

# Planning Committee

Town Hall, Colchester  
14 June 2012 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

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## Have Your Say!

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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 14 June 2012 at 6:00pm

## Members

Chairman : Councillor Theresa Higgins.  
Deputy Chairman : Councillor Helen Chuah.  
Councillors Nick Barlow, Nigel Chapman, Peter Chillingworth, John Elliott, Stephen Ford, Sonia Lewis, Michael Lilley, Jackie Maclean, Jon Manning, Nigel Offen, Philip Oxford and Laura Sykes.

**Substitute Members** : All members of the Council who are not members of this Committee or the Local Plan Committee and who have undertaken the required planning skills workshop. The following members meet the criteria:-  
Councillors Lyn Barton, Mary Blandon, Mark Cable, Barrie Cook, Beverly Davies, Annie Feltham, Marcus Harrington, Jo Hayes, Pauline Hazell, Peter Higgins, Brian Jarvis, Cyril Liddy, Sue Lissimore, Colin Mudie, Will Quince, Terry Sutton, Anne Turrell, Dennis Willetts and Julie Young.

## Agenda - Part A

(open to the public including the media)

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

An Amendment Sheet is 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, 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 24 May 2012 will be submitted to the next meeting.

## **7. Planning Applications**

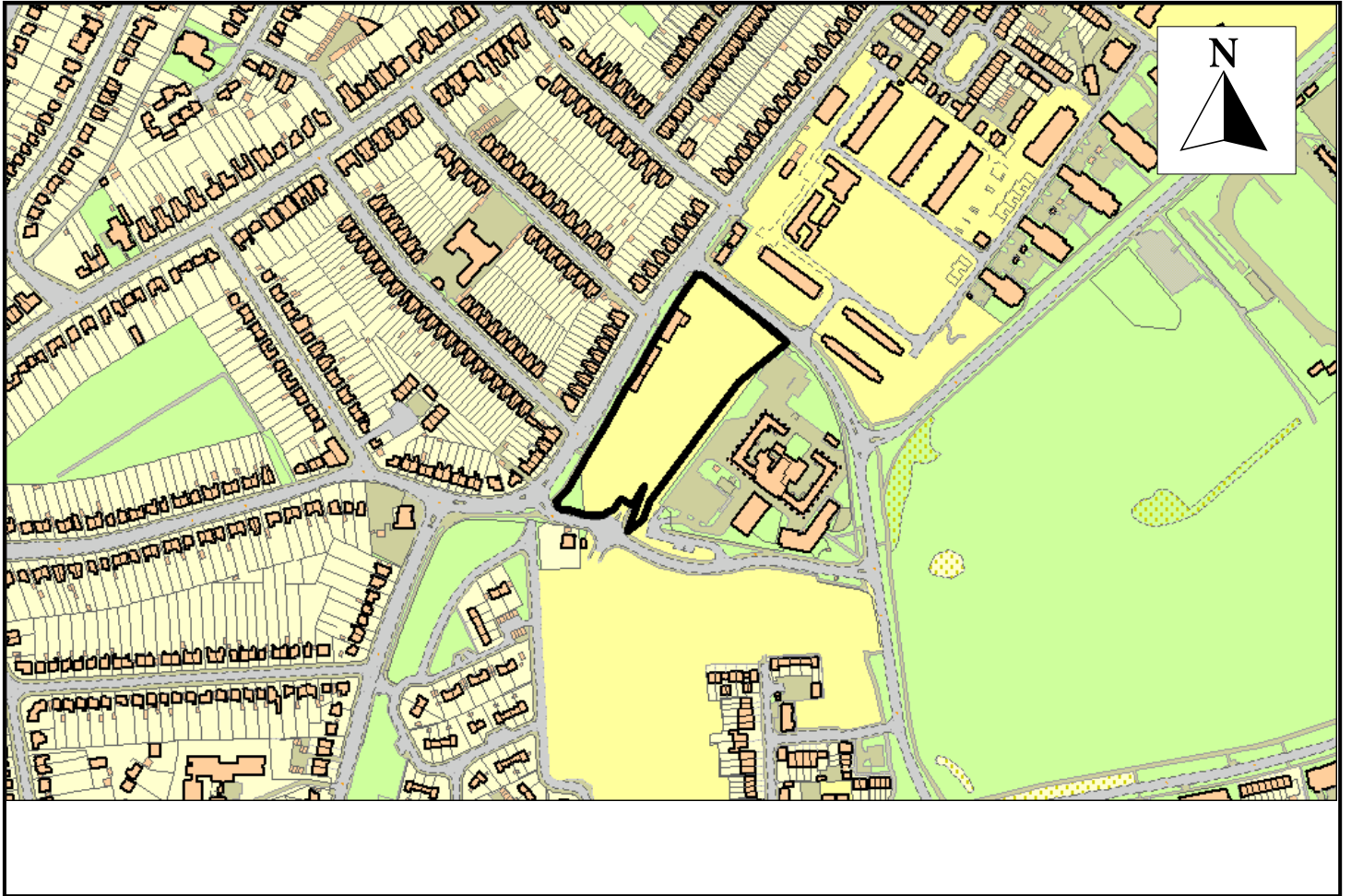
In considering the planning applications listed below, the Committee may chose to take an en bloc decision to agree the recommendations made in respect of all applications for which no member of the Committee or member of the public wishes to address the Committee.

- |    |   |                |
|----|---|----------------|
| 1. | 120412 Butt Road, Colchester<br>(Christ Church)   | <b>1 - 44</b>  |
|    | A local centre comprising a supermarket, 6no. retail units, affordable housing and car parking.   |                |
| 2. | 120641 Colchester Academy, Hawthorn Avenue, Colchester, CO4 3JL<br>(St Anne's)  | <b>45 - 65</b> |
|    | Construction of a new split-level three and two storey academy building, the remodelling of a section of the existing Colchester Centre building, light refurbishment of the existing Sports Centre building, associated landscaping and demolition of an existing four-storey teaching building. |                |
| 3. | 120657 Land rear of 103 Bromley Road, Colchester, CO4 3JG<br>(St Anne's)  | <b>66 - 75</b> |
|    | Change of use of land from agriculture to a paddock for grazing horses. Retention of an associated building for use as stables and a decked area. Resubmission of 112201.   |                |
| 4. | 120548 Land at 10 Monkwick Avenue, Colchester<br>(Berechurch)   | <b>76 - 82</b> |
|    | Proposed new dwelling on land at side of existing dwelling including parking etc.   |                |
| 5. | 100534 Land rear (NE) of 148 St Andrews Avenue, Colchester<br>(St Andrew's)   | <b>83 - 91</b> |
|    | Erection of a detached bungalow with associated parking facilities.   |                |

6. 120484 Land at Meadow Green Farm, Mount Bures Road, Wakes Colne, CO6 2AP (Great Tey) **92 - 105**
- Formation of a Stud Farm comprising a Change of Use of land and redundant livestock building to equestrian use, minor alterations to the building to form stabling, provision of manege, minor extension of existing access track and the siting of a temporary mobile home for a Stud Farm Manager. Diversion of Public Footpath No 34 (currently shown to pass through established building).
7. 120708 Lexden Wood Golf Club, Bakers Lane, Colchester, CO3 4AU (Lexden) **106 - 113**
- Erection of single storey coffee house; internal alterations to existing refreshment bar and relocation of existing parking spaces.
8. 120827 War Memorial, High Street, Colchester (Castle) **114 - 121**
- Installation of temporary flag poles and flags during the Olympics.
9. 120765 5 Bawtree Way, Colchester, CO3 4EP (Prettygate) **122 - 126**
- Proposed garage and garden store.
- 8. Endorsement of proposed amendment to the 229a Garrison legal agreement in respect of affordable housing // Area L & N** **127 - 133**
- See report by the Head of Environmental and Protective Services.
- 9. Amendment to Members Engagement in Pre-Application Planning Discussions Protocol ("Early Member Involvement")** **134 - 161**
- See report by the Head of Environmental and Protective Services.
- 10. 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:** 120412

**Location:** Butt Road, Colchester

**Scale (approx):** Not to scale

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# Committee Report

Agenda item

**7**

To the meeting of **Planning Committee**  
on: **14 June 2012**  
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: Alistair Day

**MAJOR**

**Site:** Butt Road, Colchester

**Application No:** 120412

**Date Received:** 29 February 2012

**Agent:** Martin Robeson Planning Practice

**Applicant:** Tesco Stores Ltd

**Development:** A local centre comprising a supermarket, 6 no retail units, affordable housing and car parking.

**Ward:** Christ Church

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

### 1.0 Introduction

1.1 This planning application has been referred to the Planning Committee because:

- a) Objections have been received to the proposed development; and
- b) A legal agreement is required for the obligations set out in the report.

## **2.0 Synopsis**

- 2.1 This planning application proposes the erection of a foodstore, 6 small retail units and 14 residential units with associated ancillary development. The major objections to this application relate to the fact that the proposed foodstore is larger than that previously approved; there is an over provision of foodstores in Colchester; it will adversely impact on existing businesses and will result in highway capacity and safety problems. Letter of support have also been received in respect of this application stating that the proposal will create jobs, provide for weekly and local food shopping and regenerate this part of Colchester. The report reviews the issues raised by this development proposal and provides a recommendation that the scheme is acceptable, subject to a s106 legal agreement being signed and the attachment of appropriate conditions.

## **3.0 Site Description and Context**

- 3.1 The application site comprises the former PSA site (known as Area K2 of the Garrison Urban Village Development) and the disused garrison land and buildings to the north (known as Area K1). The site extends to an area of 1.28 hectare.
- 3.2 The application sites lies approximately 0.8km to the south of Colchester town centre. To the west of the site is Butt Road and an area of established residential housing. To the north of the site is Circular Road West and to the south is Goojerat Road, beyond which is an area of new residential development (currently under construction); this development forms part of the Garrison Urban Village Development and is known as Area L&N. To the east of the site is the Military Police compound.
- 3.3 The Garrison Conservation Area covers the northern part of the site and the retained buildings along the Butt Road boundary wall are included on the Local List of Building of Architectural or Historic Interest. The site contains a number of mature trees; there are three trees towards the centre of the site and a small group of trees at the south west corner of the site; the group of trees and one of the central trees (a Lime) are protected by a Tree Preservation Order.

## **4.0 Description of the Proposal**

- 4.1 The planning application is for a local centre comprising a supermarket (2,702sqm gross – sales area 1,328sqm), six no. retail units within the locally listed former Garrison buildings (533sqm gross – sales 450sqm), associated car parking spaces and 14 no. affordable housing units with associated private amenity space and parking. Access to the local centre will be via the existing mini roundabout on Goojerat Road; the residential units will be accessed via Circular Road West.
- 4.2 The application has been submitted in full and covers the whole site.

## **5.0 Land Use Allocation**

- 5.1 Garrison Regeneration Area

## 6.0 Relevant Planning History

- 6.1 100981 - Application for change of use and conservation of former MOD occupied single storey buildings (Blocks A, B C D1 & D2) to create 535m2 (A1 Retail and A2 Financial and Professional services) accommodation, along with associated works – Approved
- 6.2 100982 - Reserved matters application (O/COL/01/0009) for the erection of two buildings to create 1080m2 A1 Retail and A2 Financial and Professional Services (Block E & Ground Floor of Block F) Accommodation and 14no. affordable units (Block F) with associated works – Approved
- 6.3 100983 – Reserved matters application (O/COL/01/0009) for the erection of two buildings to create 1080m2 A1 Retail and A2 Financial and Professional Services (Block E & Ground Floor of Block F) Accommodation and 14no. affordable units (Block F) with associated works – Approved
- 6.4 102537 - Extant permission to extend time limit for implementation of reserved matters application under outline consent O/COL/06/0783; siting; design; external appearance, means of access and landscaping for the erection of food store and shops with associated parking. (Reserved matters reference 090905) - Approved
- 6.5 090905 - Reserved matters application under outline consent O/COL/06/0783; siting; design; external appearance, means of access and landscaping for the erection of food store and shops with associated parking.
- 6.6 O/COL/06/0783 - Demolition of existing offices and construction of food store and shops with associated parking
- 6.7 F/COL/04/0716 Variation of condition 02 of planning permission O/COL/01/0692 to further extend the period for a further two years in which to submit a reserved matters application - Approved.
- 6.8.1 F/COL/01/0692 Application to vary condition 1 of planning permission COL/98/0947 to further extend the period (for a further 3 years) in which to submit a reserved matters application - Approved.
- 6.9 O/COL/01/0009 A new urban village comprising residential development (up to approx 2600), mixed uses including retail, leisure and employment, public open space, community facilities, landscaping, new highway & transportation improvements associated and ancillary development in accordance and subject to the provisions of the master plan
- 6.10 98/0947 – Outline application for the erection of food store and shop units (Renewal of Application COL/94/1423).
- 6.11 95/1432 - Outline application for the erection of food store and flats with ancillary car parking and highway works - Refused 7 March 1996.
- 6.12 94/1423 - Outline application for erection of food store and shop units Approved 7 March 1996

## 7.0 Principal Policies

7.1 The following national policies are relevant to this application:

7.2 Adopted Colchester Borough Core Strategy Policies (October 2008):

- SD1 - Sustainable Development Locations
- SD2 - Delivering Facilities and Infrastructure
- SD3 - Community Facilities
- CE1 - Centres and Employment Classification and Hierarchy
- CE2 - Mixed Use Centres
- CE2c - Local Centres
- H1 - Housing Delivery
- H2 - Housing Density
- H3 - Housing Diversity
- H4 - Affordable Housing
- UR1 - Regeneration Areas
- UR2 - Built Design and Character
- PR1 - Open Space
- PR2 - People-friendly Streets
- TA1 - Accessibility and Changing Travel Behaviour
- TA2 - Walking and Cycling
- TA3 - Public Transport
- TA4 - Roads and Traffic
- TA5 - Parking
- ENV1 - Environment
- ER1 - Energy, Resources, Waste, Water and Recycling

7.3 Development Policies

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

- DP1 Design and Amenity
- DP2 Health Assessments
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP4 Community Facilities
- DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
- DP7 Local Centres and Individual Shops
- 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
- DP18 Transport Infrastructure Proposals
- DP19 Parking Standards
- DP20 Flood Risk and Management of Surface Water Drainage

- DP21 Nature Conservation and Protected Lanes
- DP25 Renewable Energy

#### 7.4 Site Allocation Policies

Adopted Borough Site Allocations Policies (October 2010)

- SA GAR1 Development in the Garrison Area

#### 7.5 In addition, the following Supplementary Planning Documents are relevant:

- Adopted Garrison Master Plan and Development Briefs
- Essex Design Guide
- Parking Standards

### 8.0 Consultations

#### Planning Policy:

- 8.1 The site is located within an area that was allocated as a Neighbourhood Centre in the Garrison Master Plan in 2001. This allocation was subsequently carried forward by the 2010 adopted Site Allocations DPD. Policy GAR1 provides for a 1000sqm (foodstore and three small shops); this policy does however note that ‘the levels of development [set out on policy GAR1] should not be considered prescriptive but a guide to inform development proposals’. The proposal exceeds the guideline figures, in that the proposed foodstore is 1,328sqm (net), and six retail units are proposed rather than three. The key policy concern accordingly is whether this size increase would change the role played by the development in Colchester’s spatial retail hierarchy.
- 8.2 The size of the supermarket at 1,328sqm is below the 2,500 m<sup>2</sup> (net) figure provided in the PPS4 definition of a supermarket, with larger stores falling into the ‘superstore’ category. The Retail Statement notes that Colchester’s Urban District Centres, the next tier up in the hierarchy, are anchored by superstores. The increase in size of the Butt Road scheme from the policy guideline of 1000sqm is not considered to move the proposal outside the Neighbourhood Centre category, particularly when it is accepted that ‘the function and attraction of the Centres should vary in-so-far as them providing for varying levels and densities of population’ (3.18).
- 8.3 The intent of the applicant to conform to guidelines for Neighbourhood Centres is certainly clear from the Retail Statement, but importantly the intent will need to be realised by ensuring that the development as built adheres to the principles implied by Neighbourhood Centre status and as covered by relevant LDF policies. These include:
- Limiting the size of the supermarket and retail units to the agreed total
  - Ensuring the development is well integrated with the surrounding neighbourhood to facilitate sustainable modes of travel to the site (ie walking and cycling) – this encompasses both the internal site layout and its links with the wider neighbourhood
  - Delivery of a high quality design which retains appropriate elements of the Garrison

- Provision of training and employment measures for local residents.

- 8.4 The Retail Statement also addresses the extent to which the six proposed retail units are in accordance with the development plan, noting that ‘the retail units are of an acceptable scale for their role in providing a wider range of shops and services (than the supermarket alone can provide) for the needs within the catchment.’
- 8.5 The applicants have proposed inclusion of housing on the remainder of the site not needed to accommodate the Neighbourhood Centre retail. This use is considered acceptable in principle.
- 8.6 The northern half of the proposal site incorporating residential development lies within a Conservation Area. The design of the housing units should accordingly have regard to the local setting and be of a high quality in line with Development Policy DP14 (Historic Environment Assets). The importance of design is also highlighted in Core Strategy Policy UR2 (Built Design and Character) and Development Policy DP1 (Design and Amenity). The provision of open space appears limited and may not accord with the private and public open space requirements of DP16 (Private Amenity Space and Open Space Provision for New Residential Development).
- 8.7 The current proposal represents a variation from the Garrison Masterplan given the increase in retail floorspace. As a new application, it should accordingly be subject to the usual range of planning obligation requirements as provided by Core Strategy Policies SD2 (Delivering Facilities and Infrastructure) and SD3 (Community Facilities).

#### **Transportation Policy:**

- 8.8 The proposal presents opportunities to link up the existing cycle path on Butt Road which currently terminates opposite Gladwin Road. To improve cycling accessibility to the new store and its catchment area, a contribution should be sought from Tesco to extend the cycle path along Layer Road to Boadicea Way (as identified in the Cycling Delivery SPD). It is important that the cycle path that runs along Goojerat Road connects up with the cycle path on Butt Road. A crossing for cyclists/pedestrians will be required across the scheme vehicular entrance.
- 8.9 The commitments to travel planning are noted and this should be secured through condition/Section 106 agreements as appropriate.
- 8.10 The number of car parking spaces is accepted, but it is noted that the dimensions of 5 X 2.5 metres are minimum figures for use in exceptional cases only and that the preferred bay size is 5.5 X 2.9 metres.

#### **Environmental Control**

- 8.11 Environmental Control have raised no objection to this application subject to conditions to cover the following: noise and sound insulation; sound insulation of external plant; control of fumes and odours – if the supermarket cooks food and has an extractor system; light pollution; control illuminated signs; refuse storage / recycling and delivery times.

8.12 In respect of contamination, Environmental Control have noted that the Contamination Report has identified potential sources of contamination that require further intrusive investigation and risk assessment. Notwithstanding this, it is considered that the site can be made suitable for the proposed use and recommend the attachment of the standard contamination conditions to cover the requirement for further investigation and remediation.

**The Planning Projects Team (comprising the former Design and Heritage Unit)**

8.13 Urban Designer Officer's initial comments can be summarised as follows:

- The supermarket has been well considered. Its proportions and details make strong references to the style and form of retained garrison buildings.
- The retained Garrison buildings are satisfactory; the canopy across the front façade should be detailed so that window lights above doors are retained as features rather than run through with the canopy which is visually detrimental to the character and justification of the buildings retention.
- The layout of the car park is satisfactory but in principle too many spaces are provided for a local centre and more pertinently at the loss of a satisfactory residential environment to the north.

8.14 In response to the revised drawings, the Urban Design Officer made the following comments:

- The Architectural design [of the residential element] has improved with the latest amendments, however some aspects remain problematic.
- The refuse store appears too small and it is difficult to see how the wheelie bins can be easily removed for emptying. This may be resolved by having a door on road frontage that opens outwards but the space inside remains tight.
- The blank windows on the north elevation are unnecessary and can be replaced with real fenestration. The ground floor flats could have external doors to this elevation and this may also add to the authenticity of the pastiche style.
- The layout remains unsatisfactory with the semi private communal area dominated by parking with the actual amenity spaces being tokenistic with regard to function, having only limited aesthetic value.
- The set back from Circular Road is also inadequate for the size of building within the garrison. To be more sympathetic to the character of the area the residential buildings should be set back more from the street.

8.15 The Landscape Officer has raised no objection to this scheme subject to the attachment of appropriate conditions:

8.16 The Council's Tree Officer is in agreement with the assessment (condition) of the trees. No objection is raised to this application, subject to the attachment of appropriate conditions.



## **Housing**

8.17 The Housing Officer's comments can be summarised as follows:

The affordable housing contribution on this land parcel equates to 8 x 1b flats and 6 x 2b houses making for 14 affordable homes in total. The council's priority tenure requirement is for affordable rented homes so I would want to see all 14 units provided as that tenure.

Regarding the 1.5 clause quoted in the submitted Heads of Terms, the affordable housing should (irrespective of who provides it) be fully completed in a timely manner and no business should start at the proposed store until the completed affordable housing has been successfully transferred to a housing association at a price that will enable all of the units to be offered by them as genuinely affordable rented homes in perpetuity. I would suggest some form of trigger point in the construction of the store is used to address this requirement.

Any proposal that places the responsibility of providing the affordable housing with the Council or in purchasing the affordable housing plots is considered unacceptable.

The Housing Team have not been contacted by any RP regarding this development; the agent has previously been provided with a list of suitable RPs.

There needs to be far more certainty surrounding the affordable housing delivery than has been proposed to date.

## **Street Services**

8.18 Street Services have made a request for 5 litter bins. In respect of refuse storage of the apartment building, Street Services have provided details of the number of bins and size of the store required. They have also requested that a dropped kerb is provided to enable safe and convenient access.

## **The Highway Authority**

8.19 The Highway Authority have raised no objection to this application, subject to the attachment of conditions to cover the following:

- A wheel cleaning facility during construction
- Construction and Service Vehicle Management Plan
- Details of service vehicle delivery times (which should avoid the busiest periods)
- Amendments to layout details relating to access, visibility splays and footpath / cycle path widths
- The upgrading of nearby bus stops to include real time information and the relocation of the north-westbound bus stop in Circular Road West
- A travel plan and contribution towards a travel plan co-ordinator
- A zebra crossing in Goojerat Road
- A £30,000 contribution to cover the Highway Authority's costs to investigate and, if possible, install a weight limit on roads between Butt Road and Maldon

Road to include but may not be limited to Constantine Road, Hamilton Road and Errington Road

## **The Environment Agency**

8.20 The Environment Agency has raised no objection to this application, subject to the attachment of appropriate conditions to cover: ownership and maintenance of drainage systems, a scheme to deal with contamination and remediation and surface water drainage from the car park to pass through an oil inceptor.

## **Natural England**

8.21 Natural England do not have an objection to this proposal but have made recommendations to improve the ecology value of the site. Below provides a summary of Natural England's comments:

- The Extended Phase 1 Habitat survey was completed at the wrong time of year however, given that most of this site is actually hardstanding, we do not consider there are likely to be adverse effects to European protected species.
- The development has excellent scope to include green infrastructure (GI) and enhancement measures. We are therefore disappointed that the applicant has not considered features that will improve biodiversity on site such as bird, bee and bat boxes, native planting (using wildflower mix, for example).
- The use of SUDS in this type of development is welcomed.
- This proposal offers an excellent opportunity to incorporate green roofs; which improve insulation levels, help with climate change capability and also provide excellent habitat for invertebrate species including UK BAP species.

## **9.0 Representations**

9.1 At the time of writing this report, approximately 114 letters of objections have been received in respect of this scheme and 9 letters of support.

9.2 The letters of objection can be summarised into five main areas of concern:

### **The size of the store**

- The original outline plan was for a much smaller supermarket and a greater number of small units, with a fewer parking spaces. CBC should reject this plan because it is another example of development creep.
- The proposal does not constitute a 'Local Store'
- A development of this size will draw people from further afield
- The proposal constitutes over development

### **The need for the store**

- The area is already served by four well established convenience stores
- There are too many supermarkets / Tesco supermarkets in the town.
- There are plenty of empty shops in town centre the store should be located there.

### Traffic and highway safety issues

- The roads between Maldon Road and Butt Road [the side roads] will become a rat run to the store. The side roads are already under pressure from the school / existing traffic; there are regular delays caused by two cars trying to pass parked cars.
- The Drury Road / Layer Road junction is too dangerous to handle the increase traffic and heavy vehicles that pass through the area.
- The junction of Butt Road / Goojerat Road is a hazard to pedestrian and cyclists; provision needs to be made to make this safer
- The two (pedestrian) entrances onto Butt Road will result in customers parking in Butt Road and running in for quick items
- The residents parking scheme should be extended; the current parking restrictions end at 6pm - after this time it is extremely difficult to get a space as non-residents park there.
- A weight limit should be imposed on Errington Road, Hamilton Road, Constantine Road and St Helena Road to ensure that delivery vehicles do not use these residential streets.
- Controls are required on the routes to and from the Supermarket taking account of noise and traffic for residents on Drury Rd, Butt Rd, Layer Rd.
- In view of the bid for Sainsbury to take over the Drury Arms, the Transport Statement needs to be revisited to take account of the potential for two supermarkets in close proximity
- Traffic calming measures and a 20mph zone are required
- The traffic will create noise and pollution problems

### Adverse Impact on residents

- The proposal will result in youths gathering which will cause noise and disturbance to residents; the pedestrian entrance via Butt Road should be controlled in order that the area is secure during non opening hours.
- Access for cars would involve moving the bus stop and the noise created by large lorries and customers cars, would certainly affect the value of adjacent houses.
- Opening hours should be restricted to ensure that the store does not affect the quiet enjoyment of the surrounding residents.
- The store will exacerbate the already difficult parking situation.
- Litter levels will increase

### The development is of an inappropriate design

- The new store, even if designed to be 'in keeping' to some extent, would not fit with the established residential character of the area.
- The proposed art work will detract from the street scene of retained buildings along Butt Road.
- The scale of the residential element is not appropriate to the adjacent retained buildings.
- The scheme fails to provide private amenity space and the proposed commuted sum in lieu of this is Tesco buying off the Council.
- Trees and landscaping are being sacrificed for parking, delivery space and size of supermarket.

- The generic architecture is not appropriate for this historic context

#### Other issues

- Tesco states that they will create jobs - what about the loss of jobs from other shops closing.
- There is no guarantee that the housing or the other retail units will be delivered

9.3 A number of letters of support have been received in respect of this application. The letters of support can be summarised as follows:

- It will provide investment into this part of Colchester.
- it will create jobs for local residents
- it will provide for local and weekly shopping for nearby residents
- it will provide a better range of facilities in this part of the Colchester; and
- it will create a high quality environment
- it is a good location for a foodstore, it is well served by footpaths and cycleways and will deter people from travelling further afield by car.

9.4 Colchester Cycle Campaign (CCC) comments can be summarised as follows:

- The NPPF requires priority to be given to pedestrian and cycle movements and the creation of safe and secure layouts that minimise conflicts between traffic and cyclists or pedestrians.
- The Framework also requires developers to avoid street clutter and where appropriate establish home zones. Many of the streets west of Butt Road are suitable for home zones rather than a simple weight restriction.
- Cycle access into the development is unclear; will cyclists be allowed to enter the site via the Feature Square?
- The junction of Goojerat Road / Butt Road could do with an elephant crossing.
- We were amazed to see Tesco's catchment area for the new store. A car park with nearly 200 spaces will do nothing to achieve the council's aims of reducing traffic or pollution, and improving individuals' health through exercise. The catchment area is small enough for virtually every customer to walk or cycle unless they are disabled.
- Tesco should be required to join the Colchester Travel Plan Club to minimise traffic created by staff.

#### **Councillors and MP**

9.5 Cllr Offen has requested that consideration is given to the provision of a post office.

*Officer Comment: Tesco have stated that the store is not of a sufficient size to accommodate a post office within the proposed food store; there would however be no objection to the post office occupying one of the smaller retail units.*

9.6 Cllr Cope comments in respect of this application can be summarised as follows:

- This application should be considered by the Planning Committee because of the large amount of public interest.
- The current application goes significantly beyond the extent of the planning consent previously granted.
- Many residents have commented about the expected highways impact of the development; although on past form the Highways Authority are usually the last to see it that way.
- The traffic restrictions exclude St Helena Road. Local knowledge is that in fact St Helena Road is if anything more crowded than the other identified roads. St Helena Road should be added to the weight restricted streets

Cllr Cope has provided further written comments as he is unable to attend the Planning Committee on 14 June 2012; these are repeated in full in Appendix 1.

9.7 Sir Bob Russell MP comments can be summarised as follows:

- The proposal does not conform to the original outline planning permission.
- The retention of the historic Garrison buildings is supported.
- It is disappointing that the residential element is not of a standard in keeping with the historic nature of the retained Garrison buildings.
- There is already traffic congestion on Butt Road which could be affected by the planned changes to the High Street and the knock on effect that this will have on displaced vehicles.
- Additional traffic associated with this proposal will result in a significant impact on the immediate area which includes the garrison, police station, doctor's surgeries, the visitor attraction at the Roman Circus and the nearby school.
- The proposal should be refused as it far exceeds the original proposal and the applicant should revert to the foodstore size previously proposed.

## 10.0 Community Engagement

10.1 Prior to the submission of this planning application Tesco undertook a Community Engagement Exercise which comprised the following:

- Pre application discussions with the Local Planning Authority.
- Writing to members and the local MP
- Meeting with the school
- Writing to nearby residents
- A public exhibition (which was held on 9th & 10th December 2012 and promoted by 340 letters to site neighbours and via a press advert).

10.2 According to the Statement of Community Involvement the public exhibition was attended by 55 people and, of the feedback provided, approximately two thirds were in favour (having indicated yes to the question are you in favour of the proposals for Butt Road) or neutral (having indicated 'undecided' in answer to the same question). The Statement of Community Involvement notes that the vast majority of the remaining third who indicated that they did not support the proposal were residents of Errington Road and comments focussed largely on traffic related issues.

## **11.0 Parking Provision**

11.1 see paragraphs 14.43 to 14.53

## **12.0 Open Space Provision**

12.1 See Paragraph 14.61 to 14.66

## **13.0 Air Quality**

13.1 The application site is not located within or immediately adjacent to an Air Quality Management Area.

## **14.0 Report**

### Planning Background

- 14.1 There is a long standing permission (dating back to 1994) for a food store and three retail units on the former PSA site (Area K2) This outline permission has been periodically renewed and a detailed reserved matters application was approved in 2009 (Reference 09/0905). This application proposed a food store of 512sqm plus 218sqm of storage and three shops at 171sqm with 72sqm of storage. The total floor area (including storage) created by this permission is 1459sqm (1025sqm retail sales area).
- 14.2 Planning permission for the Garrison Urban Village Development was approved in June 2003. This development comprises residential development (of 2600 units) and mixed uses including retail, leisure and employment, public open space, community facilities, landscaping and highway & transportation improvements. The traffic implications of this development on the surrounding highway network were fully considered when determining this application and were deemed acceptable. The agreed Master Plan for this development identified part of the application site (Area K2) as a Neighbourhood Centre with the remainder of the site identified for residential development with low key mixed uses (Area K1).
- 14.3 On Area K1, as part of the Garrison Urban Village Development, planning permission (ref 100981) has been granted for the change of use and conversion of former MOD buildings to create 535sqm of retail use (Use class A1 and A2) and for the erection of two buildings (ref 100982) to create 1080sqm of retail uses (Use Class A1 and A2) and 14 no. affordable units; the combined retail area granted by these two permissions is 1615sqm.
- 14.4 The above planning approvals remain extant and provide a total retail provision of 3074sqm and 14 no. two bedroom affordable apartments.
- 14.5 The current planning application proposes a supermarket (2,702sqm gross / 1,328sqm net) on the former PSA site (Area K2) and six retail units (533sqm gross / 450sqm net sales area) on Area K1; 14 no. affordable units are also proposed on Area K1.

## Planning Policy

- 14.6 The Borough Council benefits from an up-to-date Development Plan consisting of the Council's Core Strategy (adopted Dec 2008) the Development Policies DPD and the Site Allocations DPD (adopted Oct 2010). The East of England Regional Spatial Strategy also forms part of the Development Plan, although with the enactment of the Localism Act its revocation has moved a step nearer. In reaching the recommendation in respect of this application, limited weight has been afforded to the Regional Spatial Strategy.
- 14.7 The northern part of the application site is allocated as a Neighbourhood Centre in the Garrison Master Plan in 2001. This allocation was subsequently carried forward by the 2010 adopted Site Allocations DPD. Policy GAR1 provides for a 1000sqm retail foodstore and three small shops. It is important to note that this policy does however state that the floor area figures are '*not be considered prescriptive but a guide to inform development proposals*'.
- 14.8 The current proposal exceeds the guideline figures set out in Policy GAR1, in that a single foodstore is proposed (with a floor area of 1,328sqm net) on Area K2. (The six retail units are located outside, but adjacent to the Neighbourhood Centre). The key planning policy concern accordingly is whether the increase in the size of the foodstore proposed for the Neighbourhood Centre would change the role played by the development in Colchester's spatial retail hierarchy.
- 14.9 The adopted Core Strategy explains that central to its retail policies is that "*new and existing communities will be supported by a network of District and Local Centres which will provide local residents with easy access to shopping, employment and services*" (paragraph 3.1). The objective is to create a "*vibrant network of District and Local Centres*" (paragraph 3.2).
- 14.10 The Council's retail centre classification and hierarchy is set out in Core Strategy Policy CE1 supported by Table CE1a. The Town Centre is at the top of the hierarchy, followed sequentially by edge of centre locations, District Centres, and Local Centres, which comprises Neighbourhood Centres and Local Shops. (The Neighbourhood Centre is the larger of the two Local Centre classifications).
- 14.11 The local policy approach to Local Centres is set out in Policy CE2c of the adopted Core Strategy. Alongside protecting and enhancing existing Neighbourhood Centres, support is given to new housing developments, such as the Garrison Area, creating new Neighbourhood Centres "*to provide for the needs of existing and new communities*". The role of such centres is clarified as being "*designed to meet the needs of the local catchment and encourage sustainable travel behaviour*" (Policy CE2c).
- 14.12 The applicants have submitted a Retail Statement to address the issue of the proposal's compatibility with national and local policy including the particular issue of whether the proposal fits the definition of a Neighbourhood Centre. They contend that the "*proposal delivers a centre consistent with its role in the Colchester retail hierarchy. The proposal for this centre is designed to meet the day to day and the weekly needs of the local catchment and encourage sustainable travel behaviour*".

- 14.13 A key concern of residents is that the current proposal is larger than that previously approved and that the size of the proposed store is not compatible with that of a Neighbourhood Centre.
- 14.14 It is accepted that the size of the proposed foodstore is larger than that previously approved (1,328sqm (net) compared to 512sqm (net)). It is however important to note that the submitted application is for full planning permission and is not therefore constrained by the scope of the previous planning permission. In determining the current application, the Local Planning Authority must give due consideration to its development plan policies and national policy guidance; it can not simply be stated that because the current proposal is larger than a previously approved scheme it is unacceptable.
- 14.15 PPS 4 (Planning for Sustainable Economic Growth) describes the general composition of a local centre as typically including amongst other shops, a small supermarket, a newsagent, a post office and a pharmacy. The current application will deliver a supermarket of 1,328sqm (net) which is a small supermarket when considered against the PPS4 definition of supermarkets. (Annex B describes a supermarket as a self service store selling mainly food with a trading floorspace of less than 2,500sqm; superstores (which are compatible with District Centres) are defined as selling food and non food goods usually with more than 2,500sqm). The proposed supermarket at 1,328sqm (net) is below the 2,500sqm (trading floor space) figure provided in the PPS4 Annex definition and is therefore considered a suitable size for a Neighbourhood Centre.
- 14.16 The National Planning Policy Framework (NPPF) was published by the Government during the course of this application and replaces the PPS / PPG guidance with immediate effect. (The technical guidance notes that accompany the former PPG / PSS remain valid).The current application therefore needs to be considered in the light of the policy guidance set out in the NPPF.
- 14.17 The NPPF requires local planning authorities to define a network and hierarchy of centres that is resilient to anticipated future economic changes; Core Strategy CE1 is considered to fulfil this objective. When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500sqm). The Council's adopted Site Allocation Plan identifies a Neighbourhood Centre for this site and the size of the proposed development is under 2,500sqm – the default size for what is considered appropriate for a Neighbourhood Centres. The proposals are thus considered compatible with the NPPF guidelines in respect of retail development.
- 14.18 The size of the catchment area for the new store (as indicated within the supporting information) is based on an 800m catchment area which has been adjusted to take account of existing retail provision. The Planning Policy Team has confirmed that an 800m catchment area is considered appropriate for a Neighbourhood Centre. In reality it is likely that draw of the store on the surrounding area according to a variety of factors, including the availability and attractiveness of alternative opportunities and the ease of access to alternatives as well as distance. In addition to this, given the stores location it is also likely to serve customers from further afield as travel during a day often includes stops at shops and services en-route to other destinations.



- 14.19 A large number of objections relate to the fact that the area is already well served by existing shops and that there is not a need for a new foodstore. Members will be aware that 'need' and competition are not material planning considerations; a refusal can not therefore be sustained on these grounds.
- 14.20 As the Planning Policy Team note, the intent of the applicant to conform to guidelines for Neighbourhood Centres is clear from the Retail Statement, but importantly the intent will need to be realised by ensuring that the development as built adheres to the principles implied by Neighbourhood Centre status and as covered by relevant LDF policies. These include:
- Limiting the size of the supermarket and retail units to the agreed total
  - Ensuring the development is well integrated with the surrounding neighbourhood to facilitate sustainable modes of travel to the site (i.e. walking and cycling) – this encompasses both the internal site layout and its links with the wider neighbourhood
  - Delivery of a high quality design which retains appropriate elements of the Garrison
  - Provision of training and employment measures for local residents
- 14.21 All of the above issues can be adequately controlled or secured through planning conditions or a legal agreement (as appropriate).
- 14.22 The six proposed retail units adjacent to the supermarket fall outside the designated Neighbourhood Centre at Butt Road; these units are identified as being suitable for A1 (shops), A2 (offices), A3 (snack bar / café) and A5 (hot food take away) uses. The agent has confirmed that none of the units are proposed for use as drinking establishments (as defined by Use Class A4) and that there is not an objection to the number of units used for takeaway uses (Use Class A5) being limited to one of the six units (via a condition).
- 14.23 Policy DP7 of the Development Policies DPD provides the policy approach to Local Centres and Local Shops. The key test for these retail units is *"to demonstrate that they are an appropriate scale for the local area they would serve and would represent no threat to the viability and vitality of existing centres and shops or retail uses.*
- 14.24 The proposed retail units are small, varying between approximately 60sqm (sales) and 90sqm (sales), which are an appropriate scale for their role in providing a wider range of shops and services (than the supermarket alone can provide) for the needs within the catchment. The units are fully integrated into the local centre, located immediately adjoining the supermarket, along a proposed *"retail street"* and benefit from a shared local centre car park with the foodstore. Moreover, the principle of accepting A1 and A2 uses on this site has been accepted by the Council when permission was previously granted for the redevelopment of Area K1. It is recommended that a condition is attached that prevents the amalgamation of these units and that they are occupied by a different owner /user from the foodstore.

- 14.25 In order to ensure that the six retail units are delivered in a timely manner, it is proposed that these units are fully refurbished and marketed for rent or sale prior to the opening of the foodstore. The agent has also confirmed that it is the intention to actively market these units (both prior and after the completion of the foodstore) and that they will be advertised for rent at the prevailing market rate.
- 14.26 The increase in the size of the Butt Road Neighbourhood Centre from the policy guideline of 1000sqm is not considered to move the current proposal outside the Neighbourhood Centre category; this is particularly the case when it is accepted that 'the function and attraction of such centres will vary according to the levels and densities of population'. The current scheme certainly does not approach the scale of the superstores found in District Centres in the town – for example, Asda (5,222sqm) at Turner Rise or Tesco at Highwoods (6,247sqm). It also needs to be remembered that the Council, through granting previous planning permissions, has accepted the principle of 3074sqm retail use on this site. In view of this, it is not considered that a refusal can be sustained simply on the grounds that a food store of 1,328sqm (net) is proposed. It is however recommended that a condition is attached to prevent any increase in the size of the store either by extension or by the insertion of a mezzanine floor.
- 14.27 14 no. residential units are proposed as a part of this application. The residential units are sited on Area K1, which is identified for residential and low key mixed uses. The siting of the residential units is considered acceptable in land-use terms.

#### Highway and Accessibility Issues

- 14.28 The NPPF focuses on the importance of providing new development in accessible and sustainable locations so that it minimises reliance on the private car. The NPPF advises that development proposals should only be refused on transport grounds where the residual cumulative impacts of development are severe. Core Strategy Policies TA1, TA2, TA3 and TA4 address transport strategy and promote accessibility and changing travel behaviour. These policies seek to strike a balance between improving accessibility through land-use planning, managing traffic flows and growth and seek to encourage a change in travel behaviour and where appropriate give priority to walking, cycling and public transport. These policies are closely linked to Core Strategy policies PR2 (People Friendly Streets) and UR1 (Urban Regeneration). Policy DP17 provides guidance on ensuring accessibility for sustainable modes of transport as well as requirements for Travel Plans and Transport Assessment and the requirements for incorporation of satisfactory and appropriate provision for pedestrians and cyclists.
- 14.29 Access to the application site is currently via the newly constructed roundabout on Goojerat Road; this roundabout also serves the adjacent residential development site on Area L&N. In addition to the new access, other highway infrastructure has already been improved on Butt Road, Circular Road West and Goojerat Road as a part of main Garrison development.

- 14.30 Public transport options for the site are good, with several bus services stopping within 400m of the site. Two bus services 64 and 64A run close to the site along Butt Road and stop directly outside the proposed Neighbourhood Centre. In addition to the services on Butt Road, there is an additional service, 63, which runs along Circular Road West.
- 14.31 The Neighbourhood Centre is already well served (in the immediate vicinity) by pedestrian and cycle linkages. The site itself is however currently impermeable with no formal access through it. Additional pedestrian access points to the Neighbourhood Centre are proposed on Butt Road and Circular Road West. The residential element of the current application is to be served via a new access point on Circular Road West.
- 14.32 The scope of the Transport Statement that accompanies this application was agreed by the Highway Authority and concentrates on the capacity of the roundabout junctions of Butt Road and Goojerat Road and Goojerat Road and the development site / Area L&N. A detailed study of the wider road network was not considered necessary as the Neighbourhood Centre forms part of the Garrison Master Plan and the surrounding highway network has been improved to accommodate this development. This point has been discussed further with the Highway Authority and they have advised that they work to the DfT's Transport Assessment Guidelines, which do not give an 'increase in traffic flow threshold due to development'. For this reason the Highway Authority tend to use a threshold of 10% - i.e. if a development is likely to increase traffic flows at any junction by 10% or more, they require the capacity of the junction to be assessed as a part of the proposed scheme. In this instance, the Highway Authority has not requested that the applicant undertakes a further assessment of Drury Road / Butt Road / Layer Road junction or other nearby roads as the anticipated traffic flows generated by this proposal are considered to fall under the 10% threshold.
- 14.33 The results of the survey work undertaken in respect of the mini roundabout on Butt Road show that the impact of the proposed development has an insignificant effect on both the ratio of flow to capacity value and the mean maximum queue length at the 2016 test situation. With regard to the roundabout, giving access to the Neighbourhood Centre, the survey work shows that it works well within capacity at the 2016 test situation. The Highway Authority has confirmed that the test modelling of these junctions has been undertaken to their satisfaction and that they are content with the test results.
- 14.34 A key concern expressed by many local residents is that this development will create an unacceptable increase in traffic with resultant problems of congestion, accidents, noise and disturbance. There is a particular fear that the visitors to the Neighbourhood Centre will use the streets between Maldon Road and Butt Road as a cut through and that these streets are not designed to accommodate a significant increase in traffic flows.

- 14.35 It is appreciated that the traffic implications of this proposal are contentious for many local residents. Officers are aware that local residents have previously raised concerns with the Highway Authority regarding the existing traffic levels on the roads between Maldon Road and Butt Road. In response to these concerns, the Highway Authority has an ongoing monitoring programme on these roads. The Local Planning Authority has been advised by the Highway Authority that, while the current proposal is likely to increase the flow of traffic on some of the roads between Butt Road and Maldon Road, this is considered unlikely to be detrimental to highway capacity and safety.
- 14.36 It is accepted that the proposed scheme will generate additional traffic and that this will have an impact on the surrounding roads. The Highway Authority do not however consider that the increase in the size of the proposed foodstore (when seen in the context of the approved Garrison development) will add significantly to travel flows on the local highway network; this is further reinforced by the test modelling undertaken as part of this application which demonstrates that the tested junctions have sufficient capacity for the anticipated traffic flows associated with this proposal.
- 14.37 The concerns of local residents regarding use of side roads by construction and service vehicles are appreciated. A delivery route for construction vehicles and those service vehicles under the control of Tesco is to be agreed and will exclude the use of Constantine Road, Hamilton Road, Errington Road and St Helena Road. In order to prevent other large delivery vehicles from using the side roads, a £30,000 contribution has been secured to enable the Highway Authority to investigate / introduce weight restriction controls on these roads. The introduction of such a measure will improve the existing situation in respect of potential disturbance caused by larger vehicles using these streets.
- 14.38 As a part of the Garrison development, significant improvement works have already been undertaken to the surrounding highway network. These works include: the introduction of signalised junctions; widening of roads / junctions; the creation of crossings points and the up-grading of the footpath and cycle ways. These works have improved the situation for both vehicular traffic and pedestrian and cycle users.
- 14.39 In addition to the works already undertaken, a number of additional highway and transportation improvements are proposed as a part of this scheme. These include: a zebra crossing in Goojerat Road (east of the proposal site access roundabout); the upgrading of the nearby bus stops (including the provision of real time information); a contribution towards the improvement of the cycleway / crossing in Layer Road and the investigation of weight restriction controls in selected streets. It is also proposed that the foodstore is subject to a Travel Plan.
- 14.40 Concern has been expressed that the existing traffic flows are having an adverse impact on highway safety and that the current proposal will further compound this situation; particular concern has been expressed that the roads are hazardous for school children. The County Council have provided information on accident records for the section of Butt Road between Goojerat Road and Errington Road; these records reveal that there have been no injury collisions in the last three years (i.e. since the roads have been upgraded). Officers have also requested information relating to the accident record for the Drury Road, Butt Road and Layer Road junction. The following four accidents are recorded in the vicinity of this junction:

- a vehicle leaving St Helena Mews, turning right from St Helena Road onto Drury Road hit another car (cause of the accident was attributed to slippery (wet) conditions and parked vehicles, the severity of the accident is recorded as slight)
- a cyclist knocked off their bike at the Layer Road / Drury Road junction (cause of the accident was attributed to slippery road conditions, failure to judge other persons speed, cyclist wearing dark clothing and not displaying light, the severity of the accident is recorded as slight).
- A car travelling from Drury Road to Butt Road hit a cyclists (cause of the accident was attributed to slippery (wet) conditions and failure to look properly, the severity of the accident is recorded as serious)
- A vehicle travelling south along Layer Road stopped to turn into a private drive and was crashed into by a second vehicle (cause of the accident was attributed to failure to look properly / careless driving, the severity of the accident is recorded as slight).

Of the above accidents only two occurred at the Drury Road, Layer Road, Butt Road junction. The Highway Authority have advised that the collision data does not show any pattern of collisions and that the proposal is unlikely to significantly worsen the collision record at this junction.

- 14.41 Concern has been raised that the increase in traffic associated with the store will create noise and pollution problems. An environmental noise assessment was submitted as a part of this application and this concluded that the proposals *“would result in an imperceptible increase in noise and hence there can be no detriment to residential amenity ... by reason of road traffic noise”* (paragraph 8.3). It should be noted that this assessment did not take into account the additional measures (HVG routing and a contribution towards weight limit restrictions) that have been secured which will improve amenity on surrounding streets. It was not necessary to submit an Air Quality Assessment as a part of this proposal as the application site does not fall within or immediately adjacent to an Air Quality Management Air. It should be noted that Environmental Control has not raised any concerns regarding the potential for pollution from vehicular traffic.
- 14.42 It is considered that the highway improvement works undertaken as a part of the Garrison Urban Village Development, combined with the measures described above, will suitably mitigate the potential highway impacts associated with this development. It is important to note that the NPPF advises that applications should only be refused on transport the grounds where the impact of the development will be severe. The potential impacts of this development have been discussed in detail with the Highway Authority and they are comfortable that this proposal will not have an unacceptable impact on the surrounding highway network and/or highway safety. Given this, and in absence of any technical information to the contrary, it is not considered appropriate to deviate from the view of the Highway Authority that this proposal (subject to a package of works secured by condition or legal agreement as appropriate) is acceptable.

## Parking Provision

- 14.43 Development Plan Policy DP19 requires development proposal to be implemented in accordance with adopted Parking Standards (November 2009). The parking standard indicates the level of parking provision required and will depend on the type and intensity of use.
- 14.44 The proposed car park serving the Neighbourhood Centre provides 164 car parking spaces and includes the provision for 12 disabled and 8 parent and child spaces. 9 motorcycle spaces are being provided as a part of this development proposal. In negotiating other aspect of this scheme the size of the proposed Neighbourhood Centre car park has been reduced from that originally submitted.
- 14.45 The Council's adopted Parking Standards require a maximum of 1 space per 14sqm for foodstores and 1 space per 20sqm for non-food stores. Based on these standards, the parking requirements for the foodstore is 193 spaces and for the non-foodstore units is 27 spaces; the total maximum parking provision for the proposed commercial development is, therefore 220 parking spaces. While the number of spaces proposed is under the maximum level indicated by the Parking Standards (164 as opposed to 220), the standards accept a lower provision of vehicle parking in urban areas where there is good access to alternative forms of transport. This site is considered to constitute such a location; moreover as a Neighbourhood Centre it is not considered appropriate to encourage car use by providing excessive car parking.
- 14.46 A number of objectors have expressed concern regarding the size of the proposed car park intended to serve the Neighbourhood Centre: some of the objections relate to the fact that the parking provision is excessive and will encourage visitors from outside the suggested catchment area; other concerns relate to the potential for overspill parking associated this development adding to pressure on the existing on-street parking used by local residents. It is the view of Officers is that the number of parking spaces being proposed is at the upper limits of what is considered necessary to serve a Neighbourhood Centre (it is likely that the car park will be substantially underused for the majority of the time). That said officers are conscious that overspill parking is a real concern of local residents and that there will be peak periods / days when the parking demands will be higher. Having carefully considered the proposed parking provision, it is considered that 164 car parking spaces provides an acceptable level of parking given the size of the store and the function it is intended to fulfil – i.e. that of a Neighbourhood Centre.
- 14.47 The proposed development provides 12 disabled parking spaces which is compliant with the Parking Standards.
- 14.48 Comment has been made that the size of the parking bays in the Neighbourhood Centre do not meet the preferred size as set out in the adopted Parking Standards, namely 2.9m wide x 5.5m long. In exceptional cases, the Parking Standards accept a minimum parking bay size of 2.5m x 5.0m.

- 14.49 In the Neighbourhood Centre the proposed parking bays measure 2.5m x 4.8m with a 0.2m margin strip, which creates an effective parking bay length of 5.0m; a parking bay of 2.5m x 5.0m meets the minimum bay size as set out in the Council's adopted Parking Standards. The size of the parking bays has been raised with the applicant and the Council has been advised that this bay size has been accepted on other Tesco developments (including elsewhere within the County) and that it has not resulted in operational problems for visitors to these Tesco stores. The agent has noted that the application seeking alterations to the Sainsbury's Stanway car park, approved in October 2011, was granted permission for car parking spaces of 2.5m x 4.8m, below these minimum standards. While the dimensions of the car park bay may not accord with the desired parking bay size as set out in the adopted Parking Standards, this is not considered to constitute a sufficient reason for refusing this application.
- 14.50 The Neighbourhood Centre car park will be available for use by the public free of charge for a maximum stay of three hours. The three hour duration will allow sufficient time for shopping in the Centre but prevent it being used by commuters etc. The three hour maximum duration of stay would be enforced by an Automatic Number Plate Recognition System (ANPR) and has been successful across the Country in managing the use of car parks.
- 14.51 For the residential development, the Parking Standards require a minimum of 1 space for one bedroom units and 2 spaces for 2+ bedroom units. The Parking Standards require 0.25 spaces per unit (rounded up) for visitor parking.
- 14.52 A total of 20 parking spaces are proposed for the residential development element of this scheme. The 6 no. two bedroom houses are provided with two parking spaces each and the 8 no.1 bedroom flats are provided with one parking space each; this provision accords with the Council's adopted Parking Standards. The Parking Standards also require the provision of 0.25 spaces per unit for visitor parking which equates to 4 visitor spaces in this instance. Rather than providing the visitor spaces within the residential park court, it is proposed that any visitors to these units will be able to use the Neighbourhood Centre car park (and will be excluded from the parking control system by providing details of who they are visiting and their car registration details to the store customer services).
- 14.53 The size of car parking spaces serving the housing element of the scheme is 2.9m x 5.5m which adheres to the Council's preferred parking bay dimensions.

#### Design and Heritage Considerations

- 14.54 The NPPF places great importance in the achievement of high quality and inclusive design in all developments. In respect of design, the NPPF states that development should: establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit; optimise the potential of the site to create and sustain an appropriate mix of uses; respond to local character and history, and reflect the identity of local surroundings and materials. Core Strategy Policy UR2 seeks to promote and secure high quality design. Core Strategy Policy ENV1 also requires development to be appropriate in terms of its scale, siting and design. Development Plan Policy DP1 sets out design criteria that new development must meet. These require new developments to respect the character of the site and

its context in terms of detailed design. Policy DP14 seeks to protect the historic environment and states that development will not be permitted that would adversely affect the setting of a listed building or a conservation area.

- 14.55 The layout of the proposed development is strongly influenced by the form of the retained Garrison buildings, the historic boundary treatment to Butt Road, the location of the access points and the need to safeguard the existing trees that are worthy of retention.
- 14.56 The proposal provides a continuation of the traditional red brickwork along the Butt Road frontage, thus retaining and reinforcing the historic Garrison boundary to this street. The new foodstore reflects the regular rhythms and pattern of the built forms and materials that already exist along this frontage. The former wagon sheds, which are included on the Local List for their architectural or historic interest, are to be fully repaired and converted to form small retail units. A glass canopy similar in style to that found on other garrison buildings within the former Le Cateau Barracks will be added to the frontage of these buildings. The conversion and sensitive repair of these buildings will serve to enhance this part of the conservation area.
- 14.57 The proposed residential development fronts onto Circular Road West providing an active frontage and natural surveillance to this important street. The residential development is composed of two blocks of three houses which flank the apartment building. The houses are two storeys in height and constructed of red brick with a slate roof and adopt a traditional domestic form with contemporary detailing. The apartment building has a central three storey section (with a carriage arch providing vehicular access to the rear parking court) with two storey side wings. The apartment building uses similar design detailing and material to the houses but has rusticated brickwork to the ground.
- 14.58 Officers have negotiated significant amendments to the residential element of this proposal. The apartment building has been re-elevated creating a more regular solid-to void rhythm (that reflects the character of the historic garrison buildings) and provides a more active frontage Circular Road West. The residential buildings have also been set back from the street (behind walled front gardens) creating a defensible space between the public and private realm.

### Sustainability

- 14.59 Core Strategy policy ER1 and Development Plan Policy DP25 seeks to promote sustainable construction techniques in tandem with high quality design and materials to reduce energy demand, waste and the use of natural resources. The Council's Supplementary Guidance Document "Sustainable Construction" (adopted 2011) provides further guidance on sustainability matters, encouraging housing developments to achieve a minimum of Code Level 3 and major commercial developments a BREAM Rating of "Very Good".
- 14.60 The proposed houses are to be built to Code 3 and this will be conditioned accordingly. With regard to the foodstore, the agent has stated that the Council's adopted planning policies only encourage new development to achieve a BREAM Very Good Rating. In view of this, Officers have been advised that Tesco do not intend to seek a formal BREAM rating (due to the weighting of criterion), although agent notes that many aspects of the design will be sufficient to achieve 'Very Good' rating.



## Private Amenity Space

- 14.61 Development Plan Policy DP16 states that all new residential development should provide private amenity space to a high standard and that is appropriate to its context. This policy requires the 50sqm of private amenity space to be provided for 2 bedroom houses and 25sqm for each apartment unit.
- 14.62 The proposed houses each have a private courtyard style gardens which are 50sqm or above and are thus in compliance with the above provisions.
- 14.63 To accord with the private amenity standards, the residential apartments should be provided with 200sqm of amenity space. Under the current proposal, the two ground floor units are provided with small courtyard gardens (approximately 10sqm and 22sqm) and each of the upper floor units have a private balcony that range in size from about 6sqm to 8sqm. The under provision of private amenity for the apartment buildings has been discussed with the agent and the Council has been advised that to meet the private amenity space, there will need to be a corresponding reduction in the size of the Neighbourhood Centre car park. To compensate for this, a commuted sum of £28,000 has been proposed for the enhancement of the POS elsewhere with the Le Cateau Barracks site and/or for the interpretation of the Roman Circus.
- 14.64 The agent has explained that the size of the proposed contribution has been calculated as follows:

“As per Policy DP16 of your Development Management DPD, 200m<sup>2</sup> of private amenity space is sought to be provided communally for the 8 flats. The provision of balconies reduces this further. In total, the scheme provides 78m<sup>2</sup> of balcony/garden space across the 8 flats, ranging between 7m<sup>2</sup> to 16m<sup>2</sup> (where ground floor units). Payment in lieu of this deficit of 122m<sup>2</sup> of amenity space is therefore payable, notwithstanding that additional areas of communal and private space are provided and not considered in this calculation.

The Council's adopted SPD clarifies that an area of this size is classified as a Local Area for Play (LAP), below the 400m<sup>2</sup> threshold for a Local Equipped Area for Play (LEAP). The LAP has no associated broken down cost, but a LEAP is described as costing £48,100 per playground with a £43,200 maintenance charge. This comes to a total of £91,300 (equivalent to £228.25 / m<sup>2</sup>). Pro rata, for a deficit of 122m<sup>2</sup> is £27,847 of LEAP space for provision and maintenance. This has been rounded up to £28,000 as included in the draft Heads of Terms and can secure a standard LEAP, over and above the LAP, which will be of greater benefit to the prospective residents and wider community.”

- 14.65 The under provision of amenity space has been discussed with the Council Housing Development Officer and he has commented that communal gardens associated with affordable apartments are frequently poorly used and are generally considered by housing association to constitute a maintenance liability.
- 14.66 In this instance, given the views of the Housing Officer combined with the fact that the one bedroom apartments all have a useable south facing private balcony or courtyard and are in very close proximity to a large area of public open space (Abbey Field), the offer of a commuted sum would seem reasonable.

### Impact on Neighbouring Properties

- 14.67 Development Plan Policy DP1 requires all new development to be designed to avoid unacceptable impacts on the residential amenity, particularly with regard to privacy and overlooking. Development Plan Policy DP12 states in considering new development proposals the Council will have regard to avoidance of adverse overshadowing, acceptable levels of daylight and acceptable levels of privacy for rear facing habitable rooms and sitting out areas.
- 14.68 The nearest local residential properties are located on the west side of Butt Road, some 27m from the proposed development; there is also an existing property on Goojerat Road. The proposed new buildings (the food store and the residential units) will not have an adverse impact on the residential amenity of these properties

### Landscape

- 14.69 It is stated that the landscaping scheme has designed to complement the existing setting of the site and to provide an appropriate treatment to the proposed mixed use development. As part of the proposed development, two feature trees will form focal points within the gateway entrances onto Butt Road. It is also intended to provide public art at the pedestrian gateway entrances on to Butt Road; the art work will reflect the former history of the site. Linking the two gateways is a proposed pedestrian walkway that forms a 'retail street frontage' to the retained Garrison buildings and the proposed foodstore. The design of the car park is intended to provide a suitable setting to both the retail and residential uses within the site. The northern part of the parking court accommodates a comparatively greater amount of tree planting which the applicant states is intended to provide a buffer between the residential area and the main retail usage.
- 14.70 Retention of the existing group of trees (covered by a TPO) at the south western corner forms a key landscape feature within the existing street scene, creating a degree of vertical scale that helps to anchor and visually integrate the built form into the surrounding environment. The submitted drawings also show new tree planting along the grass verge in Butt Road.
- 14.71 The proposal involves the removal of the central Lime tree that is protected by a tree preservation order. The Council's Tree Officer has advised that this tree is not of high quality (Category 'C') due to its included unions, general physiological condition and asymmetry crown. In view of this, the Tree Officer has advised that this tree should not constrain the proposed development and, as such, that there is not an objection to its removal.

### Affordable Housing

- 14.72 The Garrison Urban Village Development identifies 14 no. affordable units on Area K1. The previous Taylor Wimpey scheme proposed 14 no. 2 bedroom affordable apartment units on this site.

- 14.73 Officers have been advised that, under the terms of the land sale between Taylor Wimpey and Tesco, Tesco are contractually obliged to provide 14 affordable units (although this agreement does not require a particular number of bed spaces to be provided). The current scheme proposes 6 no. two bedroom houses and 8 no. one bedroom flats and the Council's Housing Officer has confirmed that this mix is acceptable.
- 14.74 As a part of the suggested Heads of Terms for the legal agreement, it is proposed that Tesco will "use reasonable endeavours for the sale of land to a Registered Provider (Housing Association) for the delivery of the affordable housing within a period to be agreed following the opening of the foodstore. Following this period, it is proposed that Tesco would offer to sell the land to the Council for the delivery of affordable housing".
- 14.75 The primary concern of the Local Planning Authority is that the affordable housing identified for this site is delivered in a timely manner. It is therefore recommended that the provision of affordable housing is linked to the construction and opening of the store - i.e. a registered provider is secured before construction work starts on the Neighbourhood Centre and that the housing development starts prior to the opening of the food store. The suggestion that the land is sold to the Council should Tesco not secure the services of a Register Provider for the delivery is not considered acceptable.

#### Economic Development

- 14.76 It is stated that the foodstore will create the equivalent of around 90 full time staff employed on the site. This total is made up of around 30 full time employees and 60 part time staff. This job estimation is based on employment figures for similar sized stores in similar demographic areas across the country. There will be additional jobs in the adjoining independent retail units and during the construction of the shops / residential units.
- 14.77 The development will also provide opportunities for training and the applicant has indicated willingness for this to be controlled via a legal agreement.
- 14.78 The Council has received letters of support welcoming the proposed investment by Tesco and employment opportunities that this will bring.
- 14.79 Objection letters have been received to this proposal on the grounds that the proposed development will put existing local shops out of business and that this will result in job losses.

#### Environmental Amenity Issues

- 14.80 The Government attaches great importance to controlling and minimising pollution. Any potential impacts to ground, air or water quality with the potential to lead to an impact on public health are a material planning consideration. Development Plan policy DP1 states that new development should protect existing amenity in particular in regard to noise disturbance, light pollution and odour pollution.

- 14.81 It is inevitable that there will be some disturbance (noise and emission to the air) during the construction and operation of this development. It is however considered that conditions can be imposed that will adequately control the potential for such nuisance.
- 14.82 A number of local residents have expressed concern about the development potentially creating a space for anti-social behaviour. The applicant has advised that the centre will benefit from natural surveillance from the retail units, CCTV coverage and sensitive lighting to provide permanent illumination for user safety. If necessary, the applicant has also stated that measures can be put in place to secure the site overnight, when the store is closed. It is recommended that any illuminated advertisement or associated signage is switched off when the store is closed.
- 14.83 The application form states that the proposed foodstore and other retail units will open at 7am on Monday to Saturday and at 10:00am on Sundays. The application form does not state when the units are to close and a condition has been attached requiring the units to close at 22:00 (Monday to Saturday) and by 16:00 on Sundays. Delivery times are to be controlled via condition to ensure that they cause minimum disturbance to nearby residential and conflict with peak hour traffic.
- 14.84 The proposed site is located within a developed area and will therefore already be subject to some degree of 'skyglow'. The proposed development has however been designed around what essentially amounts to an internal courtyard and in this way the walled edge along Butt Road will act as an effective barrier. In addition to this, the current Tesco car park lighting specification is designed to minimise the amount of light which is spilt vertically and horizontally from the site, thus further helping to reduce the impact of the car park lighting on the surrounding area. At night time, when the store is closed, it is proposed that the lighting in the car park will be dimmed but not switched off entirely as it aids security.
- 14.85 A Noise Impact Assessment has been undertaken for the proposed development which concludes that development could proceed without the likelihood of subsequent operations harming the local residents by reason of noise.
- 14.86 The potential for ground contamination has been identified however the advice of the Contamination Land Officer that the site can be made suitable for the proposed use and can be conditioned accordingly.

#### Drainage and Flood Risk Assessment

- 14.87 A Flood Risk Assessment (FRA) has been conducted which has identified that the site is situated within Flood Zone 1 – i.e. little to no risk of flooding. In accordance with Policy DP20, surface water runoff generated by the proposed development will be sustainably managed through the use of SuDS, specifically porous paving and a below ground Geolight modular attenuation system.

## Section 106 Matters

14.88 The applicant has submitted a draft Heads of Terms for a S106 agreement which covers the following:

- Local Employment and Training
- Construction Traffic Management Plan
- Heavy Goods Vehicle Transport Plan
- Contribution to weight restrictions on vehicles using specified local roads (£30,000):
- Affordable Housing (14 units and trigger points for delivery)
- Travel Plan (for food store)
- Cycle Route on Layer Road (£43,000)
- Amenity Space Contribution (£28,000 - in lieu of delivering on-site amenity space for the affordable flats.
- Litter Bins Contribution £8335.25 + VAT for the installation and maintenance (for 5 years) of 5no. litter bins within the immediate area.
- Linking the residential development to 299a for the provision of Primary and Secondary Education Contribution; Public Open Space, Sport and Recreation Contribution; Community Facilities Contribution

14.89 It is proposed that the following works will be delivered under S278 of the Highway Act

- Improvement and upgrading of bus shelter including the provision of real time information.
- Zebra Crossing on Goojerat Road

14.90 The heads of terms are considered reasonable.

## **15.0 Conclusion**

15.1 The proposed foodstore and 6 no retail units have been designed to accord with national and local planning policies and the land-use allocation identified for this part of the Garrison Regeneration Area. Residential development is also proposed as a part of this application, which fulfils the contractual requirement to provide 14 no. affordable units on this part of the Garrison Urban Village Development. Where planning policies have not been met a justification has been provided. An extensive s106 (planning obligations) and s278 (highway works) have been secured which is considered to mitigate the potential adverse impacts associated with this development proposal.

15.2 For the reasons set out in this report, the application for the erection of a foodstore, 6 no. retail units and 14 no. residential units with associated ancillary development, is on balance, considered acceptable.

## **16.0 Recommendation**

16.1 It is recommended that this planning application is deferred and the applicant advised that the Council is minded to grant a conditional approval provided that a legal agreement is signed to cover the items set out under the s106 heading. On the signing of such an agreement the Head of Environmental and Protective Services be authorised under delegated powers to grant planning permission subject to the conditions set out below:-

### **Conditions**

#### **1 - A1.5 Full Perms (time limit for commencement of Development)**

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 the requirements of Section 18(1) of the Planning (Listed Buildings & Conservation Areas) Act 1990, as amended by the Planning & Compulsory Purchase Act 2004.

#### **2 - Development in Accord with Approved Plans (Non-Std. Wording)**

The development shall be implemented in all respects strictly in accordance with the submitted plans and hereby approved, unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

#### **3 - C2.2 Archaeological Excavation and Evaluation**

No development shall take place within the application site until the applicant, or their agents or successor in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.

Reason: In order to provide a reasonable opportunity to record the history of the site.

#### **4 - Non-Standard Condition**

If hitherto unknown evidence of historic character that would be affected by the works hereby permitted is discovered, an appropriate record together with recommendations for dealing with it in context of the approved scheme shall be submitted for written approval by the Local Planning Authority.

Reason: In order to provide an opportunity to record and/or retain historic features that may be discovered during the course of the redevelopment of this site.

### 5 - C3.3 Samples to be Submitted

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 that the materials are appropriate to the architectural character of the buildings and have due regard the Garrison Conservation Area and the established townscape character of the area.

### 6 - C3.10 Details of Brick/Mortar Mix Bond/Joint Profile

Prior to the commencement of the development, full details of all new brickwork, including the bond, mortar mix and joint profile shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be constructed in accordance with the agreed details.

Reason: To ensure that the brickwork detailing is appropriate is to the architectural character of the buildings and has due regard the Garrison Conservation Area and the established townscape character of the area.

### 7 -Non-Standard Condition

Notwithstanding the details submitted, additional drawings of all architectural features / detailing including the proposed new windows (including depth of recess), cills, arches, doors, shop fronts, canopies, glazing systems (including the type of glass), louvers, brise soleil, eaves, verges, rusticated brickwork, chimney stacks or other roof features to be used, at a scale between 1:20 and 1:1 as appropriate shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be implemented in accordance with the approved additional drawings.

Reason: To ensure that the architectural features and detailing are appropriate is to the architectural character of the buildings and have due regard the Garrison Conservation Area and the established townscape character of the area.

### 8 - Non-Standard Condition

Notwithstanding the details submitted, the material and colour of all external joinery (windows, doors, louvered shop fronts etc) shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development. The development shall be implemented in accordance with the agreed details and thereafter be retained as such.

Reason: To ensure that the material and colour of the external joinery is appropriate is to the architectural character of the buildings and have due regard the Garrison Conservation Area and the established townscape character of the area.

### 9 - Non-Standard Condition

Notwithstanding the details submitted, details of the materials, profile (design) and colour of the rainwater goods shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of works. The development shall be implemented in accordance with the agreed details.

Reason: To ensure the material, colour and design of the water goods are appropriate to the character of the buildings and have due regard the Garrison Conservation Area and the established townscape character of the area.

#### 10 - Non-Standard Condition

The canopy to the retained buildings shall be constructed of metal unless otherwise agreed in writing by the Local Planning Authority and shall be installed in accordance with the agreed details prior to the opening of these units or the food store, whichever is earlier.

Reason: To ensure that appropriate materials are appropriate to the age and character of these buildings and that of the Garrison Conservation Area.

#### 11 - Non-Standard Condition

The shopfront glazing system and entrance lobby to the foodstore shall not be obscured by film or any other materials applied to or immediately behind the windows unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the foodstore and retail units provide an active frontage to the public realm of the Neighbourhood Centre.

#### 12 - Non-Standard Condition

The retained garrison buildings (retail units nos. 1 to 6) shall be fully refurbished in accordance with the agreed details to the satisfaction of the Local Planning Authority prior to the opening of the foodstore.

Reason: To ensure that locally listed buildings are repaired as a part of this development scheme.

#### 13 - Non-Standard Condition

The internal layout (size) of the six retail units (nos. 1 to 6) shall be retained in the form shown on drawing no. 1291/PL 1211 9 and shall only operate as six individual separate retail units.

Reason: The Local Planning Authority wishes to retain control over any subsequent alteration to these units to ensure that there is a continued provision of small scale shops within the Neighbourhood Centre.

#### 14 - Non-Standard Condition

The six retail units (nos. 1 to 6) in the retained buildings shall not be occupied by the same occupier (or associated company) as the foodstore.

Reason: In the interest of ensuring the vitality of the Neighbourhood Centre and a mix of uses and business.

#### 15 - Non-Standard Condition

The retail units (nos. 1 to 6) hereby permitted shall not be used as a drinking establishment (as defined by Use Class A4 of the Town and Country Planning (Use Classes) (Amendment) Order 2005).

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



#### 16 - Non-Standard Condition

Only one of the retail units (nos. 1 to 6) hereby permitted shall at any one time be used as a hot food takeaway (as defined by Use Class A5 of the Town and Country Planning (Use Classes) (Amendment) Order 2005).

Reason: The Local Planning Authority wishes to ensure that hot food takeaway uses remain a minority element, and in the interests of safeguarding the amenity of nearby residential properties.

#### 17 - Non-Standard Condition

Notwithstanding the provisions of the Town and Country Planning (Use Classes) (Amendment) Order 2005, the foodstore as shown on the approved plans shall only be used for A1 top up retail sales as described in the application namely a wide range of grocery items and not for any other A1 sales.

Reason: To ensure that the development satisfies national and local retail planning policies.

#### 18 - Non-Standard Condition

The floor area of the foodstore hereby permitted shall not be extended either by the insertion of a mezzanine floor or by the extension and/or other alteration of the building.

Reason: The Local Planning Authority wishes to retain control over any subsequent increase in the size of the foodstore to ensure it does not have an adverse impact on amenity of the surrounding residential area.

#### 19 - Non-Standard Condition

Prior to the commencement of the development, a scheme for the provision of affordable housing to be provided as a part of this development shall be submitted to and agreed in writing by the local planning authority. The scheme shall include: (i.) the timing of the construction and occupation of the affordable housing; (ii.) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no RSL is involved with this scheme; and (iii.) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing;

Reason: To ensure the affordable housing is delivered concurrently with the Neighbourhood Centre (or shortly thereafter) and that these units are made available as affordable housing.

#### 20 - Non-Standard Condition

The tenure of the affordable housing shall be affordable rent only.

Reason: For the avoidance of doubt as to the scope of this permission and to ensure that the housing meets the Council's priority housing need.

#### 21 - C10.15 Tree & Natural Feature Protection: Protected

No work shall commence on site until all trees, shrubs and other natural features shown to be retained on the approved plans, (including those referred to in condition/s XXX) 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.

#### 22 - C10.16 Tree & Natural Feature Protection: Entire Site

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

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

#### 23 - C10.18 Tree and Hedgerow Protection: General

All trees and hedgerows on and immediately adjoining the site shown on the approved plans to be retained 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 to be retained shall be monitored and recorded for at least five years following contractual practical completion of the approved development. In the event that these 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.

#### 24 - C11.11 Landscape Design Proposals

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 (including position, height, design and material).

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.

#### 25 - C11.12 Landscape Works Implementation

All approved hard and soft landscape works shall be carried out in accordance with the implementation and monitoring programme agreed with the Local Planning Authority and in accordance with the relevant recommendations of the appropriate British Standards. All trees and plants shall be monitored and recorded for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

Reason: To ensure the provision and implementation of a reasonable standard of landscape in accordance with the approved design.

#### 26 - C11.17 Landscape Management Plan

A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved by the Local Planning Authority prior to any occupation of the development (or any relevant phase of the development) for its permitted use.

Reason: To ensure that due regard is paid to the continuing enhancement and maintenance of amenity afforded by the landscape.

#### 27 – Non Standard Condition

Prior to the commencement of any works, the applicant shall commission, in consultation with the Local Planning Authority, an artist to design the proposed public art for this site. This scheme shall be carried out prior to the opening of the foodstore (unless otherwise agreed in writing by the Local Planning Authority) and shall thereafter be retained to the Local Planning Authority's satisfaction.

Reason: To ensure the delivery of the public art proposed by the applicant and that the design of the public art is suitable for its intended location.

#### 28 - Non-Standard Condition

No development shall commence until a scheme to enhance the nature conservation interest of the site has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be implemented in full prior to the occupation of the development hereby approved.

Reason: To increase the biodiversity of the site and to mitigate any impact from the development hereby approved.

#### 29 - B8.1 Drainage Scheme Prior to Commencement of Work

Prior to the commencement of any work on site, a scheme of surface water and foul drainage shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out prior to the occupation of the building/s hereby permitted.

Reason: To ensure satisfactory arrangements are made for the disposal of foul and surface water drainage.

### 30 - Non-Standard Condition

The hard surfaces hereby approved shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surfaces within the curtilage of the development.

Reason: To reduce the risk of flooding and pollution and increase the level of sustainability of the development.

### 31 - Non-Standard Condition

Prior to the commencement of any development, a scheme for the ownership and maintenance of the surface water system shall be submitted and agreed in writing with the Local Authority. The scheme shall be constructed and completed in accordance with the approved plans and specification and thereafter maintained in accordance with the agreed details.

Reason: To ensure a satisfactory method of surface water drainage.

### 32 - B8.9 Oil Interceptor Required

Prior to being discharged into any watercourse, surface water sewer or soakaway all surface water drainage shall be passed through an oil interceptor designed and constructed to have a capacity compatible with the site being drained. Roof water shall not pass through the interceptor.

Reason: To prevent pollution of the water environment.

### 33 - Non-Standard Condition

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
- (ii) an assessment of the potential risks to:
  - human health,
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - adjoining land,
  - groundwaters and surface waters,
  - ecological systems,
  - archeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

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

Reason: To ensure that risks from land contamination to the future users of the land and

neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite.

#### 34 - Non-Standard Condition

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

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

#### 35 - Non-Standard Condition

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

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

#### 36 - Non-Standard Condition

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 33 "Site Characterisation", and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 34 "Submission of Remediation Scheme", which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 35 "Implementation of Approved Remediation Scheme".

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

### 37 - Non-Standard Condition

Prior to occupation of any property hereby permitted and the provision of any services the use hereby permitted commencing, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 34 "Submission of Remediation Scheme" above.

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

### 38 - Non-Standard Condition

The foodstore and retail units hereby permitted shall not be open to customers except between the hours of 0:700 and 22:00 on Mondays to Saturday and 10:00 to 16:00 on Sundays, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the amenity of the surrounding residential properties.

### 39 - Non-Standard Condition

Prior to commencement of the development, a Service Vehicle Management Plan (which shall include details of service vehicle delivery times and service routes) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To minimise the likelihood of conflict between vehicles using the proposed service yard and those entering/exiting the proposal site and to safeguard the amenity of nearby residents.

### 40 - Non-Standard Condition

A competent person shall ensure that the rating level of noise emitted from the site by plant equipment and/or, machinery shall not exceed 5dBA above the background prior to the development 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 at all boundaries near to noise-sensitive premises. Confirmation of the findings of the assessment shall be provided in writing to the local planning authority prior to the the development hereby approved coming into beneficial use.

Reason: To safeguard the amenity of nearby residents.

### 41 - Non-Standard Condition

Any plant, equipment or machinery on the premises shall be constructed, installed and maintained so as to comply with Condition 40. The noise generated by such equipment shall not have any one 1/3 octave band which exceeds the two adjacent bands by more than 5dB as measured at all boundaries near to noise-sensitive premises.

Reason: To safeguard the amenity of nearby residents. .

#### 42 - Non-Standard Condition

The foodstore and/or retail units (Nos 1 to 6) hereby permitted shall not come into beneficial use until there has been submitted to and approved in writing by the Local Planning Authority a scheme for the control of fumes and odours. This shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such fume/odour control measures as shall have been approved shall be installed prior to the foodstore and/or retail units hereby permitted coming into beneficial use and thereafter be retained and maintained to the agreed specification and working order.

Reason: To safeguard the amenity of nearby residential properties by controlling the fumes and odours.

#### 43 - Non-Standard Condition

Any lighting of the development shall fully comply with the figures specified in the current 'Institution of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Light' for zone (insert zone – see note below). This shall include sky glow, light trespass into windows of any property, source intensity and building luminance. Upon completion of the development and prior to the foodstore and/or retail units hereby permitted coming into beneficial use/the use hereby permitted commencing] a validation report undertaken by competent persons that demonstrates compliance with the above shall be submitted to the planning authority for approval. Having been approved any installation shall thereafter be retained and maintained to the standard agreed.

Reason: In order to safeguard the amenity of neighbouring residential properties by controlling the undesirable, disruptive and disturbing effects of light pollution.

#### 44 - Non-Standard Condition

Any externally illuminated sign shall comply with the guidelines in the current 'Institution of Lighting Engineers Guidance TR5 Brightness of Illuminated Advertisements'. All such signage shall be switched off 30 minutes after the retail units are closed to the public and shall not be illuminated before the opening of the store(s).

Reason: In order to safeguard the amenity of neighbouring residential properties by controlling the undesirable, disruptive and disturbing effects of light pollution.

#### 45 - Non-Standard Condition

No development shall take place until details of external lighting have been submitted to and approved in writing by the Local Planning Authority. The external lighting shall be installed in accordance with the approved details and thereby retained as such unless a variation is subsequently submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the amenities of the occupiers of adjoining properties.

#### 46 – Non Standard Condition

Prior to the development hereby approved being brought into use, refuse storage and recycling facilities shall be provided in accordance with a scheme which shall have previously been submitted to and approved in writing by the Local Planning Authority. In the case of communal storage areas, a management company shall be made responsible for the maintenance of such areas. Such detail as shall have been installed shall be retained and maintained in good working order. The developer shall notify the Local Planning Authority of the management company contact details as soon as these are known.

Reason: To ensure the provision of satisfactory facilities for the storage of refuse and recycling and to ensure that they are managed appropriately.

#### 47 - Non-Standard Condition

No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. construction vehicle and access management plan
- iv. storage of plant and materials used in constructing the development
- v. the erection and maintenance of security hoarding
- vi. wheel washing facilities
- vii. measures to control the emission of dust and dirt during construction and the transit of materials to / from the site
- viii. a scheme for recycling/disposing of waste resulting from demolition and construction works.
- ix. Hours of work

Reason: In order to protect local amenity, to protect highway efficiency of movement and safety and ensure a consistent approach between the redevelopment of this part of the Garrison site and that permitted under O/COL/01/0009 .

#### 48 - Non-Standard Condition

No burning of refuse, waste materials or vegetation shall be undertaken on the application site in connection with the site clearance or construction of the development.

Reason: In order to protect local amenity and ensure a consistent approach between the redevelopment of this part of the Garrison site and that permitted under O/COL/01/0009.

#### 49 – Non Standard Condition

Prior to commencement of the development, revised drawings shall be submitted and approved in writing by the Local Planning Authority to show the proposed footpath located approximately through the middle of the site widen to a minimum of 3m. The development shall be carried out in accordance with the approved drawings.

Reason: To ensure the proposal site is fully accessible by more sustainable modes of transport such as cycling and walking.



#### 50 - Non-Standard Condition

No occupation of the development shall take place until such time as the following have been provided or completed:

- A priority junction off Circular Road West to provide access to the residential element of the proposal. This junction is to include 2no. footways with dropped kerbs and tactile paving, a minimum 70 x 2.4 x 70 metre visibility splay maintained clear to the ground at all times and a 'Keep Clear' road marking in Circular Road West in front of the junction
- Upgrading of the two bus stops in Butt Road adjacent to the proposal site in accordance with a scheme that shall have previously been approved by the Highway Authority
- Relocation and upgrading of the north-westbound bus stop in Circular Road West (south-east of Butt Road) in accordance with a scheme that shall have previously been approved by the Highway Authority
- A zebra crossing in Goojerat Road, east of the proposal site access roundabout.

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.

#### 51 - Non-Standard Condition

Prior to occupation of the foodstore hereby permitted the servicing area for the store shown on the approved drawings shall be constructed, surfaced and made available for use. The servicing area are shall thereafter be retained as such.

Reason: To protect highway efficiency of movement and safety.

#### 52 - Non-Standard Condition

Notwithstanding the details indicated on the submitted layout plan, a scheme for the servicing and refuse collection for the retail units (Nos 1 to 6) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the agreed details and thereafter be retained as such.

Reason: To ensure that adequate provision is made for the servicing of these units.

#### 53 - Non-Standard Condition

The retail development hereby permitted shall not be occupied until the car parking area including any parking spaces for the mobility impaired, has been surfaced and marked out in parking bays in accordance with a scheme that shall be submitted to and approved in writing by the Local Planning Authority. The car parking area shall be retained in this form at all times.

Reason: To protect highway efficiency of movement and safety.

#### 54 - Non-Standard Condition

Prior to the commencement of development, a Travel Plan for the foodstore shall be submitted to and approved in writing by the Local Planning Authority. The agreed Travel Plan shall be brought into operation from the first opening of the foodstore and shall be adhered to thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest reducing car dependency.

#### 55 - Non-Standard Condition

No development shall take place until details of secure cycle storage/stands (including those suitable for cycle buggies) for the occupants of, and visitors to, the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.

Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles.

#### 56 - Non-Standard Condition

Prior to commencement of the proposed development, details of the provision for parking of powered two wheelers of a design which shall be approved in writing with the Local Planning Authority, shall be provided within the site and shall be maintained free from obstruction at all times for that sole purpose.

Reason: To ensure that satisfactory facilities for powered two wheelers.

#### 57 – Non Standard Condition

Prior to the commencement of the residential element of the development hereby approved, Travel Packs shall be submitted to and agreed by the Local Planning Authority. The agreed Travel Packs shall be issued to each of the residential units prior to their first occupation.

Reason: In the interest of reducing car dependency and to ensure a consistent approach between the redevelopment of this part of the Garrison site and that permitted under O/COL/01/0009.

#### 58 – Non Standard Condition

The residential units hereby permitted shall not be occupied until the car parking spaces and turning areas shown on the approved plans have been laid out in accordance with the agreed details. The car parking and associated turning areas shall thereafter be retained for these purposes only.

Reason: In the interest of highway safety and to secure a satisfactory form of development

#### 59 – Non Standard Condition

Prior to the occupation of the retail development hereby permitted, pedestrian and cycle access into the site from Butt Road, Goojerat Road and Circular Road West shall be constructed in accordance with the proposed site Masterplan and the details agreed under Condition No. 24.

Reason: To ensure that the retail development is fully accessible by pedestrians and cyclists in the interest of highway safety

## 60 – Non Standard Condition

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no enlargement of the dwelling houses as permitted by Class A of Part 1 of the Schedule of that Order, including additions or alterations to the roof(s) as permitted by Class A, B and C of part 1 of the Schedule of that Order, nor the provision of any building or enclosure within the curtilage of the dwelling house as permitted by Class A or Class E of Part 1 of the Schedule of that Order shall be erected without the prior approval in writing of the local planning authority.

Reason: In order to ensure the retention of an appropriate level private amenity space and that any extension does not adversely affect the amenity of adjacent properties.

### **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 08456 037631.

(3) Noise and Sound Insulation:

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

(4) Drainage:

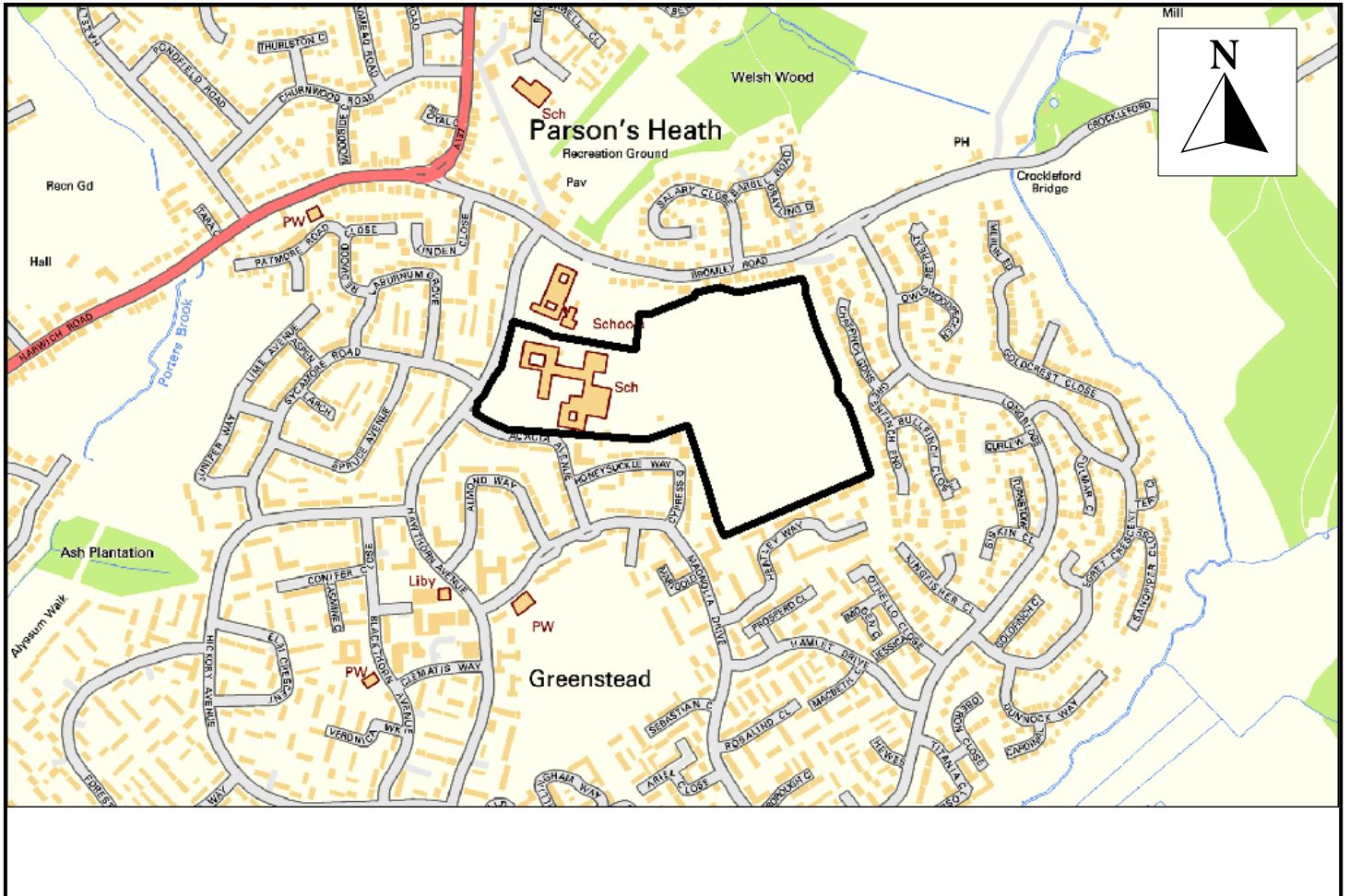
If any controlled waste is to be removed off site, then the site operator must ensure a registered waste carrier is used to convey the waste material off site to a suitably authorised facility.

The Duty of Care regulations for dealing with waste materials are applicable for any off-site movements of wastes. The developer as waste producer therefore has a duty of care to ensure all materials removed go to an appropriate licensed disposal site and all relevant documentation is completed and kept in line with regulations.

If any waste is to be used on site, the applicant will be required to obtain the appropriate exemption or authorisation from us. We are unable to specify what exactly would be required if anything, due to the limited amount of information provided.

In England, it is a legal requirement to have a site waste management plan (SWMP) for all new construction projects worth more than £300,000. The level of detail that your SWMP should contain depends on the estimated build cost, excluding VAT. You must still comply with the duty of care for waste. Because you will need to record all waste movements in one document, having a SWMP will help you to ensure you comply with the duty of care. Further information can be found at <http://www.netregs-swmp.co.uk>

If the operator wishes more specific advice they will need to contact the Environment Agency South Essex Environment Management Team at our Kelvedon office or look at available guidance on our website using the following link: [www.environment-agency.gov.uk/subjects/waste/](http://www.environment-agency.gov.uk/subjects/waste/)



**Application No:** 120641

**Location:** Colchester Academy, Hawthorn Avenue, Colchester, CO4 3JL

**Scale (approx):** Not to scale

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**7.2 Case Officer: Lucy Mondon**

**Due Date: 02/07/2012**

**MAJOR**

**Site:** Colchester Academy, Hawthorn Avenue, Colchester, CO4 3JL

**Application No:** 120641

**Date Received:** 2 April 2012

**Agent:** Jestico + Whiles

**Applicant:** Colchester Academy Trust

**Development:** Construction of a new split-level three and two-storey academy building, the remodelling of a section of the existing Colchester Centre building, light refurbishment of the existing Sports centre building, associated landscaping and demolition of an existing four-storey teaching building.

**Ward:** St Annes

**Summary of Application:** Conditional Approval

## **1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee because it is a Major application with an Officer recommendation of approval where material planning objections have been received.

## **2.0 Synopsis**

2.1 The application seeks planning permission for the erection of a replacement school building, with associated parking areas. The existing school would be demolished following completion of the proposed building.

2.2 The following report considers the material planning matters together with issues raised in representations. The report describes the site and its setting, the proposal itself, and the consultation responses received.

2.3 The planning merits of the case will be assessed leading to the conclusion that the proposal is acceptable and that a conditional approval is recommended.

## **3.0 Site Description and Context**

3.1 The site is located within a predominantly residential area. There are residential properties to the west and south of the site, which comprise of a mixture of two-storey houses and three-storey flats. An infant school lies to the north of the site.

3.2 There is currently a school and sports centre on the site, with associated car parking, outdoor sports areas and playing fields. The school building ranges from single-storey to four-storey in height and is set back from the road towards the northern boundary of the site. To the front of the school is a grassed area and large car park. The school is accessed from both Hawthorn Avenue and Acacia Avenue.

3.3 There are a number of trees on site, alongside the Hawthorn Avenue boundary.

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

4.1 The proposal is for the erection of a replacement school building and an extension to the existing sports centre to form additional classrooms and a plant room, as well as the construction of associated parking areas. The existing school building would be demolished upon completion of the new building.

4.2 The proposed school building would occupy the south-west corner of the site, having an 'L-shape' footprint, with a three-storey element running north-south along Hawthorn Avenue and a two-storey element running east-west along Acacia Avenue. The three-storey element would be 12.5 metres high. The two-storey element would be 9.5 metres high. The building would run for 74 metres along Hawthorn Avenue and 90 metres along Acacia Avenue.

4.3 The extension to the sports centre would be single-storey in height at approximately 3.8 metres high.

4.4 The buildings would be constructed in a mixture of brick and coloured render, with coloured panels interspersed between windows.

4.5 Car parking areas would be located to the north and east of the proposed school building.

4.6 Additional landscaping is also proposed as part of the application.

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

5.1 Predominantly residential.

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

6.1 Planning permission was granted for a secondary school in 1961 and 1962 (ref: 14573), with phase 1 and phase 2 of the school being granted in 1967 and 1970 respectively (ref: 16844).

6.2 A number of relocatable classrooms were granted between 1971 and 1981.

6.3 Planning permission was granted for increased sports facilities in 1995 (ref: 95/0651).

6.4 Planning permission was granted for a single-storey extension to the sports facilities in 1997 (ref: 97/0929).

## **7.0 Principal Policies**

7.1 The following national policies are relevant to this application:

The National Planning Policy Framework (NPPF)

7.2 In addition to the above national policies, the following policies from the adopted Colchester Borough Core Strategy (December 2008) are relevant:

SD2 - Delivering Facilities and Infrastructure

SD3 - Community Facilities

UR2 - Built Design and Character

TA1 - Accessibility and Changing Travel Behaviour

TA2 - Walking and Cycling

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

DP1 Design and Amenity

DP4 Community Facilities

DP15 Retention of Open Space and Indoor Sports Facilities

DP17 Accessibility and Access

DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

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

Vehicle Parking Standards

Sustainable Construction

The Essex Design Guide

Cycling Delivery Strategy

## **8.0 Consultations**

8.1 Sport England: An initial consultation response on 13<sup>th</sup> April stated that insufficient information had been submitted. Following the submission of further information, a subsequent consultation response on 9<sup>th</sup> May confirmed that Sport England are supportive of the proposal as the proposals would improve the range and/or quality of formal and informal sports and supporting facilities for students and community users.

8.2 Anglian Water: No objection subject to recommended conditions

8.3 Environment Agency: An initial consultation response on 9<sup>th</sup> May stated that the Environment Agency would be unlikely to object to the proposal if Anglian Water were satisfied with the surface water drainage system. The opportunity to install water efficiency and water saving devices was advised, as well as recommended conditions. Following the receipt of information from Anglian Water a subsequent consultation response on 25<sup>th</sup> May confirmed that the Environment Agency do not object to the proposal.

8.4 Highway Authority: No objection subject to conditions



- 8.5 Landscape Officer: An initial consultation response on 16<sup>th</sup> April found the landscaping scheme to be inadequate and amendments to the scheme were requested. Following the submission of revised landscaping details, a subsequent consultation response on 8<sup>th</sup> May confirmed that the details were broadly acceptable, but further amendments were required.
- 8.6 Environmental Control (Health): No objection subject to conditions and informatives.
- 8.7 Environmental Control (Contamination): The contamination information submitted demonstrates that the site could be made suitable for the proposed use subject to recommended conditions.
- 8.8 Design Heritage Unit: Amendments required to the design of the southern elevation.

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

## **9.0 Parish Council Response**

- 9.1 No comments received.

## **10.0 Representations**

- 10.1 Councillor Higgins requested that the application be referred to the Planning Committee on the grounds of design, appearance, layout, and impact on visual and residential amenity.
- 10.2 13 letters of objection have been received, the contents of which are summarised below:

- Will destroy view from property (6);
- Parking issues: insufficient parking during school drop-off and pick up, as well as match days. Reduction in parking with no over-flow parking provided. Parking on Acacia Avenue. Inconvenience and danger (6);
- Traffic congestion (4);
- Overshadow properties on Acacia Avenue (5);
- Invasion of privacy due to proximity of building to Acacia Avenue (4);
- Disruption and noise during construction (3);
- Will affect value of properties (3);
- Noise and smells from kitchen (4);
- Noise and disturbance from deliveries (3);
- Should build on playing field (3);
- Trees have been removed (2);
- Detrimental to street scene: loss of green amenity and open space (3);
- Not in keeping with surrounding area: materials, architecture, and height (2);
- 'Sound' parts of building could be refurbished and retained, making new build smaller (2);
- Mobile phone masts should not return (1);
- Dominating building (1);

- Proposed building unsuitable in terms of usability (students will congregate and cause congestion when trying to get to lessons etc) (1);
- Proximity of the building to the road is a danger to school children (1);
- Noise from theatre (1);
- School would be open to vandalism and graffiti (1);
- Fear that tight budget could result in substandard building and lack of landscaping (3).

10.3 Two objectors comment that they welcome investment in the school.

10.4 One comment has been received from Colchester Cycling Campaign:

- Cycle parking should be to ECC standards;
- Suggestions for S106 contributions

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

## **11.0 Parking Provision**

11.1 The Vehicle Parking Standards SPD provides the parking standards for schools and sports facilities. The adopted standard for schools is a maximum of 1 car parking space per 15 pupils (5% of which should be disabled spaces); a minimum of 1 cycle space per 5 staff and 1 cycle space per 3 pupils; and a minimum of 1 motorcycle vehicle space, plus 1 space per 20 car parking spaces (for the first 100 spaces) then 1 space per 30 car parking spaces (over 100 spaces). The parking standard for sports facilities should be assessed on individual merit. In accordance with the adopted standards the proposal would be expected to provide: a maximum of 80 car parking spaces (of which 6 should be disabled spaces); a minimum of 423 cycle spaces; and a minimum of 6 motorcycle spaces.

11.2 The school currently provides 127 car parking spaces and 60 cycle spaces. The proposed scheme would provide 113 car parking spaces (of which 8 would be disabled spaces) and 60 cycle spaces. The proposal does not provide motorcycle parking.

## **12.0 Open Space Provisions**

12.1 Not applicable.

## **13.0 Air Quality**

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

## 14.0 Report

### Design and impact on the character of the area:

- 14.1 The NPPF states that 'good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people'.
- 14.2 The proposal includes the erection of a new school building and extension to the existing sports centre to form additional classrooms and a plant room. The proposal also includes the provision of car parking areas and a bin store.
- 14.3 The overall layout of the site is considered to be an improvement on the existing. The opening up of the entrance to the school allows for the school to be more inviting to the community and the siting of the majority of school activity to the rear of the building would help to protect residential amenity in terms of noise and disturbance during the school day.
- 14.4 The design and layout of the extension to the sports centre is considered to have a minimal impact on the character of the area: the sports centre is located to the east of the site and is not overly prominent in the street scene. The proposed extension would be modest in scale and would not detract from the character of the sports centre building.
- 14.5 The main school building would be a prominent feature on the corner of Hawthorn Avenue and Acacia Avenue and would make a strong contribution to the character of the street scene and surrounding area. In terms of the proximity between the proposed building and surrounding development, the Essex Design Guide states that 'an ideal relationship for pedestrian-dominated dynamic spaces is for the width of the space to be equal to or less than the height of the enclosing planes... the building must be of sufficient height to command that part of the space'. The space between the proposed building and surrounding development is much wider than that advised within the Essex Design Guide. However, the building is still considered to command the space due to its position within the plot. It would not be desirable to enclose the space between the proposed building and surrounding development for reasons of safeguarding residential amenity.
- 14.6 The proposed building is clearly utilitarian in its design, being a functioning school building. It is not felt that the building would appear harmfully incongruous within its residential setting when considering the presence of the existing school building on site and the adjacent primary school.
- 14.7 The proposed building would be higher than the majority of surrounding development, which are two-storey houses in the main. However, there are a number of three-storey flats in close proximity to the site and the proposed building would not appear entirely at odds with the height and scale of surrounding development in this context. It is also important to note that the existing school building is four-storey in height and therefore much higher than the new school building proposed, although the existing school building is set further into the site and is therefore less prominent.

- 14.8 The materials proposed would differ from those used in surrounding development. However, the materials are not considered to clash with the palette of materials in the surrounding area to such an extent as to harm its character. The materials proposed would help to give the building a 'presence' within the community that would contribute to its identity as a school and community building.

Impact on residential amenity:

- 14.9 The proposed school building would be situated within a predominantly residential area and would be sited closer to residential properties than the current school building. Consideration has been given as to how the proposed school building would affect the occupants of nearby residential properties in terms of loss of light, overbearing impact, privacy, noise, and smells.
- 14.10 The building would be at least 37 metres from the nearest property on Hawthorn Avenue, the majority of properties on Hawthorn Avenue being at least 73 metres away. Due to the distances between the proposed building and properties on Hawthorn Avenue, the proposed building is not considered to have a significant impact on the amount of light that would enter these properties and would not have an overbearing impact. The distance between the proposed building and properties on Hawthorn Avenue also prevents any prospect of overlooking from the building.
- 14.11 The proposed building would be in greater proximity to the properties along Acacia Avenue, particularly where the three-storey element faces No's 4-8 (inclusive). The proposed building would be situated to the north of Acacia Avenue and, as such, would not affect the amount of sunlight that enters the properties. In terms of daylight, the Essex Design Guide states that acceptable daylight in interiors is achieved if a 25 degree vertical angle from a point 2 metres above the floor at the façade is not obstructed. Although the proposed building would be taller than the two-storey houses on Acacia Avenue, the distance between the buildings allows for a clear 25 degree angle to be achieved. It is therefore considered that the proposal would not significantly affect the amount of daylight that enters the properties on Acacia Avenue.
- 14.12 The proposal would involve the erection of a large building on an area of land that is currently a car park. Therefore, the building would have a marked impact on the outlook of residents on Acacia Avenue. Although the building would be prominent when viewed from the fronts of the properties on Acacia Avenue, it would be set back from these properties by 25-38 metres, with the part of the building closest to Acacia Avenue being behind a grassed mound and landscaping. The layout of the proposal and associated landscaping reduces the impact of the building to an acceptable level: The proposal is therefore not considered to be so dominant or overbearing so as to justify refusal of planning permission.
- 14.13 In terms of privacy, the part of the building closest to the Acacia Avenue properties would only have high level windows so as to prevent any overlooking to properties. The remainder of the building is set further back from Acacia Avenue (37-39 metres) and it is unlikely that any overlooking into residential properties would occur from this distance. However, in order to reduce the 'perception' of overlooking additional landscaping would be introduced to screen the building and the first-floor windows facing Acacia Avenue would be tinted so that the windows appear obscured.

- 14.14 The proposed theatre and kitchen areas have the potential to create noise and smells that may disturb residents. In terms of noise, an Acoustic Report has been submitted as part of the application. The Acoustic Report measured the local ambient noise and made recommendations for compliance of the relevant standards. The noise levels from the theatre and from plant and machinery can be controlled by condition. Issues of noise that may arise from the use of the theatre for community uses (e.g. choir groups, amateur dramatic societies) would be addressed through the licensing of the premises.
- 14.15 With regard to smells, the extraction equipment for the kitchens would be located on the roof of the school building, which would take any fumes and odours away from the nearest residential properties. Conditions can ensure that there is an appropriate scheme for the control of fumes and odours in order to protect residential amenity.

#### Landscaping and trees:

- 14.16 The soft landscaping proposed provides a strong boundary to the site that also helps to soften and filter views of the buildings beyond and retain a certain level of 'openness' to the site. The fencing proposed is necessary for security reasons: the existing fencing to the school would be reused.
- 14.17 The existing trees on the site would be retained and protected by measures stipulated within the Arboricultural Implication Report submitted. The details of the report can be conditioned to ensure appropriate tree protection.

#### Highway safety:

- 14.18 The school would be accessed from both Hawthorn Avenue and Acacia Avenue. The access from Hawthorn Avenue would be to a drop-off/pick-up zone for students, as well as a small parking area of 23 car parking spaces (including 4 disabled spaces) for visitors. Included within this parking area is cycle parking for staff and students. Pedestrian priority would be given across the access: this will be of benefit to students entering and leaving the school, as well as students walking to the adjacent infant school.
- 14.19 The access from Acacia Avenue would lead to a parking area of 90 parking spaces (including 4 disabled spaces) for staff only. This parking area would be open to the public at the end of the school day to allow access to the sports centre.
- 14.20 The Highway Authority is satisfied that the accesses and car parking areas are acceptable in terms of highway safety, subject to conditions.
- 14.21 The concerns raised by local residents regarding highway safety matters, such as parking and traffic congestion, have been taken into consideration. The school is in a sustainable location and can be readily accessed by foot, cycle, and bus, as well as by car. However, unfortunately, due to the nature of the site as a school, there will always be particularly busy periods at the start and end of the school day when students are arriving and leaving the school. In order to mitigate some of the congestion issues, a drop-off/pick-up zone has been provided so that parents can drop-off and collect students in one main area, discouraging parking in the adjacent streets which can cause a nuisance for residents.

- 14.22 The number of car parking spaces has been reduced from existing: from 127 to 113 spaces. However, the proposed number of car parking spaces exceeds the 80 car parking spaces and 6 disabled spaces required by the adopted Vehicle Parking Standards SPD. The size of the proposed car parking spaces are 2.5m x 5m, which meets the minimum parking space size as set out by the SPD. The proposal is deficient in terms of cycle parking, providing 60 rather than the 423 spaces required by the SPD. However, it is considered that 423 cycle spaces would be excessive: the 60 spaces provided have been considered acceptable by the Highway Authority.
- 14.23 The proposal is therefore considered to be satisfactory in accordance with the Vehicle Parking Standards SPD and local policy.

Contamination:

- 14.24 The proposed school building has been identified as having a use that would be particularly vulnerable to contamination. The NPPF states, at paragraph 120, that, to prevent unacceptable risks from pollution and land instability, planning decisions should ensure that new development is appropriate for its location.
- 14.25 Initial site investigations, the details of which were submitted by the applicant, detected some low levels of contamination. However, the information provided in relation to contamination satisfactorily demonstrated that the site could be made suitable for the proposed use, subject to mitigation measures, which can be secured by condition.

Flood risk and drainage:

- 14.26 The NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Areas at risk of flooding include land within Flood Zones 2 and 3.
- 14.27 The site is within a Flood Zone 1 and is therefore not categorised as an area at risk of flooding or where development may pose a significant risk of flooding elsewhere. The site is therefore considered to be a favourable site for development by the NPPF in terms of flood risk.
- 14.28 Due to the scale of the development a Flood Risk Assessment has been submitted as part of the application and this assessment has been sent out to consultation with Anglian Water and the Environment Agency.
- 14.29 With regard to surface water drainage, the surface water drainage strategy included within the Flood Risk Assessment states that roof water would be diverted to a piped surface water system, with clean water run-off from larger paved areas around the building collected by yard gullies and channel drains into the piped surface water. In areas where footpaths have soft landscaping on both sides, infiltration methods would be used for surface water which will not connect to an Anglian Water system. Petrol interceptors would be used in car park areas.

- 14.30 The details included in the Flood Risk Assessment are considered to be acceptable, subject to conditions to secure the surface water strategy, and receive details of water, energy, and resource efficiency measures, and the petrol/oil interceptors proposed.

#### Biodiversity:

- 14.31 In assessing this application due regard has been given to the provisions of the Natural Environment and Rural Communities Act, 2006, in so far as it is applicable to the proposal and the provisions of Conservation of Habitats and Species Regulations, 2010 in relation to protected species.
- 14.32 An Ecology Survey was submitted as part of the application. The survey identified that hedgehogs are likely to be present on the site and that the proposal has the potential to have an impact on nesting birds. However, the report concludes that the development would only have a minimal risk of harm or disturbance to protected, BAP or rare wildlife or local nature conservation, subject to impact avoidance measures. Enhancements were also suggested.
- 14.33 The proposal is considered to be acceptable in terms of its impact on the biodiversity of the site, subject to impact avoidance measures and site enhancements which can be secured by condition.

#### Other matters

- 14.34 The proposal involves the eventual demolition of the existing school building. The demolition of a building is classed as 'development' by virtue of sec.55 of the Town and Country Planning Act (1990). Proposals for demolition are subject to an application to the local planning authority for a determination as to whether prior approval is required for the method of demolition. Prior approval is not required where demolition is taking place on land where planning permission for redevelopment has been granted. In this case, planning permission for redevelopment has not been granted and it is necessary to consider the method of demolition as part of the current planning application, rather than require a separate application for prior approval.
- 14.35 A Code of Construction and Demolition Methodology has been submitted as part of the application. The Code of Construction details the management of the demolition and indicates access and parking for the developer. The Demolition Methodology shows the phasing of demolition: phase 1 includes the demolition of the 'Colchester Centre' attached to the sports centre, phase 2 is the demolition of the school building. The methodology also indicates the siting and height of any spoil heaps, as well as methods to control noise and dust, and details of traffic movements and contractor parking. It is considered necessary to condition the details of demolition, as well as require a demolition/construction traffic management plan, details of wheel cleaning facilities, and controlled hours of operation.
- 14.36 It is understood that there will always be some level of disruption during demolition and construction. However, it is considered that, subject to appropriate conditions these impacts will be reduced. The disruption caused during demolition and construction is a temporary consequence of redevelopment and is therefore not justifiable as a reason for refusal of planning permission.

- 14.37 The applicant has demonstrated that alternative locations for the school were considered as part of the design process. Due to site constraints, and to ensure the continual running of the school during the construction process, the proposed location for the new school building was considered to be the most appropriate. The applicant has cited budget constraints as a further reason as to why the proposed school could not be located in the position of the existing school (i.e. demolish the existing school before construction). That said, budget constraints are not considered to be a material planning consideration.
- 14.38 Local residents have suggested that the school should be built on the adjacent playing field to the east of the existing school. The loss of playing fields would not be supported by Sport England and the resultant vacant space to the west of the site would leave a void in the street scene that would be undesirable in streetscape terms. The Essex Design Guide states that 'in order to reinforce visual character, define spaces and promote pedestrian movement, most public spaces should be faced by the fronts of buildings and their entrances, not by a predominance of flank elevations or side or rear boundaries'.
- 14.39 There is no intention for the mobile phone masts to return to the site. However, in the interests of visual amenity, permitted development rights for phone masts on the school building can be removed by condition.
- 14.40 One comment has been received stating that the proposed school building would be unsuitable for use as a school. The current proposals have been developed through the agents' engagement with representatives of the Academy, the Colchester Institute, and their advisors in relation to an educational brief. It is therefore considered that the requirements of the school have been met in terms of their curriculum strategy and workings of the school.
- 14.41 Although the budget for the redevelopment of the school is tight, it is not considered that this would result in a substandard building or lack of landscaping. The design and materials of the buildings, as well as the landscaping, can be secured by condition.
- 14.42 The majority of resident's comments have been considered and discussed above. However, resident's comments regarding loss of view and impact upon property value are not material planning considerations and cannot be taken into account as part of the assessment of the planning application.

## **15.0 Conclusion**

- 15.1 In conclusion, the proposal is considered to be acceptable in terms of its scale, design, layout and impact on the character of the surrounding area, subject to conditions. The proposal is also acceptable, subject to conditions, in terms of highway safety, contamination, biodiversity, and flood risk.
- 15.2 Whilst the comments received from neighbouring residents have been taken into account, it is ultimately concluded that the proposal would not have a significant adverse impact on residential amenity so as to justify refusal of planning permission.



## **16.0 Recommendation – Approved with conditions**

### **Conditions**

#### **1 - A1.5 Full Perms (time limit for commencement of Development)**

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 - Non-Standard Condition**

The development hereby permitted shall be implemented in all respects strictly in accordance with submitted amended plans, unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: To ensure the development will be carried out as approved and because any changes must be agreed in advance in writing by the local planning authority.

#### **3 - Non-Standard Condition**

The facing materials to be used in the construction of the development hereby approved shall be grey brick, coloured render, and coated dark grey upvc windows, as shown on the amended elevational drawings and 241-JW-703 Rev P01, received on 28th May 2012, unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the proposed development is visually satisfactory and enhances the appearance of the locality.

#### **4 - Non-Standard Condition**

The building and extension hereby approved shall be built to a minimum BREEAM rating of 'very good'.

Reason: In the interests of sustainable development.

#### **5 - Non-Standard Condition**

No development shall commence until details of the tinted glazing of the first floor windows on the south-elevation of the school building are submitted to and agreed, in writing, by the Local Planning Authority. The windows shall then be implemented as approved and thereafter retained.

Reason: In the interests of residential amenity.

#### **6 - Non-Standard Condition**

No development shall commence until details of a wheel cleaning facility within the site and adjacent to the egress onto the highway are submitted to and approved, in writing, by the Local Planning Authority. The wheel cleaning facility shall be provided prior to commencement and during construction of development.

Reason: To protect highway efficiency of movement and safety during construction.

#### 7 -Non-Standard Condition

No development shall commence until a construction management plan is submitted to and approved, in writing, by the Local Planning Authority. The plan shall be implemented as approved prior to and during construction of the development hereby approved.

Reason: To protect highway efficiency of movement and safety during construction.

#### 8 - Non-Standard Condition

All vehicular, pedestrian and cycle access gates shall open inwards towards the proposal site only.

Reason: To protect highway efficiency of movement and safety.

#### 9 - Non-Standard Condition

No development shall commence until precise details of the pedestrian crossover at the Hawthorn Avenue access to the drop-off zone and car park have been submitted to and approved, in writing, by the Local Planning Authority. Before the drop-off zone and car park is first used, the pedestrian crossover shall be implemented as approved and thereafter retained.

Reason: In the interests of highway safety.

#### 10 - Non-Standard Condition

Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until the conditions below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 4 has been complied with in relation to that contamination.

##### 1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
- (ii) an assessment of the potential risks to:
  - human health,
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - adjoining land,
  - groundwaters and surface waters,
  - ecological systems,
  - archeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

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

## 2. Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

## 3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

## 4. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 1 "Site Characterisation", and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2 "Submission of Remediation Scheme", which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3 "Implementation of Approved Remediation Scheme".

## 5. Validation Certificate

Prior to occupation of any property hereby permitted and the provision of any services the use hereby permitted commencing, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 2 "Submission of Remediation Scheme" above. This certificate is attached to the planning notification.

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

#### 11 - Non-Standard Condition

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 5dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

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

#### 12 - Non-Standard Condition

Prior to the first use or occupation of the development as hereby permitted, the building shall have been constructed or modified to provide sound insulation against internally generated noise in accordance with a scheme devised by a competent person and agreed, in writing, by the Local Planning Authority. The insulation shall be maintained as agreed thereafter.

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

#### 13 - Non-Standard Condition

Any plant, equipment or machinery on the premises shall be constructed, installed and maintained so that the noise generated by such equipment shall not have any one 1/3 octave band which exceeds the two adjacent bands by more than 5dB as measured at all boundaries near to noise-sensitive premises.

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

#### 14 - Non-Standard Condition

No deliveries shall take outside of the following times;

Weekdays: 07.30 – 18.00hrs

Saturdays: 10.00 hrs – 13.00hrs

Sundays and Bank Holidays: No deliveries

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

#### 15 - Non-Standard Condition

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

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

#### 16 - Non-Standard Condition

No premises shall be occupied until the works have been carried out in accordance with the surface water strategy as set out in Flood Risk Assessment LO1123/FRA, dated March 2012, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To prevent environmental and amenity problems arising from flooding.

#### 17 - Non-Standard Condition

No development shall commence until a scheme for the provision and implementation of water, energy and resource efficiency measures, during the construction and occupational phases of the development has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include a clear timetable for the implementation of the measures in relation to the construction and occupancy of the development. The scheme shall be constructed and the measures provided and made available for use in accordance with such timetables as may be agreed.

Reason: To enhance the sustainability of the development through better use of water, energy and materials.

#### 18 - Non-Standard Condition

Notwithstanding the submitted details, prior to being discharged to any soakaway/ditch/surface water sewer, a;; surface water drainage from impermeable vehicle parking areas shall be passed through a petrol/oil interceptor designed and constructed to the satisfaction of the Local Planning Authority. The scheme shall be constructed and completed before occupancy of any part of the proposed development.

Reason: To ensure a satisfactory method of pollution control.

#### 19 - Non-Standard Condition

The development hereby permitted shall be carried out in accordance with the Adonis Phase 1 Ecology Survey, dated 21st November 2011, unless the Local Planning Authority agrees in writing to a variation.

Reason: In order to safeguard protected wildlife species and their habitats.

## 20 - Non-Standard Condition

No development shall be commenced until precise details (to include the siting, position, type and size) of the bird boxes to be erected has been submitted to and agreed, in writing, by the Local Planning Authority. The bird boxes shall be erected as approved and thereafter retained and maintained to a suitable standard.

Reason: In order to prevent disturbance to protected species and to enhanced bird habitat.

## 21 - C11.11 Landscape Design Proposals

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.

## 22 - C11.12 Landscape Works Implementation

All approved hard and soft landscape works shall be carried out in accordance with the implementation and monitoring programme agreed with the Local Planning Authority and in accordance with the relevant recommendations of the appropriate British Standards. All trees and plants shall be monitored and recorded for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

Reason: To ensure the provision and implementation of a reasonable standard of landscape in accordance with the approved design.

#### 23 - Non-Standard Condition

No development shall take place until details of earthworks have been submitted to and approved in writing by the local Planning Authority. These details shall include the proposed grading and mounding of land areas including levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. Development shall be carried out in accordance with approved details.

Reason: To ensure proper consideration and approval of any effects of change in topography on landscape features.

#### 24 - Non-Standard Condition

A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved by the local Planning Authority prior to any occupation of the development (or any relevant phase of the development) for its permitted use.

Reason: To ensure that due regard is paid to the continuing enhancement and maintenance of amenity afforded by the landscape.

#### 25 - Non-Standard Condition

The development hereby permitted shall be carried out in accordance with Arboricultural Implication Report D23011120906v3, dated 8th February 2012, unless the Local Planning Authority agrees in writing to a variation.

Reason: In the interests of visual amenity and the character and appearance of the area.

#### 26 - C10.15 Tree & Natural Feature Protection: Protected

No work shall commence on site until all trees, shrubs and other natural features shown to be retained on the approved plans, (including those referred to in condition/s XXX) 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.

#### 27 - C10.16 Tree & Natural Feature Protection: Entire Site

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

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

### 28 - C10.18 Tree and Hedgerow Protection: General

All trees and hedgerows on and immediately adjoining the site shown on the approved plans to be retained (including those referred to in condition/s XXX) 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 to be retained shall be monitored and recorded for at least five years following contractual practical completion of the approved development. In the event that these 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.

### 29 - Non-Standard Condition

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order, with or without modification) no development permitted by virtue of Schedule 2, Part 32 of that Order shall be carried out without the express planning permission of the local planning authority.

Reason: In the interests of visual amenity.

### 30 - Non-Standard Condition

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order, with or without modification) no development permitted by virtue of Schedule 2, Parts 24 and 25 of that Order shall be carried out without the express planning permission of the local planning authority.

Reason: In the interests of visual amenity.

### 31 – Non Standard Condition

The external lighting shall be implemented as shown on drawing D19813/JB/F, received on 31<sup>st</sup> May 2012, unless otherwise agreed, in writing, by the Local Planning Authority. The approved lighting shall fully comply with the figures specified in the current '*Institution of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Light*' for zone E3. This shall include sky glow, light trespass into windows of any property, source intensity and building luminance.

Reason: In the interests of neighbouring amenity and to prevent harmful levels of light pollution.

## **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) The Applicant is advised that the demolition works shall be carried out in accordance with the details provided within the Carillion Building – Code of Construction document and Demolition Methodology submitted in so far that they do not conflict with any conditions or informatives attached to this permission.

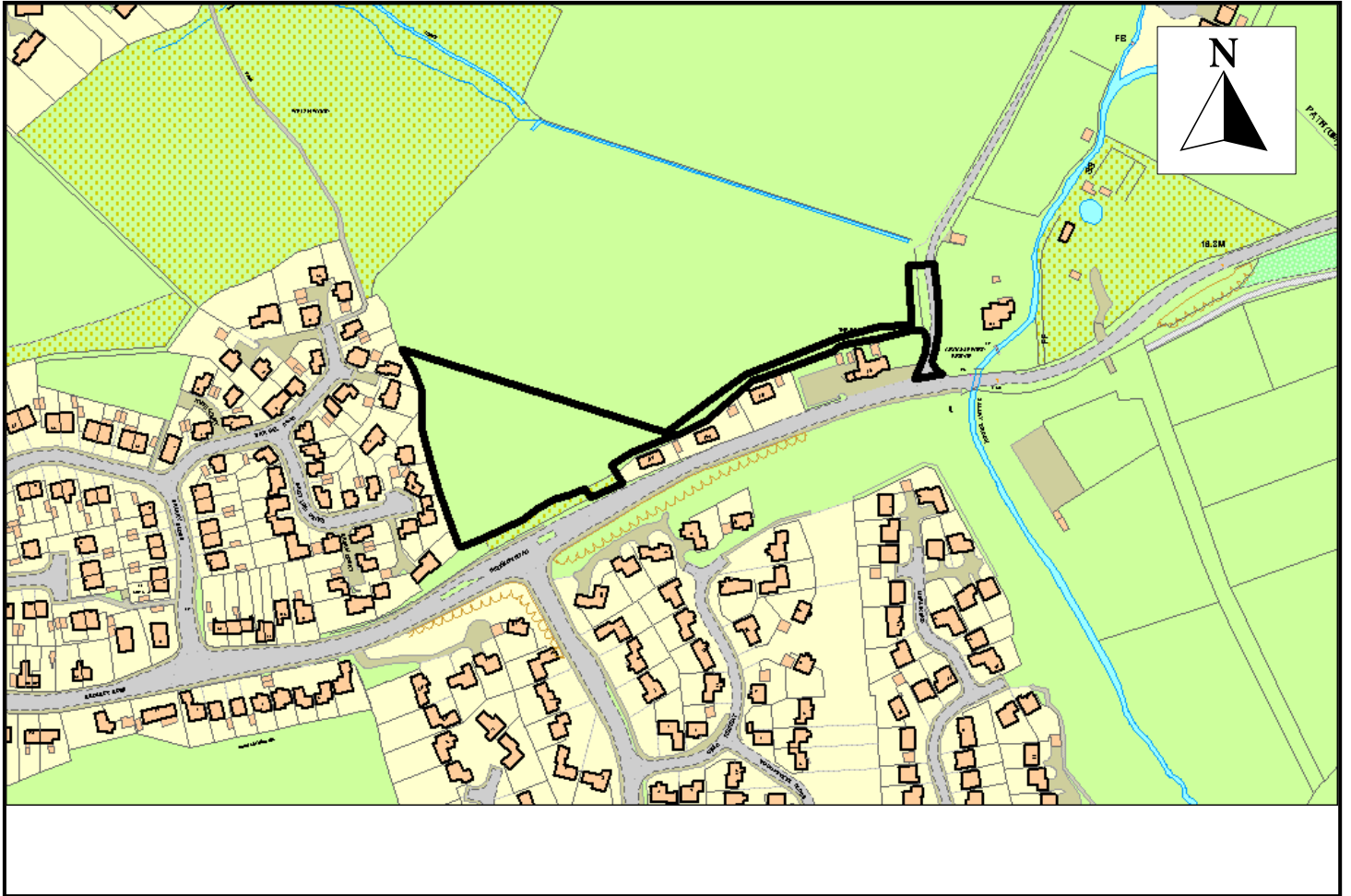
(3) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

(4) Anglian Water has assets close to or crossing this site, or there are assets subject to an adoption agreement. Therefore the site layout should take this into account and accommodate those assets within either prospectively adoptable highways or public open space. If this is not practicable then the sewers will need to be diverted at the developers cost under Section 185 of the Water Industry Act 1991 or, in the case of apparatus under an adoption agreement, liaise with the owners of the apparatus. It should be noted that the diversion works should normally be completed before development can commence.

(5) If the developer wishes to connect to the Anglian Water sewerage network they should serve notice under Section 106 of the Water Industry Act 1991. It is an offence under Section 118 of the Water Industry Act 1991 to discharge trade effluent to sewer without consent.

(6) The scheme of supervision for the arboricultural measures required by condition 26 will need to be appropriate to the scale and duration of the works and should include details of:

- a. Induction and personnel awareness of arboricultural matters
- b. Identification of individual responsibilities and key personnel
- c. Statement of delegated powers
- d. Timing and methods of site visiting and record keeping, including updates
- e. Procedures for dealing with variations and incidents.
- f. The scheme of supervision shall be carried out as agreed.
- g. The scheme of supervision will be administered by a qualified arboriculturist instructed by the applicant and approved by the local planning authority.



**Application No:** 120657

**Location:** Land Rear of 103 Bromley Road, Colchester, CO4 3JG

**Scale (approx):** 1:2500

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**Case Officer:** Simon Osborn      **Due Date:** 03/07/2012      **MAJOR**

**Site:** Land R/o 103 Bromley Road, Colchester, CO4 3JG

**Application No:** 120657

**Date Received:** 3 April 2012

**Agent:** Mr Steve Norman

**Applicant:** Mr Lee Caird

**Development:** Change of use of land from agriculture to a paddock for grazing horses.  
Retention of an associated building for use as stables a decked area.  
Resubmission of 112201.

**Ward:** St Annes

**Summary of Recommendation:** Conditional Approval

## **1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee because objections have been received to the proposal and the area of land where the proposed change of use is to occur classes this as a major application. The application had been called-in by Cllr M Hogg on the basis of the proposal being detrimental to the visual amenities of existing surrounding and overlooking neighbours and concern over highway access and egress to the site.

## **2.0 Synopsis**

2.1 This application seeks permission for the proposed change of use of land to paddock and the retention of stables and decking. The report considers the proposal in the light of the Council's adopted policies and a previous refusal. However, bearing in mind the additional information submitted in support of the proposal and the altered response of the Highway Authority, this application is recommended for approval.

## **3.0 Site Description and Context**

3.1 The application site is a broadly triangular parcel of land, situated at the edge of a field that rises up from Salary Brook toward the settlement edge of Colchester, and enclosed by ranch-style fencing. The longest edge of the triangle is adjacent to the main field and the other two edges are adjacent to residential dwellings to the west, and a treed embankment to the south rising steeply from the Bromley Road. The stable building and decking (which have already been constructed) are visible from the Bromley Road and the dwellings opposite (i.e. to the south) in Owls Retreat. The proposed use and stables are associated with the property known as 103 Bromley Road and can be accessed from the parking area by a steep flight of 18 steps. A gate has been installed to the paddock close to the rear boundary with 107 Bromley Road and the plans show an access route on the southern margin of the field, behind The

Beehive Inn and 107 and 111 Bromley Road and connecting to an access track onto Bromley Road between The Beehive Inn and 115 Bromley Road.

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

- 4.1 The application seeks planning permission for the retention of a stable block for 2 horses, with an associated tack and store room, together with an area of raised decking between the stables and the applicant's garden. The building is close to an oak tree within the highway verge. The application also seeks planning permission for the change of use of agricultural land to paddock and although the proposed paddock has been fenced-off, the use of the land for horses/ponies has not commenced. The Planning Statement indicates that the applicant has 2 ponies elsewhere and it is proposed to stable and graze the ponies at the application site.
- 4.2 The Planning Statement indicates that the 2 ponies will be delivered to the field via the access track off the Bromley Road (between The Beehive Inn and 115 Bromley Road); otherwise this track will not be used other than with the exception of very occasional visits. It is intended that the delivery of foodstuffs, visits by the farrier and the vet, and the removal of manure will be from the parking area within the curtilage of the application dwelling. In the event of this space being full, the adjacent layby in the Bromley Road can accommodate two cars.

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

- 5.1 The land is outside the settlement boundary of Colchester.

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

- 6.1 The existing dwelling was permitted by application 080255 (which was for a replacement).
- 6.2 An earlier application for the stables, decking and change of use of land to paddock (reference 112201) was refused for the following reason:

*“Policy ENV1 in the Core Strategy generally seeks to protect the countryside for its own sake. Where new development needs, or is compatible with a rural location, it should be appropriate in terms of its scale, siting and design and protect, conserve or enhance landscape and townscape character. Policy DP1 in the Development Policies encourages all development to be of a high standard, which respects or enhances the landscape and other assets that contribute positively to the site and surrounding area. Policy DP24 supports equestrian activities provided it is related to an existing dwelling in the countryside and does not have a detrimental impact on the townscape setting or local landscape character. Policy DP17 seeks to ensure that the traffic generated by new development can be accommodated in a safe manner without detriment to highway safety.*

*In this instance the proposed stable block and decking appear to have been constructed on the edge of a field that forms part of the Salary Brook river valley and forms an attractive rural envelope around this part of the built-up settlement of Colchester. The structures appear as prominent and incongruous structures, sited several metres above the road carriageway, and appear insensitive to this rural/urban fringe location. The structures furthermore are sited in close proximity to a mature tree and in the absence of an arboricultural impact assessment it is not possible*

*to fully assess their impact upon the health of this important local landscape feature. Finally, the proposal would intensify the use of a substandard access, which lacks suitable visibility splays for a road of this type, and is therefore detrimental to highway safety and efficiency. The proposal as such is contrary to the aforementioned adopted Council policies.”*

## **7.0 Principal Policies**

7.1 The following national policies are relevant to this application:

The National Planning Policy Framework (NPPF)

7.2 In addition to the above national policies, the following policies from the adopted Colchester Borough Core Strategy (December 2008) are relevant:

ENV1 - Environment

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

DP1 Design and Amenity  
DP17 Accessibility and Access  
DP24 Equestrian Activities

## **8.0 Consultations**

8.1 ECC Highways stated:

“Following discussion with the agent and provision of further traffic association information it has been noted that the overall increase in vehicular manoeuvring associated with this site is going to be minimal and vehicles can be parked off the highway in the existing layby to the west of the property. The actual use of the access east of the property will be very occasional and therefore the risk to the highway user will be limited. In this regard the Highway Authority raises no objection to this proposal.”

8.2 Environmental Control recommended conditions relating to the storage and disposal of manure and the use to be only for the private and personal enjoyment of the applicants of the property.

8.3 Essex and Suffolk Water advised they have mains within the vicinity of the proposed development and wish to draw this to the attention of the applicant. The application as currently submitted does not affect their apparatus.

8.4 The Arboricultural Officer recommended that annual monitoring of the oak tree is undertaken for the next 3 to 5 years as any impact from the development may not be apparent for several growing seasons.

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

## **9.0 Parish Council Response**

9.1 Not applicable

## **10.0 Representations**

10.1 Objections were received from the Welshwood Park Residents Association and 5 local residents; one letter of support was received. The following issues were raised:

1. This could set a precedent for further buildings and ultimately houses in the countryside and adjacent to Welsh Wood.
2. The stables appear unsightly (in the countryside)
3. Smells associated with manure, etc
4. Noise from riding and jumping
5. Impact on mature trees
6. Access point is dangerous
7. Visitors to this property often park in Owls Retreat.

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

## **11.0 Parking Provision**

11.1 A parking area with a turntable is provided within the curtilage of the dwelling. This is of irregular size and could accommodate 1 or 2 vehicles. No additional parking provision is proposed. There is a layby just to the west of the application property on Bromley Road.

## **12.0 Open Space Provisions**

12.1 There is no requirement for open space provision as part of this proposal.

## **13.0 Air Quality**

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

## **14.0 Report**

### Policy Principles

14.1 Policy ENV1 in the Core Strategy generally seeks to protect the countryside for its own sake. Where new development needs, or is compatible with a rural location, it should be appropriate in terms of its scale, siting and design and protect, conserve or enhance landscape and townscape character. Policy DP1 in the Development Policies encourages all development to be of a high standard, which respects or enhances the landscape and other assets that contribute positively to the site and surrounding area. Policy DP24 supports equestrian activities provided it is related to an existing dwelling in the countryside and does not have a detrimental impact on the townscape setting or local landscape character. Policy DP17 seeks to ensure that the

traffic generated by new development can be accommodated in a safe manner without detriment to highway safety.

- 14.2 Development comprising of stables and change of use of land for equestrian purposes is development that is normally considered appropriate for a rural area. In this instance the proposed use is in close proximity to an existing dwelling, 103 Bromley Road. Concerns have been expressed that the application represents the thin end of a wedge, resulting ultimately in potential housing development. However, the application site is outside the settlement limits of Colchester and the development proposed would not set a precedent for development of a residential nature.
- 14.3 Concerns have also been expressed that the use of the land will result in unpleasant smells. However, this is a use of land that typically will take place within a countryside location in close proximity to other dwellings. Environmental Control has not objected to the proposal subject to appropriate conditions including submission of details for the storage and disposal of manure.

#### Impact on Local Landscape/ Townscape Setting

- 14.4 The paddock is in the south west corner of a large field, which is part of the Salary Brook river valley and forms an attractive rural envelope around this part of the built-up settlement. The stable building has a robust, utilitarian appearance, which is visible from the Bromley Road and other dwellings within the vicinity of the application site. This and the adjacent decking have been constructed close to the field edge and to a mature oak tree that grows within the highway embankment. This tree was part of a group TPO (03/71) whose status has been revoked. An arboricultural report was submitted with the application, which assessed the condition of the tree to be good, but that further monitoring would be required in the next few years to properly assess the impact of the building on the health of the tree. The oak tree is an attractive local feature and does filter screen the impact of the building viewed from the south, particularly in summer months when the foliage is out. There are also footpaths to the east and north of the application site, but due to the general rising of landform from these directions, the built structure does not appear unduly onerous or detrimental to the appearance of the countryside.
- 14.5 The earlier reason for refusal made reference to the impact of the structure on the landscape and townscape setting. The revised application has made some changes, including a small reduction to the area of decking and painting the structure a darker shade of brown, which help to improve its appearance. The revised application also included an arboricultural assessment, which the Arboricultural Officer is broadly in agreement with. The provision of stables within the countryside is not unusual and, whilst the stable block is visible from a public perspective in particular from Bromley Road, the revised application is considered acceptable in terms of its landscape impact.

## Access

- 14.6 The previous application was submitted (and refused) on the basis that access to the paddock for the delivery of feedstuffs, etc would take place from the Bromley Road via an existing unmade track between the Beehive Inn and the house at 115 Bromley Road, at the bottom of the hill near to Salary Brook. This is an existing track which serves a couple of dwellings and also acts as a public footpath. The Highway Authority objected to the intensification of the use of this access, because of poor visibility splays and this section of Bromley Road being covered by the 60mph national speed limit. Subsequent representations from the applicant that this track would only be used rarely, was later accepted by the Highway Authority and the revised application has been made on this basis.
- 14.7 The Planning Statement submitted with the application indicates that 2 ponies will be delivered to the paddock via the access track off the Bromley Road (between The Beehive Inn and 115 Bromley Road); otherwise this track will not be used other than with the exception of very occasional visits. It is intended that the delivery of foodstuffs, visits by the farrier and the vet, and the removal of manure will from the parking area within the curtilage of the application dwelling. In the event of this space being full, the adjacent layby in the Bromley Road can accommodate two cars. The Highway Authority has not objected to the proposal on this basis.
- 14.8 There is officer-level concern with regard to the practicality of lifting feed deliveries up the flight of steps from the Bromley Road to the stables and removing manure by this method. Planning conditions can be imposed requiring food deliveries and disposal of manure to be from 103 Bromley Road and other conditions can be imposed that no hard or consolidated surface shall be laid down to the route to the paddock behind 103-113 Bromley Road in order to try and limit the number of vehicle movements using this route. In practice, limiting the number of vehicle movements from the paddock via this latter route will be difficult. However, given that the Highway Authority has not objected to the proposal, the officer advice is that it would be difficult to refuse the application on highway safety grounds.

## **15.0 Conclusion**

- 15.1 The proposal for the use of agricultural land as paddock and the retention of stables and a small area of decking is a use that is generally considered acceptable within a countryside location, notwithstanding the position of the site immediately adjacent to the urban settlement boundary. In this instance, the raised position of the site relative to Bromley Road will make deliveries associated with the use more awkward, and whilst it is possible to use an alternative route, regular use of this would not be desirable. The application has been submitted on the basis that regular deliveries and most other vehicle movements associated with the use would be made directly from 103 Bromley Road and approval is recommended on the basis of planning conditions that seek to ensure this.



## **16.0 Recommendation - APPROVE** subject to the following conditions

### **Conditions**

#### **1 - A1.5 Full Perms (time limit for commencement of Development)**

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 - Non-Standard Condition**

The development hereby permitted shall be implemented strictly in accordance with the site plan and scale 1:100 elevations and floor plan drawing Revision A, submitted with the application validated on 3rd April 2012, unless otherwise agreed in writing by the local planning authority.

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

#### **3 - Non-Standard Condition**

Prior to the paddock use hereby permitted commencing, a detailed scheme for the storage of manure within the site and its subsequent disposal shall be submitted to and approved in writing by the Local Planning Authority. The storage and disposal of manure shall be carried out in accordance with the approved scheme.

Reason: To ensure satisfactory provision is made for the storage and disposal of manure.

#### **4 - Non-Standard Condition**

The stable buildings and paddock hereby permitted shall be used solely for the stabling of a maximum of two horses or ponies and storage of associated equipment and foodstuffs in connection with and for the private and personal enjoyment of the occupants of the application property. No commercial uses including a livery, riding school, industrial or other storage uses shall take place whatsoever.

Reason: To ensure satisfactory provision is made for the storage and disposal of manure.

#### **5 - Non-Standard Condition**

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no jumps or other paraphernalia shall be installed within the paddock, without the prior approval in writing of the Local Planning Authority.

Reason: In the interest of countryside and residential amenity.

#### **6 - Non-Standard Condition**

No external lighting fixtures for any purpose shall be constructed or installed unless details have first been submitted to and approved by the Local Planning Authority; and no lighting shall be constructed or installed other than in accordance with those approved details.

Reason: To reduce the undesirable effects of light pollution on the amenity of the countryside.

#### 7 -Non-Standard Condition

All feedstuff deliveries to the site, any visits from the vet or farrier, and the disposal of bedding from the stables and associated manure shall be made from the access point directly associated with 103 Bromley Road and the flight of steps leading to the stables, unless otherwise agreed in writing by the Local Planning Authority.

Reason: This is the basis on which the revised planning application has been submitted and in order to keep to a minimum the number of vehicular movements using the access track beyond The Beehive Inn in the interest of highway safety and residential amenity.

#### 8 - Non-Standard Condition

No hardened or consolidated surface shall be constructed or deposited along the red-lined route to the rear of 107 to 113 Bromley Road, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure the number of vehicle movements along this route is kept to a minimum, in the interests of highway safety and neighbouring residential amenity.

#### 9 - Non-Standard Condition

The stables and decking hereby permitted shall be maintained and retained with a dark brown stained finish, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of local amenity.

#### 10 - Non-Standard Condition

The remedial measures recommended by the arboricultural report submitted with the planning application in respect of the oak tree adjacent to the stable building shall be implemented in the first growing season following this permission.

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

#### 11 - Non-Standard Condition

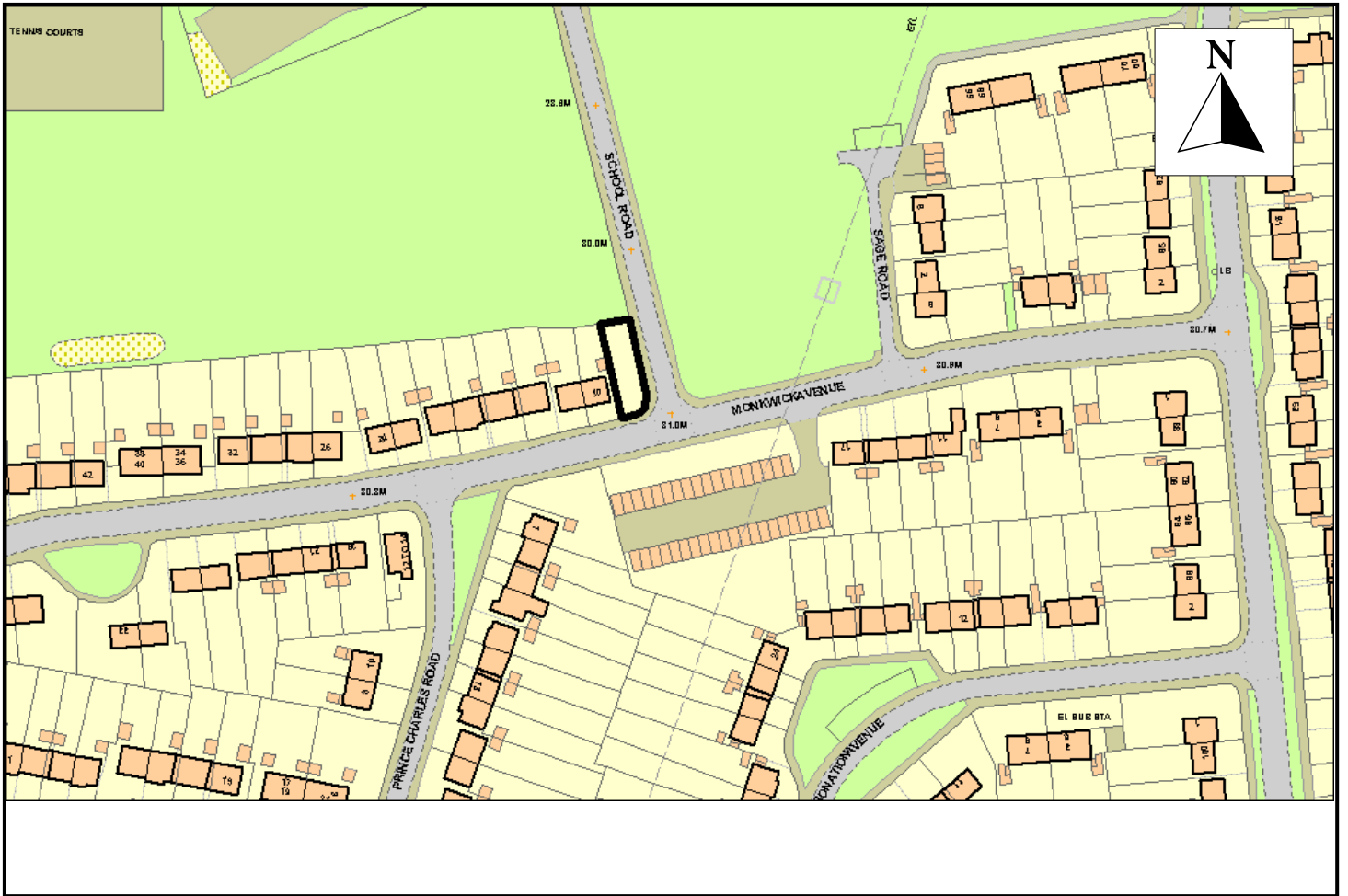
The existing oak tree immediately to the south of the stable building, identified as tree T1 in the arboricultural report submitted with the planning application, shall be monitored and recorded for at least five years following the date of this permission, by a qualified arboriculturalist instructed by the applicant and approved by the local planning authority, and a monitoring report shall duly be submitted on an annual basis. If this tree or any other tree (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: In accordance with the recommendations of the arboricultural report submitted with the application and to safeguard the continuity of amenity afforded by this tree.

### **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 08456 037631.



**Application No:** 120548

**Location:** Land at, 10 Monkwick Avenue, Colchester, CO2 8NL

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

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7.4 Case Officer: Lucy Mondon

Due Date: 28/06/2012

**MINOR**

**Site:** Land at 10 Monkwick Avenue, Colchester, CO2 8NL

**Application No:** 120548

**Date Received:** 3 May 2012

**Agent:** Nwdp

**Applicant:** J O'Connor

**Development:** Proposed new dwelling on land at side of existing dwelling including parking etc.

**Ward:** Berechurch

**Summary of Application:** Conditional Approval subject to Unilateral Undertaking

## 1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it has been called in by Councillor Mudie for the following reason:

*I request that Planning Application 120548 be called in and be considered by the Planning Committee due to the serious concerns over Highway Safety.*

*The proposal includes provision for two off road parking spaces .One to the front of the proposed property and the other to the side at the rear.*

*The plot is on a corner of a junction which serves as the only vehicular access to Nursery, Infant, Junior and Secondary schools as well as the Ormiston Centre.*

*School Road which leads to the above mentioned sites, is of narrow proportion running alongside the property to which one of the proposed off road parking provisions is suggested. There is a large amount of traffic movement during school children drop off and picking up times. Plus there is further traffic generated during the day and evening with attendees to the Ormiston Centre. Additionally, vehicles customarily parked along School Road opposite the proposed rear off road parking site would make access and exit very difficult. Furthermore, it could potentially create a dangerous situation for the general public to traverse School Road either on foot or by vehicle.*

*On 15th December 2011 a pupil was seriously injured in a road accident along School Road. The present proposal for two off road parking spaces within close proximity to a busy junction serving local schools and sport facility will further impact on the safety concerns already existing in School Road.*

## **2.0 Synopsis**

2.1 The report describes the proposal for a single dwelling on land currently owned by 10 Monkwick Avenue. Objections, chiefly relating to highway safety are considered and negotiations and an amended scheme are then discussed. Finally it is concluded that Highway issues are resolved and approval is recommended.

## **3.0 Site Description and Context**

3.1 The site comprises the side garden of 10 Monkwick Avenue which faces out on to School Road and is closed off by a fence. The side garden is currently occupied by a garage. To the north is a wooded area.

3.2 The host property itself is of its time (1950s) and is similar in design and detail to those around it. It forms part of a series of terraces which characterise the area.

## **4.0 Description of the Proposal**

4.1 The original proposal was for a detached, three bedroom, dwelling with parking. This comprises one space to the front, and one to the side on School Road. The proposal has now been amended to give a terraced form of development, this is discussed below.

## **5.0 Land Use Allocation**

5.1 Residential

## **6.0 Relevant Planning History**

6.1 98/0228 - Erection of single storey detached garage and new fencing along side of garden. Approved 1<sup>st</sup> April 1998.

## **7.0 Principal Policies**

7.1 The following national policies are relevant to this application:

The National Planning Policy Framework (NPPF)

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

H1 - Housing Delivery

UR2 - Built Design and Character

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  
DP12 Dwelling Standards  
DP16 Private Amenity Space and Open Space Provision for New Residential Development  
DP19 Parking Standards

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

Backland and Infill  
Vehicle Parking Standards  
Sustainable Construction  
The Essex Design Guide  
External Materials in New Developments

## 8.0 Consultations

8.1 The Highway Authority has not objected, but has requested conditions relating to visibility splays, parking provision and no unbound materials.

8.2 Your Officer noted that the proposal fell short of some of these requirements, in particular the splay to the north on the School Road side. Also the proposed parking bays were inadequate in size. In the case of the splay, and the parking space to School Road, the problems can be resolved, but not so Monkwick Avenue. Therefore, your Officer asked the Highway Authority to confirm that it did not object to the under-sized bays on Monkwick Avenue, and to the principle of the access onto School Road. The following reply was received:

*'The vehicle visibility splays can be achieved within the highway; the footways measure 1.9 on Monkwick Ave, and 2.2m on School Road.*

*As you say, the pedestrian splays can be achieved by slight manoeuvring of the parking spaces.*

*The space accessed from School Road can be to standard.*

*The space accessed from Monkwick is substandard but having a look round the area this would appear not to be unique. I am not sure how sustainable a refusal based on dimensions of parking space could be in such a situation and am, therefore, not unduly exercised by this.*

*Having regard to the above I am content that our current recommendation can stand with the proviso that the Monkwick Ave parking space be noted at the substandard dimensions.'*

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

## 9.0 Parish Council Response

9.1 n/a

## **10.0 Representations**

- 10.1 Councillors Harris and Barton have also raised concerns in relation to Highway safety.

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

## **11.0 Parking Provision**

- 11.1 Two spaces per dwelling (which complies with standards). The two spaces for the host dwelling are to face on to Monkwick Avenue, but are of insufficient depth related to the new standards, one of the spaces to the new dwelling also suffers this limitation (each of them are about 900mm short – the required dimensions being 5.5m x 2.9m). However, it is physically impossible to achieve the required depth due to the position of the housing. Given the prevailing pattern along Monkwick Avenue, the Highway Authority has stated that it does not have any objections. The space onto School Road was initially shown as substandard, but amended drawings are awaited which will remedy this.

## **12.0 Open Space Provisions**

- 12.1 Unilateral Undertaking to secure open space provision.

## **13.0 Air Quality**

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

## **14.0 Report**

### Design

- 14.1 The design of the house is with a gabled front, contrasting with the roof fronted terrace to act as a 'book end' to this row of housing.
- 14.2 However, your Officer has surveyed the area and feels that a detached dwelling would give a gappy appearance which does not fit with the area (notwithstanding the fact that a building opposite suffers from this appearance, however this flatted building – 12-14 Prince Charles Road – was given permission a long time ago and does not accord with the prevailing pattern of development). The applicants have agreed to amend the scheme to attach the house to the host dwelling. Amended drawings are awaited and will be reported on the amendment sheet.
- 14.3 No other issues of design, massing or scale present themselves.

### Residential Amenity

- 14.4 No issues arise. It is noted that the rear garden of the host dwelling would now be overlooked from this side, as it already is from the other. This is a traditional occurrence in an urban situation such as this.



- 14.5 Given that the host and new dwelling are virtually flush with each other, there are no issues of loss of light or outlook. The host dwelling will lose a side window, but this serves a landing and will have to be replaced with a rooflight or sun-pipe.

#### Amenity Space

- 14.6 Whilst the gardens of both dwellings would be slightly smaller than those around them, they still comply with the minimum standards of 60m<sup>2</sup> per three-bedroom dwelling. Plot sizes to comply with those in the area.

#### Effect on the Area

- 14.7 The end of terrace would complement the pattern of the area. Whilst it is noted that it could be seen to be closing off an open aspect, when on the ground it is clear that this effect is minimal as a garage is already in place.

#### Other matters

- 14.8 Amended drawings are awaited which show the house to adjoin the terrace with a new section of roof bridging the dwellings, the parking space on School Road to be compliant, and the access to School Road to be shunted 1.5 metres south to achieve the required vision splay.

### **15.0 Conclusion**

- 15.1 In conclusion the amended scheme is held to be acceptable in terms of design, streetscape, Highway safety and residential amenity.

### **16.0 Recommendation**

APPROVE subject to the receipt of satisfactory amended plans and to the prior completion of a legal agreement under Section 106 of the Town and Country Planning Act 1990. The Head of Environmental and Protective Services to be authorised to complete the agreement to provide the following:

- Contribution to open space, sports and recreation and community facilities.

#### **Conditions**

- (1) Time Limit (choose relevant model condition)
- (2) Development to accord with amended plans (reference numbers to follow on the amendment sheet)
- (3) Parking provision
- (4) Vision splays
- (5) No unbound materials
- (6) Removal of all PD for both dwellings

- (7) New dwelling to be built to Code 3
- (8) Materials to be agreed
- (9) Boundary treatment

### **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 08456 037631.



**Application No:** 100534

**Location:** Land Rear (NE) of, 148 St Andrews Avenue, Colchester

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

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**7.5 Case Officer: Simon Osborn****MINOR**

**Site:** Land Rear (NE) of 148 St Andrews Avenue, Colchester

**Application No:** 100534

**Date Received:** 22 March 2010

**Agent:** Mr Steve Norman

**Applicant:** Mr & Mrs G Yuill

**Development:** Erection of a detached bungalow with associated parking facilities

**Ward:** St Andrews

**Summary of Recommendation:** Conditional Approval subject to Unilateral Undertaking

**1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee in accordance with the agreed scheme of delegation at the time in operation when the application was originally submitted and because an objection has been received.

**2.0 Synopsis**

2.1 The application seeks permission for a new bungalow in the rear garden of this property, which takes access off a garage/ parking court, where permission has previously been granted for new bungalows. The report considers the proposal in the light of the Council's policies and guidance for new infill and in relation to the site context. The report recommends planning permission is granted for the scheme.

**3.0 Site Description and Context**

3.1 The application site forms part of the rear garden of 148 St Andrews Avenue, a detached chalet bungalow, which backs onto a large garage and parking court, in the ownership of Colchester Borough Council, off Forest Road. The land drops significantly in a northwest to southeast direction, from the parking court towards the existing dwelling. The application site is in a predominantly residential area; and planning permission has previously been granted for 3 other bungalows, which also front onto this garage/ parking court.

**4.0 Description of the Proposal**

4.1 The application seeks planning permission for a 2-bedroom, single storey bungalow. Revisions to the size and design of the proposed bungalow have been submitted during the consideration of the application.

## **5.0 Land Use Allocation**

5.1 Predominantly residential

## **6.0 Relevant Planning History**

6.1 None

## **7.0 Principal Policies**

7.1 The following national policies are relevant to this application:

The National Planning Policy Framework (NPPF)

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

H1 - Housing Delivery

H2 - Housing Density

H3 - Housing Diversity

UR2 - Built Design and Character

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

DP1 Design and Amenity

DP12 Dwelling Standards

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

DP17 Accessibility and Access

DP19 Parking Standards

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

Backland and Infill

Community Facilities

Vehicle Parking Standards

Sustainable Construction

Open Space, Sport and Recreation

Extending your House

The Essex Design Guide

External Materials in New Developments

## **8.0 Consultations**

8.1 ECC Highways – no objections subject to conditions

8.2 Environment Agency – no comments

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

## **9.0 Parish Council Response**

9.1 Not applicable

## **10.0 Representations**

10.1 One representation received from 74 Forest Road: the bungalow is too high and will cut out light and spoil the view; furthermore it will not fit in with its surroundings.

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

## **11.0 Parking Provision**

11.1 The proposal makes provision for 2 car parking spaces at the front of the proposed bungalow. This is in accordance with the relevant adopted policy (DP19) for new residential development.

## **12.0 Open Space Provisions**

12.1 A unilateral undertaking has been provided that makes a contribution towards public open space, sports and recreation facilities in line with the Council's adopted guidance. The application site is not of sufficient size for public open space to be provided on site.

## **13.0 Air Quality**

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

## 14.0 Report

- 14.1 The site is within the main urban area where new residential development is considered acceptable in principle, subject to appropriate design and there being no significant impact on the amenity of neighbouring properties. Whilst this is a form of backland development, the front of the proposed bungalow and the parking area face toward a large garage/ parking courtyard with access from Forest Road. Applications for three other bungalows (to the rear of 150, 158 and 162 St Andrews Avenue) have previously been approved as “backland development fronting onto the parking court”, with the thought that providing a built presence onto this court would represent an improvement to the local townscape and offer some form of informal surveillance onto the parking court. The principle of this form of development has already been accepted and is considered to meet the requirements of the newly adopted Backland and Infill SPD.
- 14.2 The existing dwelling at 148 St Andrews Avenue is a chalet-style bungalow with a 33m deep rear garden. There is a significant drop in land levels from the back of the garden down toward the front and the proposal respects this by proposing a single-storey dwelling. This will ensure the proposed bungalow will not have an overbearing impact upon the existing dwelling. The proposed dwelling is a 2-bedroom bungalow, of modest appearance, with a proposed rear garden area of 75 square metres and space on the frontage for 2 cars to park. This is in accordance with the minimum standards required by your policies for new residential development.
- 14.3 The applicant has provided a longitudinal site sectional drawing to show the relationship between the proposed dwelling and the existing. This indicates a distance of approx 20m between the backs of the two properties, with the finished ground floor level of the proposed dwelling roughly level with the first floor level of the existing dwelling. Whilst the Essex Design Guide normally recommends a distance of 25m to prevent unreasonable overlooking, in this case the proposed new dwelling faces directly toward the property of the applicant. A higher fence of approx 2.4m between the two properties will help safeguard privacy between these properties. It is suggested that PD rights are removed with regards to decking and rear extensions to further safeguard privacy.
- 14.4 Comments were received from 74 Forest Road with regard to the impact of the proposal; however, this is some distance from the proposed new bungalow and the proposal will have no material impact on that property. The adjacent property at 150 St Andrews Avenue already has planning permission granted for a new bungalow in the rear garden of similar proportions to that proposed for this site. The application site lies at one end of the garage/ parking courtyard and it will not be possible to repeat this form of development at 146 St Andrews Avenue. The impact on this property is considered acceptable as the proposed dwelling is approx 25m from the rear of that dwelling; it is however recommended that landscape planting is provided along the northwest edge of the rear garden to soften impact on the latter property.
- 14.5 In common with the other bungalows constructed off this garage/ parking forecourt, the consent of the owners of the forecourt (i.e. Colchester Borough Council as landowner) will also be required to provide access across the forecourt onto the adopted highway at Forest Road.

## **15.0 Conclusion**

15.1 Planning permission has previously been granted for three other bungalows at the backs of this run of properties in St Andrews Avenue, with a new frontage being provided onto the garage/ parking forecourt to the rear of other dwellings in Forest Road. The proposal is of a similar nature to these others and it is recommended that planning permission be granted for this.

**16.0 Recommendation - APPROVE** subject to the following conditions

### **Conditions**

1 - A1.5 Full Perms (time limit for commencement of Development)

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 - Non-Standard Condition

The development hereby permitted shall be constructed in strict accordance with the approved drawings, unless otherwise agreed in writing by the Local Planning Authority. These drawings include the scale 1:200 site layout Revision D received on 15 May 2012, the scale 1:200 longitudinal site-section drawing Revision A received on 15 May 2012, and the scale 1:100 elevation and floor plan drawing received on 24 October 2011.

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

3 - C3.3 Samples to be Submitted

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 harmonise with the character of existing development in the area.

4 - Non-Standard Condition

Prior to the commencement of the development hereby permitted, cross sections of the site and adjoining land, including details of existing ground and building levels around the dwelling hereby approved and any changes in levels proposed together with the proposed floor levels within the dwelling, shall be submitted to the local planning authority for approval. The development shall be carried out in accordance with the approved cross sections and levels.

Reason: To protect the privacy and amenity of the occupiers of existing dwellings along St Andrews Avenue having regard to the difference in ground levels between the application site and these dwellings.



#### 5 - Non-Standard Condition

Prior to the commencement of development, evidence that the development is registered with an accreditation body under the Code for Sustainable Homes and a Design Stage or Interim Code Certificate demonstrating that the development will achieve Code Level 3 or higher for all dwellings shall have been submitted to and agreed, in writing, by the Local Planning Authority.

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

#### 6 - Non-Standard Condition

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

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

#### 7 -Non-Standard Condition

Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from the verge shown on the approved scale 1:100 drawing, shall be provided on both sides of the vehicular access. The visibility splay shall be retained free of any obstruction in perpetuity and the splay shall not form part of the vehicular surface of the access on its northwestern side.

Reason: To provide adequate intervisibility between the users of the access and pedestrians in the interest of highway safety.

#### 8 - Non-Standard Condition

Prior to occupation of the development, the vehicular hardstanding shall be provided and thereafter retained with minimum dimensions of 5.8 metres (width) by (5.5m depth).

Reason: To ensure appropriate provision for off-street parking is made in accordance with the Council's adopted policies.

#### 9 - Non-Standard Condition

No unbound material shall be used in the surface treatment of the parking area.

Reason: In the interest of highway safety.

#### 10 - Non-Standard Condition

Prior to the first occupation of the dwelling hereby permitted, fences shall be provided around the perimeters of the site with neighbouring gardens in accordance with details which shall first have been submitted to and agreed in writing with the Local Planning Authority, and shall thereafter be retained as approved. The details to be submitted shall make provision for a 2.4m high fence along the south-west boundary of the site with 148 St Andrews Avenue and the details of proposed fencing heights along the other boundaries of the site.

Reason: In the interest of the privacy and amenity of neighbouring properties.

#### 11 - C10.16 Tree & Natural Feature Protection: Entire Site

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

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

#### 12 - C10.17 Tree and Hedgerow Protection: General

All existing trees and hedgerows shall be retained, unless shown to be removed on the approved drawing. The details to be submitted shall include the planting of an instant hedge as shown in principle on the scale 1:100 site layout drawing Revision D, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure an appropriate visual amenity in the local area.

#### 13 - Non-Standard Condition

Prior to the development hereby approved being brought into use, refuse storage facilities shall be provided in a visually satisfactory manner and in accordance with a scheme which shall have previously been submitted to and approved in writing by the Local Planning Authority. Such facilities shall thereafter be retained to serve the development.

Reason: To ensure that adequate facilities are provided for refuse storage and collection.

#### 14 - Non-Standard Condition

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking and re-enacting that Order with or without modification), no development within Classes A to E of Part 1 of the Schedule of the Order (any extension, outbuilding, garage or enclosure, and any form of decking, veranda, balcony, or raised platform) shall take place without the prior written permission of the Local Planning Authority.

Reason: To safeguard the visual amenity of the area, to protect the amenity of adjoining residents and to prevent the overdevelopment of the site by controlling future extensions, alterations and associated development.

#### 15 - Non-Standard Condition

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no gate, fence, wall or other means of enclosure above 600mm in height shall be provided within the curtilage of the dwelling forward of the front of the dwelling without the prior agreement in writing of the Local Planning Authority.

Reason: In the interest of the visual appearance of the locality.

#### 16 - Non-Standard Condition

No new window or other openings shall be inserted in the side facing elevations of the proposed dwelling without the prior approval in writing of the Local Planning Authority.

Reason: In the interests of residential amenity and to secure the privacy of adjoining occupiers.

## **Informatives**

- (1) The consent of the owners of the parking court (Colchester Borough Council as landowner) will be required to provide access between the application site and the adopted highway at Forest Road. This will also need to include consent to provide a communal refuse bin in accordance with condition no. 13 above within 25m of the highway boundary. If this consent is not forthcoming, the planning permission cannot be implemented.
- (2) 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.
- (3) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.
- (4) The development is subject to a Unilateral Undertaking for a contribution towards community facilities and open space, sports and recreation facilities, which is payable to the Council immediately before development commences.



**Application No:** 120484

**Location:** Land at, Meadow Green Farm, Mount Bures Road, Wakes Colne, Colchester, CO6 2AP

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

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**7.6 Case Officer: Mark Russell**

**MINOR**

**Site:** Land at Meadow Green Farm, Mount Bures Road, Wakes Colne, Colchester, CO6 2AP

**Application No:** 120484

**Date Received:** 15 March 2012

**Agent:** Edward Gittins Associates

**Applicant:** Mr Michel Abusubul

**Development:** Formation of a Stud Farm comprising a Change of Use of land and redundant livestock building to equestrian use, minor alterations to the building to form stabling, provision of manege, minor extension of existing access track and the siting of a temporary mobile home for a Stud Farm Manager. Diversion of Public Footpath No 34 (currently shown to pass through established building).

**Ward:** Great Tey

**Summary of Recommendation:** Refusal

**1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee because of a call-in by Councillor Chillingworth on the following lines:

*"The application is likely to lead to a new permanent dwelling in the open country side contrary to policy DP24. Also the application should be considered in the light of the national planning policy framework."*

1.2 When asked whether the item should still come to Committee if the recommendation were for refusal, Cllr Chillingworth has replied:

*"I had hoped the application would come to committee anyway, mainly because I am interested to know how you will handle a case such as this under the NPPF. There is an obvious reason for recommending refusal because of DP24, however this is the first such case since PPS7 was cancelled."*

## **2.0 Synopsis**

2.1 The following report describes a proposal for the formation of a stud farm in a countryside location, involving the modification and use of existing buildings and the provision of a temporary mobile home. The proposal is considered in some depth in relation to policy issues, especially in the light of the new National Planning Policy Framework. The complicated history of the site is also explained. Objections to the principle of the development from locals and the Parish Council are then discussed and the lengthy planning history is explained. Finally, refusal is recommended.

## **3.0 Site Description and Context**

3.1 The site, although mostly within Wakes Colne, straddles the Wakes Colne/Mount Bures Boundary and was previously part of Hammonds Farm. The landholding now known as Meadow Green Farm is 13.8 ha. (34 acres) and contains a disused livestock building measuring 32.8m x 13.8m x 3.1m which used to be part of Hammonds Farm.

## **4.0 Description of the Proposal**

4.1 The proposal is to utilise the above mentioned disused livestock building for six stables and two foaling boxes with storage, staff facilities and a laboratory and equine service area. This will require some external finishing works required (described as additional block work panels with Yorkshire boarding).

4.2 A manege of 50m x 25m with all weather surfacing, enclosed by post and rail fencing, just to the south of the existing buildings, is also proposed.

4.3 Paddock fencing is also tabled to divide the land into six paddocks.

4.4 The application documents also make it clear that the applicants intend to complete the erection of the hay-barn which has been commenced (having been granted prior approval for agricultural purposes in 2007. This is an extant permission.

4.5 Finally, the proposal is for a temporary/mobile home, with a view to making this permanent.

4.6 As a consequence, it is also necessary to divert a footpath (number 34) which apparently runs through an existing building. The applicants have chosen to do this via the Town & Country Planning route, rather than under the Highways Act.

## **5.0 Land Use Allocation**

5.1 No notation/Countryside

## **6.0 Relevant Planning History**

6.1 F/COL/06/0622 - Retrospective application for creation of access road. REFUSED. Appeal withdrawn.

6.2 AG/COL/06/0631 - Agricultural Determination application to determine whether prior approval is required for access road (retrospective). REFUSED. Appeal withdrawn.

- 6.3 F/COL/06/1878 - Retrospective application for proposed access road. Resubmission of F/COL/06/0622. REFUSED. Appeal withdrawn.
- 6.4 \*C/COL/06/1664 - Change of use of barn and adjacent sheds to domestic horse use and change of use of land from agricultural to domestic grazing. Approved 4<sup>th</sup> December 2006.
- 6.5 071677 - Proposed hay barn and hardstanding. Approved 1<sup>st</sup> August 2007.
- 6.6 080562 - Retrospective application for provision of access road. Approved 21<sup>st</sup> May 2008.
- 6.7 081569 - Change of use of agricultural building into stables to include opening up of footpath route and provision of hardstanding. Withdrawn 23<sup>rd</sup> October 2008.
- 6.8 090546 - Change of use of agricultural building into stables to include opening up of footpath route and provision of hardstanding. REFUSED. 16<sup>th</sup> June 2009. APPEAL DISMISSED. Claim for costs DISMISSED.
- 6.9 \*090756 - Use of land for grazing horses, erection of building containing 4 loose boxes and construction of hardstanding and new driveway. REFUSED 6<sup>th</sup> October 2009. APPEAL DISMISSED.

\*These are all on land adjacent to the application site, which was formerly part of the site.

## 7.0 Principal Policies

- 7.1 The following national policies are relevant to this application:

The National Planning Policy Framework (NPPF)

- 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  
 H1 - Housing Delivery  
 UR2 - Built Design and Character  
 ENV1 - Environment  
 ENV2 - Rural Communities

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

DP1 Design and Amenity  
 DP8 Agricultural Development and Diversification  
 DP9 Employment Uses in the Countryside  
 DP21 Nature Conservation and Protected Lanes  
 DP24 Equestrian Activities

## 8.0 Consultations

### 8.1 Planning Policy has responded as follows:

*'The site is located in a countryside location outside of defined settlement boundaries. Core Strategy Policy ENV1 and Development Policy DP24 are therefore particularly relevant. Access to the site appears to be taken from a Protected Lane as shown on the LDF Proposals Map and Development Policy DP21 is therefore also relevant.*

*The National Planning Policy Framework was published on the 27 March 2012 and has immediate effect. Although the supporting information correctly refers to the national planning policy guidance in place at the time of application, the policy contained in the National Planning Policy Framework is now a relevant material consideration.*

*As made clear in the NPPF, however, applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The planning policies in Colchester's Adopted LDF are therefore the primary consideration for this application.*

*Policy DP24 sets out the criteria that the application must be assessed against. The scale and level of activity proposed will need to be assessed as part of the application, including the amount of proposed equestrian related development, and this considered against the criteria in Development Policy DP24. The proposals should not lead to overdevelopment in the countryside or create conflict with other rural uses if they are to accord with this policy. Criteria (iv) of Policy DP24 requires equestrian development to be related to an existing dwelling or not lead to pressure for a new dwelling. The application proposes that a new dwelling would be provided on the site. In this respect therefore the proposals conflict with the adopted policy.*

*The supporting statement argues that there is a conflict between DP24 and PPS4. The inspector's report into the Development Policies DPD finding the policy sound was published on 27 September 2010. PPS4 was published on 29 December 2009 prior to this. As part of the examination the inspector therefore had opportunity to consider the conformity of the plan with PPS4 and found the plan was sound and consistent with national policy. The Development Policies DPD is formally adopted and forms part of the development plan against which applications must be assessed.*

*It should be noted, however, that both PPS4 and PPS7 which are referred to in the statement have now been superseded by the NPPF. The most relevant section is now paragraph 55 of the NPPF which sets out that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. The special circumstances in which isolated new homes in the countryside can be supported remain limited and include the essential need for a rural worker to live permanently at or near their place of work in the countryside. As the publication of NPPF has resulted in the revocation of annex A of PPS7 on sustainable development in rural areas there is currently no further guidance given on this subject at national level.*



*The application is required to be determined in accordance with the development plan unless material considerations indicate otherwise. As set out above national planning policy, which is a material consideration, no longer provides a detailed level of guidance on this issue. Whilst the material considerations surrounding the business use will therefore be relevant, they are not considered to justify a departure from adopted local planning policy to allow a new dwelling in this countryside location.'*

8.2 The agent then offered a rebuttal to this as follows:

'We consider the response of Planning Policy is fundamentally flawed in its approach which seeks to resist the proposal on grounds of conflict with Development Policy DP24.

Planning Policy considers that application of DP24 is sound by reference to the Inspector's examination of the policy in 2010. However, any conclusions drawn at that time (especially those relying on PPS guidance) are now irrelevant. The key consideration is whether DP24 is in conformity with new Government policy contained in the National Planning Policy Framework (NPPF) which superseded all PPG and PPS guidance on 27th March 2012 and is a material planning consideration.

We draw particular attention to Annex 1 of the NPPF which provides that where there is more than a 'limited degree' of conflict between relevant local policies and policies contained within the NPPF, due weight should be given to those policies according to their degree of consistency with the NPPF. It goes without saying, therefore, that where the level of conflict is severe, the policy can carry only limited weight. In this case, Planning Policy have correctly identified the most relevant section of the NPPF as being paragraph 55 which states, inter alia:

*Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:*

*The essential need for a rural worker to live permanently at or near their place of work in the countryside.*

There can be no skewing or misinterpretation of this policy which provides that the essential need for a rural worker (where a 'rural worker' is anyone whose work requires a countryside location with no exclusions) to live permanently at or near their place of work represents an exception to normal policy constraints which seek to resist new isolated homes in the countryside.

Planning Policy have also identified that more detailed guidance on this issue – formerly contained within PPS7 Annex A – is no longer provided at national level.

However, the absence of such detailed guidance does not undermine the weight to be afforded to the NPPF which is a material planning consideration. In similar vein, the loss of PPS7 Annex A does not add credence to out-of-date policies which are seen to be in conflict with the NPPF.

We maintain that there is clear and unmitigated conflict between NPPF paragraph 55 and Policy DP24 which specifically precludes - and hence discriminates against - proposals for new equestrian workers' dwellings even where there is an essential need for such workers to live at the site. Accordingly, we consider that DP24 can now carry only limited weight and that the correct policy approach should be the same as that for determining all other types of rural workers' dwellings including agricultural workers.

The NPPF is also clear that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. Paragraph 28 states, inter alia, that local plans should (with our emphasis):

*Support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;*

*Promote the development and diversification of agricultural and other land-based rural businesses;*

In this context, we consider the formation of a stud farm is a legitimate land-based rural business and hence, is supported in principle, by the above national policy.

Furthermore, the proposal includes the conversion and re-use of an existing rural building and would create 3 FTE jobs. Indeed, the Application is supported by a comprehensive Business Plan and Technical Assessment prepared by a Chartered Surveyor and Land Management Consultant which demonstrates the Applicant's long-term commitment to the creation of a viable land-based business.

In view of the above crucial matters relating to the application of policy and the highly material employment aspects, we would be grateful if these considerations could be referred back to Planning Policy to enable a fair and balanced response to be obtained prior to the determination of our Client's Application.'

### 8.3 Your Policy team then responded as follows:

*'Additional comments from planning policy are shown below. These comments should be read in conjunction with the earlier comments dated 03/05/12.*

*It is noted that the response from the planning agent has now been updated to refer to the publication of the NPPF and correctly identify that this is now the relevant national policy consideration.*

*It is considered that Development Policy DP24 had full weight prior to the publication of the NPPF notwithstanding the argument put forward in the applicant's earlier supporting statement that it was in conflict with PPS4. As stated in the earlier planning policy response this could not have been the case as this issue was considered by Inspector at examination in 2010 and the plan was found to be consistent with national policy.*

*The NPPF was published on 27 March 2012. Annex 1 (Implementation) makes clear at paragraph 211 policies in a Local Plan should not be considered out-of-date simply because they were adopted prior to the publication of this Framework. Development Policy DP24 should therefore not be considered 'out-of-date'.*

*At paragraph 214 it is stated that for 12 months from the date of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework. Provided there is no more than a limited degree of conflict with the framework Development Policy DP24 should therefore continue to be afforded full weight.*

*Paragraph 215 states that in other cases and following the 12 month period, due weight should be given to relevant policies according to the policies' degree of consistency with the framework.*

*As stated in the earlier response from planning policy the detailed guidance on this issue previously found in PPS7 Annex A is no longer in force and has not been replaced. Paragraph 55 of the NPPF provides general guidance on this issue and does not go into detail. The wording of NPPF paragraph 55 refers to rural workers, although no definition of rural worker is provided, which therefore could potentially be wide ranging. Given the lack of additional national guidance (previously contained in PPS7 Annex A) this is an issue where local policies will be able to provide more clarity. Paragraph 214 of the NPPF gives a 12 month period in which issues such as this can be addressed.*

*It is considered that the approach of Colchester's Adopted LDF to rural dwellings remains in general conformity with the NPPF. The wording of the NPPF may give scope to allow more flexibility on rural dwellings in a limited range of circumstances, however, the LDF remains in general conformity and there is limited conflict. Full weight should therefore continue to be afforded to local policies as set out by paragraph 214.*

*As set out in the earlier policy response the application should be determined in accordance with the development plan giving due weight to any other material considerations such as the NPPF. The application fails to accord with Development Policy DP24 and therefore there is a policy objection to this proposal.'*

8.4 The agent gave a further response, below:

*"Further to our letter dated 8th May relating to policy matters, we have now read the additional comments submitted by Planning Policy dated 9th May and respond as follows:*

*We maintain that any conclusions drawn by the Examination Inspector in 2010 are now irrelevant as all national policy at the time the DPD was examined has now been superseded by the NPPF. We are therefore unsure why Planning Policy continues to refer to the Inspector's conclusions which no longer have any bearing on the application of policy in this case.*

Similarly, the question of whether Policy DP24 is now out-of-date is undisputed. The current debate is centred on whether there is more than a *'limited degree'* of conflict between Policy DP24 and policies contained within the NPPF. If the level of conflict is only limited - as Planning Policy claims - then the policy may continue to be afforded full weight for a period of 12 months. If, however, the level of conflict is deemed to be more than *'limited'* – as we maintain - the weight of the policy will decrease accordingly.

To this end, we reject any suggestion by Planning Policy that Policy DP24 remains in *"general conformity"* with the NPPF for the following reasons:-

1. The first bullet point of NPPF paragraph 28 supports the growth and expansion of all types of business and enterprise in rural areas, both through the conversion of existing buildings and well designed new buildings. However, this impartial support for new rural businesses is actively frustrated by limb (iv) of Policy DP24 which seeks to resist equestrian businesses where they are not related to an existing dwelling. We maintain that the policy is economically counterproductive as it provides that a new equestrian business cannot be established without a large initial investment to purchase both a rural property and associated land and buildings that are suitable for conversion. Limb (iii) of DP24 also prevents the expansion of existing equestrian businesses as it seeks to resist any intensification of buildings in the countryside.
2. The first bullet point of NPPF paragraph 55 states that the essential need for a rural worker to live permanently at or near their place of work represents one of several special circumstances that may support the development of a new dwelling. This special provision is effectively denied by Policy DP24 which requires that an equestrian business can only be developed where there is an existing dwelling. The conflict is further highlighted by supporting paragraph 9.31 which states:-  
  
*"An equestrian use will not be considered to justify the erection of a dwelling in a location where permission would normally be refused."*
3. Whilst we accept that an equestrian use in itself may not be sufficient to justify a new dwelling, the NPPF is clear that the essential need for a rural worker – in this case a Stud Farm Manager – to live at his place of work does represent a special circumstance in which a dwelling may be supported. If the Council accepts that the proposed Stud Farm creates an essential need for a Stud Manager to live at his place of work, there is hence clear and significant conflict between the NPPF and Policy DP24.

In summary, therefore, we maintain that there is severe conflict between Policy DP24 and the NPPF such that the policy can carry only limited weight in the determination of the current Planning Application. In the event that Planning Policy maintains its objection to the proposal, we therefore respectfully request that you refer this Application to Members of the Planning Committee for determination as it raises important policy matters which will no doubt have significant implications for the Council in the event of a Planning Appeal.

*At this point your Officer requested that the exchange should cease, as there is clearly a fundamental disagreement in principle which is unlikely to be overcome.*

- 8.5 The Highway Authority did not object, but requested several conditions relating to parking provision, surface materials and unobstructed access to footpaths.
- 8.6 Environmental Control did not object, but requested that the proposed packaged treatment plant should comply with current regulations and have a consent to discharge provided by the Environment Agency. Also, a scheme to store and dispose of manure was requested, and a condition limiting lighting.

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

## **9.0 Parish Council Response**

- 9.1 Mount Bures Parish Council has responded as follows:

*"Whilst the Council realises that the application relates mainly to land in Wakes Colne we would like to make the following observations;*

1. *The applicant proposes to significantly alter the existing footpath regime, diverting Footpath 34 to the north of the development to meet Footpath 31 which also continues through the site to then continue along Footpath 33. Council does not consider this situation to be a safe site for walking and also not conducive to animal husbandry. It is unlikely that existing walkers will wish to continue using the footpaths. The proposed alterations are most unwelcome and the Council strongly objects to this section of the application.*
2. *With regard to the Change of Use and alteration of buildings, Council believes that this constitutes an overdevelopment of equine business in the area. There are already established equestrian facilities next door at Hammonds Farm, and many others nearby. The siting of the new facilities will be extremely close to the horses, which could be of both sexes, at Hammonds Farm, and Council can foresee problems with the siting of stallions so close, without proper segregation.*
3. *There are already plenty of established studs in the wider area. There is a concern that saturation of the market will affect the financial viability of this new venture.*
4. *Mobile Home. Council is very aware from previous decisions that approval of a mobile home is a prerequisite to approval of a permanent property. In view of this the Council strongly objects to this section of the application.*

*Council is unconvinced that the information regarding Bed & Breakfast and the references supplied have any relevance to the case.*

*We confirm that Council objects to this application as whole.'*

- 9.2 Comments are awaited from Wakes Colne Parish Council.

## **10.0 Representations**

10.1 Ten letters of objection were received, covering the following points:

- The principle of the development
- Setting of a precedent
- Increased traffic
- Other properties nearby have been for sale
- Visual impact
- Too close to other equine uses
- Inadequate/pressure on water supplies
- More footpaths will be affected than is being claimed
- Light pollution
- The area already experiences pressure from too much equine activity
- This is a protected lane
- The stable and the site are of insufficient size to accommodate the proposed use
- The business model presented does not stack up
- Insufficient parking
- Insufficient information about manure storage/removal
- The access road is not strong enough to accommodate the vehicles

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

## **11.0 Parking Provision**

11.1 Two car parking spaces are proposed, plus one for a horse-box. This complies with a residential standard, but is deficient for staff parking. There is, however, enough room on the site for such provision.

## **12.0 Open Space Provisions**

12.1 n/a

## **13.0 Air Quality**

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

## **14.0 Report**

### History

14.1 The planning history for this site shows a gradual movement away from agriculture, to repeated attempts for equine and associated use. The history above shows several refusals for a road access, followed by public inquiries from which the appellants then withdrew.

- 14.2 The only hope the applicant may pin to any permissive stance is application 071677, which granted prior approval (under agricultural permitted development) for a hay barn and hardstanding. This was in connection with the agricultural use which was claimed to be ongoing at that time. It is worth noting that the barn has not been built (although the footings are in place)
- 14.3 By the time of applications 081569 and 090546, the buildings which are now shown to be at the north eastern corner of the site had been incorporated into the site (they had been part of the neighbouring landholding next to Hammonds farmhouse itself at the time of C/COL/06/1664 for example).
- 14.4 To clarify – the only permission ever granted for anything on this site (apart from the access, which also serves other parcels of land) was for the as yet un-built hay barn and hardstanding, which was granted prior approval in connection with agriculture.
- 14.5 At the time of the dismissal of the appeal against refusal of 090546, the appellants claimed that the development being sought (stabling) was for grazing horses, and as such fell under agricultural use, and also indicated a low-key usage, which is different to what is now being claimed.
- 14.6 At the time of the appeal, the appellant also stated that he did not intend to seek a residential presence on the site. The Inspector, in her closing statement recognised that to allow the appeal would be to lay the ground for such an application, concluding:
- ‘I therefore find that the scale of the proposals and the isolated location of the appeal site, unconnected with any residential property, would be likely to result in increasing pressure for development in the countryside, including potentially a dwelling. As such, it would be likely to harm the character and appearance of the countryside.’
- 14.7 The proposal before Members includes more than that dismissed at appeal two years ago, as it also seeks a mobile home.

#### Principle

- 14.8 The protection of the countryside for its own sake, sustainability and restriction of dwellings in the countryside have long been central tenets in the Planning system, both nationally and locally. The uncategorical dismissal of the appeal against the refusal of 090546 was just two short years ago. All that has changed in that time is that the Inspector’s prophecy (that an application for a dwelling would surely follow) has been realised, and that the NPPF has been introduced.
- 14.9 It is understandable that a party which has lost an appeal under the previous regime of PPG/PPS may point to NPPF as offering a new raft of considerations (indeed, at the moment we are dealing with an appeal where the appellant is claiming that a landscape gardening company is a ‘rural use’). In fact, the central tenets listed above hold fast in the new NPPF, and our Policy team has given a very strong message that nothing has changed and our policies are compliant with NPPF.

### Viability

- 14.10 Much evidence has been submitted by the applicants, and has been accompanied by a business plan and technical assessment from Tatersalls. There has been correspondence from objectors who have disputed its claims, this has then been countermanded by Tatersalls. Colchester Borough Council has not employed its own consultant due to the cost to the public purse, particularly given the fundamental principle of refusing this application. However, it may have to do employ a consultant if the applicant appeals against any refusal.
- 14.11 For the moment, Members may satisfy themselves with the comment from Tatersalls that the application 'at this stage is merely for a temporary dwelling.....in order that the viability of the business may be proven over a three year period.'
- 14.12 If Members are minded to agree with the Officer's recommendation for refusal, they may wish to include the fact that the business case has not been proven. At appeal, we may then have to employ a consultant to counter any claims made by Tatersalls. Given that Tatersalls has already undertaken the work as part of the application, the appellant could not then reasonably claim costs for this work at appeal (the appellant claimed costs at the time of 090546, a claim which, along with the appeal, was dismissed by the Inspector).

### Rural Amenity

- 14.13 It is noted that an attempt has been made to locate the manege and mobile home/hardstanding near to the existing group of buildings (including the yet to be built hay barn). However, the users of the to be diverted footpath 34, as well as other footpaths, would be met with a new visual intrusion which would also be detectable from some parts of Mount Bures Road.
- 14.14 In addition, the sub-division of the field into paddocks would also fragment the countryside, and lead to visual disappointment for its users.
- 14.15 Extra light intrusion is also a very real danger. Whilst this can be offset to a degree (with shrouding and so on) it cannot completely eliminate the extra light which would ensue.
- 14.16 The narrow Mount Bures Road, a protected lane, would also be undermined and eroded by the increasing amount of large vehicles and vehicular activity. The extra traffic would also undermine the tranquility of the area. Whilst it is acknowledged that the previous use was agricultural which would have included large vehicles, this used a different access onto Hemps Green to the south.

### Parking

- 14.17 As already discussed at paragraph 11, the provision is deficient, but there is sufficient space on site to accommodate staff in addition to residential parking.



### Sufficient Space/Size of Buildings

- 14.18 Tatersalls and a neighbouring objector, both with equine knowledge, have disagreed about this matter. Members are advised to not involve themselves in the dispute unless they have some specialist knowledge which may be of use should the applicant appeal a refusal. Members may, instead, wish to refer to the intensity of the proposed use and its effect on the site and the wider countryside.

### Footpaths

- 14.19 It has been stated that footpaths other than those mentioned would be affected. If this is the case it would be for the applicant to deal with this matter should any permission be granted for this application.

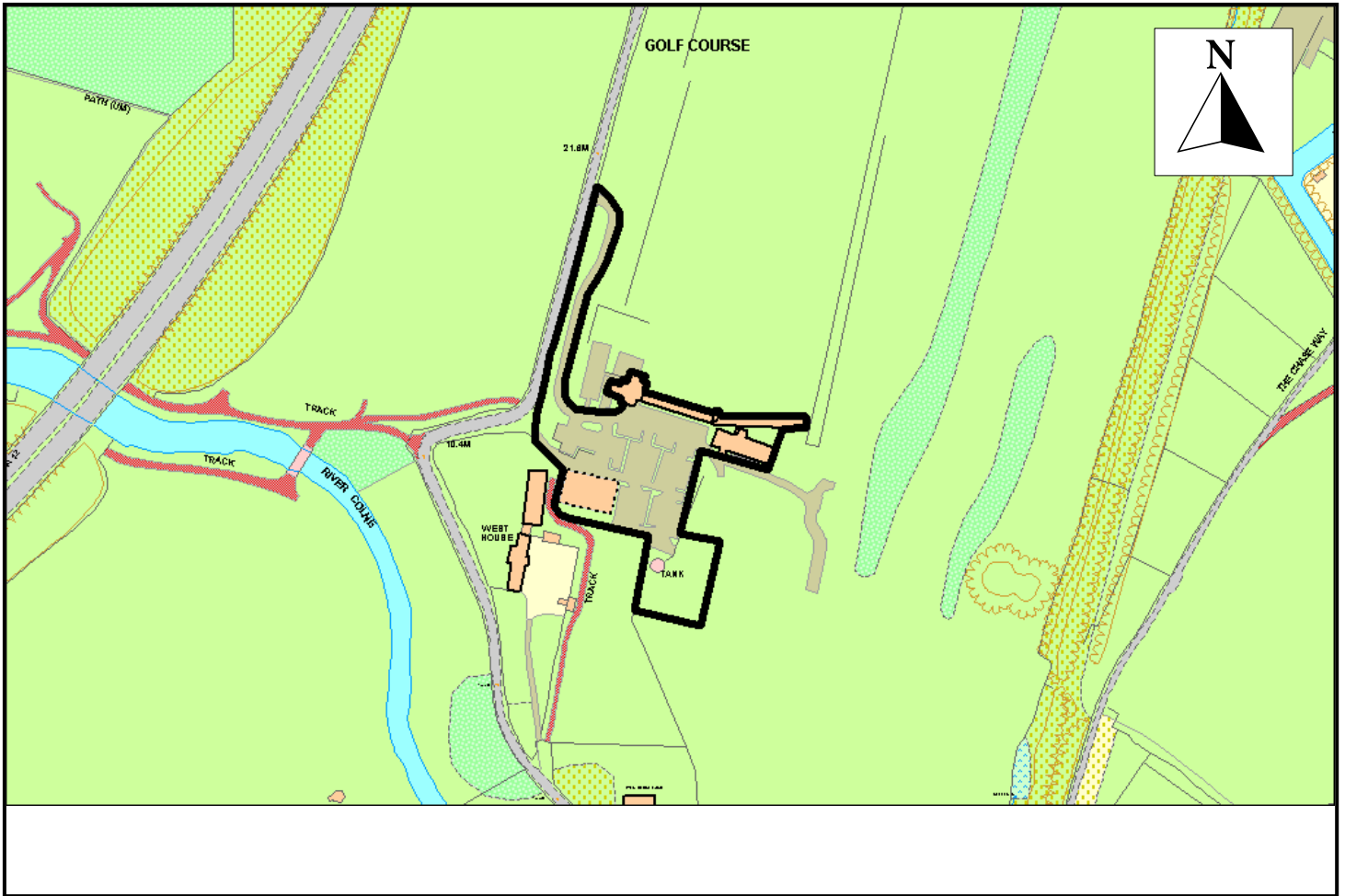
### Other Matters

- 14.20 Lack of facilities for manure disposal and water have been cited as concerns. On the former, our Environmental Control section has stated a way forward. On the latter, it would be for the applicant to make arrangement. It is not felt that these issues can be carried forward as reasons for refusal.

## **15.0 Conclusion**

- 15.1 Given all of the above considerations, Members are requested to refuse this application in terms of its principle, and its effect on the site and the wider countryside as a result of its physical presence and activities, and the fact that no business case has been proven.

- 16.0 Recommendation** - REFUSE planning permission for the reasons set out in the report above.



**Application No:** 120708

**Location:** Lexden Wood Golf Club, Bakers Lane, Colchester, CO3 4AU

**Scale (approx):** 1:2500

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**7.7 Case Officer: Mr David Whybrow**

**MINOR**

**Site:** Lexden Wood Golf Club, Bakers Lane, Colchester, CO3 4AU

**Application No:** 120708

**Date Received:** 17 April 2012

**Agent:** Mr Stephen Belchem

**Development:** Erection of single storey coffee house; internal alterations to existing refreshment bar and relocation of existing parking spaces

**Ward:** Lexden

**Summary of Recommendation:** Conditional Approval

**1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee following a call-in by Councillor Mrs Lewis. The reasons given are:-

- a) A resident farmer is concerned that conditions relating to a previous application have not been carried out and any outstanding works should be included in the current application.
- b) Provision should be made towards road safety warning signs and chevrons as a result of additional traffic on Spring Lane/Bakers Lane.
- c) Adequate screening required to neighbouring residents.

**2.0 Synopsis**

2.1 The following report considers the grounds of Councillor Mrs Lewis' call-in request and the context in which the application is made. Consultation responses will be considered and an assessment of the application made, having regard to all material considerations, leading to a conclusion that a conditional planning permission is warranted in this case.

**3.0 Site Description and Context**

3.1 Lexden Wood Golf Club lies in attractive rolling countryside in the Colne Valley, to the east of Bakers Lane. It comprises chiefly single storey buildings including clubhouse, golf shop, bar, changing rooms and golf driving range. To the south of these buildings is an extensive car parking area, beyond which is a barn used as a machinery store. Beyond this lies the residential curtilage of West House. A separate property, West House Farm, lies a short distance further to the south.

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

- 4.1 A coffee house with store/cellar and foyer are proposed extending into the existing car park between the golf shop and bar/changing rooms with the driving range immediately to the rear. The building is of flat roofed form with extensive glazing to the car park elevation. A pedestrian area is proposed at the front with tree planting proposed to define the edge of the car park as altered. The height is generally lower than the surrounding structures and will have no impact on the skyline.
- 4.2 Additional car parking spaces (35) are proposed to the south-east of the existing car park and extending towards Westhouse Farm. Perimeter hedge planting is shown on the proposed block plan with supplementary tree planting outside this.

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

- 5.1 Rural, without notation; Area of High Archaeological Potential; Environment Agency National Flood Zone.

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

- 6.1 95/1100 – Extension of covered driving bays and erection of equipment store – Approved 26 October 1995
- 6.2 98/1571 – Proposed extension forming club room, fitness area, restaurant etc – Withdrawn 11 May 2000
- 6.3 F/COL/99/0750 – Variation of Condition 01 of application 97/0743 to extend use – Approved 9 September 1999
- 6.4 F/COL/00/0722 – Erection of new clubhouse and facilities (open for use by general public) – Approved 3 January 2001
- 6.5 F/COL/00/0477 – Driving range screening – Approved 12 May 2000
- 6.6 F/COL/01/1717 – Club house/kitchen extension – Approved 25 January 2002
- 6.7 F/COL/01/1779 – Construction of car park – Approved 4 March 2002
- 6.8 F/COL/01/0317 – Extension to driving range cover – Approved 18 April 2001
- 6.9 F/COL/01/1122 – Two storey stair enclosure extension to existing consent – Approved 14 August 2001
- 6.10 F/COL/06/1973 – Earthworks to existing golf course to improve safety and facilities – Approved 4 April 2007
- 6.11 080651 – Clubhouse improvements – extension to previously approved changing room – Approved 21 May 2008
- 6.12 080248 – Clubhouse improvements – Approved 1 April 2008

## **7.0 Principal Policies**

7.1 The following national policies are relevant to this application:

The National Planning Policy Framework (NPPF)

7.2 In addition to the above national policies, the following policies from the adopted Colchester Borough Core Strategy (December 2008) are relevant:

SD2 - Delivering Facilities and Infrastructure

UR2 - Built Design and Character

TA4 - Roads and Traffic

TA5 - Parking

ENV1 - Environment

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

DP1 Design and Amenity

DP10 Tourism, Leisure and Culture

DP14 Historic Environment Assets

DP17 Accessibility and Access

DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

## **8.0 Consultations**

8.1 The Environment Agency have no objections but suggest informatives in respect of sewage treatment/land drainage matters.

8.2 The Archaeological Officer requested a pre-determination archaeological evaluation which was subsequently produced by the agent. Upon receipt of this the standard archaeological condition C2.2 was recommended so that suitable mitigation can be implemented.

8.3 Environmental Control request the standard informative regarding demolition and construction works.

8.4 The Highway Authority comment as follows:-

“Bakers Lane is very narrow in places and already suffers from being a ‘rat run’ between Bergholt Road and the A12. This is a constant maintenance liability.

Would it be possible to condition use of the new coffee house to members only, thereby avoiding an influx of public vehicles to this attractive landscaped rural café?

Further I would like to have some form of agreement backed by a bond for £10,000 and ‘before’ and ‘after’ surveys to protect Bakers Lane during the construction phase. Obviously if our Maintenance team inspects the Lane immediately before, and after, the works and there is either no maintenance problem, or anything caused by the construction vehicles has been rectified at the developer’s expense, then the bond will be returned in full.”

The agent has agreed that such conditions will be acceptable to his client and consequently the Highway Authority have recommended a conditional consent with informatives.

- 8.5 The Trees and Landscape Officer is satisfied with the landscape context of the submitted proposals and recommends approval with conditions.

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 Representations**

- 10.1 The owner of West House has written to express concern at the proposals in the following terms:-

- Could the additional car park area be proposed closer to the site entrance where marquee currently stands?
- In the proposed position we have the worry that cars will be coming and going next to where our children are playing, allowing anybody to watch them at play. A screening of trees would protect both our children and golfers.
- Noise pollution as a result of cars closer to our house.

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

## **11.0 Parking Provision**

- 11.1 See report below

## **12.0 Open Space Provisions**

- 12.1 N/A

## **13.0 Air Quality**

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

## **14.0 Report**

- 14.1 The following report will consider the proposals under the headings of visual impact, traffic/ parking and residential amenity.

- a) Visual Impact –This low profile structure, framed by taller buildings will have a neutral impact on its surroundings, at worst.

The proposed car park extends into open countryside and will be visible from adjoining gardens, nevertheless the submitted plans show perimeter hedge planting and complementary tree planting which will mitigate any adverse visual effect. It should be noted that the Landscape Officer is satisfied with the application's landscape content. There is no identified conflict with Policies UR2 or DP1.

- b) Traffic and parking – The coffee house is proposed to complement the existing use and replace and improve upon existing facilities in line with DP10 objectives. For this reason it is not considered that there will be an intensification of use but the Highway Authority recognise the effects of construction traffic. Their suggested conditions address this.

The compensatory additional parking proposed in lieu of that being lost will add to overall numbers of spaces at the site but will cater for the natural growth of the business rather than catering for a new attraction with a specific clientele.

- c) Residential amenity – As described above, the proposals offer good separation from the curtilages of nearby dwellings and ample scope to provide hedge and tree planting sufficient to provide a satisfactory level of screening from other residential property and landscape mitigation. It cannot be argued that the scheme as proposed will have any direct effect on neighbours' amenity.

## **15.0 Conclusion**

- 15.1 The submitted proposals comply with all relevant policies and should be approved subject to appropriate conditions.

## **16.0 Recommendation – Approval subject to the following conditions:-**

### **Conditions**

#### **1 - A1.5 Full Perms (time limit for commencement of Development)**

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 - Non-Standard Condition**

The development hereby permitted shall be carried out in full accordance with the approved drawing nos 680.PG.L 005, 006 & 007 and the submitted application documents.

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

#### **3 - C2.2 Archaeological Excavation and Evaluation**

No development shall take place within the application site until the applicant, or their agents or successor in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.

Reason: To ensure that any remains of archaeological importance are properly recorded.

#### 4 - C11.14 Tree / Shrub Planting

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

Reason: To ensure an appropriate visual amenity in the local area.

#### 5 - Non-Standard Condition

The proposed coffee house shall be for the use of the golf club members and their guests only.

Reason: For the avoidance of doubt and in the interests of highway safety.

#### 6 - Non-Standard Condition

Before the development is commenced the applicant shall enter into a legal agreement with the Local Highway Authority to secure a bond of £10,000 and "before and after" surveys to protect Bakers Lane during the construction period of the development proposed.

Reason: To guarantee an appropriate level of maintenance of the public highway during the construction phase, in the interests of highway safety.

#### 7 – Non Standard Condition

Each vehicular parking space shall have minimum dimensions of 2.9m x 5.5m.

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

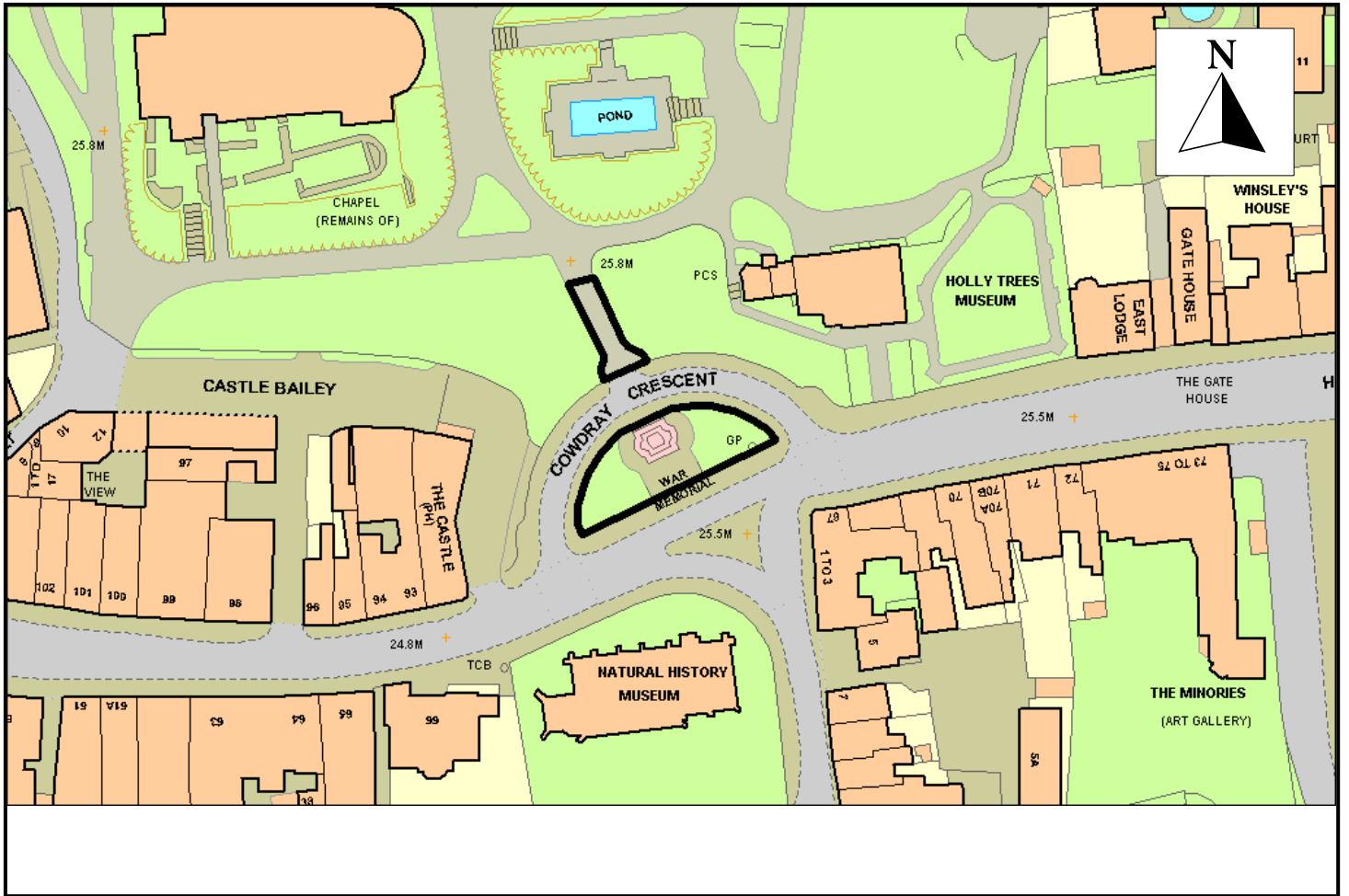
### **Informatives**

(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) Your attention is drawn to the contents of the letter dated 24 April 2012 by the Environment Agency, a copy of which was forwarded direct to the agent for the application.



- (3) All works affecting the highway shall 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 to Essex County Council on 0845 603 7631.
- (4) Steps should be taken to ensure that the Developer provides sufficient turning and off loading facilities for delivery vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site.
- (5) Prior to the commencement of any work on the site, a joint inspection of the route to be used by construction vehicles should be carried out by the Applicant and the Highway Authority, including photographic evidence. The route should then be inspected again, after completion of the development and any damage to the highway resulting from traffic movements generated by the application site should be repaired to an acceptable standard and at no cost to the Highway Authority. The Area Highway Manager may also wish to secure a commuted sum for special maintenance to cover the damage caused to the existing roads used as access for vehicles accessing the application site.
- (6) The construction route to the site should be clearly signed and a strict regime of wheel washing and street cleaning should be in place.



**Application No:** 120827

**Location:** War Memorial, High Street, Colchester

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

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**7.8 Case Officer: Lucy Mondon Due Date: 26/06/2012**

**OTHER**

**Site:** War Memorial, High Street, Colchester

**Application No:** 120827

**Date Received:** 1 May 2012

**Applicant:** Colchester Borough Council

**Development:** Installation of temporary flag poles and flags during the olympics

**Ward:** Castle

**Summary of Recommendation:** Advertisement Consent subject to no objections being raised by English Heritage or the Highway Authority

### **1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee because the applicant is Colchester Borough Council.

### **2.0 Synopsis**

2.1 The application seeks Advertisement Consent for the erection of 10 No. flags at Cowdray Crescent, Colchester. The flag poles would be 7.2 metres high, with orange and purple flags measuring 0.9 metre by 3.6 metres.

2.2 The report considers material planning matters of amenity and public safety in accordance with the Advertisement Regulations and national policy guidance together with matters raised in representations and consultation responses. The report describes the site and its setting, the proposal itself, and the consultation responses received.

2.3 The planning merits of the case will be addressed, leading to the conclusion that the proposal is acceptable on a temporary basis only and that a conditional approval is recommended.

### **3.0 Site Description and Context**

3.1 The application site includes the grassed areas to the east and west of a war memorial on Colchester High Street, as well as an area of grass inside the Cowdray Crescent entrance to Castle Park. The site is located on the outskirts of Colchester town centre. The site is within a Conservation Area and is in close proximity to a number of Grade I, II\*, and II listed buildings, including the war memorial and associated railings which are Grade II listed. The adjacent park is classified as a Historic Park, with the Castle and surrounding area being classified as a Scheduled Ancient Monument. The site is set, therefore, within a distinctly historic context. The period character of the surrounding

properties, as well as the civic status of the war memorial and entrance to the park, contributes to the quality and visual amenity of the area.

- 3.2 There are a number of protected trees to the west of the site. The site lies within an area of high archaeological potential.

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

4.1 The proposal is for the erection of 10 No. flags to promote the Olympic Games, including the Olympic torch relay which will come through Colchester on 6<sup>th</sup> July 2012. Six of the flags would be positioned to the east and west of the war memorial with the remaining four flags being positioned within the entrance to Castle Park from Cowdray Crescent.

4.2 The flag poles would be 7.2 metres high and the flags would measure 0.9 metre by 3.6 metres. The flags would be either orange or purple: five flags of each colour.

4.3 The flag poles would be fibre glass and would be inserted into the ground with a steel ground dart (1 metre deep) and secured by a base weight at ground level. The flags would be fabric.

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

5.1 Not applicable.

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

6.1 No relevant planning history.

#### **7.0 Principal Policies**

7.1 The following national policies are relevant to this application:  
The National Planning Policy Framework (NPPF)

7.2 In addition to the above national policies, the following policies from the adopted Colchester Borough Core Strategy (December 2008) are relevant:  
UR2 - Built Design and Character  
ENV1 - Environment

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):  
DP1 Design and Amenity  
DP14 Historic Environment Assets

#### **8.0 Consultations**

8.1 English Heritage: No comments received at time of writing. Should comments be received, these shall be reported to the Committee as an addendum to this report.

8.2 Highway Authority: No comments received at time of writing. Should comments be received, these shall be reported to the Committee as an addendum to this report.

### 8.3 Archaeology: No objections.

'The creation of the war memorial/Cowdray Crescent scheme in 1921/22 involved the demolition of several properties including the extensive premises of L J Watts (stonemason) which had a frontage onto the High Street and whose premises extended northwards into the park. Thus, the ground here is already disturbed and trial holes dug in January this year revealed a great depth of overburden and a solid floor at a depth of c. 880mm: the floor being relatively modern in date. No Roman material was found. Records held in the Museum files inform us that large amounts of soil were imported to fill a large hole at this location, just inside the park gates.

Given that the ground dart is relatively slender, it is unlikely that there will be scope for archaeological recording.

It is noted that the proposed locations of the flag poles are all located outside of the Scheduled Ancient Monument area of the Upper Castle Park.'

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

## 9.0 Parish Council Response

9.1 N/A

## 10.0 Representations

10.1 None received.

## 11.0 Parking Provision

11.1 Not applicable.

## 12.0 Open Space Provisions

12.1 Not applicable.

## 13.0 Air Quality

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

## 14.0 Report

14.1 The NPPF states that "poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts."

## Amenity

- 14.2 In assessing an advertisement's impact on "amenity", regard should be had to the effect on the appearance of the building or on visual amenity in the immediate neighbourhood where it is to be displayed. It is therefore necessary to consider what impact the advertisement, including its cumulative effect, will have on its surroundings. The relevant considerations for this purpose are the local characteristics of the neighbourhood, including scenic, historic, architectural or cultural features, which contribute to the distinctive character of the locality.
- 14.3 Core Strategy Policy UR2 states that the Borough Council will promote and secure high quality and inclusive design in all developments to make better places for both residents and visitors. The policy goes on to state that developments that are discordant with their context and fail to enhance the character, quality and function of an area will not be supported. Development Policy DP1 states that all development must be designed to a high standard and avoid unacceptable impacts on amenity. Development proposals must demonstrate that they, and any ancillary activities associated with them, will (inter alia) respect and enhance the character of the site, its context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, proportions, materials, townscape and/or landscape setting, and detailed design features; wherever possible, development should remove existing unsightly features as part of the overall development proposal. Development Policy DP14 relates to the historic environment and states that development will not be permitted that will adversely affect a listed building, a conservation area, historic park or garden or important archaeological remains. Development affecting the historic environment should seek to preserve or enhance the heritage asset and any features of specific historic, archaeological, architectural or artistic interest.
- 14.4 The site is located within a conservation area and is in close proximity to a number of listed buildings, as well as an Historic Park and Scheduled Monument. The site also forms part of an attractive 'green space' around the war memorial and at the entrance to the park. The historic character of the surrounding area and the contribution of the site as a green and open area within the town centre are therefore important considerations when making an assessment of the impact of the proposal upon 'amenity'.
- 14.5 The NPPF states in Chapter 12 'Conserving and Enhancing the Historic Environment' that, when considering the impact of a proposed development on the significance of a designated heritage asset (i.e. a Conservation Area or Listed Building), great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.
- 14.6 The proposed flags would be visually prominent, being over 7 metres in height and brightly coloured, and would have a significant impact on the setting of a number of Listed Buildings, as well as the Historic Park and Scheduled Monument to the north of the site. The flags would, due to their visual prominence and modern design, detract from the historic character and appearance of the surrounding area.

- 14.7 The proposal would harm the visual characteristics of the surrounding Conservation Area and adjacent Listed Buildings, but is not considered to cause substantial harm to the Conservation Area or Listed Buildings (i.e. significant alteration or destruction). The NPPF states that, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The applicant has provided some level of justification for the proposal in stating that the flags would be erected on a temporary basis in order to promote the Olympic Games and the Olympic torch relay which will come through the town. The flags would therefore have public benefit in terms of generating civic pride in connection with the torch relay and contributing to tourism as part of a national event of international importance.
- 14.8 The flags would be erected for a temporary period (15 weeks) and the public benefit of the proposal is considered to outweigh the temporary harm that the proposal may have in terms of the setting of the surrounding Conservation Area and adjacent Listed Buildings, as well as the nearby Historic Park and Scheduled Monument. The flags are not considered to be appropriate on a more permanent basis, or for a succession of 'temporary' events. It is therefore proposed that consent is given for a temporary period only, related specifically to the Olympic Games, after which the flags (including the associated flag poles and any fixtures and fittings) should be removed.
- 14.9 Similarly, the impact of the flags upon the visual amenity of the adjacent protected trees and green space is considered to be justified given the temporary nature of the proposal for a 'one off' national and international event.

#### Highway Safety

- 14.10 In assessing an advertisement's impact on "public safety", regard should be had to the effect upon the safe use and operation of any form of traffic or transport. In assessing the public safety implications of an advertisement display, one can assume that the primary purpose of an advertisement is to attract people's attention, therefore it should not automatically be presumed that an advertisement will distract the attention of passers-by. The vital consideration, in assessing an advertisement's impact, is whether the advertisement itself, or the exact location proposed for its display, is likely to be so distracting, or so confusing, that it creates a hazard to, or endangers, people in the vicinity who are taking reasonable care for their own and others' safety.
- 14.11 The flags would be sited adjacent to a public highway: Cowdray Crescent. Cowdray Crescent is primarily used as a 'drop-off and pick-up' area for coaches and is also used by pedestrians in order to access Castle Park and Holly Trees Museum, as well as pedestrians leaving the park to enter the town. The flags would be a prominent feature in the street scene and would attract the attention of passers-by. However, the flags are not considered by the Local Planning Authority to be so distracting so as to create a hazard in terms of pedestrian or vehicle users of the public highway as they would be set back from the main High Street thoroughfare and within an area where vehicles would be stationary or travelling at slow speeds.

## Other matters

14.12 The proposal involves some ground disturbance within an area of high archaeological potential. Although applications for advertisement consent can only be assessed on the grounds of amenity and public safety, the Council's Archaeological Officer was consulted on the application. The Archaeological Officer has concluded that the proposal is unlikely to disturb archaeological deposits, as the ground has been heavily disturbed as part of a development in the 1920s.

## **15.0 Conclusion**

15.1 In conclusion, the proposal is considered to be acceptable in terms of its impact upon amenity and public safety. The proposal will temporarily harm the visual character of the area, but this harm is reversible and would be for a temporary period only. The temporary harm has been considered to be outweighed by the public benefits of the proposal by promoting a national even of international importance.

## **16.0 Recommendation**

That, subject to no objections being raised by English Heritage or the Highway Authority, Advertisement Consent be granted subject to the following conditions.

### **Conditions**

#### 1 - Non-Standard Condition

The period of this consent shall expire on 15th September 2012 at which date the flags (and associated flag poles) hereby given consent shall be removed from the site in their entirety.

Reason: The temporary advertisements hereby given consent are not appropriate for retention beyond the time period stipulated due to their significant impact on the historic character of the surrounding area.

#### 2 - Standard Condition

Any advertisements displayed, and any site used for the display of advertisements, shall be maintained in a clean and tidy condition to the reasonable satisfaction of the Local Planning Authority.

Reason: In order to comply with the Town and Country Planning (Control of Advertisements) Regulations 2007.

#### 3 - Standard Condition

Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a safe condition.

Reason: In order to comply with the Town and Country Planning (Control of Advertisements) Regulations 2007.



#### 4 - Standard Condition

Where an advertisement is required under these Regulations to be removed, the removal shall be carried out to the reasonable satisfaction of the Local Planning Authority.

Reason: In order to comply with the Town and Country Planning (Control of Advertisements) Regulations 2007.

#### 5 - Standard Condition

No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.

Reason: In order to comply with the Town and Country Planning (Control of Advertisements) Regulations 2007.

#### 6 - Standard Condition

No advertisement shall be sited or displayed as to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air or so as otherwise to render hazardous the use of any highway, railway, waterway or aerodrome (civil or military).

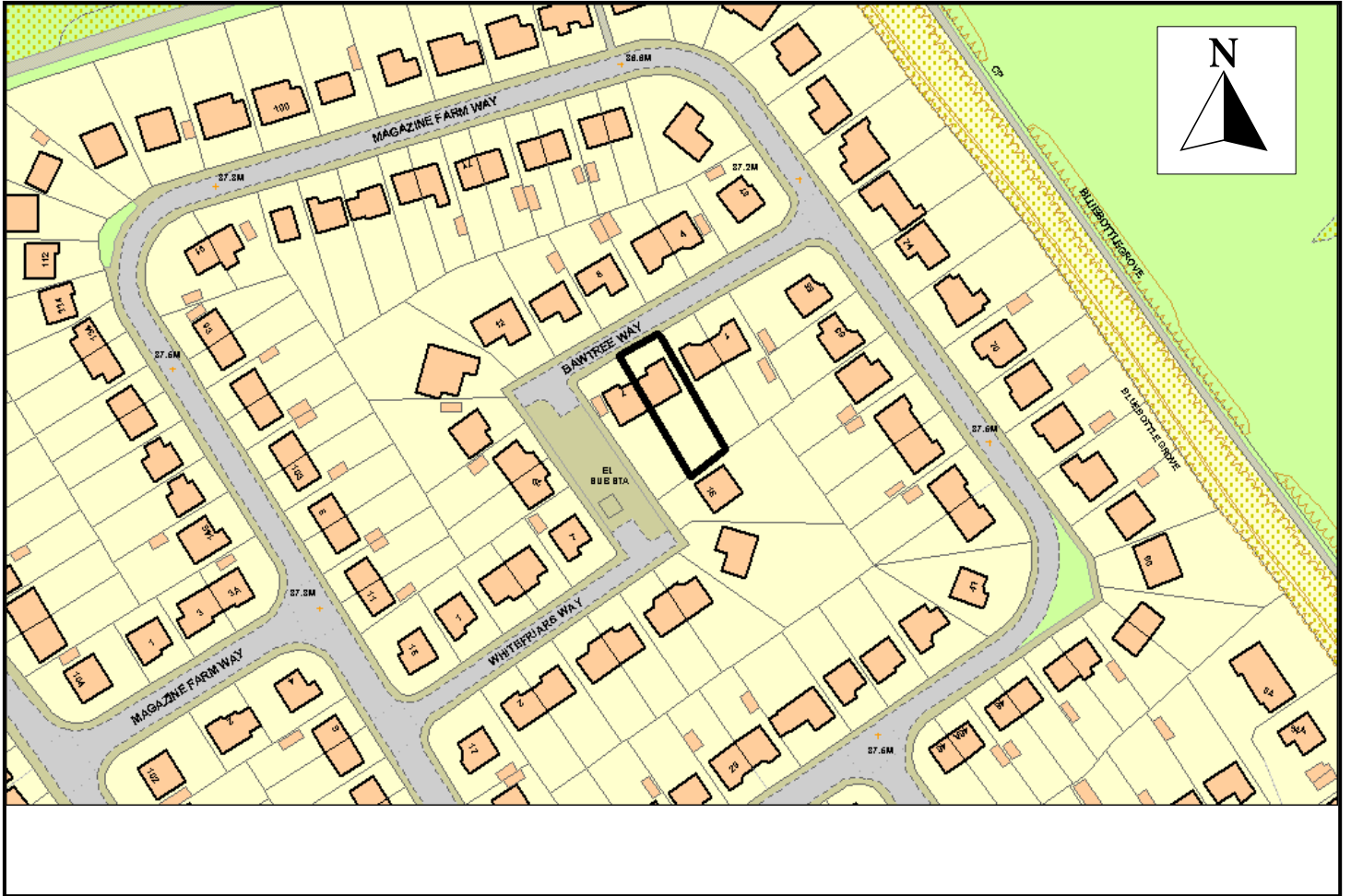
Reason: In order to comply with the Town and Country Planning (Control of Advertisements) Regulations 2007.

### **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 08456 037631.

(3) With regards to Condition 1 of this consent, the applicant is advised that the interpretation of the term 'entirety' shall include any fixtures and fittings relating to the flags and flag poles.



**Application No:** 120765

**Location:** 5 Bawtree Way, Colchester, CO3 4EP

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

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**7.9 Case Officer: Mark Russell Due Date: 19/06/2012**

**HOUSEHOLDER**

**Site: 5 Bawtree Way, Colchester, CO3 4EP**

**Application No: 120765**

**Date Received: 24 April 2012**

**Agent: Medusa Design**

**Applicant: S. Beaumont**

**Development: Proposed Garage and Garden Store**

**Ward: Prettygate**

**Summary of Recommendation: Refusal**

### **1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee because one of the objectors is an employee of Colchester Borough Council.

### **2.0 Synopsis**

2.1 The following commentary describes the proposal for a large garage/garden store within a rear garden in a residential area. Objections relating to the size of the proposal, the character of the area, the effect on amenity and other issues are then analysed and refusal is recommended under those headings.

### **3.0 Site Description and Context**

3.1 Bawtree Way is a small residential road of eight houses off of Magazine Farm Way in Prettygate in a residential area originally granted permission in 1955. Bawtree Way comprises modest plots with bungalows and rear gardens of between 150 and 200m<sup>2</sup>.

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

4.1 The proposal is to remove the existing rear garden shed, and single garage which is to the side of the house, and to erect a building described as a 'garage and garden store.'

4.2 The proposed building would be approximately one metre from the boundary with 3 Bawtree Way, and one metre – increasing to nearly two metres due to the geometry of the plot – from the boundary of 16 Whitefriars Way, which is to the rear.

4.3 As for the proposed dimensions, these are 6.2 metres deep by 8.8 metres wide, giving an approximate area of 55m<sup>2</sup>. The proposed height is approximately 2.25 metres at eave, rising to 3.5 metres at ridge.

4.4 The proposed design is an irregular roof pattern, with a single ridge hipped design interrupted by a slack gabled section to the front. Garage doors and windows are proposed for the front of the building facing towards the host property. Materials to the walls are timber weatherboarding with a brick plinth, interlocking slate is proposed for the roof.

## **5.0 Land Use Allocation**

5.1 Residential

## **6.0 Relevant Planning History**

6.1 None

## **7.0 Principal Policies**

7.1 The following national policies are relevant to this application:  
The National Planning Policy Framework (NPPF)

7.2 In addition to the above national policies, the following policies from the adopted Colchester Borough Core Strategy (December 2008) are relevant:

UR2 - Built Design and Character

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

DP1 Design and Amenity  
DP12 Dwelling Standards  
DP13 Dwelling Alterations, Extensions and Replacement Dwellings  
DP19 Parking Standards

7.5 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:  
Vehicle Parking Standards  
Sustainable Construction  
Extending your House  
The Essex Design Guide  
External Materials in New Developments

## **8.0 Consultations**

8.1 Environmental Control requested a standard Demolition and Construction advice note.

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

## **9.0 Parish Council Response**

9.1 n/a

## 10.0 Representations

10.1 Two letters of objection were received from neighbouring properties along the following lines:

- Excessive bulk/overpowering;
- Out-of-scale;
- Height of roof.
- Looks like an annexe.
- Effect on the character of the neighbourhood
- Overshadowing;
- Concerns over workshop use noise/pollution;
- Position of the proposal

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

## 11.0 Parking Provision

11.1 The applicants have described the proposal as a garage, and therefore a parking space. Whilst its internal dimensions comply with the standards for the parking of one vehicle (7m x 3m as measured internally), the proposed two-metre wide entrance does not.

11.2 It is noted that the existing garage does not comply with standards, and that the effect on parking provision is therefore neutral, That is to say, there are no compliant spaces unless the rear garden is included in the calculations.

## 12.0 Open Space Provisions

12.1 n/a

## 13.0 Air Quality

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

## 14.0 Report

### Design

14.1 The design of the building itself is not objectionable, and the choice of materials draws from vernacular references, albeit that the estate is mid 20<sup>th</sup> century.

### Scale, Height and Massing

14.2 The size of the building, however, does raise concerns. The area is populated by bungalows, and the proposal is not dissimilar in footprint to the properties around it, including the host dwelling (the house being approximately 75m<sup>2</sup>, the garage 55m<sup>2</sup>). Over one quarter of the rear garden would be filled by the building.

### Impact on the Surrounding Area

- 14.3 The knock-on effect of this would be a very obvious large building in a back garden which would be visible from the public aspect of Bawtree Way, as well as from the gardens and houses of that street and from those of Whitefriars Way and Magazine Farm Way. As well as visual disappointment, this would also diminish the enjoyment of use of neighbouring gardens. This negative aspect would be further augmented by the passage and presence of motor vehicles in the back garden.

### Impacts on Neighbouring Properties

- 14.4 Objections have been received by neighbours on a number of fronts. Those which can be considered are its design and effect on the neighbourhood (which have been discussed above) and its effect on neighbours due to the position and height.
- 14.5 The visual disappointment of having such a structure has been mentioned above. In terms of loss of amenity, the proposed building would be very close to the conservatory of 16 Whitefriars Way and would obstruct outlook from the kitchen window of that property and appear overbearing.
- 14.6 It is noted that the garage would be to the north-west of Whitefriars Way, a loss of evening light would occur to that property, as it would to the garden of 3 Bawtree Way, and to 7 Bawtree Way in the mornings, albeit that this would mainly be to the rear sections of those gardens as opposed to the traditional 'sitting out' areas.

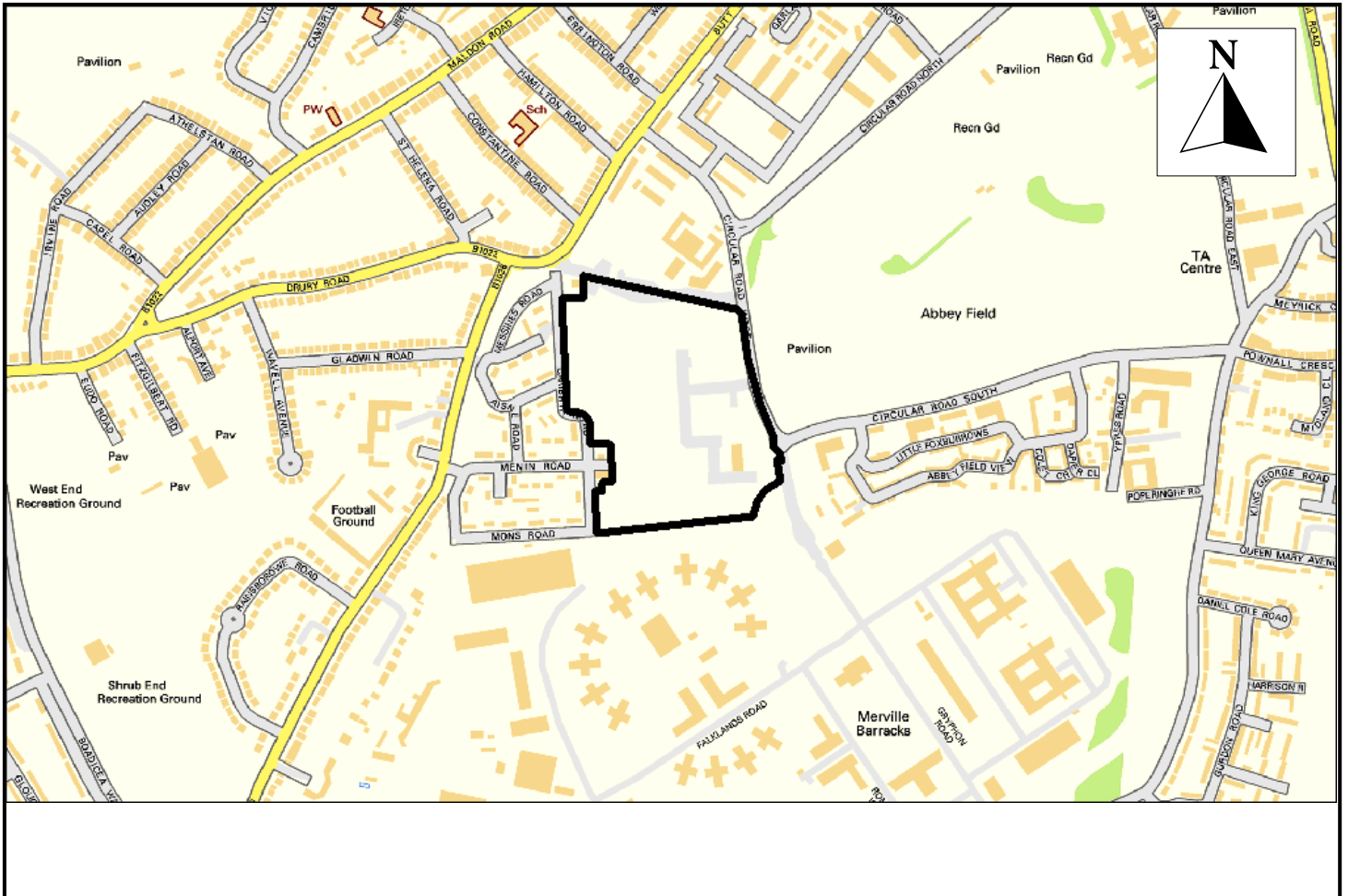
### Other Matters

- 14.7 It is worth noting that a building with a similar footprint could be built without Planning permission under Class E of the General Permitted Development Order, but that this would have to be reduced to 2.5 metres in height, or moved two metres from all boundaries. In any case, the use of the building could only be incidental to the enjoyment of the dwellinghouse, and for no other use.
- 14.8 Issues concerning potential future workshop use or use as an annexe cannot be cited as reasons for refusal. Any change of use would have to be considered on its merits. Use incidental to the enjoyment of a dwellinghouse could include repairing a hobby car (but not bringing in vehicles from elsewhere) which would not require Planning permission.

## **15.0 Conclusion**

- 15.1 In conclusion, the proposed building, by virtue of its height and scale is deemed to be a discordant element in the residential area, that would unduly affect the amenity of neighbouring properties. Members are therefore requested to refuse this application.

## **16.0 Recommendation – Refusal as stated in report above**



**Application No:** O/COL/01/0009

**Location:** Garrison Area L & N, Circular Road West, Colchester

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

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## Planning Committee

Item  
**8**

14 June 2012

<b>Report of</b>	<b>Head of Environmental &amp; Protective Services</b>	<b>Author</b>	<b>Alistair Day</b> ☎ 01206 282479
<b>Title</b>	<b>Endorsement of proposed amendment to the 299a garrison legal agreement in respect of the provision of affordable housing on Area L&amp;N</b>		
<b>Wards affected</b>	<b>Berechurch</b>		

**Report seeking Members' endorsement for a Deed of Variation to the 299a garrison legal agreement in respect of the provision of affordable housing on Area L&N.**

### 1.0 Decision Required

- 1.1 Members are asked to endorse the proposal to provide a reduced provision of affordable housing on the part of the Garrison Urban Village Development known as Area L&N (land to the west of Circular Road West and to the south of Goojerat Road).

### 2.0 Reasons for Decision(s)

- 2.1 Members endorsement is required for Deed of Variations to legal agreements that would result in a change in the provisions of the obligations secured under the original agreement.

### 3.0 Alternative Option

- 3.1 Members can decide not endorse the reduced affordable housing offer. This would leave Taylor Wimpey with two options:

a) to build up to the trigger point that requires the delivery of the affordable housing and then mothball the site; or

b) to submit a fresh application and appeal against the Council's decision not to support the reduced provision of affordable housing. It should be noted that in submitting a revised planning application, Taylor Wimpey could revert to a conventional developers profit (i.e. 20% as opposed to the current 12% profit) which would render the scheme considerably less viable and lead to a further reduction in the level of proposed affordable housing; indeed it is quite possible that Planning Inspector may consider that there is insufficient profit to justify the provision of any affordable units.



## 4.0 Supporting Information

- 4.1 Outline planning permission (ref: O/COL/01/0009) was granted for the Garrison Urban Village Development in June 2003 and remains extant. The Master Layout Plan approved pursuant to condition 1 of this permission identifies the relevant development areas and dwelling numbers for each area. The permission is accompanied by a s299A agreement, which has been subject to a number of variations (the 'Agreement'). The agreement provides for the payment of financial contributions on a phased basis and also, the mechanism for the provision of affordable housing.
- 4.2 A reserved matters planning application (ref: 091619) was submitted by Taylor Wimpey in 2009 for the redevelopment of Areas L & N of the Colchester Garrison Urban Village Development. This development was described as comprising 256 dwellings with parking and infrastructure works, including the provision of a LEAP and public open space. The application 091619 was approved by the Council on 29 April 2010.
- 4.3 Under the terms of the s299a Agreement the Developer is required to provide 86 affordable dwellings at Areas L&N and is able to complete and sell a specified number of private dwellings before the requirement to provide affordable housing is triggered.
- 4.4 Since the completion of the Agreement and the adoption of the LDF documents, the residential development market has been subject to substantial adjustment (decline). In addition, the Government has introduced new policies in relation to the funding and tenure definition of affordable housing. These factors have had a significant bearing on the financial viability of the Garrison development and, as such, Taylor Wimpey, is no longer in a position to comply with requirement to provide all of the affordable housing on this site. In view of this, Taylor Wimpey has sought through negotiation to reduce the required level of affordable housing.
- 4.5 Taylor Wimpey and the Council have appointed consultants (Jones Lang Lasalle and BPS Chartered Surveyors respectively) to review the viability of Areas L&N. The purpose of the viability assessment has been to determine the number of affordable units that can be provided in light of the current economic environment. This analysis will also provide a mechanism for reassessing future affordable housing provision. The Council's appointed advisor has scrutinised the key appraisal input alongside prevailing market assumptions and is in agreement in respect of this information. The key appraisal inputs, alongside a short commentary, are set out in Appendix 1 of this report.
- 4.6 On the basis of this assessment work (which includes the acceptance of a 12% developers profit as opposed to the standard 20% and a significant right down in land values) Taylor Wimpey has made a revised (reduced) affordable housing offer comprising:
- 39 Affordable Rented units (which represents 15% of the total residential provision). It is proposed that Taylor Wimpey will enter an agreement with a Registered Provider prior to the occupation of more than 50% of the private sale units.

In addition to the above, Taylor Wimpey has also agreed to offer the following assisted purchase schemes.

- 5% (12 units) to be offered on the basis of the Government's 95% first time buyer mortgage scheme (or other such scheme that is prevailing at the time) enabling first time buyers to access mortgage finance. These units are to be provided no later than the occupation of 75% of the private sale units.
- 5% (13 units) to be offered on the basis of Taylor Wimpey's retained equity scheme, which is aimed at first time buyer. These units are to be provided no later than the occupation of 85% of the private sale units.

It is also proposed that the viability of the scheme is reassessed no later than two years from its completion and in the event that there is a substantial improvement in the market and profits a further financial contribution is paid to the Council for additional affordable housing. A cascade mechanism is proposed to cover the event that the affordable housing is not transferred to a Registered Provider and 10% purchase units remain unsold.

4.7 The Council's consultant has confirmed that the above represents a realistic and viable offer.

4.8 While it is accepted that current proposal involves a reduction in affordable housing, it does at least enable the continuation of the Garrison development and ensures the provision of 39 affordable rented units plus 25 assisted purchase units. The alternative is for Taylor Wimpey to either; a) build up to the trigger point that requires the delivery of the affordable housing and then mothball the site; or b) submit a fresh application and appeal against the Council's decision not to support the reduced provision of affordable housing.

4.9 It is considered that the proposed affordable housing offer represents a pragmatic approach to the redevelopment of this part of the Garrison site and it is recommended that Members accept this offer.

## **5.0 Consultations**

### **5.1 Planning Policy**

The Spatial Policy Manager has been fully involved in the assessment of the financial viability of this scheme and the negotiations surrounding the revised provision of affordable housing. The Spatial Policy Manager recommends that, in the light of the agreed viability appraisal, national policy and the approach that may be adopted by the Planning Inspectorate, the reduced affordable housing offer is accepted.

### **5.2 Housing**

The Housing Development Officer has been consulted on this proposal and has verbally confirmed that, in the light of the submitted and agreed financial appraisal, there is not an objection to the revised provision of affordable housing on this site.

### 5.3 Portfolio Holders for Housing and Planning

Cllrs Nick Barlow (as the then Planning Portfolio Holder) and Tim Young (as the then Housing Portfolio Holder) have been consulted on this proposal and have both accepted the revised housing offer given the conclusions and advice of the Council's consultant.

### 6.0 Strategic Plan References

6.1 The redevelopment of the Garrison site is an important corporate objective within the Strategic Plan. The delivery of affordable housing is also an important corporate objective

### 7.0 Financial Implications

7.1 Financial implications for this Council only arise if a housing association does not become involved with the provision of the affordable houses. These implications are: (i) the Council having the option to purchase the affordable units; and (ii) if the Council declines this offer the provision of a commuted sum in lieu of the affordable housing.

### 8 Standard References

8.1 The proposal set out in this report does not directly raise any implications in respect of publicity considerations or Equality, Diversity and Human Rights, Community Safety, Health and Safety or Risk Management Implications.

## Appendix 1

### Key appraisal inputs:

#### Revenue

- **Private dwelling sales** – evidence has been taken from actual house sales on the L&N Area Phase 1. At the time of the analysis 38 units had been sold, the unit types being representative of the entire phase, providing a direct basis for extrapolation across the whole of L&N.
- **Affordable housing sales** – the sale of the affordable housing has been tendered to local Registered Providers and the top bid from Chelmer Housing Group has been used as the sales price.
- **Ground rents** – the private apartments will be subject to ground rent: £250 per unit per annum has been assumed and a yield of 6% applied.
- **Community Land sale (The theatre building)** – offers have been sought for the area for disposal for community use, and the highest price has been inserted in the model.

#### Costs

- **Build costs** – a detailed cost plan has been provided by Taylor Wimpey which has been reviewed and accepted by the Council's consultant. These costs include all on plot costs, site abnormalities and landscaping but exclude Garrison-wide infrastructure allocation.
- **Infrastructure costs and S299a financial contributions** – this has been a focus for analysis between the respective consultants, bearing in mind it is approximately 9 years since the S299a Agreement was signed. There are approximately £69million of costs associated with the infrastructure across the Garrison and both teams of advisors gave considerable attention to the matter. The sum inserted in the model represents the result of these discussions. The infrastructure costs include Section 299a (normally Section 106) financial contributions. The costs have been apportioned to L&N on the basis of development floor area.
- **Design and construction fees** – these represent approx. 4.5% of the build costs which is accepted as reasonable for a project of this scale.
- **Sales and marketing costs** – these are a projection in line with market assumptions, and represent 3% of the sales value of the private dwellings.
- **Legals (sales)** - these are a projection in line with market assumptions, and represent £600 per private sale unit.

- **Value attributed to Land** – This figure represents the value Taylor Wimpey has assigned the site in its accounts. This is a substantial write-down compared with the price paid for the site. Importantly, the value in the appraisal is also considerably below the price at which owners are likely to bring forward land for residential development in Colchester Borough. The importance of this information is that, should TW insert a market value for land into the appraisal, the viability of the project would be considerably worse.
- **Agents fees (site acquisition)** - these are a projection in line with market assumptions, and represent 1% of the site purchase price.
- **Legal fees (site acquisition)** - these are a projection in line with market assumptions, and represent 0.75% of the site purchase price.
- **Stamp Duty** – this charged at 4% of the land purchase price.
- **Development Interest** – the HCA appraisal model calculates this by reference to the development period cash-flow. A market rate of 6.75% has been applied
- **Profit on private sales** – a market level of profit would normally be included at a minimum 20% of the private sales values. TW have accepted a reduced profit of 12% which supports the offer of 15% affordable housing. In the same way as for the suppressed land value, if the profit was shown at a market level the scheme would be considerably less viable and would therefore support much less affordable housing than the level now agreed. It must be stressed that the level of profit that Taylor Wimpey can accept on the site is a reflection of the particular circumstances and may not be appropriate on future phases.
- **Profit on affordable housing** – we have applied a level of profit at 6% of the affordable housing construction costs. This is viewed as a Contractor's rather than a Developer's profit.

## Planning Committee

Item  
**9**

14 June 2012

<b>Report of</b>	<b>Head of Environmental &amp; Protective Services</b>	<b>Author</b>	<b>Vincent Pearce 282452</b>
<b>Title</b>	<b>Amendment to Member Engagement in Pre-Application Planning Discussions Protocol (“Early Member Involvement”)</b>		
<b>Wards affected</b>	<b>All</b>		

**This report proposes changes to the “Member Engagement in Pre-Application Planning Discussions” to take account of good governance considerations and to provide additional explanation as to the working of the protocol**

### **1.0 Decision Required**

**1.1 Members are asked to agree the proposed changes as described in Section 3 of this report. These changes shall formally come into effect as soon as the Legal Services Manager and Monitoring Officer has made appropriate changes to the Planning Procedures Code of Practice” to reflect changes hereby agreed by the Planning Committee.**

### **2.0 Reasons for decision**

**2.1 Colchester Borough Council has agreed a constitution which sets out how the Council works, how decisions are made and the procedures that are followed to ensure efficiency, transparency and accountability to local people.**

**2.2 More detailed procedures and codes of practice are provided in separate rules and protocols at the end of ‘the Constitution’ document. One of these, found within part 5 (Ethical Framework) of ‘the Constitution’ is the “Planning Procedures Code of Practice”.**

**2.3 The Code of Practice was last amended in December 2011 when a new arrangement was introduced that made provision for members in certain circumstances to join officers and land owners/developers in pre-application sessions.**

**2.4 The Development Services Manager has reviewed the working of these changes and has considered feedback received from members and now proposes consequent changes - the detail of and justification for which are described in Section 3 of this report. These changes are all designed to enhance and widen Member inclusion and to increase transparency even further.**

### 3.0 Report

3.1 The “Early Member Involvement Initiative” (EMII) has now been successfully running for 6 months since the Planning Committee agreed to its formal introduction at the meeting of 1 December 2011.

3.2 Throughout 2012 The Chief Executive has been reviewing Corporate Governance arrangements in order to ensure that they remain fit for purpose and reflect what is required by the Government in terms of sound corporate management and having robust safeguards in place to ensure probity. Whilst he routinely carries out such evaluations his latest analysis has been prompted by the need to facilitate the needs of the Government’s Localism Agenda.

3.3 Within the context of that ongoing work and the introduction of the National Planning Policy Framework (April 2012) the Planning Service has reviewed its current EMI arrangements and wishes to recommend a number of adjustments. These recommended changes also reflect member feedback received during the annual member planning workshop sessions held 28/29 May 2012.

### 3.4 What adjustments are proposed?

3.5 The protocol agreed on 1 December 2011 will remain unchanged except for the proposed adjustments and additions detailed below if these are agreed by Members.

3.6 Paragraph 3.2 to be expanded to explain how Members can influence S106 decisions. (new text is **underlined and emboldened**) (deleted text is **[emboldened and within square brackets]** )

“3.2 The role of Members within these meetings will be to listen and to ask questions that may clarify elements of the proposal for them and to raise awareness of any issues that **[their constituents] have arisen or are likely to arise from within their communities [raise in due course]**, but they will not take part in any negotiation, which shall remain a role of the relevant officer(s). All meetings will be chaired by Officers and they shall start **a** meeting by setting out the grounds as provided within the associated Protocol. **Members are not permitted to dictate or negotiate S106 requirements at such meetings as Obligation requirements must pass Government defined tests of reasonableness. These tests are designed to prevent developers being able to effectively ‘buy’ planning permissions as Obligations can only be required where the benefits secured reasonably and proportionately mitigate the direct localised impacts of that development. Members are however permitted to influence S106 discussions by liaising with relevant service representatives who sit on the Council’s Development Team. The Development Team is the forum at which all major developments are discussed by authorised officers and assessed for suitable S106 contributions. Every decision taken is considered against the Governments tests of reasonableness. The Development Team membership and contact details will be published on the hub for members information. In commenting on planning applications members can also describe what S106 benefits they would hope to see arising from that development.**”

■ **Officer comment on need for adjustment:**

This addition clarifies how members can legitimately seek to influence S106 decisions and rectifies an omission from the original text. It also makes it clear that those Members who attend do not have a remit to negotiate directly with the land owner/developer present.

“ 3.7 All members attending pre-application discussions must have first attended a training session on conduct at pre-application discussions or one of the Planning Services planning workshops for members. These training sessions will be organised by the Planning Service on a regular basis in order to ensure that the integrity of the Member’s decision making role is maintained. No member engaging in pre-application discussions should go more than 24 months without at least attending a “refreshment training session”. It is also proposed that only the following Members will be invited to attend pre-application meetings:

- **[The Chairperson of the Planning Committee]**
- Local Ward Members. **Local Ward Members may nominate a substitute to attend an Early Member Involvement Initiative session where they are unable to attend for themselves or where they wish not to prejudice their ability to sit on the Planning Committee in the event that the proposal is ultimately destined to become a planning application that may come before the Planning Committee**
- **Local Ward Members of adjoining wards where such areas may be directly and significantly affected by the proposal. Local Ward Members may nominate a substitute to attend an Early Member Involvement Initiative session where they are unable to attend for themselves or where they wish not to prejudice their ability to sit on the Planning Committee in the event that the proposal is ultimately destined to become a planning application that may come before the Planning Committee**
- Any other Members, **including County Council members for that area,** only at the invitation of the Head of Environmental and Protective Services. (with reasons for invitation being recorded on file)

**The Planning Service will post the following details of all Early Member Involvement Initiative meetings on the hub:-**

**Date and time of meeting**

**Venue**

**Site the subject of discussion**

**Proposal**

**Invited Members**

**And after the meeting:-**

**Notes of meeting**

**Details of Attendees**



■ Officer comment on need for adjustment:

The deletion of the Chair of the Planning Committee ensures that all members of the Planning Committee are subject to the same rules and that the Chairperson remains outwith any discussion with developers to ensure the transparency of the decision making process and to ensure that the Chairperson is not perceived as having been or actually been exposed to an opportunity for undue lobbying. This will ensure that every application is judged on its individual merits only after all materials planning considerations have been taken into account and that no outcome has been pre-determined by the Chairperson. This is essential to reinforce the integrity of the planning system and the public's confidence in the fairness of the decision making process.

A number of Members have expressed concern that if you are a Councillor representing a one- Member ward and you are on the Planning Committee (or are a sub) you are at a disadvantage compared members in multi-member wards in that you have to decide whether you wish potentially prejudice your ability to sit on the Committee for that item by attending the Early member Involvement Initiative session. Other members have expressed concern that if meetings are arranged on dates or at times that make attendance impossible their communities may be at a disadvantage. It seems eminently sensible to permit the nomination of substitutes. Clearly as the role of attending members is to represent the community in which the proposed development may occur it is essential that the substitute member is familiar with that area or has been extensively briefed by the local member who is unable to attend. In selecting a substitute, local ward members should be mindful of ensuring that they do not nominate a colleague who is not eligible to attend either as a result of the wider role/position held or because they have not attended the appropriate training.

**“3.9 Where a major planning application is submitted without any formal pre-application discussion with the Planning Service, the Service will automatically request that the applicant makes themselves available for an Early Member Involvement Initiative meeting. Where the applicant has agreed to take part in the Initiative ward members will automatically be notified by e-mail by the Service of this and if any member wishes to trigger an EMII session they must do so by e-mail return and the Service will make appropriate arrangements.**

**“3.10 Where a major planning proposal is the subject of formal pre-application discussion with the Planning Service, the Service will automatically expect that the applicant makes themselves available for an Early Member Involvement Initiative meeting unless they formally opt out of such a meeting. Where the applicant agrees to take part in the Initiative ward members will be automatically notified by e-mail by the Service of this and if any member wishes to trigger an EMII session they must do so by e-mail return and the Service will make appropriate arrangements.**

■ Officer comment on need for adjustment:

The current protocol makes no provision for the automatic notification of ward members of an EMII opportunity (where the development enquirer has indicated a willingness to take part in the Initiative). This arrangement can and should be tightened to provide ward members with a more supportive process. Currently the system relies on the relevant case officer triggering the notification which has generally worked without a hitch but it is a system that is open to human error or abuse. The changes to 3.7 as identified above will reinforce the openness of the process sought to be heightened in 3.9 and 3.10 above.

### **3.7 Consolidated text changes**

#### 3.8 Detailed below are the stripped down changes described above:-

“3.2 The role of Members within these meetings will be to listen and to ask questions that may clarify elements of the proposal for them and to raise awareness of any issues that have arisen or are likely to arise from within their communities, but they will not take part in any negotiation, which shall remain a role of the relevant officer(s). All meetings will be chaired by Officers and they shall start a meeting by setting out the grounds as provided within the associated Protocol. Members are not permitted to dictate or negotiate S106 requirements at such meetings as Obligation requirements must pass Government defined tests of reasonableness. These tests are designed to prevent developers being able to effectively ‘buy’ planning permissions as Obligations can only be required where the benefits secured reasonably and proportionately mitigate the direct localised impacts of that development. Members are however permitted to influence S106 discussions by liaising with relevant service representatives who sit on the Council’s Development Team. The Development Team is the forum at which all major developments are discussed by authorised officers and assessed for suitable S106 contributions. Every decision taken is considered against the Governments tests of reasonableness. The Development Team membership and contact details will be published on the hub for members information. In commenting on planning applications members can also describe what S106 benefits they would hope to see arising from that development. “

“ 3.7 All members attending pre-application discussions must have first attended a training session on conduct at pre-application discussions or one of the Planning Services planning workshops for members. These training sessions will be organised by the Planning Service on a regular basis in order to ensure that the integrity of the Member’s decision making role is maintained. No member engaging in pre-application discussions should go more than 24 months without at least attending a “refreshment training session”. It is also proposed that only the following Members will be invited to attend pre-application meetings:

- Local Ward Members. Local Ward Members may nominate a substitute to attend an Early Member Involvement Initiative session where they are unable to attend for themselves or where they wish not to prejudice their ability to sit on the Planning Committee in the event that the proposal is ultimately destined to become a planning application that may come before the Planning Committee

- Local Ward Members of adjoining wards where such areas may be directly and significantly affected by the proposal. Local Ward Members may nominate a substitute to attend an Early Member Involvement Initiative session where they are unable to attend for themselves or where they wish not to prejudice their ability to sit on the Planning Committee in the event that the proposal is ultimately destined to become a planning application that may come before the Planning Committee
- Any other Members, including County Council members for that area, only at the invitation of the Head of Environmental and Protective Services. (with reasons for invitation being recorded on file)

The Planning Service will post the following details of all Early Member Involvement Initiative meetings on the hub:-

Date and time of meeting  
 Venue  
 Site the subject of discussion  
 Proposal  
 Invited Members

And after the meeting:-

Notes of meeting  
 Details of Attendees

“3.9 Where a major planning application is submitted without any formal pre-application discussion with the Planning Service, the Service will automatically request that the applicant makes themselves available for an Early Member Involvement Initiative meeting. Where the applicant has agreed to take part in the Initiative ward members will automatically be notified by e-mail by the Service of this and if any member wishes to trigger an EMII session they must do so by e-mail return and the Service will make appropriate arrangements.

“3.10 Where a major planning proposal is the subject of formal pre-application discussion with the Planning Service, the Service will automatically expect that the applicant makes themselves available for an Early Member Involvement Initiative meeting unless they formally opt out of such a meeting. Where the applicant agrees to take part in the Initiative ward members will be automatically notified by e-mail by the Service of this and if any member wishes to trigger an EMII session they must do so by e-mail return and the Service will make appropriate arrangements.

#### **4.0 Financial implications**

4.1 None

#### **5.0 Strategic Plan References**

5.1 Improving the support provided to Members to represent their communities is a priority.

#### **6.0 Risk Management**

6.1 There are no risk management issues to report this quarter.

**7.0 Publicity Considerations**

7.1 None

**8.0 Human Rights Implications**

8.1 None.

**9.0 Community Safety Implications**

9.1 None.

**10.0 Health and Safety Implications**

10.1 None.



## Planning Committee

Item

1<sup>st</sup> December 2011

Report of	Head of Environmental and Protective Services	Author	Andrew Tyrrell
Title	Member Engagement in Pre-Application Planning Discussions		
Wards Affected	All		

**This report proposes changes to the Planning Procedures Code of Practice and sets out a protocol entitled “Member Engagement in Pre-Application Planning Discussions” that would allow Members to become involved in pre-application meetings between the Council and developers.**

### 1. Decision(s) Required

- 1.1 Members are asked to agree to the proposed changes to the “Planning Procedures Code of Practice” that are set out in Appendix A to this report with immediate effect.
- 1.2 If the changes outlined in 1.1 above are agreed, Members are also asked to agree the “Protocol for Member Engagement in Pre-Application Discussions” set out in Appendix B to this report, taking effect immediately.

### 2. Reasons for Decisions

- 2.1 Colchester Borough Council has agreed a constitution which sets out how the Council works, how decisions are made and the procedures that are followed to ensure efficiency, transparency and accountability to local people. Some of these procedures are required by law, while others are a matter of choice for the Council. The Constitution is divided into 16 Articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of the document. One of these, found with Part 5 (Ethical Framework) of the Constitution is the “Planning Procedures Code of Practice”.
- 2.2 The Code of Practice was last revised in October 2008. It sets out how the Council deals with planning applications and applies to all councillors who are involved in the development management and planning policy process. It also recognises the separate roles of councillors and officers. On this basis, the current Code of Practice does not allow for Members to participate in planning discussions with applicants and their appointed architects/agents.
- 2.3 The principal change proposed herein is to allow for Members to be engaged in the planning process on major applications as early as possible. Whilst introducing this flexibility the roles of officers and members will remain distinct and separate, consequently there is also a need to introduce a protocol for instances where Members are involved in the early stages of the planning process. This protocol will need to be followed at all times.

2.4 As per the existing Code of Practice, it remains that all Councillors are bound by the Council's Members Code of Conduct contained in the Council's Constitution. The Planning Procedures Code of Practice still aims to complement what is contained in the Members Code of Conduct and if there is any unintended disparity between what is contained in this Code of Practice and the Members Code of Conduct, the latter will still prevail.

### **3. Report on the Proposed Changes**

3.1 The Code of Practice sets out the role of Members and the role of Officers. These roles remain largely unchanged. The crux of the changes relate to the way in which these roles can be conducted, specifically with regard to discussions with developers. The key change here is that Councillors will be able to participate in pre-application discussions on major planning proposals in instances that accord with the Council's adopted protocol entitled "Member Engagement in Pre-Application Planning Discussions".

3.2 The role of Members within these meeting will be to ask questions that may clarify elements of proposal for them and to raise awareness of any issues that their constituents may raise in due course, but they will not take part in any negotiation, which shall remain a role of the relevant officer(s). All meetings will be chaired by Officers and they shall start meeting by setting out the grounds as provided within the associated Protocol.

3.3 The Code of Practice continues to make it clear that Members must not meet an applicant, or any other person in connection with a planning application, alone (i.e. without officers being present) and that they are advised not to express their personal opinions prematurely, before they have heard all of the evidence for and against a proposal. This is usually not until the planning committee meeting, once people have exercised the "have your Say" option and other Members have asked all of their questions regarding a proposal.

3.4 The Code of Practice also distinguishes the difference between Members who are part of the planning decision making process and those who are not. Ward Members who are not part of the committee are able to act on behalf of their constituents and will be able to address the committee as a visiting ward member. This is because they are not part of the decision making body. Should a member of the Planning Committee wish to act in this manner, they would need to relinquish their place on the Planning Committee to a substitute member in order to address the Committee as a ward member, they should also leave the room as soon as they have finished addressing the committee in order to avoid influencing the vote through their continued presence.

3.5 In terms of the Protocol, this sets out the formal processes in greater detail. These should be followed in all instances to avoid Members being at risk of prejudicing their positions, breaching their Code of Conduct or causing a malpractice that could result in more serious punishment to the Council. Usually, pre-application discussions are treated as private and confidential for a variety of reasons, including that they may be speculative, affect unknowing employees, or even involve land transactions were publicity could affect viability. Consequently, there are significant considerations in broadening the audience on pre-application discussions with regard to the public awareness that may arise. To safeguard Members, it is proposed that they shall only be invited to engage in the process once a developer has confirmed in writing that they are happy for the information to be circulated more widely, and more publicly.

- 3.6 A meeting shall then be set up so that the Developer may discuss the proposal at a formal meeting convened for such purposes. Only “major” development shall be eligible to pre-application meetings. Minor proposals will continue to be undertaken by Officers. For the purposes of Member Engagement, the definition of major development used in the Development Management NI157 Performance Indicators shall be used, with the exclusions of any application to vary a condition related to a previous major planning permission, or waste and mineral applications (which are usually a County Council function). This means that eligible major applications will potentially consist of any proposal for:
- ten (10) or more residential dwelling units;
  - any residential site area exceeding 0.5 hectares where it is not known how many dwellings are to be created;
  - new non-residential buildings over 1,000m<sup>2</sup>;
  - a change of use over 1,000m<sup>2</sup>; or
  - Any other development site area that is 1 hectare or more.
- 3.7 All Members attending pre-application discussions must have first attended a training session on conduct at pre-application discussions. These training sessions will be organised by the Planning Service on a regular basis in order to ensure that the integrity of the Member’s decision making role is maintained. No Member engaging in pre-application discussions should go more than 24 months without at least attending a “refreshment training session”. It is also proposed that only the following Members will be invited to attend pre-application meetings:
- The Chairperson of the Planning Committee
  - Local Ward Members
  - Any other Members only at the invitation of the Head of Environmental and Protective Services (with the reasons for invitation being recorded on file).
- 3.8 Full details of the protocol for the meeting itself are set out in Appendix B.

#### **4. Alternative Options**

- 4.1 The alternative option is to decline the proposed changes to the Planning Procedures Code of Practice and the introduction of the proposed Protocol for Member Engagement in Pre-Application Discussions and continue to operate in accordance with the existing Code of Practice.

#### **5. Financial implications**

- 5.1 There are no significant financial implications resulting from the proposed changes.

#### **6. Equality, Diversity and Human Rights Implications**

- 6.1 The constitution relates to all universally and these proposed changes do not alter its integrity and soundness in respect of equality and diversity.

#### **7. Publicity Considerations**

- 7.1 The changes will need to be publicised. It is proposed that the changes will be promoted via the Council’s website, as well as being communicated to our regular planning agents and architects through the Planning Agents Forum.

## **8. Consultation**

- 8.1 There has been no prior formal consultation regarding this proposal. However, national research has indicated that developers and local communities alike are generally supportive of the idea. Consequently, it is increasingly common for Councils to adopt similar protocols allowing greater member involvement and the idea is in line with changing Government policy aimed at greater representation of local residents. The Council has also previously been asked to involve members in the planning process at an earlier stage to avoid new issues being brought to the fore at a later stage, which would also support the presumption that this change would be welcomed externally.

## **9. Risk Consideration**

- 9.1 The main risk is from a breach of the Code which could result in maladministration or worse. Previously, Member involvement was not encouraged; however in recent years there has been a steady flow of new legal decisions seeking to draw the line between legitimate predisposition and unlawful predetermination and there are a number of cases that illustrate a shift towards increased pragmatism in this area. However, they also reveal a continuing conceptual uncertainty at the heart of the law in this area. Predominantly, concerns centre on poor practices, the issue of lobbying, the need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. It is critical not only that proper procedures exist and are followed, but that they are perceived by all as being fair and reasonable. This is the reason for setting out a clear protocol but care and common sense must be exercised by all the parties involved.

## **10. Community Safety Implications**

- 10.1 The proposed changes do not significantly affect community safety.

## **11. Background Papers**

- 11.1 The Constitution

## **12. Appendices**

- 12.1 Appendix A sets out the tracked changes version of the Code of Practice. The tracked changes version in Appendix A is included as this documents every change suggested, including all deletions and insertions. This was considered to be the easiest way to keep track of the changes in an open and transparent manner.
- 12.2 Appendix B sets out the full version of the proposed Protocol for "Member Engagement in Pre-Application Planning Meetings".





# **Colchester Borough Council**

## **Planning Procedures Code of Practice**

**(Revised November 2011)**

# Colchester Borough Council

## Planning Procedures Code of Practice

### Introduction

- (1) Planning applications and the allocation of sites within the Development Plan, including the way they are decided, attract a great deal of public and media interest. It is important that the system is, and is seen to be, open and free from improper influence.
- (2) This Code of Practice describes how the Council deals with planning applications. It applies to all councillors who are involved in the development management and planning policy process. It recognises the separate roles of councillors and officers.
- (3) If you have any questions about this document, or would like some further explanation, please contact the Council's Monitoring Officer, Andrew Weavers.

### Basic assumptions

- (1) The purpose of the planning system is to consider development proposals in the light of wider public interests.
- (2) To be successful, the planning system relies on councillors and officers acting in a way which is fair and is clearly seen to be fair.
- (3) Councillors have a special duty to their constituents, but their first duty is to the whole community of the Borough of Colchester. They must vote in the interests of the whole Borough where planning matters are concerned. They should bear in mind the Development Plan and all other relevant material planning considerations (The Development Plan incorporates the adopted Core Strategy, Development Policies, and Site Allocations).
- (4) All Councillors are bound by the Council's Members Code of Conduct contained in the Council's Constitution. This Planning Procedures Code of Practice aims to complement what is contained in the Members Code of Conduct and if there is any unintended disparity between what is contained in this Code of Practice and the Members Code of Conduct, the latter will prevail.
- (5) Councillors are reminded that some breaches of this Code could potentially amount to allegations of criminal offences by individual Councillors; could result in judicial challenges to decisions by the Planning Committee; and/or could result in significant cost implications for the Council.

<b>Colchester Borough Council Planning Procedures Code of Practice</b>
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## **Section 1 - The role of Councillors**

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- (1) In making decisions on applications, councillors will:
    - act fairly and openly
    - approach each application on its own merits and with an open mind
    - carefully weigh up all the relevant material planning considerations
    - avoid undue contact with interested parties
    - ensure that the reasons for any decision are clearly stated
  - (2) The planning system exists to consider development proposals in the light of the wider public interest. Councillors must take into account the interests of the whole of the Borough of Colchester and act in a way which is fair and is clearly seen to be so.
  - (3) Councillors will not give instructions to officers, and they will not put pressure on officers to make a particular recommendation on an application. This behaviour would amount to a Councillor using his/her position improperly which would constitute a breach of the Members Code of Conduct.
  - (4) Councillors can expect officers to give them every help in answering questions on planning matters.
  - (5) Councillors who are members of the Planning Committee will be free to vote on planning applications in the way they consider appropriate, that is, without a Party 'whip'. They will also take account of all the relevant information, evidence and arguments. These will include the Development Plan and all relevant planning considerations.
  - (6) In the event that the Chairman of the Planning Committee is required to exercise his/her casting vote on an application, the Chairman will exercise his/her vote based solely on the planning merits of the application before them and the debate on the application by the Committee.
- NB: For more detailed guidance on Councillor/Officer relationships, please refer to the Council's Member/Officer Protocol in the Constitution.

## **Section 2 - The role of Officers**

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- (1) In making decisions on applications, officers will:
  - give professional and impartial advice
  - make sure that all the information is given that is needed for a decision to be made
  - put the application in context, in terms of the Development Plan and all other relevant material planning considerations
  - give a clear and accurate written analysis of the issues
  - give a clear recommendation, with reasons.
- (2) Officers will give advice only. The exception is if they have been given further powers under the Council's Scheme of Delegation to Officers, or when the Planning Committee gives specific delegated authority.
- (3) Officers are responsible for carrying out the decisions of the Planning Committee.
- (4) The Council endorses the Royal Town Planning Institute Code of Conduct in particular that Chartered Town Planners must not make or subscribe to any statements or reports which go against their own professional opinions.

## **Section 3 - Discussions with Applicants**

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- (1) The Council encourages officers to have meetings with prospective applicants before they make an application. To avoid misunderstanding, in most instances these meetings will only involve officers and should only be held at the Council's offices or on site. However, Councillors will be able to participate in pre-application discussions on major planning proposals in instances that accord with the Council's adopted protocol entitled "Member Engagement in Pre-Application Planning Discussions". The only other exception when Councillors will be allowed to participate in planning application discussions will be when the Planning Committee has passed a resolution that meetings will involve councillors. The resolution must have been passed during a meeting with the public present. In all of the above instances minutes of all such meetings must be recorded and inserted in the relevant planning application file, as well as being reported in any delegated officer report or planning committee agenda.

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- (2) Officers will chair all pre-application meetings and they shall make it clear at each meeting that:
- only informal opinions and provisional views can be given, and these shall be based on the Development Plan, other Council policy and material planning considerations;
  - no advice or opinions expressed at this time can bind or affect the Planning Committee (or the Head of Environmental and Protective Services if he/she is delegated to make the decision) because not all of the relevant information will have been made available at this time.
  - Members are present to ask questions that may clarify elements of proposal and to raise awareness of any issues that their constituents may raise in due course, but they will not take part in any negotiation, which shall remain a role of the relevant officer(s).

All Council representatives taking part in these discussions will make it clear that decisions on planning applications are taken either:

- by the councillors on the Planning Committee; or
  - under specific circumstances by the Head of Environmental and Protective Services or an officer specified using delegated powers as under the Scheme of Delegation to Officers.
- (3) The officer will make a written note of all issues discussed at each meeting. If appropriate, the Officer will also send a follow-up letter if the prospective applicant has left documentary evidence with the Council. The Officer will also make a note of any telephone conversations.
- (4) If a pre-application meeting involves councillors, at least one officer will be present at all such meetings and a note of the discussion will be made. If an application is then made, the note will be made available for public inspection, as long as this is allowed under the usual rules about access to information.
- (5) Councillors will not take part in post-submission meetings with applicants or other parties, unless:
- section 5 of this code of practice allows this; or
  - the matter has been reported to the Planning Committee and the councillors concerned have been appointed by the committee.
- (6) A note of any discussions will be taken. This will be made available for

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public inspection, as long as this is allowed under the usual rules about access to information. At least one officer will be present at all such meetings.

## **Section 4 - Role of Informal Briefings**

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- (1) To assist in the decision making process, officers will undertake informal briefings where appropriate to explain underlying issues/policies relating to major development proposals.
- (2) These shall not extend to detailed discussion on any proposal the subject of a current planning application which has yet to be determined by the Planning Committee.

## **Section 5 - Lobbying**

---

- (1) It is quite common for applicants and others to want to discuss a proposed development with councillors before an application is decided. This can help councillors better understand the issues involved. However, to avoid compromising their position before they have received all the relevant information, evidence and arguments, councillors and in particular members of the Planning Committee will:
  - not meet an applicant, or any other person in connection with a planning application, alone (i.e. without officers being present)
  - not make it known in advance whether they support or oppose a proposal
  - not express an opinion which could be taken as support for, or opposition to, a proposal
  - not organise support or opposition for a proposal or lobby other councillors (except when speaking before the committee)
  - direct lobbyists or objectors to the case officer
  - inform the Head of Environmental and Protective Services and the Chairman of the Planning Committee about the existence of any lobbying interests.
- (2) Councillors who are **not** members of the Planning Committee may express predisposed support for a particular body of opinion before the matter is considered by the committee. But they must make it clear that they will not prejudicially reach a final view on a proposal until all the relevant information, evidence and arguments have been put

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before them.

- (3) A councillor who had previously expressed support for a particular body of opinion as referred to in Paragraph (2) above who is subsequently substituted onto the Planning Committee will not be able to speak or vote on any item that they have expressed support for in advance. This will also apply if any item is referred to full Council for a decision.
- (4) Any member of the Planning Committee (or councillor who is substituted onto the Planning Committee) whose impartiality has been compromised by them expressing a prejudicial view on an application prior to the Committee considering the matter will need to withdraw from the decision-making process. Any councillor who finds his/herself in this position should seek advice from the Monitoring Officer.
- (5) Councillors must avoid putting themselves in a position that could lead to the public thinking that they are receiving preferential treatment for themselves, friends or relatives, or for any firm or body they are connected with. The Council's Members Code of Conduct gives more information about this.

### **Section 6 - Reports to Planning Committee**

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- (1) Committee papers will normally be available at least five clear working days before the meeting.
- (2) All applications presented to the Planning Committee for decision will have a full written report from officers. This will include:
  - the substance of any objections
  - the views of people who have been consulted
  - a clear explanation of the Development Plan, site and related history
  - any other material planning considerations
  - a reasoned consideration of the proposal
  - a clear recommendation.
- (3) Any relevant planning information which is received after the written report has been prepared and prior to 5pm on the day preceding the Planning Committee meeting will be presented to the Committee by officers. Any representations received after 5pm, the specified cut off



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time will not be presented to the Committee. In the event of significant new information being received after the specified cut-off time, the Head of Environmental and Protective Services may recommend that the Planning Committee defers consideration of the application.

- (4) If the circumstances of an application change between the preparation of the report and its discussion by the Planning Committee, the Head of Environmental and Protective Services may remove any item from the agenda of the meeting.
- (5) If an application is decided in the way an officer's report recommends, the decision will be worded as in the report. Any amendments that officers or councillors put forward at the Committee meeting will be taken into account.
- (6) If councillors disagree with officers' professional advice, the reasons for rejecting a report's recommendation must be clearly stated at the meeting and recorded in the minutes. In this situation, councillors need to be sure that their decisions are based on sound planning reasons. Councillors must be aware that they may have to justify their decision at any appeal and may be held accountable by local residents.
- (7) Applicants and third parties will be entitled to speak at the meeting, as allowed by the Council's "Have your Say" planning procedure.
- (8) There will be an officer from the Council's Corporate Management at all meetings to make sure that procedures are properly followed.

### **Section 7 - Disclosure of interests – Councillors**

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- (1) The law and the Council's Members Code of Conduct set out rules and guidance for councillors on declaring their interests. Councillors must follow these rules and guidance and also review their own situation regularly. Under the Council's Code of Conduct impropriety must be avoided, and also any appearance of or grounds for suspicion of improper conduct. Where there is the possibility of an allegation of bias or predetermination, councillors must seek advice from the Monitoring Officer.
- (2) Councillors who are unsure whether an interest should be declared must seek the advice of the Monitoring Officer, or the Democratic Services Officer at the meeting.
- (3) Councillors are discouraged from receiving hospitality from people with an interest in a planning proposal. In accordance with the Council's Member's Code of Conduct councillors are required to register any gift or hospitality over the value of £25 on their Notice of Registerable Interest within 28 days of its receipt and declare the nature and

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existence of the gift and hospitality at the relevant committee meeting for a period of 3 years from the date of receipt.

- (4) Any member of the Planning Committee who has expressed a prejudicial view on an application will not participate in the determination of that application. If they do not wish to make representations in accordance with the Council's Member's Code of Conduct then they will leave the room for the duration of the discussion and vote on the application. If they wish to make representations they may do so as a visiting ward member (provided they are an eligible ward member) or from the public gallery in other instances (only if the public are so entitled) and must leave the room once they have finished their representations or the Committee decides that they have finished. They must not remain in the room when the vote is taken on the application.
- (5) If a councillor has acted in such a manner as to give rise to an allegation of bias or predetermination they must seek advice from the Monitoring Officer prior to seeking to make any representations or participation at Planning Committee.

## **Section 8 - Disclosure of interests – Officers**

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- (1) If an officer has an interest in any planning matter then they must declare this to their Head of Service/Planning Service Manager. This is recorded on the relevant application file and they must take no part in the processing of the particular matter.
- (2) No officer will, when exercising a power granted by the Scheme of Delegation to Officers, exercise that power in the case of an application where they have been responsible for writing the report and making the recommendation to the Planning Committee. In these circumstances the officer will refer the case to another officer for advice.
- (3) No officer will deal with any planning application within a radius of 500m of their own property.
- (4) Officers are discouraged from receiving hospitality from people with an interest in a planning proposal. If this is unavoidable, officers will declare its receipt, as soon as possible, in the relevant register of gifts and hospitality. Any concerns in this regard must be raised with the Monitoring Officer.

## **Section 9 - Applications submitted by Councillors or Officers**

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- (1) All applications which are submitted by or on behalf of councillors, former councillors or officers or their spouse/partners, will be reported to the Planning Committee for a decision. Wherever this becomes apparent, they will not be dealt with under the Scheme of Delegation to Officers. The Monitoring Officer will be informed of all such applications as soon as it becomes apparent to the Planning Service.
- (2) The councillor (in accordance with the Members Code of Conduct) or officer concerned will take no part in the processing or deciding of the application.

## **Section 10 - Training**

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- (1) All councillors must receive training in planning procedures. The subjects covered by the training will be decided by officers in consultation with councillors. A councillor who does not undertake this training will be disqualified from the Planning Committee and from being a substitute for members of the committee who are unable to attend. They will also be disqualified from taking part in deciding an application referred to full council. They will also be unable to participate in any pre-application or planning application meetings that include the developer, applicant(s) or their agent(s).
- (2) A programme of training will be available each year, covering issues of current importance as well as updating knowledge. From time to time, specialist training will be provided to cover particular topics or to look at matters in greater depth.

## **Section 11 - Complaints and compliments**

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- (1) Complaints and compliments about the Council's development management process will be dealt with under the Council's corporate complaints and compliments procedure.

## **Section 12 - Review of this Code of Practice**

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- (1) This code will be reviewed regularly to make sure that it reflects changes in the law, the Council's structure or other relevant considerations.

## **Schedule**

### **Committee Site Visits Protocol**

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All sites are investigated and considered by officers as part of the normal process of determining applications. The results of these investigations will be reported to the Committee in the written report on the applications. This information should normally be sufficient for members to be able to make a decision on the applications.

- (1) There may be reasons when councillors may want to visit specific sites. This may be, for example, to understand local conditions and the relationship of a proposed development to the surrounding area as it may not be possible to see the full picture from the submitted drawings or from outside the site. Members of the Planning Committee requesting site visits should specify the reasons for the site visit and offer particular issues they want to look at on site.
- (2) A formal site visit will be held where it is clear there will be benefits from holding one, or if the Planning Committee asks for a site visit. A record will be kept of why visits are being held and who attended.
- (3) The only people invited to the site visit are members of the Planning Committee and officers of the Council. Whilst other parties may be present, no one other than the Chairman, members of the committee and officers may address the Committee on a site visit.
- (4) The applicant and any other parties who are present at the site visit as a result of publicity e.g. ward councillors, neighbours or objectors, will not be permitted to participate in the site visit or in the discussion or speak directly to members of the Committee.
- (5) If access to private land is needed, officers will get the agreement of the landowner before the visit.
- (6) On assembling at the site, the Chairman will advise those present of the purpose of the site visit and the procedure to be followed, so that all are aware that it is a fact finding exercise only and that no decision will be taken until the Planning Committee meeting.
- (7) There must be no discussion of the merits of the case. Questions should not be put directly to the applicant or to any other people present. In the event that further discussion between officers and the applicant/others present proves necessary in order to answer members' questions on factual matters, the Chairman may decide on a brief adjournment of the meeting to facilitate this process.

<p style="text-align: center;"><b>Colchester Borough Council</b> <b>Planning Procedures Code of Practice</b></p>
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- (8) The visiting party will stay together as a group. No lobbying by applicants or objectors will be allowed and the public has no right to be in attendance. If an applicant or group persists in attempting to lobby, all councillors and officers will leave the site and the site visit will be abandoned.
- (9) When councillors on the Planning Committee are on site visits they must not make any comments that could give the impression that they had already formed a view on the merits of the application. No decision on the application will be made until a formal meeting of the Planning Committee, where councillors will have before them all necessary information to be able to make an informed decision. This will include a record of the site visit.

### **Site visits by individual councillors**

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- (1) Councillors are discouraged from visiting sites on their own, however if undertaken, councillors should:
  - Offer equal time to all parties for and against a proposal to try to hear both sides
  - not commit themselves to one side or another
  - always declare their visits to the Planning Committee before the item is considered.
- (2) Councillors need to be aware that lobbying or expressing their opinions could prejudice their opportunity to vote at any Committee meeting where a planning application is considered. Councillors may want to seek advice from the Monitoring Officer before making unaccompanied site visits.
- (3) Any councillor that does undertake a site visit on their own will not be acting as part of the Local Planning Authority and so will have no rights of access to any private land.
- (4) A note of any visit to a site outside of the Planning Committee must be made and passed to officers immediately and will be recorded on the planning application file.

## **APPENDIX B**

### **Colchester Borough Council Protocol for:**

#### **“Member Engagement in Pre-Application Planning Discussions”**

##### **Introduction**

In December 2009 the Department of Communities and Local Government (DCLG) published a consultation document entitled “Development Management: Proactive planning from pre-application to delivery”. Development Management introduces a proactive and engaging approach to dealing with developments as opposed to the traditional regulatory role that has been taken in the past (under “Development Control”).

A greater emphasis is placed on pre-application discussions and the Council is committed to providing a high quality Development Management service for local communities; inward investors; Developers; other statutory bodies and infrastructure providers in order to promote high quality, sustainable development. A Development Management approach, however, will necessitate a change in the way that both Officers and elected Members work within the planning applications system. Development Management encourages Members to be involved in pre-application discussions to act as champions of their communities but, where applicable, without prejudicing their role as decision makers.

Over recent years, there has been a steady flow of new legal decisions seeking to draw the line between legitimate predisposition and unlawful predetermination. Three relatively recent cases illustrate a shift towards increased pragmatism in this area:

- R (Island Farm Development Ltd) v Bridgend County Borough Council [2006] EWHC 2189 (Admin) [2007] LGR 60
- Condron v National Assembly for Wales [2006] EWCA Civ 1573 [2007] LGR 87
- R (Linda Ware) v Neath Port Talbot Council & National Grid [2007] EWHC 913 (Admin)

However, they also reveal a continuing conceptual uncertainty at the heart of the law in this area. Concerns on poor practices within local authorities have often been based on the issue of lobbying. Councillors, and members of the planning committee in particular, need to avoid bias and predetermination and take account of the general public’s (and the Ombudsman’s) expectation that a planning application will be processed and determined in an open and fair manner. This is a challenging frontier, but one that can reap huge benefits if undertaken in a proper manner. It is critical not only that proper procedures exist and are followed, but that they are perceived by all as being fair and reasonable. Care and common sense must be exercised by all the parties involved.

The purpose of this protocol is to provide clear guidance to ensure that elected Members can take part in discussions on development proposals at all relevant stages, including when options are being scoped and plans shaped, without prejudicing their decisions or compromising the integrity of the process.

##### **Creating “Eligible Pre-Application Proposals”**

Usually, pre-application discussions are treated as private and confidential for a variety of reasons, including that they may be speculative, affect unknowing

employees, or even involve land transactions where publicity could affect viability. Consequently, there are significant considerations in broadening the audience on pre-application discussions with regard to the public awareness that may arise. To safeguard Members, it is proposed that upon initial receipt of a major pre-application proposal the Planning Service shall contact the Developer to request their consent to engage Members in the planning process. This request will make clear that such schemes may be distributed more widely and may raise more public awareness. However, this has benefits to them to consider.

The agreement of the Developer will always be necessary.

Where Developers give consent, the plans shall be made available for Members to inspect. The Developer shall then be invited to attend a meeting to discuss the proposal at a formal meeting convened for such purposes. Only “major” development shall be eligible to pre-application meetings. Minor proposals will continue to be undertaken by Officers.

For the purposes of Member Engagement, the definition of major development used in the Development Management NI157 Performance Indicators shall be used, with the exclusions of any application to vary a condition related to a previous major planning permission, or waste and mineral applications (which are usually a County Council function). This means that eligible major applications will potentially consist of any proposal for:

- ten (10) or more residential dwelling units;
- any residential site area exceeding 0.5 hectares where it is not known how many dwellings are to be created;
- new non-residential buildings over 1,000m<sup>2</sup>;
- a change of use over 1,000m<sup>2</sup>; or
- Any other development site area that is 1 hectare or more.

Proposals falling in the above categories shall be considered as “Eligible Pre-Application Proposals” (EPAPs) once consent is given by the Developer to engage Members. These are more likely to be those of major strategic importance, which will represent a major contribution to delivery of the Local Development Framework (LDF).

The timing of meetings will be essential to ensure that developments evolve through genuine discussion. Members will be invited to engage in EPAPs at the earliest opportunity, however, before any Member involvement it is necessary that any major pre-application proposal will have first been considered by the Council’s Corporate Development Team. This is to ensure that the Officer can give accurate advice regarding any financial considerations to Members based upon the Corporate Development Team analysis.

All major planning proposals are currently considered by the Council’s Corporate Development Team. The Corporate Development team are responsible for setting out any s106 requirements. No planning obligation should be requested outside of this process and it should be noted that there are no proposed changes to the Corporate Development Team procedures.

Should Members wish the Corporate Development Team to reconsider any suggested contributions to be sought from an EPAP then the proposal would return to the Corporate Development Team for a second consideration. This may occur

during the pre-application of application stages and may need to be subject to flexibility on each individual case.

### **Eligibility of Members**

Once an EPAP is confirmed, it is proposed that the following Members will, as standard procedure, be invited to attend such meetings:

- The Chairperson of the Planning Committee
- Local Ward Members

In addition, invitations to meetings will also be sent to Members from other wards that are likely to be affected by a development (for example, neighbouring wards when developments are close to ward boundaries or where the scale or nature of development may affect another ward regardless of geographical proximity via issues such as traffic routes etc). The identification of the affected wards will be completed by officers based on material planning considerations. Their recommendations for invitation will then be authorised by the Head of Service.

Likewise, any other Members will only be invited at the discretion of the Head of Environmental and Protective Services and the reasons for allowing them to engage in a pre-application proposal shall be recorded on file.

All Members attending pre-application discussions must have first attended a training session on conduct at pre-application discussions. These training sessions will be organised by the Planning Service on a regular basis in order to ensure that the integrity of the Member's decision making role is maintained. No Member engaging in pre-application discussions should go more than 24 months without at least attending a "refreshment training session".

### **Pre-Application Meetings**

Members should only attend those meetings organised in accordance with this protocol and not arrange private meetings with Developers. The meeting will be conducted during office hours. It shall be arranged by Officers who shall accommodate, as far as reasonably practical, the availability of Eligible Members.

In the interests of transparency, consistency and fairness to all, the meetings shall follow a firm structure, as follows:

- The planning Officer will act as Chair for the meeting, introducing participants and setting out the purpose of the meeting to advise how it will be conducted.
- The Developer will present their proposal.
- Members will then have the opportunity to ask questions and seek clarification. They may alert the Developer to what they perceive as the likely views of their constituents but care will need to be taken that personal views are not expressed.
- The Chair will then thank the Developer for attending and the Developer shall leave the meeting.
- Once the Developer has left the meeting, Members may advise Officers of any other matters they wish to be explored further and any elements which they feel would benefit from negotiation.
- Officers will then offer a professional opinion to guide Members as to what negotiations would be reasonable and align with LDF policy.
- The Chair will then conclude the meeting.



The Chair will record the meeting and take a note of all present, plus any issues identified. Officers will take appropriate follow up action. The note of the meeting will be placed on the public file at the earliest opportunity.

In all cases, the involvement of Members will be recorded in any subsequent Committee Report.

The Chair will make it clear to the applicant/Developer that the role of the Member is to listen to the discussion, identify issues that the Developer will need to consider and to represent community interests but that it will not be possible for any Member to enter into negotiations or express a view on the proposal.

Negotiations will take place after the meeting and will be undertaken by professional Officers only.

In the case of potentially contentious meetings, 2 or more Officers will attend. For certain major, complex proposals it may be necessary to have more than one Member meeting and, to this end, a schedule of involvement will be agreed with the Developer by Officers.

#### **Member Disagreement with Officers**

Planning decisions are not an exact science, so interpretation can vary. It is critical to the openness and transparency of the planning service that mutual trust between Councillors and their Officers is demonstrated and each understands the other's role.

The Local Planning Authority has a duty under section 38 (c) of the Planning and Compulsory Purchase Act 2004 to determine applications in accordance with the development plan (adopted policy) unless material planning considerations indicate otherwise. Whilst Members may interpret policies differently, and are perfectly entitled to reach a different conclusion on the weight to be given to the material considerations, Members must not seek to influence the Officers' professional assessment of any proposal. If the interpretations differ, Officers will continue to lead discussions and the Member will have their opportunity to put across their opinion during the usual Planning Committee procedures.



## **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.