

**COLCHESTER BOROUGH COUNCIL
PLANNING COMMITTEE
26 August 2010 at 6:00pm**

SUPPLEMENTARY AGENDA

Part A

(open to the public including the media)

Pages

. Amendment Sheet

55 - 61

See Amendment Sheet attached.

AMENDMENT SHEET

**Planning Committee
26 August 2010**

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

7.2 091245 – Bellwood, Colchester Road, Great Wigborough

Delete condition 2 and replace with the following condition:-

2 – The permission hereby granted does not authorise the siting of the mobile home that is currently within the site or any use of the site for residential purposes.

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

With regard to the Consultations, no additional comments have been received from the Highway Authority.

7.3 101267 – 6 Braiswick, Colchester

The following letter has been received from the owner of 8 Braiswick:-

“The reason we are writing is to inform and seek the advice of the Planning Department concerning the possible removal of part of the hedge on the boundary between nos 6 and 8 Braiswick, in relation to a subsidence claim at no 8, and to ensure the Committee is aware of this possible development during the site visit as it may be relevant to consideration of the planning application.

Slight subsidence has been identified at no 8 and the cause has been determined as root-induced shrinkage of the underlying clay coming largely from constituents of the boundary hedge. The arboricultural consultants have recommended removal of an 8m section of the hedge and constituent trees to the rear of no 8. The species to be removed include hawthorn and a number of others. Ownership of the hedge and trees is not clear but is assumed to be joint between nos 6 and 8.

Were this hedge / tree removal to be carried out, it would increase the visual impact of the building at no 6 - although the section that would be removed is not immediately adjacent to the building, it would reduce line-of-sight screening of the building from the rear window of no 8.

This is we think relevant information to the case as the minutes of the meeting on the 12th Aug record the Planning Department's view that "there were a number of trees which softened the building."

We have two questions.

- 1) Are there any general regulations that would protect this section of hedge / trees, irrespective of any planning issues at no 6?

- 2) Assuming joint ownership, would the proposed condition of approval no 6 ("no trees shall be removed from the site...") for planning application 101267, if adopted, preclude removal of the hedge / trees?

For reasons both of privacy and general visual amenity we would personally prefer a subsidence solution at no 8, if it were feasible, which preserves the hedge - a matter which we are taking up with the insurer's agent. But regardless of our own opinion we thought we should make the Planning Department and Committee aware of these developments and seek any relevant advice."

Officer comment:

There are no general regulations that would afford protection to the boundary hedge at 6 / 8 Braiswick; the Hedgerow Regulations relate to rural hedges that do not form part of a garden boundary.

The suggested condition 6 would not preclude the removal of the boundary hedge if it was demonstrated that it was causing damage to the nearby buildings.

The following e mail has been received from the owner of 9 Warwick Bailey Close:

1. Planning Officers Report

We would firstly like to express our disappointment upon viewing the amended planning officer's report, further to the planning committee meeting of 12th August 2010.

It was our understanding that the report was to be edited, and re-submitted to the committee to ensure the clarity of the information with regards to our property (being referred to as 6 Warwick Bailey Close), and the detail in the planning department conditions proposed should the committee pass the application.

We find however, that in the report that our property is still sporadically referred to as 6 Warwick Bailey Close, and that the planning officer has taken the opportunity to extend his argument on one of his points. There are also some omissions from the conditions.

2. **If members were minded to refuse the application they should also consider what enforcement action they would like to take to remedy the situation.**

The above sentence has been introduced to the bottom of point 9.1 seems to pre-empt committee members to pass the application as enforcement action is implied to be too difficult. This, surely implies that the planning officer had no intention of ever refusing this application, as to do so would have been too difficult, despite our, and our neighbours repeated protests.

To invite objection comment on an application surely implies that this comment will be looked at and seriously considered, instead, the officer makes a show of considering all of our points in his report and dismissing each one without (in our opinion) due consideration, and without the benefit of viewing the building from our physical perspective.

3. **It should also be noted that neighbours are not entitled to any view into or over this land and the fact that they can see it and regard it as an eyesore is also of limited weight. As it is private land, the land owner has some rights to what he can or can't do with the land that should not be prejudiced by a neighbour's sense that they should retain an attractive view from their land or property.**

The above sentence is taken from point 9.2, and illustrates the dismissive nature of the officers regard for our comments.

We would like to point out that the applicant is referred to as the land owner, not the resident. Being that the land owner is not a resident (and therefore does not have to live with the consequences of his actions), why then are the invited views of the residents from all sides of the development considered to have 'limited weight'. We do after all pay our council tax to live in a residential area, which should not include industrial sized brick built storage sheds. It should also be mentioned, that although, as neighbours we 'are not entitled to any view into or over this land', we also have no choice over the views presented to us.

4. Newly revised proposals for conditions to be imposed upon approval

We note that there has been no inclusion of a condition to limit the storage of hazardous materials.

It should also be mentioned, that the current parking regime on site would limit fire service access to the storage shed in the event of an emergency. (As there is usually a resident's car parked in the undercroft for most of the daytime, and all of the night). We would hope that the newly revised parking plan to be presented under condition 9 accurately reflects this.

5. Final Comments

It should be noted that, if this same application were referring to a house, built in exactly the same position and of the same size, it would likely be refused as per the previous application (F/COL/06/1801 - Erection of detached bungalow to the rear).

If the applicant had been running a commercial company, and had applied for permission for the same building for storage for commercial purposes, that this too would likely be refused, as to do so in a residential area would be against planning guidelines.

Refusal in the above two scenarios could (and in the case of the 1st scenario, has been) be considered under the following guidelines:

6.1 Adopted Review Colchester Local Plan (March 2004):

DC1- Development Control considerations;

UEA 11 – Design

UEA 12 - Backland Development

UEA 13 – Development Adjoining Existing Property

CO4 – Landscape Features

As refusal for the two scenarios presented could be achieved quoting the above as grounds (a fact reinforced by condition 1 of the planning officer's report)

1 – Non Standard Condition

The permitted building shall be used solely for storage purposes incidental to the flat 6 Braiswick and shall at no time be used for any trade, commercial, business or any other use in connection with inhabitation.

Reason: For avoidance of doubt as to the scope of this permission, *as a business or residential use would not be acceptable in this location.*)

It is our argument that the current application, as it stands, falls somewhere between the above two scenarios, we would therefore urge committee members to refuse this application and to recommend enforcement action be taken for the structures removal.

Officer's Comments

- 1. The Minutes from the Committee meeting of 12 August 2010 state that this application was deferred as it was considered that a site visit was necessary before making a decision.***

It is accepted that the officer's report should refer to 9 Warwick Bailey Close not 6 Warwick Bailey Close.

- 2. In the Planning Officer's view, the development at 6 Braiswick is considered to comply with relevant planning policies. Should Members decide to refuse this application enforcement action will however accordingly need to be taken to remedy the situation. The purpose of the added sentence to paragraph 9.1 is to enable Members to advise officers as to what enforcement action should be taken so that a report/enforcement notice can be drafted accordingly.***

The added sentence is not intended to pre-empt any decision made by the Planning Committee.

- 3. Members will be aware that in planning terms there is no right to a view. Members will also be aware that a landowner does not need to reside at a property in order to apply for planning permission on their land. The development has been considered in the light of the relevant development plan policies and is considered acceptable.***
- 4. Condition 1 suitably covers the storage of materials.***

- 5. *The current application is substantially different from Application F/COL/06/1887 which was for a detached bungalow measuring approximately 11.5m x 9.25m (and filled virtually the entire width of the plot).***

Commercial operations, like flats, do not have permitted development rights and planning applications that relate to such land uses are judged against the same planning criteria. The fact that a commercial organisation may be located in a residential area does not preclude further development on such a site..

7.4 091539 – Land rear of 185 Shrub End Road, Colchester

ECC Highways have not provided a response to the proposal.

Agenda Item 8 – Pantile Farm, Peldon Road, Abberton

The main report states that enforcement action has already been taken and the report is simply for information. At the time the report was drafted it was believed that this was the only appropriate way forward. However, as a result of specialist legal advice obtained, further investigations, and co-operation from the owner, it is now proposed that no action is taken for a period of two months to allow for the submission of planning applications to attempt to regularise the breaches at the site.

The owner of the site has now obtained planning advice and proposes to try and regularise the breaches and enter into a legal undertaking.

The need to take enforcement action as a matter of urgency as set out in the main report was due to the lack of evidence regarding the previous uses at the site. This made it necessary to rely on an aerial photograph taken in August 2000 to show that the outside storage had not become immune from enforcement action. In response to the Planning Contravention Notice, the owner had stated that there had previously been some storage of materials outside in connection with a different business. The August 2000 aerial photograph was the only evidence that there was no significant outside storage ten years ago. A claim could have been made that the storage use commenced almost immediately after the photograph was taken. The owner has now made a categorical statement that prior to 2004, any outside storage was negligible and could be considered to be de-minimus. Legal advice is that this would be sufficient to prevent a claim that the use was now lawful in the event of an appeal.

Legal advice is that the majority of the containers, being welded together, are to be considered as buildings and are in the main, lawful, having been on site for more than four years. As ten of the containers are now lawful, taking enforcement action against the remaining four would be difficult to justify. The owner proposes to relocate the remaining containers into a more appropriate location where they are not visible from the road.

SPECIFIC PROPOSALS BY THE OWNER

The unauthorised black boarded building – this is now being used as a stable and for a few game birds. A planning application to retain it for equine or other suitable rural uses is to be submitted. The building is around two years old, so is not about to become lawful in the near future.

The outside storage of reclaimed building materials – Although B8 storage, is one of the uses which is considered suitable in the Core Strategy for this site, this is restricted to within the buildings, not as outside storage. In an attempt to mitigate the effects of the outside storage, the owner proposes to remove some lawful development from the site, consisting of an old blue lorry back used for storage and a double portacabin. Other visual improvements to the site, including landscaping are proposed.

The photograph shows a view from the entrance to the site. The green building in the centre is to be retained, moving to the right, the blue lorry back will be removed and the green containers sitting behind and to the right will be relocated further within the site. The portacabin, which is a white and red structure just visible behind the building on the right will also be removed. The white building on the right will be painted a colour to be approved.

RECOMMENDATION – To allow a period of two months for the submission of the applications. If they are approved, no further action to be taken. If the applications are not received, or if they are refused, then enforcement action to be taken in line with the report dated 17 June 2010 and the legal advice obtained.

**COLCHESTER BOROUGH COUNCIL
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SUPPLEMENTARY AGENDA

Part B

(not open to the public or the media)

Pages

There are no Section B Items