now able to advise you that it is not the intention of either our client or ourselves to attend this week’s Planning Committee to make verbal representations. However, we do ask that Members are made aware of the contents of this letter.**

**We have considered matters with our client and would suggest that it is premature for the Committee to approve legal action at present for the following reasons:-**

- 1. There is an extant planning permission, which permits inter alia the storage of aggregates. The principle therefore of a storage use must surely be acceptable and all that is occurring at the moment is the storage of aggregates, their distribution and the storage of vehicles. A significant number of the vehicles on site relate to the aggregate business.**
- 2. It is proposed, in so far as necessary to instruct a planning consultant to make an application to regularise the position on a without prejudice basis as soon as possible.**
- 3. The vehicles themselves are only stored at the site on a temporary basis in that our client has nowhere else that they may be stored and they cannot be sold at present due to market conditions.**
- 4. The actual storage use does not result in significant activity and we do not believe that it causes any harm but nonetheless attempts are being made to reduce the number of vehicles as quickly as possible.**
- 5. The storage of these vehicles is part of a wider business activity, which currently employs approximately 20 people. The storage element is essential to this business and if the storage facility is lost, then it may jeopardise individuals employment.**
- 6. Our client is willing to enter into a dialogue with the Council to try and find a way forward.**
- 7. It is inevitable that legal proceedings would be contested and hence they would be very expensive and beforehand therefore there should at least be further attempts to try and find a satisfactory way forward.**

**We should be obliged therefore if all these matters could be considered by the Committee in their deliberations.”**



**Officers' comments in response are set out below using the same numbering.**

- 1. *It is accepted that there is a permitted storage use on site but only in respect of aggregates and not vehicles or other structures. The storage of vehicles or other structures not connected with the aggregate use was forbidden in the Agreement, which the owners signed. It is not accepted that these vehicles, the subject of the breach, have any connection with the aggregates business on the site, particularly as they are located in an enclosed compound separate from the aggregate business.***
- 2. *Noted***
- 3. *The vehicles have been on the site as far as officers are aware for nearly 6 months and may well have been there longer. It will be down to the owner to find an alternative location for them.***
- 4. *Noted.***
- 5. *The employment implications of the cessation of the use, if true, do not alter Officer's view that the use should cease as being contrary to the Planning Permission and Planning Obligation regulating the use of this land.***
- 6. *Noted. However, the owner has not sought to discuss the breach with Officers either before using the site for unauthorised storage or after Officers became aware of the breach.***
- 7. *Officers consider that the owners could have opened a dialogue with Officers before now, but have not and, indeed, have been obstructive to Officers in our attempts to investigate the breach by restricting access to the site.***

**The contents of the previous letter from the Owners' Solicitors submitted prior to the last Committee and Officers' comments are repeated below for Members' information.**

**A letter has been received from Solicitors, Holmes and Hills, acting on behalf of the owners of the site. It requests that their representations be put before Committee. The comments in the letter are set out below together with Officers' response in italics.**

**"You have given us just 3 working days to take our client's instructions, advise accordingly and make representations. This is quite simply unreasonable and prejudices our client's position. We note that the report to Committee is dated 5<sup>th</sup> February 2009 and therefore the relevant Officer could have informed us of the position prior to 13<sup>th</sup> February 2009. Further, the solicitor dealing with matter is currently away on annual leave.**

In the circumstances we have been unable to take our client's detailed instructions. However, we make the following general comments on behalf of our client:

1. The Officer dealing with this matter is aware that Mr Palmer of our client has had a long period of ill health which has prevented him from dealing with this matter.
2. The Council has provided no evidence to demonstrate that any vehicles that may be on the site are in direct breach of Clause 4.10 of the Unilateral Undertaking. Clause 4.10 provides that it shall not apply to vehicles present on the site being used in connection with the carrying out of the Approved Uses.
3. It is clear from the report to Committee that civil action pursuant to S187(B) of the Town & Country Planning Act 1990 is being recommended. In all of the circumstances we do not consider that this matter is of such an urgent nature, or that harm of such a severe nature is being caused, to warrant proceedings for an Injunction and the inevitable costs of such proceedings.
4. We note that the report states that if no action was taken the unauthorised use would become lawful at the end of ten years, after which no enforcement action could be taken. If this is indeed the case, as the Unilateral Undertaking is dated 8<sup>th</sup> November 2006 clearly any alleged breach is not of such an urgent nature to require proceedings for an Injunction as the period of ten years would not expire until 2016.
5. The Council's Legal Department will no doubt be aware of the overriding objective in Part 1.1 of the Civil Procedure Rules and specifically, Paragraph 4.1 of the Practice Direction – Protocols. In light of this and all that we say above we consider that it would be unreasonable for the Planning Committee to approve the recommendations contained in the report.
6. Due to insufficient time and information that has been provided by the Council our client is not in a position to make full representations to the Planning Committee thus prejudicing our client's position."

*The owners have had ample opportunity to make representations to the Local Planning Authority regarding this breach in response to correspondence from Officers and requests for site inspections. The owners have been unwilling to assist Officers in their enquiries by not allowing access into the enclosed area where the vehicles are stored in spite of advance notice of such visits. This lack of co-operation and the continuance of the breach has led Officers to take this action.*

1. *The illness of one of the owners is noted, however, no evidence has been provided to demonstrate why this has precluded them from dealing with the breach or seeking any mitigation from legal action.*

- 2. The storage of vehicles and other structures unrelated to the approved use of the site is expressly forbidden in the Legal Agreement. Officers have no doubts that the storage of vehicles on the site is not related to the approved uses and is therefore not lawful. The owners have not provided any evidence to the contrary.**
- 3. This action is being pursued on the advice of the Council's Solicitor, who has seen and agreed the report.**
- 4. There is no justification for delaying legal proceedings given the clear breach of planning control.**
- 5. This issue can be addressed by the Council's Solicitor in implementing the legal action. Should it be necessary to refer the matter back to Committee this will be done.**
- 6. The owners have had considerable time to make representations to the Local Planning Authority in respect of this matter and have not done so. The nature of the breach was brought to their attention together with the possibility of legal action in a letter dated 8<sup>th</sup> October 2008. However, in view of the issue raised concerning notification Members may wish to defer the item till next time to allow representation by or on behalf of the owners.**

**Update on Deferred Item 7.3 from the Committee Meeting Agenda on  
19 February 2009  
Application 090021 Tesco Express, 48 St Christopher Road.**

Since the previous committee meeting a demonstration has been pursued as requested by Councillors. The agent, Mr Ling, had been seeking to set up a demonstration for ourselves and a Hampshire-based council. However, it seems that Camden Borough Council and one other have since requested information on an acoustic test, so the demonstration appears to have been reduced to an acoustic survey that will be shared amongst the 4 Councils who have asked for additional information. Councillors are therefore asked whether or not they feel that an acoustic survey, which would need to be reviewed by Environmental Control, would be satisfactory. Mr Ling advises that the results will be available in approximately 7 days time. If this is not considered to be sufficient by members, the alternative is to continue to pursue a demonstration. It looks like other Councils are not asking for this now, although this should not sway members from their beliefs. Any demonstration that can be arranged is unlikely to be locally based.